

2022 ANNUAL REPORT

BUILDING THE MODERN WSIAT



Workplace Safety and Insurance
Appeals Tribunal

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

WSIAT 2022

Annual Report

Workplace Safety and Insurance Appeals Tribunal
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INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) has exclusive jurisdiction to determine appeals from final decisions of the Workplace Safety and Insurance Board (WSIB), and such other matters assigned to it under the *Workplace Safety and Insurance Act, 1997* (WSIA). The WSIAT is the final level of appeal for workplace safety and insurance matters in Ontario.

The WSIAT is an independent, quasi-judicial adjudicative agency. The WSIAT is separate from the WSIB and operates at “arm’s length” from government. It was established by statute in 1985 as the Workers’ Compensation Appeals Tribunal and continued by section 173 of the WSIA.

This volume contains the WSIAT’s annual report to the Minister of Labour, Immigration, Training and Skills Development and to the WSIAT’s various constituencies. The focus of this report is the WSIAT’s activities, financial affairs and evolving administrative policies and practices. The annual report also contains information on the WSIAT’s operations for fiscal year 2022, a message from the Chair, and comments on matters that may be of special interest or concern to the Minister or the WSIAT’s constituencies.

Mandate

The mandate of the WSIAT is to hear and decide appeals from final decisions of the 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 well-reasoned commentary on legislation in the workplace safety and insurance system.

Guiding Principles

The guiding principles of the WSIAT are:

- an accessible appeal 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.

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CHAIR'S REPORT



MESSAGE FROM THE CHAIR

ROSEMARIE MCCUTCHEON



I am pleased to provide the 2022 Annual Report of the WSIAT.

The WSIAT sets yearly targets in its annual business plan. This annual report demonstrates that the WSIAT has been largely successful in meeting its goals, which fall into the following categories:

- timely and fair case processing, hearings and decisions;
- improving access to justice and accessibility;
- promoting equity, diversity and inclusion; and
- modernization, which includes responsiveness to stakeholder needs and adaptability to a changing environment.

Timely and Fair Case Processing, Hearings and Decisions

It is important to emphasize “timely” and “fair.” Both terms are essential components of administrative justice – one should never be pursued at the expense of the other. Administrative justice is meant to be simpler and faster than the courts. At the same time, the process must be fair and proportional to the circumstances. At the WSIAT, we see these goals as complementary, rather than competing objectives.

In 2022, the WSIAT successfully managed its caseload in a timely way and realized the following productivity improvements:

- The median time to close appeals was 12.8 months, compared to 15.5 months in 2021 and 27.6 months in 2017. The WSIAT continues to gain substantial ground in meeting our strategic objective of closing appeals within 12 months or better, and we intend to maintain our momentum in 2023.
- The median time to the first offered hearing date was 4.5 months, which surpassed our 2022 strategic objective of offering the first hearing date within six months or better.
- The active appeals inventory was 3,938 at year-end, which falls within our preferred target of 4,000 (+/- 5%).

- The percentage of decisions issued within 120 days was 89%, falling just short of our goal of 90%. The WSIAT has robust internal processes to follow up on delayed decisions and we intend to improve on this metric in 2023, while respecting the independence of our adjudicators.

We also saw a significant uptake in our electronic services. In 2022, 12,305 submissions were received through the E-File application, compared to 8,294 received in 2021. From the launch date on March 28, 2022 to December 30, 2022, the WSIAT sent 20,498 documents electronically through E-Share. We continue to encourage representatives and parties to participate in E-File and E-Share, which are secure and convenient ways to communicate with the WSIAT about appeal-related matters while reducing the impacts on the environment related to paper production, mass printing, and shipping.

In 2022, the WSIAT explored methods of identifying cases that may benefit from an expedited process, such as time-sensitive return to work disputes. However, upon careful review by the Office of the Vice-Chair Registrar, it was found that there were relatively few participants who were ready for a speedier process in the appropriate cases. The WSIAT does expedite cases in certain circumstances (for example, terminal illness of one of the parties or witnesses), and we will continue to take that approach where appropriate.

The WSIAT also proposed a new pre-hearing process that has been shared with the WSIAT's Advisory Group for feedback. This proposed process is supported by refreshed forms and practice guidelines that have been reviewed from a plain language perspective to

"[...]feedback has indicated that videoconference is viewed as a fair and accessible method of hearing in the majority of cases. It has also enabled the WSIAT to reduce timelines and "level the playing field" in times to hearing across the province.



maximize clarity and ease of understanding. We continue to make adjustments to the proposed new process in response to feedback and aim to make the transition to the new process in late 2023 or early 2024. We will communicate the changes well in advance of the effective date of the new process.

We continue to maintain and enhance our commitment to

excellence in the pursuit of timely justice. The high quality of adjudication is supported by several departments of the WSIAT, including the Tribunal Counsel Office, the Office of the Vice-Chair Registrar, the Diversity and Anti-Racism Office, and the Office of Counsel to the Chair. These departments support the processing of appeals and offer comprehensive professional development programs that ensure the WSIAT has a motivated workforce of knowledgeable employees and adjudicators.

Our commitment to professional development has never been stronger. In 2022, the WSIAT hosted a Canadian WCAT Symposium for our counterparts at workers' compensation appeal tribunals (WCATs) across Canada. Along with several prominent speakers, the WSIAT shared information and insights about emerging trends and issues that arise in the pursuit of access to justice, important noteworthy decisions, and initiatives from various provincial and territorial WCATs.

Improving Access to Justice and Accessibility

In late 2021, the WSIAT conducted an accessibility survey. In 2022, a working group was established to respond to areas where a need for improvement was identified. The WSIAT also took the following steps to improve accessibility and transparency in 2022:

- The accessibility survey was posted on the WSIAT website and addressed at a stakeholder session in 2022.
- A new Accessibility and Diversity page was established on the homepage of the WSIAT website, making it easier to find information about the WSIAT's inclusive work environment, equitable access to services, and how to request an accommodation.
- The WSIAT's newly established Diversity and Anti-Racism Office continued to promote principles of equity, diversity, inclusion and accessibility, including the creation of new messaging on our internal homepage on accessibility and diversity.
- Our E-file service was improved to accomplish a faster turnaround time for received documents.

Promote Equity, Diversity and Inclusion

Our staff and adjudicators have embraced the WSIAT's commitment to the equity, diversity and inclusion (EDI) learning journey. We are proud of the following accomplishments in 2022:

- All staff and OICs completed the mandatory EDI commitments in their performance plans.
- Training sessions were held for staff and OICs on racism and mental health, how to be an ally and self-care.
- Educational events were held throughout 2022, including Holocaust Remembrance Day, Bell Let's Talk Day, Black History Month, Pride Month, and the National Day for Truth and Reconciliation.

Building a Modern, Responsive WSIAT

Fortunately, the public health environment has improved and public health restrictions have largely been lifted. Our challenge at the WSIAT is to maintain and consolidate the gains that

were facilitated by the shift to electronic communications and virtual hearings, while offering options that best suit the diverse needs of our stakeholders.

We continue to seek feedback on virtual hearing methods from adjudicators and stakeholders. This feedback has indicated that videoconference is viewed as a fair and accessible method of hearing in the majority of cases. It has also enabled the WSIAT to reduce timelines and “level the playing field” in times to hearing across the province.

We also held stakeholder focus groups in 2022. One of the key takeaways was the desire for choice in hearing methods and communications.

In the fall of 2022, the WSIAT announced that videoconference would become the default hearing method, with a gradual increase in the availability of in-person hearings. We scheduled nine in-person hearings in 2022. We anticipate a gradual increase in scheduling in-person hearings, including regional hearings, in 2023. (As of mid-March 2023, eight in-person hearings have already been scheduled for 2023.)

We will continue to adapt in response to stakeholder feedback, while seeking to balance demand for in-person hearings with our commitment to the judicious and economical use of our time and resources.

The WSIAT takes pride in providing a high level of support to parties, both represented and unrepresented. To further enhance our services, we are working on implementing a navigator service in 2023 to provide additional support to self-represented parties in the early stages of the pre-hearing process. As always, legal workers in the Office of the Vice-Chair Registrar and lawyers in the Tribunal Counsel Office will continue to provide assistance to parties.

Thank you and Continued Gratitude

It is an honour and a privilege to serve as the Chair of the WSIAT, where we have a hard-working, creative, and dedicated team that puts stakeholder needs at the centre of everything we do. Thank you to the WSIAT staff and adjudicators for their considerable efforts in 2022 and for their ongoing commitment to service excellence.

I also wish to thank the Honourable Monte McNaughton, Minister of Labour, Immigration, Training and Skills Development, for his ongoing support for the WSIAT's mandate and commitment to excellence. We also thank our system partners, the WSIB, the Office of the Employer Adviser, the Office of the Worker Adviser, and the many stakeholders who attend our regular outreach events and educational sessions.



Rosemarie McCutcheon
Chair, Workplace Safety and Insurance Appeals Tribunal

WSIAT 2022

PRODUCTION AND ACTIVITY HIGHLIGHTS

HEARINGS



751

Written



9

In-Person



832

Videoconference



469

Teleconference



1,984

Decisions
Issued



267

Resolved Cases



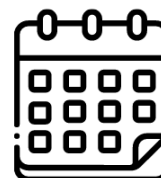
89%

Decisions Issued
within 120 Days



20,498

E-Share
Documents



4.5 months

Median Time
to First Offered
Hearing

12.8 months

Median Time to
Close Appeals



12,305

E-File
Submissions

2022 DECISION HIGHLIGHTS

This section reviews some of the many legal, factual and medical issues that the WSIAT considered in decisions released or summarized in 2022.

The WSIAT decides cases under four acts. The 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.

The WSIAT also considers and applies policies adopted by the 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.

WSIB Policy under the WSIA

While the WSIAT has always considered WSIB policies, section 126(1) of the WSIA expressly states that if there is an applicable WSIB policy, the WSIAT shall apply it when making its decision. Section 126(2) states that the WSIB shall notify the WSIAT of any policies that apply to a particular appeal.

Section 126(4) sets out a process for the WSIAT to refer a policy back to the WSIB if the WSIAT concludes that the policy is inapplicable, unauthorized or inconsistent with the WSIA. Section 126(8) states that, after a policy is referred back to the WSIB, the WSIB shall issue a written decision with reasons.

There were two section 126(4) referrals in 2022. The first referral occurred in *Decision No. 699/1812*, 2022 ONWSIAT 334; *Decision No. 1327/1812*, 2022 ONWSIAT 333; and *Decision No. 1328/1812*, 2022 ONWSIAT 335. These decisions concerned Operational Policy Manual (OPM) Document No. 23-02-01, "Cancers in Firefighters and Fire Investigators" (Cancers in Firefighters Policy). These three appeals were heard together, as each case involved similar facts and determined entitlement for breast cancer for a communications/dispatch firefighter. The Panel found there was no dispute between the parties that the rebuttable presumption of entitlement in section 15.1(4) of the WSIA applied. A communications/dispatch firefighter falls within the definition of "firefighter" contained in the applicable regulation. The workers had the requisite number of years of employment as a firefighter, and breast cancer is one of the prescribed cancers in the applicable policy. Therefore, the outcome of the appeal turned on whether the presumption had been rebutted. The Panel concluded that it was not appropriate to weigh evidence of work-relatedness when determining whether a presumption of causation is rebutted for occupational

disease entitlement, as this would be inconsistent with the purpose of presumptions for occupational disease. The Panel referred the Cancers in Firefighters Policy to the WSIB for review under section 126(4) on the basis that it was inconsistent with the WSIA, as it lacked provisions to establish a causal connection between workplace exposure and the development of an occupational disease to support the application of a presumption of entitlement. Given the broad definition of “firefighter,” which encompasses persons not involved in fire suppression (the process associated with the causation of the disease), the term “firefighter” was not a sufficient basis to establish workplace causation. The Panel rejected the argument that the Cancer in Firefighters Policy was consistent with the WSIA because it simply mirrored the language of the regulation. In this regard, the Panel cited several other policies that implement regulatory presumptions in which the WSIB added provisions that go beyond the language of the presumption itself. The Cancer in Firefighters Policy excludes forest firefighters, a provision which is not contained in the regulation. The Panel found that the implementation of an occupational disease presumption through WSIB policy ought to include provisions that ensure the application of the presumption is premised upon a workplace injuring process.

A section 126(4) referral also occurred in *Decision No. 1052/22I*, 2022 ONWSIAT 2064. This decision focused on OPM Document No. 18-05-03 “Determining the Degree of Permanent Impairment” (Permanent Impairment Policy). The Vice-Chair found that the provisions in the Permanent Impairment Policy that describe how to obtain a medical assessment for non-economic loss (NEL) adjudication purposes were fundamentally inconsistent with section 47 of the WSIA. The Vice-Chair referred the Permanent Impairment Policy for review under section 126(4), as the policy appeared to indicate that the manner in which the assessment is to be conducted does not provide or allow for compliance with the following legislative requirements:

- the assessment be conducted by a physician on a roster maintained by the WSIB (section 47(4));
- the worker can select the physician who will conduct the assessment (section 47(4));
- the doctor conducting the assessment will have regard for the worker’s treating health professional’s reports (section 47(5)); and
- the employer will receive a copy of the assessment report (section 47(7)).

The WSIAT also considers other documents created by the WSIB that are not formally recognized as policy under section 126. *Decision No. 61/22*, 2022 ONWSIAT 140, considered whether information on the WSIB website should be relied on in WSIAT decision-making. The Vice-Chair found that consistency in adjudication cannot be achieved by reliance on the content of the WSIB website. The party responsible for the creation of content on the WSIB website is unclear, the date that content is created is also unclear, and the content may be amended at any time or disappear completely. The Vice-Chair found that WSIAT

decision-makers have more confidence in the WSIB's Administrative Practice Documents because they are dated, fixed in content, include a document history, and have a scheduled review date.

LOE Entitlement Issues

The WSIA provides loss of earnings (LOE) benefits for workplace injuries. LOE benefits are calculated on the basis of 85 percent of the difference between the worker's net average earnings before the injury and the net average earnings that the worker earns, or is able to earn, in suitable and available employment or business after the injury.

LOE benefits are only payable if a worker sustains a wage loss. If suitable modified work is offered by the employer at no wage loss, LOE benefits are denied. In deciding what constitutes suitable modified work, *Decision No. 255/22, 2022 ONWSIAT 988*, clarified that suitable modified work must be productive and provide an objective benefit to the employer's business. This decision also focused on accommodating the worker's psychological needs, clarifying that an offer of suitable work must consider both the worker's physical and psychological needs.

In order to determine LOE benefits, adjudicators must ascertain the worker's average earnings. The process for making this determination is set out in section 53 of the WSIA. *Decision No. 517/22, 2022 ONWSIAT 1626*, confirmed that the average earnings of an apprentice must be calculated as prescribed in *Ontario Regulation 175/98*. The Vice-Chair found that, given the use of the word "shall" in section 53(4) of the WSIA, when determining the average earnings of an apprentice, neither regulation nor policy provide for secondary inquiries into the fairness or rationale behind the amount of pay.

Decision No. 136/22, 2022 ONWSIAT 255, examined when the statutory minimum set out in section 43(2.2) of the WSIA applies to the calculation of an earnings basis, which is used to determine LOE benefits. The worker argued that because his partial LOE benefits fell short of the statutory minimum, they should be increased to the statutory minimum. The Vice-Chair confirmed that the statutory minimum amount, which is applicable to payments for partial LOE, is only considered if the worker's pre-injury net average earnings or 85 percent of the worker's pre-injury net average earnings is less than the statutory minimum. This was not the case here, as the worker had earned more than the statutory minimum prior to his workplace accident.

NEL Benefits

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 and apply the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (3rd edition, revised) (AMA Guides). This volume is prescribed as the NEL

rating schedule by *Ontario Regulation 175/98*. A worker is entitled to be assessed for a NEL award if they continue to have a permanent impairment after reaching maximum medical recovery.

Decision No. 902/22, 2022 ONWSIAT 1115, found that an intermittent loss of smell and taste does not meet the permanent impairment criteria under section 9.3c of the AMA Guides. Under this section, “detection by the patient of any odor or taste, even though he or she cannot name it precludes a finding of permanent impairment.” Based on this statement, the Vice-Chair determined that a loss of taste or smell must either be 0% (no impairment) or 3% (a complete loss).

Decision No. 159/22, 2022 ONWSIAT 1046, granted entitlement for a NEL assessment for psychotraumatic disability. The worker had an atypical panic disorder and multiple chemical sensitivity. The Vice-Chair found that the worker’s management of her panic disorder, which involved avoiding potential triggers, did not mean she had recovered. The Vice-Chair was satisfied that the worker continued to experience a functional abnormality or loss as a result of her compensable psychological condition.

Chronic Mental Stress

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 that provide entitlement for chronic mental stress (CMS).

Under OPM Document No. 15-03-14, “Chronic Mental Stress” (the CMS Policy), interpersonal conflicts between a worker 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. *Decision No. 831/21, 2022 ONWSIAT 1432*, examined whether several incidents involving a worker and his co-workers should be characterized as “workplace harassment” or “interpersonal conflict.” The incidents included obstructing the worker’s path, shouting at him, staring at him, bumping into him, alleging he had harassed female co-workers, blocking his access to a computer, and making threatening gestures. The Panel reviewed a decision of the British Columbia Workers’ Compensation Appeal Tribunal and agreed that, when determining what constitutes workplace harassment, “behavioural perfection” is not an achievable standard. Behaviour in the workplace that falls well short of “perfection” will not necessarily be abusive or harassing.

Decision No. 35/22, 2022 ONWSIAT 1173, also questioned whether issues between a worker and her manager amounted to workplace harassment or interpersonal conflict. The Panel majority found that a change in management style does not amount to a finding of harassment. Their analysis focused on a labour arbitration decision, which had found that harassment normally involves an element of persistent conduct or a course of activities that involves hostility, importuning, badgering, intimidation or bullying. Not every “employment bruise” should be treated as harassment. The Panel majority noted

that managers or colleagues will not always “act their best” in all their interactions, and a “degree of tolerance to perceived rudeness or imperfect social graces” is expected. The Vice-Chair dissented and would have allowed the appeal. The dissent relied on the reasoning of several Ontario Human Rights Tribunal (OHRT) decisions that had examined allegations of harassment. In particular, the Vice-Chair’s dissent relied on the OHRT’s reasoning that there is a subjective element inherent in the definition of harassment and an adjudicator must consider the person’s subjective experience of the course of conduct when determining whether it was vexatious or egregious.

The CMS Policy emphasizes that a worker with a job that entails a high degree of routine stress should not be denied benefits simply because all workers employed in that occupation, or category of jobs within that occupation, are normally exposed to high levels of stress. *Decision No. 371/17, 2022 ONWSIAT 1266*, found that the worker’s job in child protection was one that involved a high degree of routine stress. The worker was responsible for matters involving life and death, and his decisions had major life impacts on children. Entitlement for chronic mental stress was allowed because the medical evidence demonstrated that the worker was exposed to substantial workplace stressors, including perceived and actual threats of violence that created concerns about his personal safety, as well as distress that was associated with the very nature of his job.

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. The WSIB has also adopted policies and adjudicative advice documents that apply to other occupational diseases and exposures. Occupational disease claims that are not subject to specific statutory or policy provisions are determined on their individual facts in accordance with the principles of causation.

Decision No. 3097/17, 2022 ONWSIAT 1517, involved the issue of entitlement to benefits for kidney cancer, which the worker claimed was caused by occupational exposures. The worker also sought entitlement for mesothelioma, which he attributed to occupational asbestos exposure. Following a report from a WSIAT Medical Assessor, the Chair found that the evidence established the worker’s occupational exposure made a significant contribution to the development of his kidney cancer, which had metastasized. Therefore, the worker’s entitlement for kidney cancer also included the related metastatic cancer. The worker was denied entitlement for mesothelioma because the evidence showed that mesothelioma was unlikely to be the correct diagnosis. Given the Medical Assessor’s report, the Chair considered it more likely that the correct diagnosis was metastatic cancer from primary kidney cancer.

Section 14 of the WSIA provides a presumption that when a worker who is a first responder is diagnosed with post-traumatic stress disorder (PTSD), it is presumed to have arisen

out of and in the course of employment unless the contrary is shown. *Decision No. 895/22, 2022 ONWSIAT 1544*, involved a worker who developed PTSD while working as a correctional officer, an occupation that falls within the definition of “first responder” in section 14. The Panel found that the presumption had not been rebutted. While the triggering event was not one that involved a level of threat commonly experienced by individuals who meet the diagnostic criteria for PTSD, there is no requirement that the triggering event be one that is objectively traumatic or involves threats of violence or actual violence. Rather, the presumption in section 14 is only rebutted when the workplace is shown not to be a significant contributing factor in the development of the worker’s PTSD.

Decision No. 1406/22, 2022 ONWSIAT 1717, also involved a correctional officer diagnosed with PTSD. The Panel found that section 14 provides a presumption for first responders diagnosed with PTSD, in recognition of the traumatic experiences to which this group of workers are routinely exposed. With this overarching purpose in mind, there is no requirement for the triggering event to be one that is objectively traumatic or involves threats of violence or actual violence. Rather, the presumption is only rebutted when work is shown not to be a significant contributing factor in the development of the worker’s PTSD.

Decision No. 864/21, 2022 ONWSIAT 2066, examined whether the compensable pneumothorax that the worker sustained after a lifting accident resulted in permanent damage to his lung. The worker claimed that the workplace accident caused his previously undiagnosed chronic obstructive pulmonary disease (COPD) to become symptomatic, worsened his COPD, or directly damaged the lung with the result that his ongoing respiratory symptoms became compensable. The Panel denied the appeal after obtaining a report from a WSIAT medical assessor, who confirmed a specialist opinion that the worker’s later symptoms were attributable to non-compensable COPD. The Panel found that the worker had no functional loss because the scarring from the pneumothorax was unlikely to have continued affecting ongoing respiratory function. Accordingly, the worker would be deemed not to have a permanent impairment under subsection 47(13) of the WSIA, as the degree of permanent impairment would be determined to be zero.

Decision No. 1280/22, 2022 ONWSIAT 1498, examined whether a teacher sustained a compensable vocal cord injury due to the amount of vocal use that her job required. The worker claimed entitlement for a gradual onset disablement injury. The employer’s representative provided medical literature describing reflux laryngitis, and submitted that this non-work-related condition could be the significant contributing factor in the worker’s vocal problems, as opposed to her employment duties. The Panel found that the diagnosis of reflux laryngitis had been ruled out by a speech pathologist. Furthermore, an otolaryngologist diagnosed the worker with “vocal cord nodules likely from chronic vocal abuse working as a teacher.” The Panel also noted that there was no evidence that the worker had participated in any non-occupational activities that required voice projection or vocal abuse, nor were there any contradicting medical opinions before the Panel in this appeal. Therefore, the evidence supported a finding that the work duties were a significant contributing factor in the development of the worker’s vocal cord injury, diagnosed as vocal cord nodules.

Employer Issues

One key employer issue adjudicated at the WSIAT is which employer is responsible for the costs of a compensable injury, as well as the extent of its cost burden. In *Decision No. 1493/22*, 2022 ONWSIAT 1905, the employer sought a 100% transfer of costs under OPM Document No. 15-01-06 "Third Party Motor Vehicle Accident Claim Costs." Costs can be transferred under this policy if an accident involves a negligent third party who is not covered by Schedule 1. The worker in this case sustained a mental stress injury after witnessing a motor vehicle accident. The policy does not state that a worker injured by the accident needs to be directly struck by the negligent party's vehicle in order for the employer to be entitled to cost relief under the policy. As such, the worker's injuries were found to be the result of a motor vehicle accident caused by a negligent third party who was not covered under Schedule 1. The employer was therefore entitled to 100% cost relief under the policy.

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. *Decision No. 1044/22*, 2022 ONWSIAT 1877, discussed whether obesity may be considered a pre-existing condition for the purposes of SIEF cost relief. OPM Document No. 14-05-03, "Second Injury and Enhancement Fund (SIEF)" (SIEF Policy) provides that the medical significance of a condition is assessed in terms of the extent to which it makes the worker liable to develop a disability of greater severity than a normal person. The Vice-Chair found that the word "normal" indicates that something is within a range of what is expected, and which is not unusual. After reviewing studies provided by the employer's physician, which discussed the prevalence of obesity in Canada, the Vice-Chair found that it cannot be stated that obesity in itself makes a worker liable to develop a disability of greater severity than a "normal" person. The Vice-Chair agreed with prior submissions from the WSIB that obesity is generally not considered a medical condition that would fall under the SIEF Policy unless medical opinions suggest that the worker was morbidly obese.

Right to Sue Applications

The workplace insurance scheme in Ontario is premised on the "historic trade-off," which refers to workers giving up their 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.

Under section 28(2) of the WSIA, a worker of a Schedule 2 employer cannot commence an action against their Schedule 2 employer or a director, executive officer or worker employed by the worker's Schedule 2 employer. *Decision No. 1747/21*, 2022 ONWSIAT 1595, found that when a worker's employer is the provincial Crown, the worker cannot commence an action against another government ministry. Government ministries do not have separate legal personalities that are distinct from the Crown. Therefore, a worker of the provincial Crown would be unable to commence an action against another ministry, as it would be seen as part of the same Schedule 2 employer of the worker, namely the provincial Crown.

Decision No. 550/21, 2022 ONWSIAT 1335, held that subrogated rights of action under section 30 can be considered in the context of a right to sue application. Section 123(2) of the WSIA prevents the WSIAT from deciding appeals under section 30, but not applications under section 31. The Panel noted that part of the action was commenced by family members who were neither dependents nor survivors under the WSIA. The Panel found that the WSIAT has no jurisdiction over the family members' right of action, or the determination of whether the action is derivative in nature. This issue would need to be decided by the Courts.

Decision No. 1710/21, 2022 ONWSIAT 461 and *Decision No. 996/21, 2022 ONWSIAT 27*, both considered the issue of whether the WSIAT has jurisdiction to decide if a worker's right of action is taken away in circumstances where the worker's estate is not a party to the action or the application. In both cases, the workers had passed away and non-dependent family members commenced actions subsequent to their deaths. *Decision No. 1710/21* explained that a broad and purposive interpretation of the WSIA was appropriate to avoid a situation in which the division of authority between the WSIAT and the Courts results in neither the WSIAT nor the Courts being willing to exercise jurisdiction to make a necessary decision. Namely, a decision on whether the WSIA would have taken away the worker's right to recover damages for his injury had he not been fatally injured. The Panel noted that this decision fell directly within the expertise of the WSIAT, regardless of the fact that the ultimate decision regarding the parent's ability to proceed with their claim lay with the Courts.

Other Legal Issues

The WSIAT continued to adjudicate procedural issues in 2022, including the issue of observers at WSIAT hearings. *Decision No. 1169/2012, 2022 ONWSIAT 1782*, focused on a request for observers, the WSIB's participation in a hearing through *amicus curiae* submissions, and expert witnesses. This decision concerned a batch of cases that arose after claims were made by injured workers employed through the Seasonal Agricultural Worker Program. The Panel dealt with a request for approximately 50 observers to attend. The Panel noted that the WSIAT is not subject to the open court principle, and does not typically have large numbers of observers at hearings. The WSIAT also does not usually allow public observers at hearings. The Panel concluded that it was appropriate to grant the request for observers for the final day of the hearing when legal submissions would be made, as it was determined that the issue was of significant importance to the legal community and other groups. The Panel also allowed observers on the basis that an appropriate technological solution could be arranged that would not detract from or undermine the seriousness of the proceedings.

Decision No. 288/22I, 2022 ONWSIAT 391, discussed when it is appropriate to bifurcate WSIAT proceedings. The employer requested that the appeal of one WSIB decision be decided orally, and the appeal of a second WSIB decision be decided through a written hearing process. The Panel found that while bifurcation can be granted in proceedings involving constitutional and human rights matters, the bifurcation of appeal proceedings in

this situation would not be consistent with WSIAT practices. There was no reasonable basis on which to deviate from this practice, as bifurcation in this case could lead to incomplete and unfair results or a duplication of process. The Panel also examined how the appeal should proceed. The appeal was originally scheduled for a hybrid model, which allowed for a videoconference, with the worker and the worker's representative participating by way of teleconference. However, the Panel found that videoconference was not viable in this case because the worker did not have access to high speed internet. The Panel concluded that, given the complexity of the appeal, an in-person hearing was necessary.

Decision No. 450/21I, 2022 ONWSIAT 407, dealt with the preliminary issue of whether a person who is a paralegal but has been administratively suspended by the Law Society of Ontario and subsequently retired could represent a worker at a WSIAT hearing. The Panel found that section 26.1 of the *Law Society Act* clearly and unequivocally restricts the provision of legal services to licensees in good standing. The Panel found that the representative was not eligible to represent the worker in the proceedings while his status was "not practicing law." In addition, the representative was considered a "licensee," notwithstanding the suspension of his license. As such, the exemptions under section 26.1 did not apply, including the friend exemption.

Decision No. 930/19R, 2022 ONWSIAT 1420, confirmed that the WSIAT's longstanding threshold test for reconsiderations ought to be construed in light of the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*). The Chair found it was appropriate for the WSIAT to align its reconsideration threshold test with the test for reasonableness established in *Vavilov*. This approach ensures that the WSIAT's decisions are rational, understandable, and fair in a manner that is consistent with the exercise of delegated public power and the purposes of workers' compensation, including the provision of compensation quickly without court proceedings. If parties are routinely required to resort to the Courts for well-reasoned decisions that meet the standards set by the Supreme Court of Canada in *Vavilov*, then this purpose would be undermined.



APPLICATIONS FOR JUDICIAL REVIEW

The WSIAT is the final level of appeal for workplace safety and insurance matters in Ontario. The WSIAT has exclusive jurisdiction to determine appeals from final decisions of the WSIB with respect to entitlement to compensation under the WSIA (section 123(1)) and its decisions are subject to a strong privative clause (section 123(4)).

A party who disagrees with a WSIAT decision can file an application for judicial review. Judicial review is a process by which courts make sure that the decisions of administrative bodies are fair, reasonable and lawful. The Divisional Court of Ontario hears applications for judicial review of decisions made by administrative bodies in Ontario, including decisions of the WSIAT.

The WSIAT's General Counsel and lawyers from the Tribunal Counsel Office represent the WSIAT in judicial review applications and other litigation. They also coordinate representation by external counsel.

In 2022, five judicial review applications were initiated concerning the following WSIAT decisions:

- *Decisions No. 1286/19, 2020 ONWSIAT 1142 and 1286/19R, 2021 ONWSIAT 1653;*
- *Decision No. 1173/21, 2022 ONWSIAT 259;*
- *Decisions No. 1435/15R3, 2020 ONWSIAT 977 and 1435/15R4, 2021 ONWSIAT 1268 (filed in 2021, received in 2022);*
- *Decision No. 852/19, 2022 ONWSIAT 542; and*
- *Decisions No. 1081/21, 2021 ONWSIAT 1878 and 1081/21R, 2022 ONWSIAT 1148.*

The WSIAT received a notice of abandonment regarding the application for judicial review of *Decision No. 1197/19, 2021 ONWSIAT 1348.*

In 2022, the Divisional Court heard four applications for judicial review of WSIAT decisions.

- In March 2022, the Divisional Court dismissed the application concerning *Decisions No. 1865/19, 2020 ONWSIAT 143 and 1865/19R, 2020 ONWSIAT 1961* in *Todde v. Workplace Safety and Insurance Appeals Tribunal*, 2022 ONSC 1909.
- In March 2022, the Divisional Court granted the application concerning *Decision No. 930/19, 2019 ONWSIAT 2010* in *McQuoid v. Workplace Safety and Insurance Appeals Tribunal*, 2022 ONSC 1629.

- In July 2022, the Divisional Court dismissed the application concerning *Decisions No. 1246/07, 2008 ONWSIAT 40; 1246/07R, 2008 ONWSIAT 2191; 1246/07R2, 2011 ONWSIAT 749; 1631/09, 2009 ONWSIAT 2341; and 1631/09R, 2018 ONWSIAT 1137*. The dismissal was made in *Ratman v. Workplace Safety and Insurance Appeals Tribunal*, 2022 ONSC 3923.
- In December 2022, the Divisional Court dismissed the application concerning *Decision No. 1173/21, 2022 ONWSIAT 259* in *Bell Technical Solutions Inc. v. Workplace Safety and Insurance Appeals Tribunal*, 2022 ONSC 6946.

A party can appeal a final order of the Divisional Court of Ontario, with leave of the Court of Appeal for Ontario. In 2022, the Court of Appeal for Ontario dismissed three motions for leave to appeal that concerned WSIAT decisions.

- In January 2022, the Court of Appeal for Ontario dismissed a motion seeking leave to appeal *Morningstar v. WSIAT*, 2021 ONSC 5576. This decision concerned *Decisions No. 1227/19, 2019 ONWSIAT 2324 and 1227/19R, 2020 ONWSIAT 1151*.
- In April 2022, the Court of Appeal for Ontario dismissed a motion seeking leave to appeal *Chen v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2021 ONSC 7625. This decision concerned *Decision No. 3144/18, 2020 ONWSIAT 939*. The applicant filed an application for leave to appeal to the Supreme Court of Canada, which is pending.
- In June 2022, the Court of Appeal for Ontario dismissed a motion seeking leave to appeal three decisions of the Divisional Court: *Taylor v. Pivotal Integrated HR Solutions*, 2020 ONSC 6108; *Taylor v. Pivotal*, 2021 ONSC 7388; and *Taylor v. Pivotal*, 2021 ONSC 7720. These decisions concerned *Decisions No. 691/05, 2008 ONWSIAT 402 and 691/05R, 2013 ONWSIAT 1292*.

Seven applications for judicial review have been scheduled, or are expected to be heard, in 2023. These judicial review applications concern the following WSIAT decisions:

- *Decisions No. 1435/15R3, 2020 ONWSIAT 977 and 1435/15R4, 2021 ONWSIAT 1268;*
- *Decision No. 852/19, 2022 ONWSIAT 542;*
- *Decision No. 3658/17, 2021 ONWSIAT 1488;*
- *Decisions No. 1081/21, 2021 ONWSIAT 1878 and 1081/21R, 2022 ONWSIAT 1148;*
- *Decisions No. 136/17, 2017 ONWSIAT 1694, 136/17R, 2019 ONWSIAT 492 and 136/17R2, 2020 ONWSIAT 942;*
- *Decisions No. 2712/18, 2018 ONWSIAT 3021 and 2712/18R, 2019 ONWSIAT 540; and*
- *Decision No. 1011/20, 2021 ONWSIAT 995.*

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, it considers whether the decision is authorized by legislation and is reasonable in light of the evidence, as well as 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 that indicate the need for a formal investigation, it notifies the WSIAT about its 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 2022.

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 includes the WSIAT's Diversity and Anti-Racism Office, which is responsible for the WSIAT's multi-year equity, diversity and inclusion and anti-racism programs. In addition, Executive Services includes the Counsel, Special Projects and the Adjudication Support Group, which is responsible for processing all decisions prepared by OIC appointees.

In 2022, the Executive Services team:

- increased the OIC appointee roster by seven Vice-Chairs and six Members;
- provided training and support to newly appointed OIC adjudicators;
- supported the implementation of the WSIAT's phased return to the office plan and a hybrid work model that prioritizes the health and safety of employees, OIC appointees and stakeholders;
- facilitated the resumption of limited in-person hearings at the WSIAT's Toronto location and in two regional centres in accordance with public health guidelines, providing access to justice to appellants who could not participate in digital hearings;
- supported ongoing modernization initiatives in line with "digital first" strategies;

“In 2022, the Executive Services team[...]organized and hosted the first Canadian Workers’ Compensation Appeals Tribunals Symposium, which provided adjudicators and employees from workers’ compensation appeals tribunals across Canada with information about emerging trends, issues and noteworthy decisions.”

- promoted customer service excellence by ensuring that staff, OIC appointees and stakeholders can work in a secure digital environment;
- kept the stakeholder community informed about WSIAT operations through three information sessions facilitated by the WSIAT’s Chair, external outreach, feedback surveys, and training opportunities on technical and procedural topics;
- organized and hosted the first Canadian Workers’ Compensation Appeals Tribunals Symposium, which provided adjudicators and employees from workers’ compensation appeals tribunals across Canada with information about emerging trends, issues and noteworthy decisions; and
- provided administrative support to OIC appointees, who released 1,984 decisions.

Diversity and Anti-Racism Office

In 2022, the newly created Diversity and Anti-Racism Office (DAO) continued to build equity, diversity, inclusion and anti-racism (EDI) competency at the WSIAT. During this period, the DAO team:

- established a multi-year EDI Roadmap that outlines key programs and policies, education and awareness initiatives, and learning goals;
- implemented a multi-year training plan to increase EDI competency, with an inaugural training session focused on building awareness of anti-racism, unconscious bias, inclusive language, allyship, systemic racism and mental health;
- introduced annual EDI commitments for staff and OIC appointees to include in their annual performance plans;
- instituted two EDI certificates: the DAO Certificate of Diversity and Inclusion and the Inclusive Leadership Certificate;

- organized several enterprise-wide educational events and training sessions, including the Bell Let's Talk Day, Black History Month, Pride and Indigenous Heritage Month and the National Day for Truth and Reconciliation;
- delivered training sessions on racism and mental health, how to be an ally and self-care; and
- launched a new DAO intranet page that provides resources on anti-racism, accessibility and inclusion.

Human Resources, Administration and Emergency Management and Security

The Human Resources department is responsible for establishing and maintaining inclusive talent pipelines, robust employee and labour relations practices, contemporary health and safety measures, and comprehensive employee rewards. Human Resources continuously seeks to increase access to professional development opportunities, modernize internal operations, and develop future-proof processes and programming.

In 2022, the Human Resources team:

- prioritized collective bargaining and achieved a renewed collective agreement;
- drafted and reviewed policies on recruitment, working from home, lieu time, scents and allergens, disconnecting from work, workplace violence and workplace harassment;
- finalized standard operating procedures and templates;
- established new salary grids and salary adjustments for union and non-union employees;
- implemented foundational digital tools that support a modern and efficient talent development program, as part of the Human Resource Information Systems Optimization Project; and
- provided advisory services in the areas of labour relations, performance management, workplace discrimination and harassment prevention, staffing and organization design, short-term sickness and accommodation, and other employee-related matters.

The Administration Services and Emergency Management department supports the WSIAT's business and facility operations and the emergency management and security program. In 2022, the Administration Services and Emergency Management team:

- supported the WSIAT's gradual resumption of in-person hearings by reconfiguring common spaces and equipping hearing rooms to comply with health and safety regulations;
- delivered programs related to the COVID-19 pandemic, including vaccination attestation and screening, rapid antigen testing, first aid training and return-to-work information sessions;

- introduced Rave Alert, a comprehensive, organization-wide notification system;
- organized training for front-line staff on customer service and de-escalation from the Centre for Mental Health and Addiction (CAMH); and
- upgraded the duress alarm system to include all hearing rooms, including the Ian J. Strachan Conference Centre and the Ron Ellis Hearing Centre.

Finance

The Finance department is responsible for managing the WSIAT's financial operations. Key responsibilities include implementing the WSIAT's internal financial management practices, developing the fiscal budget, and overseeing the year-end external audit.

Staff in the Finance department fulfill the WSIAT's financial reporting requirements and provide accounting, financial, budgeting and procurement services to employees and OIC appointees. The Finance department also manages monthly remuneration and payroll processes for all part-time appointees.

Other key responsibilities include:

- developing, implementing and maintaining internal financial controls;
- maintaining and overseeing the WSIAT's financial systems;
- planning, developing and monitoring expenditures against the annual budget;
- establishing and maintaining banking relationships and overseeing the WSIAT's cash flow requirements;
- providing senior management with accurate financial data to support business decisions; and
- communicating with external auditors and overseeing the year-end statutory audit.

In 2022, the Finance team:

- continued efforts to digitize its operations;
- established 65 additional vendors for electronic funds transfers, bringing the total to 507 vendors;
- provided timely 2022 quarterly budget forecast reports to the Ministry of Labour, Immigration, Training and Skills Development;
- contributed to the 2023-2025 business plan and prepared the 2023-2025 financial budget; and
- supported the successful completion of the 2022 external audit for the 2021 fiscal year.

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 reviews and other complaints. OCC facilitates compliance with the *Freedom of Information and Protection of Privacy Act* (FIPPA) and responds to FIPPA complaints and appeals. OCC lawyers also conduct research and lead training and professional development sessions. OCC is led by the Counsel to the Chair, and includes lawyers and administrative staff.

In 2022, OCC focused on its core functions. The Counsel to the Chair and the Associate Counsels to the Chair continued to review draft decisions submitted by OIC appointees 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 goal of maintaining the trust of WSIAT stakeholders through integrity, fairness and service excellence.

In 2022, the OCC team:

- offered professional development programs remotely to staff and OIC appointees to ensure they were apprised of statutory and policy amendments, as well as developing case law from the WSIAT and the Courts;
- provided remote orientation sessions to new OIC appointees;
- reviewed the WSIAT's decision framework to ensure accordance with access to justice and plain language principles;
- developed knowledge management resources that facilitate access to information on law, policy and procedure through electronic means;
- contributed to the Practice Direction project, which is tasked with revising the WSIAT's Practice Directions;
- conducted outreach and training sessions for stakeholders, including presentations on hybrid hearings, observers and preparing clients for remote electronic hearings;
- presented case law updates at various stakeholder events; and
- conducted seven focus groups with stakeholders to discuss post-pandemic hearing formats and protocols.

The WSIAT's Legal Writer/Editor is also a member of OCC. Despite a staffing change in April 2022, the Legal Writer/Editor processed and assigned keywords to 2,130 decisions and summarized 698 decisions in 2022. The Legal Writer/Editor summarized 32% of the decisions released by the WSIAT in 2022, exceeding the goal of summarizing at least 30%.

Office of the Vice-Chair Registrar

The Office of the Vice-Chair Registrar (OVCR) 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.

As of January 2022, the OVCR includes the Medical Liaison Office (MLO). The MLO coordinates the assistance obtained from Medical Counsellors and Medical Assessors, and leads and supports medically-focused educational activities for staff and OIC appointees.

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

In 2022, the OVCR's primary goals were to maintain service and production levels during the COVID-19 pandemic; continue to modernize; find processing efficiencies; and increase sustainability.

In 2022, the OVCR team:

- communicated with consenting parties and the WSIB electronically, increasing production levels, gaining efficiencies and enhancing access to justice for our stakeholders;
- expanded electronic information transfer services with the WSIB;
- maintained centralized printing and mailing processes for all WSIAT departments;
- launched E-Share, the WSIAT's secure electronic file-sharing platform;
- increased the use of electronic documents, allowing the high-volume printer fleet to be reduced by 25%;
- increased case record production by 16%, reducing wait times;
- increased cases released to the Scheduling department by 8%, in response to the increased appeal volumes received in 2021;
- resolved 267 appeals through the Early Intervention Program;
- explored ways to expedite appeals with active return to work or labour market re-entry issues; and
- participated in customer service-focused outreach efforts such as stakeholder events and training sessions.

In 2022, the Medical Liaison Office:

- oversaw the update of three Medical Discussion Papers: “Carpal Tunnel Syndrome,” revised by Dr. Herbert P. Von Schroeder; “Chronic Obstructive Pulmonary Disease,” revised by Dr. Ronald A. House; and “Knee Conditions and Disability,” revised by Dr. Robert B. Litchfield;
- collaborated with qualified Medical Assessors to provide assistance in appeals;
- recruited new Medical Assessors in internal medicine (respirology), orthopaedics (knee and shoulder), neuroradiology, radiation oncology and radiology (cardiac and thoracic); and
- recruited three new Medical Counsellors in general surgery, orthopaedics (spine) and psychiatry to replace retiring counsellors.

Tribunal Counsel Office

The Tribunal Counsel Office (TCO) is a centre of legal expertise that provides assistance on appeal and non-appeal related matters in accordance with the WSIAT’s mandate, mission statement and guiding principles.

The General Counsel and TCO lawyers provide legal assistance in WSIAT appeals and applications, particularly appeals and applications with complex or novel issues. TCO also acts as in-house legal counsel, providing advice and support on corporate issues such as procurement and human resources. 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 WSIAT’s litigation is managed by the General Counsel with assistance from TCO lawyers and external counsel. The work of TCO is supported by a team of administrative staff, led by the Coordinator, TCO Administrative Services.

In 2022, the TCO team:

- assisted with appeals and right to sue applications by making submissions and questioning hearing participants;
- supported adjudicative excellence and the continuing professional development of staff and OIC appointees by contributing to the Professional Development Committee, Professional Development Days and other training opportunities; and
- provided advice on the development and revision of WSIAT policies and procedures.

TCO also contributed to the following WSIAT projects and initiatives:

- the Practice Direction project, which is tasked with revising the documents that guide WSIAT procedures;

- stakeholder information sessions and external outreach and training;
- stakeholder and adjudicator focus groups that came together to provide input on the WSIAT's alternative hearing methods; and
- the first Canadian Workers Compensation Appeals Tribunals symposium, which took place in the fall of 2022.

TCO also provided leadership and support to the following WSIAT committees:

- the committee working on safely holding in-person hearings during the COVID-19 pandemic;
- the committee researching and considering feedback on alternative hearing methods;
- the Accessibility Working Group, which considered feedback from the 2021 stakeholder accessibility survey and recommended improvements to the WSIAT website that were implemented in 2022; and
- the Access to Justice Working Group, which developed resources for self-represented parties that will be introduced in 2023.

Scheduling

The Scheduling department co-ordinates the scheduling of hearing dates for pre-hearing conferences, mediations, oral in-person hearings and oral hearings by teleconference and videoconference. They 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 2022, the Scheduling team successfully scheduled:

- 751 written hearings, including time extensions, access cases and proposed resolutions;
- 9 oral in-person hearings;



- 469 oral hearings by teleconference;
- 828 oral hearings by videoconference; and
- the WSIAT's first webinar hearing for four appeals, which had more than 50 observers.

In 2022, the Scheduling department successfully advanced the goal of reducing the wait time to hearing for all appeals. They successfully met monthly hearing targets, which are based on incoming appeal volumes, projections and adjudicative capacity. For total hearings, the wait time from the date an appeal was ready to proceed to the first proposed hearing date was reduced from 6.3 months in 2021 to 4.5 months in 2022. For oral hearings, the wait time was reduced from 7.3 months in 2021 to 4.7 months in 2022. For written appeals, the wait time was reduced from 4.6 months in 2021 to 4.2 months in 2022.

Throughout 2022, the Scheduling department also managed adjournments, which occur when a participant's circumstances change. New hearing dates were provided on a priority basis whenever possible.

The WSIAT is committed to providing fair hearings on a timely basis. Currently, videoconference is the default format for oral hearings. However, parties may request an in-person or teleconference hearing. The WSIAT considers these requests and determines the most appropriate hearing format based on the circumstances in each case. It is anticipated that there will be a gradual increase in the availability of in-person hearings in 2023.

Information and Technology Services

The Information and Technology Services (ITS) department maintains the WSIAT's information technology (IT) infrastructure and information management (IM) systems. ITS also develops IT and IM strategies and solutions, and supports the WSIAT's day-to-day information and technology needs.

The ITS department is comprised of the following functional units:

- Technology Infrastructure (IT resources and technical support)
- Business Solutions (application development and support)
- Project Leadership (project and change management)
- Information Services (the Ontario Workplace Tribunal Library, records management, French translation and web content development)

In 2022, the ITS department focused on stabilizing the WSIAT's current infrastructure. The ITS department also published a technology strategy that includes a commitment to stabilize, modernize and transform the organization's technology footprint and support business optimization and efficiency. This strategy will guide ITS plans through the next

two to three years. In 2023 and 2024, ITS will focus on modernizing the WSIAT's technology solutions, with a view towards transforming our lines of business by leveraging new, modernized infrastructure.

In 2022, the ITS team:

- developed a modernization and transformation strategy;
- successfully deployed hybrid video conference and hearing room technology;
- implemented a new help desk model that provides live support to adjudicators conducting videoconference hearings;
- supported a staggered hearing schedule to optimize support staff productivity;
- added 29 enhancements to tracIT, the WSIAT's case management system;
- deployed a new, modernized reporting tool in tracIT that produces 39 critical reports;
- updated 18 existing in-house applications;
- added optical character recognition to 15,695 electronic documents, allowing them to be searched electronically;
- introduced a new process that allows the WSIAT and the WSIB to exchange electronic documents such as WSIB policies, employer status updates and re-released decisions;
- supported efforts to update the WSIAT's records management program through staff training, departmental reviews and the creation of policies and procedures;
- negotiated and renewed several strategic contracts and improved relations with strategic vendors;
- deployed new firewalls capable of supporting upcoming initiatives;
- decommissioned all end-of-life operating devices, consolidating the WSIAT's end-user footprint;
- updated the WSIAT's public website to comply with the *Accessibility for Ontarians with Disabilities Act, 2005*;
- provided research support by answering 734 questions concerning workplace safety, worker's compensation, labour relations, union certification, pay equity matters and issues related to legal and legislative research;
- migrated the Ontario Workplace Tribunals Library catalogue and Ontario Labour Relations Board Certificates database to a cloud-based platform; and
- produced 641 official French translations.

CASELOAD PRODUCTION AND ACTIVITY

Introduction

Section 125(2) of the WSIA requires an appellant (the objecting party) to file a notice of appeal within six months after a final decision of the WSIB.

Appeals are processed through a two-part application process. To start an appeal and meet the time limits in the WSIA, 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 their 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 WSIAT communications or is not ready to proceed while the appeal is in the notice stage, the appeal is placed into inactive status. Under the WSIAT's current process, an 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 appeal is deemed abandoned and closed. The WSIAT notifies the appellant twice of the two-year time limit before closing the appeal.

Active Appeals Inventory

The active appeals inventory is affected by three factors: the number of incoming or reactivated appeals; the number of appeals that are confirmed as ready to proceed to a hearing; and the number of appeals that are closed. At the end of 2022, the active appeals inventory totaled 3,938 appeals. The 2022 total inventory was 1% lower than the 2021 total inventory of 3,981 appeals. The active caseload inventory is within the preferred target of 4,000 cases (+/-5%).

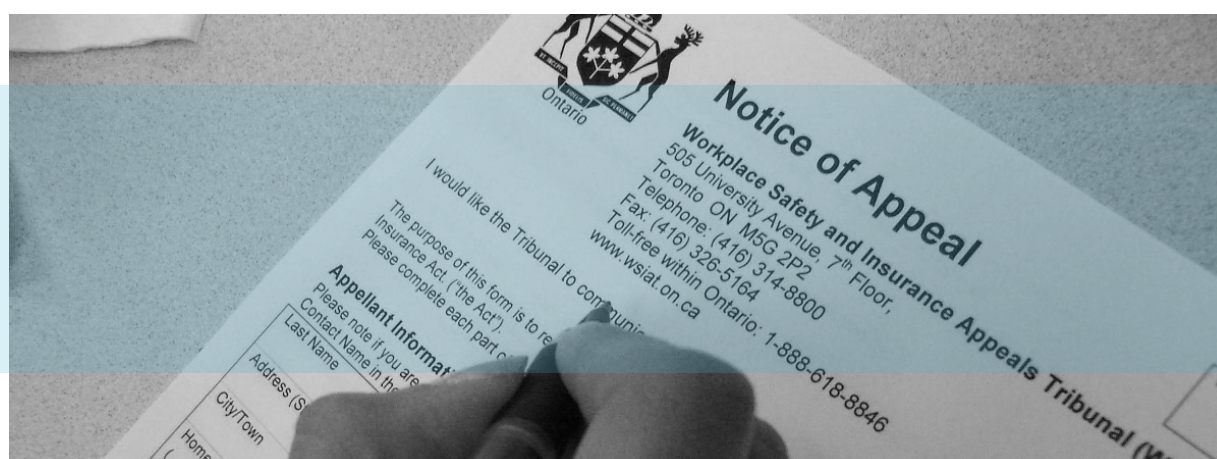


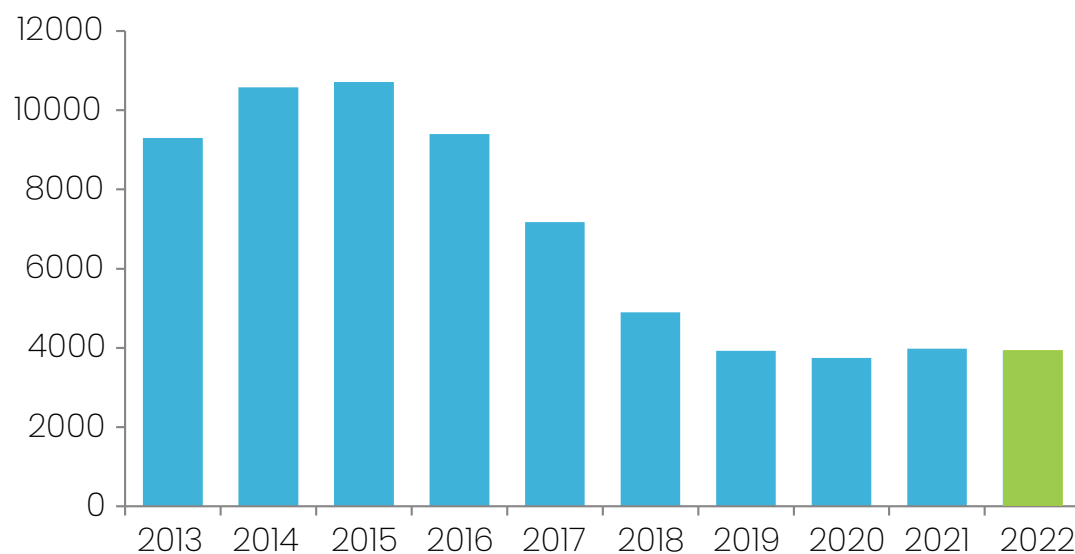
Chart 1(A) shows the 2022 year-end active appeals inventory by processing stage.

CHART 1(A): Active Appeals in Process on December 31, 2022

APPEAL PROCESSING STAGE	NUMBER OF APPEALS AT STAGE
Notice of Appeal Stage	2,330
Early Review Stage	38
Substantive Review	429
Hearing Ready	91
Scheduling and Post-hearing	740
Decision Writing	310
TOTAL CASES IN PROCESS	3,938

Chart 1(B) presents the year-end active appeals inventory from 2013 to 2022.

CHART 1(B): Active Appeals Inventory on December 31, 2022



Appeals Started

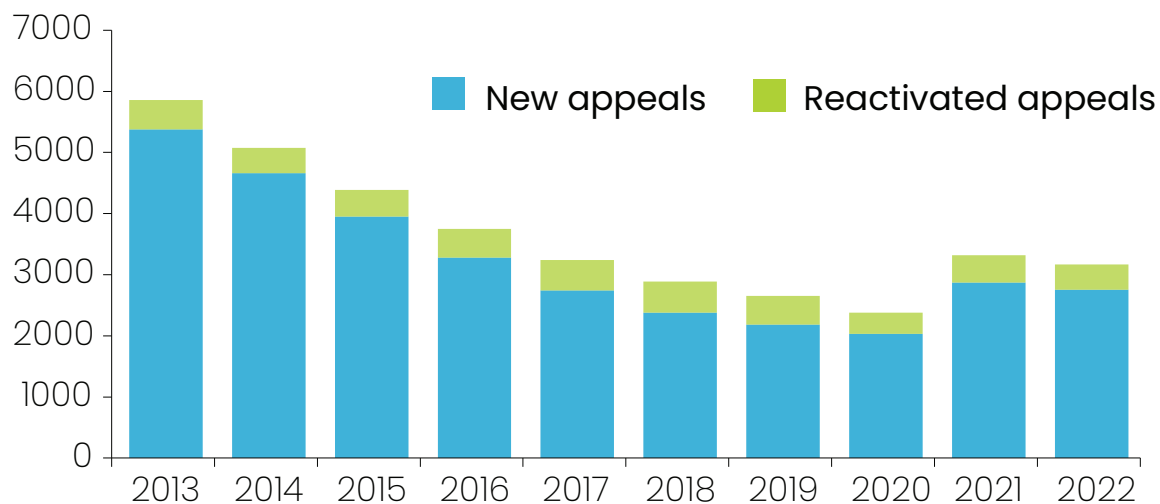
When an appeal is brought to the WSIAT, it is classified as either a new appeal or a reactivated appeal. New appeals are appeals that have been initiated at the WSIAT for the first time.

Reactivated appeals are appeals that originated as new appeals and proceeded through the notice stage until they were paused due to circumstances that prevented WSIAT staff from processing the appeal further. These appeals remain inactive until the appellant notifies the WSIAT of their readiness to proceed with the appeal, at which time the case is placed back into active status.

In 2022, 3,168 appeals were started at the WSIAT. This figure represents a decrease of 5% compared to 3,319 appeals started in 2021. New appeals were 4% lower in 2022 than 2021 (2,756 in 2022 compared to 2,874 in 2021). Reactivated appeals were 7% lower in 2022 than 2021 (412 in 2022 compared to 445 in 2021). This change reflects the cyclical and fluctuating nature of incoming appeals.

Chart 2 presents the annual totals of new appeals and reactivated appeals started from 2013 to 2022.

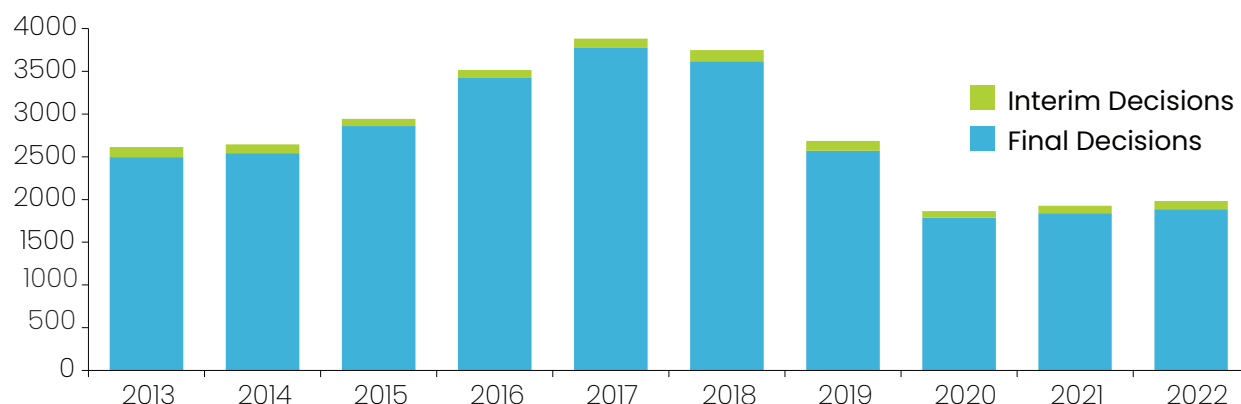
CHART 2: Appeals Started



Decisions Issued

In 2022, the WSIAT issued a total of 1,984 decisions. This figure includes 1,887 final decisions and 97 interim decisions. Total decisions issued in 2022 were 3% higher than in 2021, when 1,928 decisions were issued (1,841 final decisions and 87 interim decisions).

Chart 3 presents the WSIAT's annual final and interim decision production from 2013 to 2022.

CHART 3: Final and Interim Decisions

Appeals Closed

An appeal is closed when a decision is issued or the appellant withdraws or abandons the appeal. An appeal can be closed at the pre-hearing or post-hearing stage. A pre-hearing closure occurs when the appellant has withdrawn their appeal, achieved a mediated settlement through the alternative dispute resolution process, or abandoned the appeal. A post-hearing closure typically occurs after a hearing when the decision is released. The majority of appeals at the WSIAT are closed by final decision following oral or written hearings.

Chart 4(A) shows that 2,548 appeals were closed in 2022. Appeals closed by decision were 75% of the total (1,908). Appeals closed by withdrawal or abandonment were 25% of the total (640). Total appeals closed in 2022 were 4% lower than total appeals closed in 2021 (2,548 in 2022 compared to 2,654 in 2021). This outcome was impacted by 273 adjournments of appeals (pre- and post-hearing) in 2022.

CHART 4(A): Appeals Closed in 2022

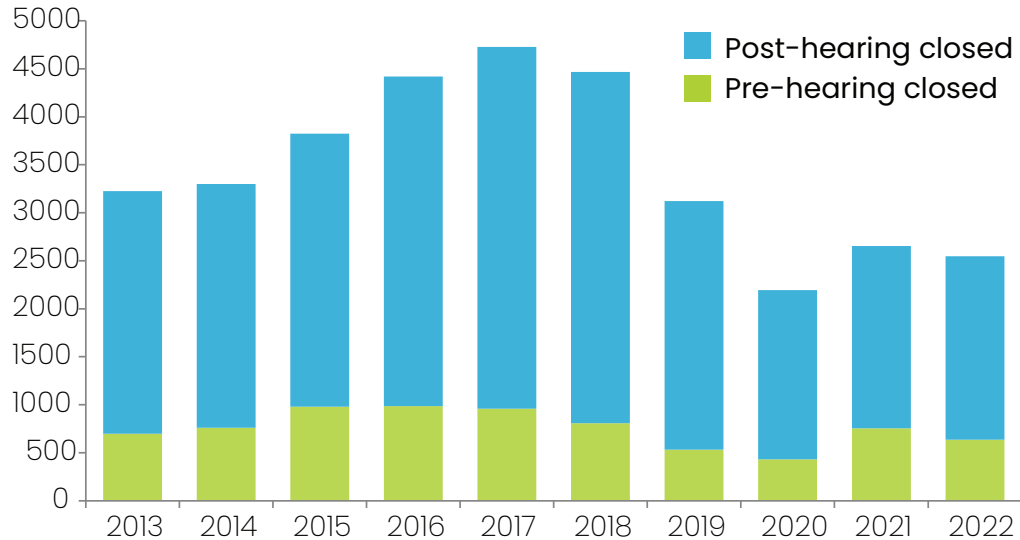
CLOSING TYPE	NUMBER	PERCENT OF TOTAL CLOSED
Decision Following Hearing*	1,908	75%
Withdrawn, Abandoned	640	25%
TOTAL APPEALS CLOSED	2,548	100%

Note:

- * The number of decisions closed following a hearing may not equal the number of decisions released in a year due to administrative constraints at year end that preclude the appeal from being closed immediately following the decision.

Chart 4(B) presents the number of appeals closed at both the pre-hearing and post-hearing stage from 2013 to 2022.

CHART 4(B): Appeals Closed Pre-hearing and Post-Hearing



Inactive Appeals Inventory

An appeal is made inactive when active processing cannot proceed due to the absence of critical information required by the WSIAT to adjudicate the appeal. When an appeal is made inactive it is added to the inactive appeals inventory, where it remains until it is reactivated by request from the appellant or permanently closed by the WSIAT. The appellant has up to one year to indicate readiness to proceed with their inactive 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. While the WSIAT recognizes that there is often value in hearing related issues together, this must be balanced against the potential prejudice to the parties and waste of institutional resources in delaying the adjudication of a scheduled WSIAT appeal while a party pursues an additional issue at the WSIB. Appellants are encouraged to consider whether the additional issue(s) is actually related to the original appeal issue(s) or if the issue can be decided in a separate proceeding. The WSIAT is currently reviewing its guidelines for how issues that are related and relevant to an appeal should be addressed so that the original appeal is not unnecessarily delayed or the hearing adjourned.

The inactive appeals inventory is comprised of appeals that were made inactive in 2022 or in prior years and have not been reactivated or closed by the end of 2022.

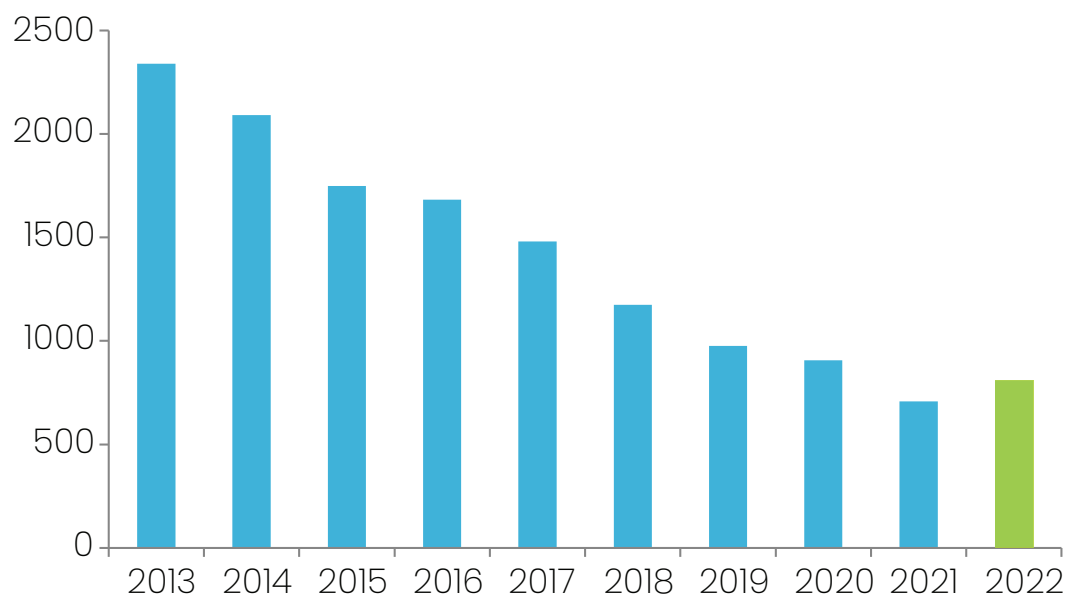
Chart 5(A) shows that, in 2022, 663 appeals were made inactive; 412 appeals were reactivated and returned to the active appeals inventory and 149 inactive appeals were closed. At the end of 2022 there were 809 appeals in the inactive appeals inventory, 14% higher than at the end of 2021 (707). The increase in inactive appeals in 2022 is due to more appellants indicating that they are not ready to proceed with their appeal because they are pursuing other issues with the WSIB and/or searching for information to support their appeal.

CHART 5(A): Inactive Appeals Inventory Processing in 2022

INACTIVE APPEALS INVENTORY	NUMBER OF APPEALS
Inactive inventory at start of 2022	707
Made inactive in 2022	663
Reactivated in 2022	-412
Inactive appeals closed in 2022	-149
Inactive appeals inventory at end of 2022	809

Chart 5(B) presents the inactive appeals inventory at the end of the year from 2013 to 2022.

CHART 5(B): Inactive Appeals Inventory



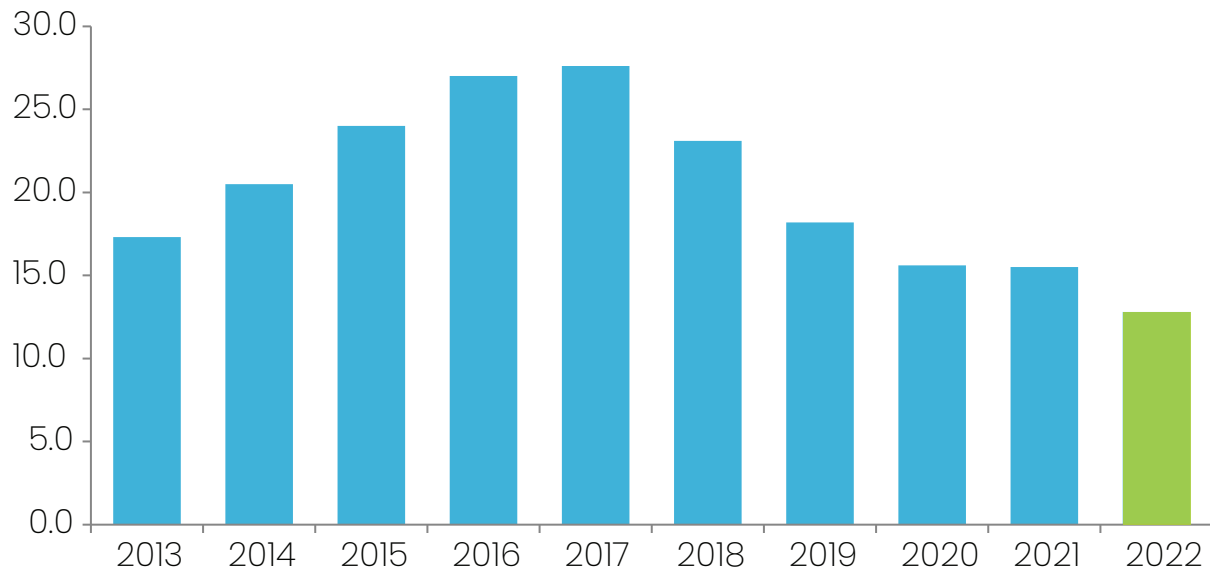
Timeliness of Appeal Processing

Median Age to Appeals Closed

The median age to appeals closed is a timeframe that begins on the date the Notice of Appeal (NOA) form is received and ends on the date that the appeal is closed. Appeals are closed either by an issued decision or a withdrawal or abandonment of the appeal by the appellant.

Chart 6 presents the median age to close appeals from 2013 through 2022. Since 2017, the median age to close appeals has declined significantly. In 2017, it was 27.6 months; in 2021, 15.5 months; and in 2022, 12.8 months. The WSIAT's strategic objective is to close appeals within 12 months or better.

CHART 6: Median Age to Appeals Closed



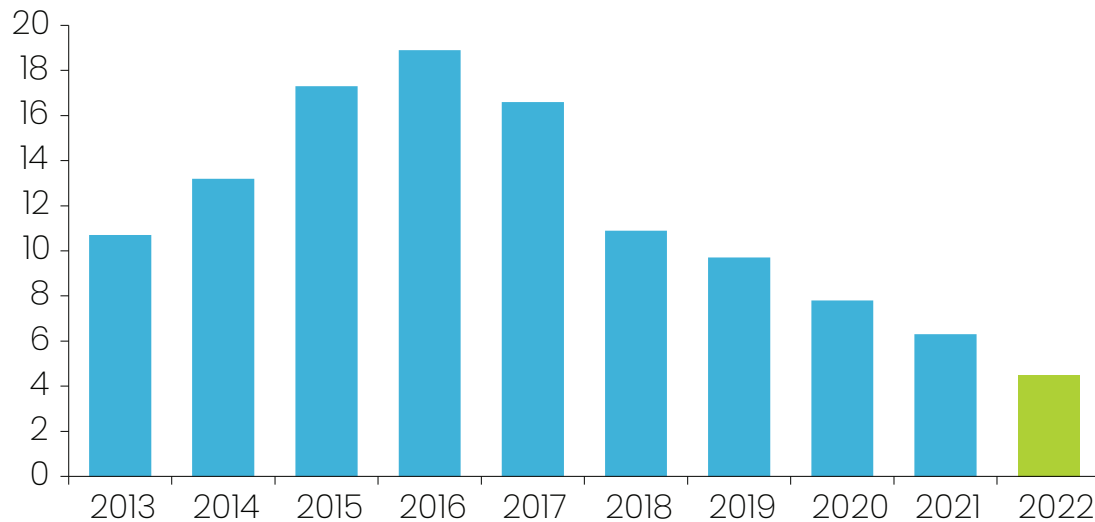
Median Age to First Offered Hearing

The WSIAT also measures the median age of the first offered hearing date. This timeframe is measured in months, beginning on the date an appeal is confirmed ready to proceed and ending on the hearing date first offered to the parties. The length of time to the hearing date is a critical timeframe within the appeal completion period, which encompasses the period from an appeal's initiation to its closure.

Chart 7 presents the median age of the first offered hearing from 2013 to 2022. Since 2017, the median age to the first offered hearing date has also declined significantly. In 2017, it was 16.6 months; in 2021, 6.3 months; and in 2022, 4.5 months. The 2022 timeframe improved upon the WSIAT's strategic objective of offering the first hearing within 6 months or better. The WSIAT's success in reducing the time to first offered hearing is largely

due to the ongoing acceptance of teleconference and videoconference hearings by the WSIAT's stakeholders and the WSIAT's focus on improving productivity in all aspects of its processing of appeals.

Chart 7: Median Age to First Offered Hearing

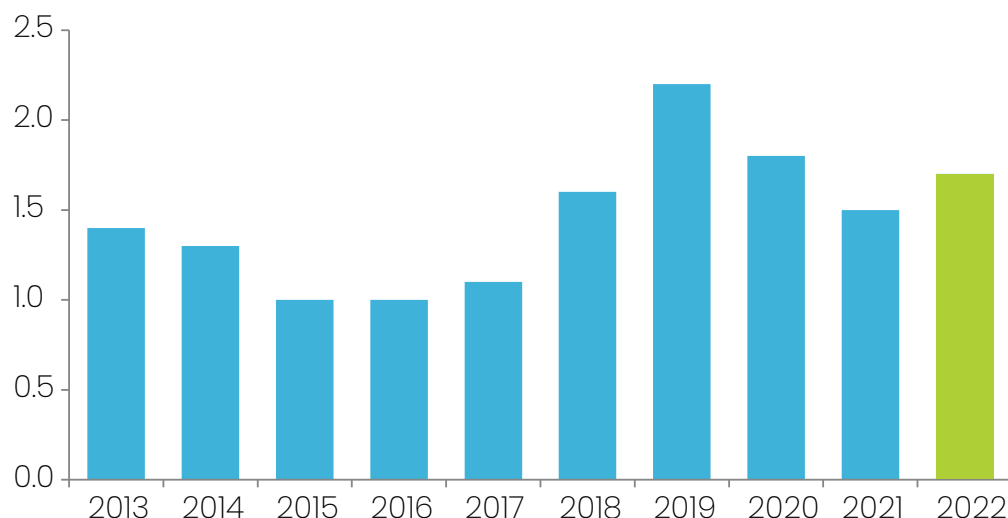


Median Age Decision Writing

The median age of decision writing is measured in months, starting on the most recent date the adjudicator began writing the decision and ending on the date the decision was issued.

Chart 8 presents the median age of decision writing in each year from 2013 through 2022. This median age has historically been less than 2 months. In 2021 it was 1.5 months and in 2022 it was marginally higher at 1.7 months.

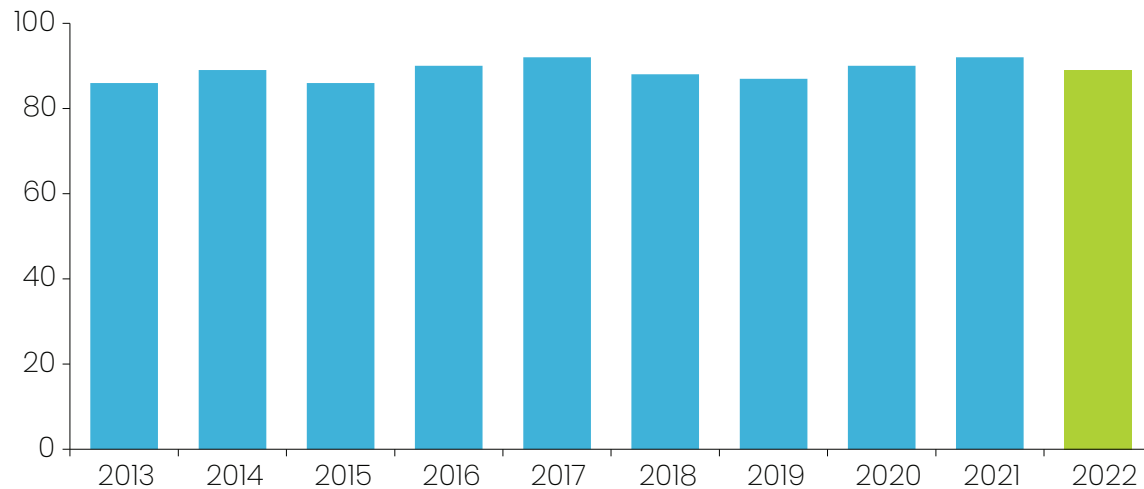
CHART 8: Median Age Decision Writing



Final Decisions Issued Within 120 Days

Section 127 of the WSIA requires the WSIAT to issue decisions within 120 days of a hearing, or such longer time as the WSIAT may permit. The WSIAT's target for final decisions issued within 120 days is 90%. As shown in Chart 9, the WSIAT fell just shy of this goal, with 89% of the WSIAT's final decisions issued within 120 days in 2022, compared to 92% in 2021 and 90% in 2020. Additional efforts are planned for 2023 to ensure the timely issuance of final decisions.

CHART 9: Final Decisions Percentage Released within 120 Days



Hearings and Decisions by Type

Appeal Issue Type

A WSIAT appeal may involve more than one issue arising from the WSIB decision(s) under appeal. Chart 10 shows the percentage volume of the issues that were most frequently appealed in the decisions issued in 2022.

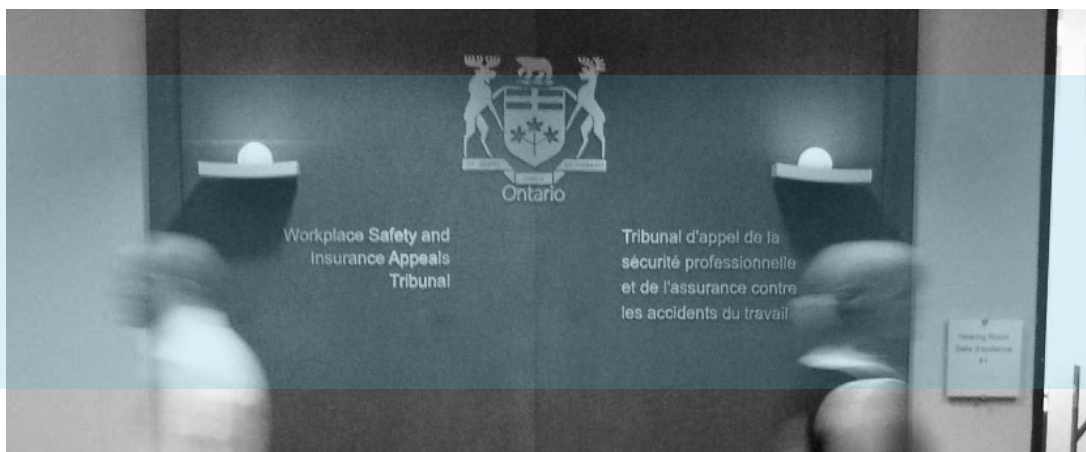


CHART 10: Issues Appealed

ISSUE TYPE	ISSUE PERCENTAGE***
Loss of earnings	23%
New area of injury	9%
Non-economic loss quantum	8%
Initial injury/disease entitlement	8%
Work transition	7%
Non-economic loss entitlement	7%
Multiple issues each comprising less than 1% of total*	6%
Second Injury and Enhancement Fund	6%
Ongoing entitlement	5%
Health care benefits	4%
Other**	4%
Psychotraumatic disability	4%
Chronic pain	3%
Recurrence	2%
Chronic and traumatic mental stress	2%
Early and safe return to work	2%
Permanent disability quantum (for accident dates prior to January 2, 1990)	1%

Hearings by Hearing Type

There are two major hearing types: oral and written. Oral hearings are comprised of in-person hearings, teleconferences and videoconferences. Written hearings are comprised of Early Intervention Program proposed resolutions reviewed by a Vice-Chair, and hearings by way of written submissions from the parties participating in the appeal. Written hearings are generally less complex than oral hearings. Written hearings do not require testimony from the parties, nor do they require cross-examination by the party's representatives.

Notes:

* Multiple issues are comprised of several individual issues that are each 1% or less than 1% of total issues. Combining these issues into a single group was done to simplify the presentation of Chart 10.

** The term "Other" is generally used for section 120 time limit appeals or executive officer appeals.

*** The total percent is 101% due to rounding of the individual issue percentages.

Written submissions provide all of the appeal information needed by the Vice-Chair or Panel to issue a decision.

In 2022, the WSIAT conducted 2,061 appeal hearings. Written hearings represented 36% (751) of total appeal hearings and oral hearings represented 64% (1,310). This ratio of written to oral hearings is generally consistent with historical percentages. In 2021, the WSIAT conducted 2,206 appeal hearings. Written hearings represented 32% (699) of total appeal hearings and oral hearings represented 68% (1,507). The higher percentage of written hearings in 2022 was in part due to increased appeal volumes that were available to be scheduled as written hearings.

Chart 11(A) compares hearing types and their respective totals in 2022 to 2021. Total hearings in 2022 (2,061) were 7% lower than in 2021 (2,206).

There were fewer teleconference oral hearings in 2022 (469) compared to 2021 (729), but higher videoconference hearings in 2022 (832) compared to 2021 (773). This experience demonstrates that parties are now more comfortable with videoconference hearings and/or have the appropriate technology to participate in videoconference hearings.

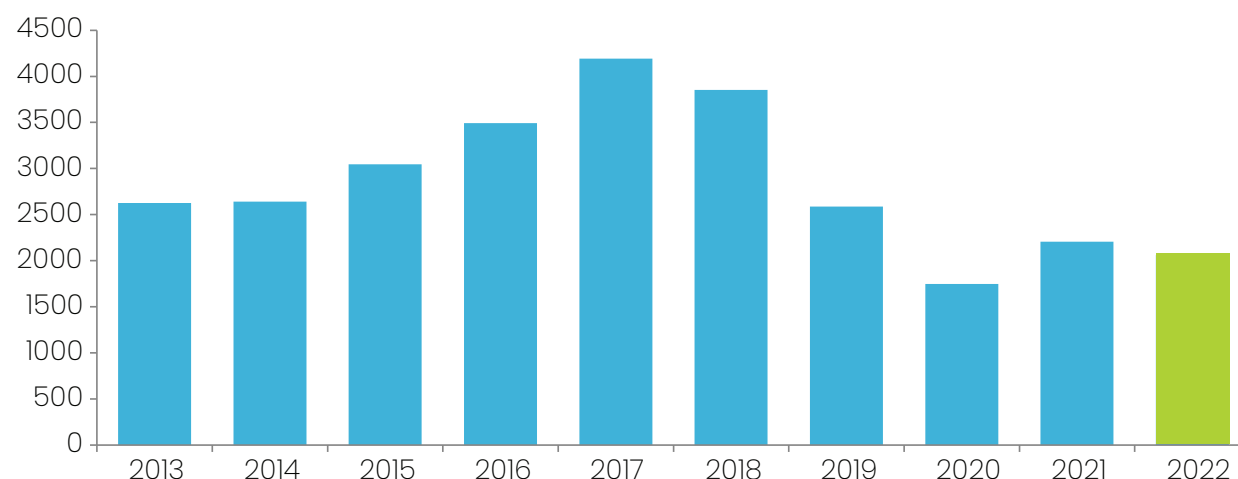
Nine in-person hearings were conducted in 2022 compared to five in-person hearings in 2021. The in-person hearings occurred in cases in which teleconference or videoconference hearing methods were not appropriate for a number of reasons, including the need for accommodations. In-person hearings are expected to increase in 2023, including regional hearings, subject to public health guidelines and the WSIAT's criteria for determining whether an in-person hearing is appropriate (see *Workplace Safety and Insurance Appeals Tribunal (WSIAT) Interim Guideline on the Gradual Resumption of In-Person Hearings – Phase 2 on the WSIAT's website*).

CHART 11(A): Hearings Conducted in 2022 and 2021

HEARING TYPE	HEARD IN 2022	HEARD IN 2021	PERCENTAGE COMPARISON 2022 vs 2021
In Person	9	5	80%
Teleconference	469	729	-36%
Videoconference	832	773	8%
Written (including EIP cases)	751	699	7%
TOTAL HEARD	2,061	2,206	-7%

Chart 11(B) presents the annual total number of hearings at the WSIAT from 2013 to 2022.

CHART 11(B): Total Hearings



Hearings by Adjudication 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 (see *Practice Direction: Hearing Assignments* on the WSIAT's website).

Chart 12 shows the adjudication types at WSIAT hearings. In 2022, tripartite Panels heard 36% of WSIAT hearings, compared to 43% in 2021. In 2022, 64% of WSIAT hearings were heard by single Vice-Chairs, compared to 57% in 2021. There were no hearings by five-member Panels in 2022. The hearing adjudication type is in part dependent on the type of cases that were available for scheduling throughout the year.

CHART 12: Hearing Adjudication Type

ADJUDICATION TYPE	HEARD IN 2022	HEARD IN 2021
Tripartite Panels	36%	43%
Single Vice-Chair	64%	57%

Representation Type at Hearings

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 2022 is shown in Charts 13(A) and (B).

CHART 13(A): Worker Representation in Worker Appeals

REPRESENTATIVE TYPE	PERCENT OF TOTAL REPRESENTATION
Paralegal	38%
Lawyer/Legal Aid	33%
Office of the Worker Adviser	10%
Union	10%
Self-represented	9%
Others	less than 1%

CHART 13(B): Employer Representation in Employer Appeals

REPRESENTATIVE TYPE	PERCENT OF TOTAL REPRESENTATION
Paralegal	63%
Lawyer/Legal Aid	25%
Firm Personnel	8%
Office of the Employer Adviser	4%



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 2022, the WSIAT received 136 reconsideration requests, compared to 104 in 2021. The number of reconsideration requests is cyclical and the 2022 volume falls within a normal variance. The increase is also due in part to the fact that total decisions issued in 2022 were 3% higher than in 2021, when 1,928 decisions were issued. The WSIAT issued 111 reconsideration decisions in 2022, compared to 126 in 2021. The processing of reconsideration requests in 2022 is shown in Chart 14.

CHART 14: Reconsideration Processing Activity in 2022*

RECONSIDERATION REQUESTS	PROCESS COUNT
Requests Received	136
Decisions Issued	111
Requests Pending Resolution	84

Electronic Services

The WSIAT launched its electronic filing service, E-File, on September 8, 2020. This application allows stakeholders to E-File forms and other documents relating to their appeal or application. The E-File application is accessed from the WSIAT's public website. In 2022, 12,305 submissions were received through the E-File application, compared to 8,294 received in 2021.

The WSIAT launched its E-Share service on March 28, 2022. E-Share is a secure, cloud-based file sharing service. Parties who choose to use this service are able to receive case materials from the WSIAT faster and access them at a time that is convenient to them. From the launch date on March 28, 2022 to December 30, 2022, the WSIAT sent 20,498 documents electronically through E-Share.

Note:

- * Reconsideration processing is excluded from all other charts and statistical references in the Caseload Production and Activity section.

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2022 (Chart 15) is shown below.

CHART 15: Statement of Expenditures and Variances for the Year Ending December 31, 2022 (in \$000s)

EXPENSE TYPE	2022	2022	VARIANCE	
	Budget	Actuals	\$	%
OPERATING EXPENSES				
Salaries and Wages	17,696	17,072	623	3.5
Employee Benefits	3,710	3,581	128	3.5
OTHER DIRECT OPERATING EXPENSES:				
Transportation and Communication	598	274	324	54.2
Services	7,407	6,212	1,195	16.1
Supplies and Equipment	1,107	1,385	(278)	(25.2)
Total Other Direct Operating Expenditures	9,111	7,871	1,240	13.6
Total - WSIAT	30,516	28,525	1,992	6.5
Services - WSIB	620	629	9	(1.5)
Interest Revenue	(12)	(38)	(26)	(218.5)
TOTAL OPERATING EXPENSES	31,124	29,116	2,008	6.5
ONE-TIME EXPENSES				
Severance Payment	125	66	59	47.0
Capital Expenditures	500	49	451	90.2
TOTAL EXPENDITURES	31,749	29,231	2,518	7.9

Note: The above 2022 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 (\$507) is comprised of the following:

CAPITAL FUND

Amortization	343	
Fixed Assets acquired	(611)	(267)

OPERATING FUND

Accrued Severance, Vacation Benefits, & HCSA	(129)	
Prepaid Expenses	(111)	(240)
Difference		(507)

The accounting firm of Deloitte LLP has completed a financial audit on the WSIAT's financial statements for the year ended December 31, 2022. The Independent Auditor's Report is included as Appendix B.

APPENDIX A

Vice-Chairs and Members in 2022

This is a list of Vice-Chairs and Members whose OIC appointments were active during 2022 and their annual remuneration.¹

Name (Full-time OIC)	Initial Appointment	Term End Date	Annual Remuneration ²
Chair			
McCutcheon, Rosemarie	August 16, 2019	January 8, 2025	\$185,982.42
Vice-Chairs			
Baker, Andrew	June 28, 2006	December 31, 2023	\$155,542.92
Crystal, Melvin	May 3, 2000	May 2, 2022	\$60,422.44
Dee, Garth	June 17, 2011	February 18, 2024	\$155,542.92
Dimovski, Jim	November 19, 2014	March 4, 2026	\$155,542.92
Huras, Christina	February 10, 2019	August 28, 2024	\$145,810.34
Iima, Katherine	January 5, 2018	February 20, 2023	\$134,594.15
Jepson, Kenneth	December 10, 2019	August 28, 2024	\$145,810.34
Kalvin, Bernard	October 20, 2004	June 30, 2022	\$83,831.45
Keil, Martha	February 16, 1994	February 17, 2022	\$93,830.27
Kosny, Agnieszka	January 8, 2018	June 10, 2025	\$140,944.05
Lai, Martha	December 22, 2021	December 21, 2023	\$134,512.22
Patel, Vandana	February 17, 2022	February 16, 2024	\$97,871.31
Patterson, Angus	June 13, 2010	March 31, 2024	\$155,542.92
Perryman, Natalie	January 5, 2018	February 7, 2023	\$145,810.34
Petrykowski, Luke	October 3, 2016	April 19, 2026	\$155,542.92
Rose, Elana	February 17, 2022	February 16, 2024	\$102,581.70
Ryan, Sean	May 28, 2020	May 27, 2025	\$155,542.92
Shime, Sandra	July 15, 2009	September 2, 2022	\$129,070.71
Smith, Joanna	August 28, 2016	May 17, 2026	\$155,542.92
Members Representative of Employers			
Sacco, Carmine	February 21, 2018	February 20, 2023	\$117,972.92
Sahay, Sonya Toni	August 12, 2021	August 11, 2023	\$117,972.92
Thomson, David	May 18, 2017	August 10, 2027	\$120,605.63
Members Representative of Workers			
Agnidis, Zoe	August 19, 2021	August 18, 2023	\$110,104.02
Ferrari, Mary	July 15, 2016	July 14, 2026	\$125,840.78
Hoskin, Kelly	June 13, 2011	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.

Name (Part-Time OIC)	Initial Appointment	Term End Date	Annual Remuneration
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Vice-Chairs

Ahlfeld, Pamila	September 16, 2021	September 15, 2023	\$80,838.97
Allen, Paul	February 24, 2016	February 23, 2026	\$94,609.25
Andal, Ramon	February 3, 2022	February 2, 2024	\$63,631.00
Bayefsky, Eban	July 30, 2020	July 29, 2025	\$33,391.50
Crystal, Melvin	May 3, 2022	May 2, 2024	\$45,664.60
D'Angelo, Claudia	February 17, 2022	February 16, 2024	\$57,952.50
Darvish, Sherry	July 30, 2020	July 29, 2025	\$16,745.00
Durette, André	February 17, 2022	February 16, 2024	\$61,907.29
Evans, Katharine	October 4, 2017	October 3, 2022	\$111,723.64
Ferguson, Nancy	July 30, 2020	July 29, 2025	\$17,089.78
Frenschkowski, JoAnne	March 4, 2013	March 3, 2023	\$83,552.65
Gehrke, Linda	November 4, 2015	November 3, 2025	\$92,442.28
Gordon, Mark	February 17, 2022	February 16, 2024	\$53,140.78
Hoare, Rhea	October 26, 2016	October 30, 2026	\$71,299.23
Hodis, Sonja	July 15, 2009	August 12, 2024	\$77,169.85
Horne, Ronald	May 10, 2017	May 9, 2027	\$65,083.90
Jacques, Karen	February 15, 2017	February 20, 2027	\$57,228.51
Keil, Martha	February 18, 2022	February 17, 2024	\$64,517.50
Kosmidis, Elizabeth	June 17, 2015	June 16, 2025	\$95,628.74
Marafioti, Victor	March 11, 1987	February 20, 2023	\$96,628.52
McCaffrey, Grant	July 22, 2015	July 21, 2025	\$77,494.90
McLoughlin, Michael	August 29, 2019	August 28, 2024	\$41,670.44
Mitchinson, Tom	November 10, 2005	November 9, 2023	\$64,345.14
Morrow, Bernard	July 30, 2020	July 29, 2025	\$39,335.98
Onen, Zeynep	November 4, 2015	November 3, 2025	\$38,784.38
Patel, Vandana	December 10, 2020	February 17, 2022	\$25,821.78
Peckover, Susan	October 20, 2004	October 19, 2023	\$90,669.26
Perlin, Tatiana	September 29, 2021	June 15, 2022	\$10,933.50
Pollock, Bruce	February 15, 2017	February 20, 2027	\$57,934.77
Ramsay, Christopher	May 18, 2016	May 17, 2026	\$30,485.77
Salisbury, Robert	February 2, 2017	February 20, 2027	\$25,782.38
Smith, Eleanor	February 1, 2000	October 30, 2023	\$64,788.39
Somerville, Ann	October 4, 2017	November 16, 2027	\$44,509.24
Strachan, Daria	February 3, 2022	February 2, 2024	\$21,965.51
Walsh, (Hedy) Anna	October 7, 2021	October 6, 2023	\$27,358.42
Wong, Anita	July 30, 2020	July 29, 2025	\$81,183.70
Zehr, Chantelle	October 4, 2017	October 5, 2027	\$107,896.94

Members Representative of Employers

Burkett, Gary	February 2, 2017	February 20, 2027	\$65,018.00
Chahal, Simi	February 17, 2022	February 16, 2024	\$24,072.00
Davis, Bill	May 27, 2009	December 12, 2021	\$6,785.00
Falcone, Mena	October 21, 2015	October 20, 2023	\$58,188.75

Name (Part-Time OIC)	Initial Appointment	Term End Date	Annual Remuneration
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Members Representative of Employers (continued)

Gallant, Jean-Sébastien	February 17, 2022	February 16, 2024	\$14,130.50
Greenside, Patricia	January 8, 2018	January 7, 2023	\$82,850.75
Kesler, Marlene	January 7, 2021	January 6, 2023	\$26,948.25
Moreau, Martial	February 17, 2022	February 16, 2024	\$30,385.00
Ouellette, Richard	April 26, 2017	April 25, 2027	\$64,398.50
Soden, Kristen	October 18, 2017	October 17, 2027	\$46,447.75
Trudeau, Marcel	April 16, 2008	December 31, 2023	\$37,990.69

Members Representative of Workers

Broadbent, David	April 18, 2001	April 17, 2021	\$11,306.25
Carlino, Gerry	October 3, 2012	October 2, 2022	\$27,376.00
Grisdale, Robert	February 17, 2022	February 16, 2024	\$29,989.70
Mandoko, Junior	February 17, 2022	February 16, 2024	\$24,417.15
Provato, Joseph	December 10, 2020	December 9, 2022	\$70,269.00
Roth, Stephen	February 24, 2016	February 23, 2026	\$65,429.82
Salama, Claudine	October 3, 2012	October 5, 2024	\$63,867.50
Signoroni, Antonio	September 29, 2010	January 6, 2024	\$33,674.25
Thompson, James	April 5, 2017	April 4, 2027	\$28,261.00
Tzaferis, Mary	December 7, 2016	December 6, 2026	\$60,770.00
Uche, Juliet	February 17, 2022	February 16, 2024	\$21,977.50

Senior Staff

Bhardwaj, Yuvraj	Director, Finance
Bisson, Nicole	Director, Appeal Services
Canzius, Lauren	Director, Diversity and Anti-Racism Office
Haley, Mark	Director, Human Resources and Administration
Mageau, Guylaine	Senior Manager, Executive Services
Paulic, Tony	Director, Information and Technology Services
Schumacher, Sarah	Counsel to the Chair
Todorovic, Slavica	Director, Executive Services and Strategic Initiatives
Woodrow, Rebecca	Tribunal General Counsel (Acting)

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. In 2022, there were five Medical Counsellors.

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



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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, 2022, 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, 2022, and the results of its operations, changes in fund balances, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Basis for Opinion

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

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

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

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

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

Auditor's Responsibilities for the Audit of the Financial Statements

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

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

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

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

"Original signed by Deloitte"

Chartered Professional Accountants
Licensed Public Accountants
March 8, 2023

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2022

ACCOUNT DESCRIPTION	2022	2021
ASSETS		
CURRENT		
Cash	\$ 3,848,686	\$ 2,982,210
Due from Workplace Safety and Insurance Board (Note 3)	389,998	1,302,699
Prepaid expenses and advances	586,914	476,337
Recoverable expenses (Note 3)	244,197	200,616
Total Current Assets	5,069,795	4,961,862
CAPITAL ASSETS (Note 4)	776,446	509,115
Total Current and Capital Assets	\$ 5,846,241	\$ 5,470,977
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	\$ 2,683,481	\$ 2,686,125
Accrued severance benefits and vacation credits	2,438,603	2,567,591
Operating advance from Workplace Safety and Insurance Board (Note 5)	1,800,000	1,800,000
Total Current Liabilities	6,922,084	7,053,716
FUND BALANCES		
OPERATING FUND (Note 6)	(1,949,359)	(2,091,854)
CAPITAL FUND	873,516	509,115
Total Fund Balances	(1,075,843)	(1,582,739)
Total Liabilities and Fund Balances	\$ 5,846,241	\$ 5,470,977

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

 Chair

WORKPLACE SAFETY AND INSURANCE**APPEALS TRIBUNAL****Statement of Operations****Year ended December 31, 2022**

ACCOUNT DESCRIPTION	2022	2021
OPERATING EXPENSES		
Salaries and wages	\$ 17,072,487	\$ 15,454,932
Employee benefits (Note 7)	3,518,493	3,392,806
Transportation and communication	273,774	403,174
Services and supplies	6,924,858	7,293,264
Amortization	343,471	411,465
Sub-total of Operating Expenses	28,133,083	26,955,641
Services - Workplace Safety and Insurance Board ("WSIB") (Note 8)	629,400	614,973
TOTAL OPERATING EXPENSES	28,762,483	27,570,614
BANK INTEREST INCOME	(38,222)	-
NET OPERATING EXPENSES	28,724,261	27,570,614
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	(29,231,157)	(27,528,456)
ANNUAL (SURPLUS) / DEFICIT	\$ (506,896)	\$ 42,158

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2022

CHANGES IN FUND BALANCES	Capital	Operating	Total
BALANCE - JANUARY 01, 2021	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)
Additions to capital assets	610,802	-	610,802
Amortization of capital assets	(343,471)	-	(343,471)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	128,988	128,988
Prepaid expenses (Note b)	97,070	13,507	110,577
Annual Surplus/(Deficit)	364,401	142,495	506,896
BALANCE - DECEMBER 31, 2022	873,516	(1,949,359)	(1,075,843)

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, 2022

CASH FLOWS	2022	2021
NET INFLOW/(OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	\$ 29,231,157	\$ 27,761,710
Cash receipts for recoverable expenses	2,157,314	864,004
Bank interest received	38,222	-
Expenses, recoverable expenses net of amortization	(29,949,415)	(27,456,460)
Sub-total Increase/(Decrease) in Cash	1,477,278	1,169,254
CAPITAL		
Acquisition of capital assets	(610,802)	(481,333)
NET INCREASE/(DECREASE) IN CASH	866,476	687,921
CASH, BEGINNING OF YEAR	2,982,210	2,294,289
CASH, END OF YEAR	\$ 3,848,686	\$ 2,982,210

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2022

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, Immigration, 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, 2022

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, 2022

3. RECOVERABLE EXPENSES

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

Recoverable Expenses From	2022	2021
Shared services		
Ontario Labour Relations	102,755	90,657
Board Pay Equity Hearings	5,808	5,857
Tribunal		
Others		
Canada Revenue Agency HST rebate receivable	125,886	95,005
WSIB	389,998	1,302,699
Miscellaneous	9,748	9,097
Total	634,195	1,503,315

4. CAPITAL ASSETS

Type of Capital Asset	Cost	Accumulated Amortization	2022 Net Book Value	2021 Net Book Value
Leasehold Improvements	4,216,273	4,155,057	61,216	61,647
Furniture and Equipment	458,946	451,351	7,595	19,017
Computer Equipment and Software	2,018,724	1,311,089	707,635	428,451
Total	6,693,943	5,917,497	776,446	509,115

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 \$1,949,359 as of December 31, 2022 (2021 - \$2,091,854) 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, 2022

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$1,378,279 (2021 - \$1,303,692) and are included in employee benefits in the Statement of Operations.

b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The net severance benefits accrued in 2022 amounted to a decrease of \$71,447 (2021 - \$81,435) over the prior year amount and is included in employee benefits in the Statement of Operations.

c) Vacation credit entitlement

Vacation entitlements are accrued in the year when vacation credits are earned. The net vacation credits accrued in 2022 amounted to a decrease in the accrual of \$65,626 (2021 - \$117,518 increase) over the prior year amount and is included in employee benefits in the Statement of Operations.

d) Non-pension future benefits

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

e) Health Care Spending Account ("HCSA")

Eligible employees are entitled to an annual health care spending account as part of their health benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2022 amounted to an increase of \$8,085 (2021 - \$17,877 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, 2022

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 1-3 years. The minimum payments under these commitments are as follows:

Year	Payments
2023	367,141
2024	351,228
2025	48,870
Minimum payments	767,238

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

Year	Payments
2023	1,777,227
2024	1,795,000
2025	1,510,791
Minimum payments	5,083,018

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