

WSIAT 2023 Annual Report



Workplace Safety and Insurance
Appeals Tribunal

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

WSIAT 2023 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. It is separate from the WSIB and operates at arm's length from government. The agency was established by statute in 1985 as the Workers' Compensation Appeals Tribunal and was renamed by section 173 of the WSIA, which came into force on January 1, 1998.

This volume contains the 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 administrative policies and practices. The Annual Report also contains information on the WSIAT's operations for fiscal year 2023, a letter from the Tribunal Chair, and comments on matters that may be of special interest or concern to the Minister and WSIAT stakeholders.

Mandate

The mandate of the Workplace Safety and Insurance Appeals Tribunal is to hear and decide appeals from final decisions of the Workplace Safety and Insurance Board and such other matters as are conferred upon the WSIAT 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.

Message from the Chair

Rosemarie McCutcheon

I am pleased to present the 2023 Annual Report of the Workplace Safety and Insurance Appeals Tribunal.

The WSIAT continued its strong performance in 2023, delivering on its mission to provide quality adjudication in workplace safety and insurance matters in accordance with the principles of natural justice and on a fair and timely basis.

In 2023, we held steady in the timely processing of appeals while pursuing new access to justice initiatives, such as the soft launch of Navigation Services in November. We responded to feedback from stakeholders in the development of

In 2023, we mourned the passing of Dr. S. Ronald Ellis, KC...he was a visionary who was appointed Chair in 1985 and built this tribunal from the ground up.

our new pre-hearing process, which will take effect in May 2024. Our new forms and Practice Directions were reviewed by a plain language expert to reduce jargon and be more understandable to our stakeholders.

2023 was also a year of transition, with a gradual increase of in-person hearings, WSIAT staff returning to the office a minimum of three days

a week, and the full reopening of the Ontario Workplace Tribunals Library. We introduced a secure method of releasing decisions electronically and improved our website with a new accessibility and diversity page.

In 2023, we mourned the passing of Dr. S. Ronald Ellis, KC, the founding Chair of what was then the Workers' Compensation Appeals Tribunal. Warmly known as "Ron" to friends and colleagues, he was a visionary who was appointed Chair in 1985 and built this tribunal from the ground up. Ron's vision is demonstrated in the WSIAT's first Annual Report, which laid a foundation that endures today. Under Ron's guidance, the first Annual Report

- introduced the WSIAT's innovative approach to administrative justice by describing a WSIAT hearing as non adversarial, fair and objective, and uniquely characterizing a WSIAT proceeding as a re-hearing process rather than a traditional appeal;

- instituted a culture of consultation and collaboration by establishing the roles of the Office of the Counsel to the Chair, the Tribunal Counsel Office, and the external Advisory Group;
- committed the WSIAT to maintaining uniform standards and fostering consistency in decision-making, with robust mechanisms in place to achieve these objectives;
- prioritized transparency from the outset by guaranteeing that all WSIAT decisions would be published with keywords (now at 90,000 and counting); and
- demonstrated a prescient recognition of the role that technology and innovation play in the justice system.

We continue to strive to uphold the high standards that were set when the WSIAT was established and innovate in the pursuit of greater access to justice for our stakeholders.

Ron also exemplified intellectual curiosity and a reflective approach to administrative law. In that tradition, the WSIAT hosted its second Access to Justice Symposium in October 2023. The keynote speaker was the Honourable Thomas Cromwell, former justice of the Supreme Court of Canada. The symposium also featured the Honourable David Piccini, Minister of Labour, Immigration, Training and Skills Development; David Corbett, Deputy Attorney General (and former Chair of the WSIAT); and notable academics, adjudicators, counsel, administrators and WSIAT leaders. It was an inspiring hybrid event with over 300 attendees from across Canada.

Ron was a leading academic and scholar, but he did not lose sight of the very real and practical impacts of administrative justice on people's lives. Similarly, at the WSIAT, we continue to recognize that the diverse needs of our stakeholders must be the focus of our access to justice initiatives. In 2024, we plan to undertake an independent review of our pre-hearing process with a diversity and accessibility lens.

In the year ahead, we expect our incoming appeal volumes and timelines to remain steady. This presents an opportunity to deepen our outreach and engagement with stakeholders. We will continue to host regular stakeholder information and training events, while finding new ways to gather and respond to feedback. Honest and informed stakeholder feedback is pivotal to the WSIAT's commitment to continual improvement.

In 2024, we will also lay a principled foundation for the exploration of artificial intelligence and machine learning (AI/ML) solutions that may be leveraged to better serve our stakeholders. I wish to assure stakeholders that we are committed to putting people first and being transparent in the adoption of AI/ML solutions.

I wish to thank the Honourable David Piccini, Minister of Labour, Immigration, Training and Skills Development for his support of the WSIAT and our commitment to access to justice. We also thank all of our partners in the system and stakeholders for their cooperation.

We have an amazing and dedicated team of staff and adjudicators at the WSIAT. I am grateful for them every day and thank them for their commitment to the WSIAT's mission, vision and values. I am looking forward to the year ahead.

A handwritten signature in black ink, reading "R. McCutcheon". The signature is fluid and cursive, with the first name "Rosemarie" and last name "McCutcheon" clearly visible.

Rosemarie McCutcheon
Tribunal Chair

2023 Year in Review

Total Active Caseload (January 1, 2023)	3,938
Total Active Caseload (December 31, 2023)	3,569
Cases Started	2,853
New	2,346
Reactivated	507
Hearings Conducted	2,015
Videoconference	1,263
Teleconference	22
In-person	16
Hybrid	2
Written	712
Decisions Issued	1,867
Decisions Issued in 120 Days	91%
ADR Resolved Cases	321
Median Time (in months) to First Offered Hearing	4.6
Median Time (in months) to Close Appeals	13.1
E-Share Documents	58,615
E-File Submissions	13,310

Highlights of the 2023 Cases

This section reviews some of the many legal, factual and medical issues that the Workplace Safety and Insurance Appeals Tribunal (WSIAT) considered in decisions released or summarized in 2023.

The WSIAT decides cases under four acts. The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes a system of workplace insurance for accidents occurring after 1997, and continues the pre-1985, pre-1989 and pre-1997 workers' compensation acts for prior injuries. The WSIA and the pre-1997 Act have been amended a number of times since 1998.

The WSIAT also considers and applies policies adopted by the Workplace Safety and Insurance Board (WSIB). The substantive provisions and terminology contained in WSIB policies vary over time. This section uses the policy terms considered in the WSIAT decisions discussed.

LOE Entitlement Issues

The WSIA provides loss of earnings (LOE) benefits for workplace injuries. LOE benefits are calculated based on 85% 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, after the injury.

In 2023, the WSIAT released four decisions that were heard together as leading cases: *Decision No. 1172/20, 2023 ONWSIAT 1420*; *1171/20, 2023 ONWSIAT 1421*; *1736/21, 2023 ONWSIAT 1422*; and *1169/20, 2023 ONWSIAT 1423*. The main issue was the application of the WSIB's Adjudicative Advice Document for participants in the seasonal agricultural workers program. This document limits long-term benefits for permanently injured workers to 12 weeks of LOE benefits and deems them able to work in the Ontario labour market. The Panel found that the Adjudicative Advice Document did not apply as it is a non-binding document that is inconsistent with the language and purposes of the WSIA. The Panel concluded that long-term LOE benefits for migrant agricultural workers ought to be based upon their ability to earn in their actual local or regional labour market. In reaching this conclusion, the Panel applied the principles of statutory interpretation to the July 1, 2007 amendments to sections 42 and 43 of the WSIA. The Panel considered the statutory intent behind the replacement of the word "deem" with "determine" and the addition of the word "available" in a passage discussing how to calculate LOE benefits based on the suitable employment or business that the worker can engage in after the accident. The Panel found that the replacement of the term "deem"

with “determine” signals the legislature’s intention that entitlement to LOE benefits be based upon an individualized assessment rather than a fictional assumption. Further to that, the Panel found that migrant agricultural workers are entitled to labour market re-entry assessments and services under section 42 of the WSIA in accordance with their actual labour market. In these leading cases, the Panel considered the relevant context which included the undisputed existence of anti-Black racism in Ontario, the vulnerable employment status of migrant agricultural workers, and their challenges in accessing health care both in Ontario and their home countries.

If a worker finds a job in their selected suitable occupation (SO) following the completion of a work transition (WT) plan, LOE benefits are usually based on the difference between pre-accident earnings and actual post-accident earnings. However, if a worker is found to be voluntarily underemployed, the post-accident earnings are based on the amount

an experienced worker would earn in the identified SO. *Decision No. 3205/16R2*, 2023 ONWSIAT 1639, found that the reconsideration threshold test had been met on the basis that the original decisions (*Decisions No. 3205/16*, 2017 ONWSIAT 427, and *3205/16R*, 2018 ONWSIAT 1554) did not consider the worker’s personal circumstances. Specifically, the decisions did not consider family status and sex when they determined that the worker had made a deliberate and conscious choice to be underemployed following completion of her WT plan.

The worker submitted that family status and sex are protected characteristics under the *Canadian Charter of Rights and Freedoms (Charter)* and the *Human Rights Code (Code)* and, as such, were personal circumstances that ought to have been considered when determining LOE entitlement. The Vice-Chair accepted this submission and confirmed that legislation and WSIB policy should be interpreted and applied in a manner that is consistent with the *Charter* and the *Code*. The Vice-Chair directed that an oral hearing on the merits be scheduled and the Vice-Chair remained seized of the appeal.

In these leading cases, the Panel considered the relevant context which included the undisputed existence of anti-Black racism in Ontario, the vulnerable employment status of migrant agricultural workers, and their challenges in accessing health care both in Ontario and their home countries.

LOE benefits are payable if a worker sustains a wage loss as a result of the injury. If the WSIAT determines that modified work offered by the employer at no wage loss is suitable, then the worker is not entitled to LOE benefits under section 43 of the WSIA. *Decision No. 870/23*, 2023 ONWSIAT 1590, considered whether suitable modified work was available where the worker’s employment atmosphere was clearly characterized by hostility. The Panel found that the worker was in a

very tenuous employment relationship complicated by intergenerational family disagreements. The employer was also small and had not demonstrated the ability to provide modified employment on a continuing basis. The Panel referred to *Evans v. Teamsters Local Union No. 31*, 2008 SCC 20, which addressed the extent of mitigation required in the context of a wrongful dismissal action. The Supreme Court of Canada stated that the critical element was that an employee “not [be] obliged to mitigate by working in an atmosphere of hostility, embarrassment, or humiliation...” The Panel observed that mitigation in the case of permanent injuries may involve decades that comprise the remainder of a worker's working life. Therefore, the concern that an employee should not be obliged to mitigate a loss by working in an atmosphere of hostility, embarrassment or humiliation should be even greater in the workers' compensation context than in the wrongful dismissal context. The worker was a glass installer whose employability was affected by his permanent workplace injury. The Panel found that LOE benefits should not be based on what the worker could earn with the employer, but on what he could earn in the general labour market.

When a worker is first injured, they may be unable to return to work for a period of time. Section 40 outlines the co-operation provisions for workers, employers and the WSIB during the early and safe return to work process. *Decision No. 434/23*, 2023 ONWSIAT 628, confirmed that the worker was entitled to two days of LOE benefits prior to beginning modified duties. Even though the worker was physically able to return to work, she did not do so due to non-compensable commitments (medical appointments). The worker's lack of availability was due to a compelling reason, as outlined in WSIB policy, and not indicative of non-co-operation in the early and safe return to work process. Operational Policy Manual (OPM) Document No. 15-06-08, “Adjusting Benefits Due to Post-accident, Non-work-related Change in Circumstances” states that, when workers are unavailable for brief periods of time, full benefits should be maintained.

The impact of the COVID-19 pandemic on LOE entitlement was also examined by the WSIAT in 2023. *Decision No. 1108/23*, 2023 ONWSIAT 1278, looked at the issue of whether the SO of customer service was suitable and available during the COVID-19 pandemic. The Panel found that the worker was at a disadvantage due to the negative impact of the pandemic on the availability of customer service jobs, his compensable physical limitations, and his limited education and work experience in the field of customer service. As a result, the worker did not have a reasonable prospect of securing employment within the SO or in other similar suitable work subsequent to the completion of his WT plan. The Panel granted the worker full LOE benefits until suitable positions within the SO became more available within the labour market.

Decision No. 685/23, 2023 ONWSIAT 1241, looked at whether a worker was entitled to LOE benefits after being terminated for non-compliance with the employer's mandatory COVID-19 vaccination policy. The Panel found that the worker's loss of earnings was not caused by the workplace injury, as suitable modified work was

available. The wage loss was due to the intervening event of the worker's decision not to meet her vaccine-related employment obligations.

In *Decision No. 230/23*, 2023 ONWSIAT 584, a worker who was performing modified work for the accident employer was laid off due to the COVID-19 pandemic and never recalled. The Vice-Chair found that while the pandemic was a unique circumstance, a layoff of 20 months was not temporary and there was no evidence that the worker would be recalled. The Vice-Chair applied OPM Document No. 15-06-03, "Entitlement Following Permanent Work Disruptions" and found that the worker was entitled to LOE benefits and a labour market re-entry assessment as a position that would provide the same modified work was likely not available in the general labour market.

Initial Entitlement and Secondary Conditions

Initial entitlement appeals require adjudicators to determine whether a worker sustained a personal injury by accident arising out of and in the course of employment. There were several decisions in 2023 that focused on initial entitlement issues stemming from the COVID-19 pandemic.

In *Decision No. 1741/22*, 2023 ONWSIAT 68, the employer appealed the worker's initial entitlement for a cervical myofascial strain, a right upper trapezius strain, and right rotator cuff shoulder tendinosis. The worker developed these injuries while working at home during the COVID-19 pandemic. Her duties were repetitive, high paced and performed at an ergonomically unsuitable workstation. The worker did not have an ergonomic chair or desk at home, and had to sit at her dining table. The Panel found that the worker's duties contributed significantly to the onset or development of her conditions and confirmed the initial entitlement.

The Panel in *Decision No. 12/23*, 2023 ONWSIAT 1350 found that the worker's pre-existing back condition was aggravated and worsened by an improper ergonomic set-up, which the worker used while working from home due to the COVID-19 pandemic. Initial entitlement for an L4-L5 disc herniation was granted on an aggravation basis.

OPM Document No. 15-04-10, "Immunization Against Infectious Disease" provides entitlement to benefits for reactions to compulsory immunizations that are for the prevention of work-related disease or infection. The worker in *Decision No. 33/23*, 2023 ONWSIAT 591, was diagnosed with progressive demyelination resulting from a COVID-19 vaccination and claimed entitlement for this condition. The issue before the Panel was whether the worker was required to receive the COVID-19 vaccine as a component of her employment and whether she was exposed to COVID-19 due to the nature of her job. The Panel accepted that, as a healthcare worker at a seniors' residence, there was a heightened likelihood of exposure to COVID-19 and the vaccination was required to prevent work-related disease or infection. The Panel found that the employer, in conjunction with the seniors' residence, had arranged

the worker's appointment to receive the vaccination, which was not yet available to the general public. The Panel found that the worker met the requirements in OPM Document No. 15-04-10 and was entitled to benefits for her adverse reaction to the COVID-19 vaccine.

Entitlement can also be granted for secondary conditions that stem from the original workplace accident. *Decision No. 552/23*, 2023 ONWSIAT 991, examined the issue of whether the worker had entitlement for atrial fibrillation as a secondary condition to his compensable cardiac condition. The Panel granted the appeal and found that the worker's treating physicians, including specialists in cardiology, expressly opined that the atrial fibrillation was causally related to the mitral valve replacement surgery. The Panel relied on a medical article on atrial fibrillation, which states that cardiac surgery increases the risk of atrial fibrillation by as much as 37 to 50%. The Panel acknowledged the worker's non-compensable risk factors but found that the compensable cardiac condition was at least a significant contributing factor in the development of his atrial fibrillation.

If a worker develops a psychological or chronic pain disability due to a compensable physical injury, they may be entitled to benefits under WSIB policy. In *Decision No. 836/22*, 2023 ONWSIAT 14, the worker claimed entitlement for either psychotraumatic or chronic pain disability. The employer argued that the inclusion of entitlement for mental stress in section 13 of the WSIA, as well as the creation of mental stress policies, have modified the standard of proof required to establish entitlement for chronic pain and psychotraumatic disability. The Panel did not accept this argument for three main reasons: (1) there have been no amendments to the WSIA or the WSIB's policies that support such a significant change; (2) the issue of whether an accident by injury arose out of and in the course of employment is separate and distinct from the question of whether a non-organic injury is causally connected to a compensable organic injury; and (3) the policy implications of the proposed change would make workers responsible for the financial consequences of workplace injuries in a manner that is inconsistent with the historic bargain that underpins the workers' compensation system. The Panel allowed the appeal in part and granted entitlement for chronic pain disability.

NEL Benefits

The WSIA and the pre-1997 Act provide non-economic loss (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*. In *Decision No. 1393/23I*, 2023 ONWSIAT 1753, the issue under appeal was the NEL rating for the worker's low back. The worker representative argued that failure to use a more recent edition of the AMA Guides infringes on the worker's *Charter* rights and there is discretion to use a more updated version. While the Panel did not address the *Charter* argument in the interim decision and focused on the

correctness of the worker's NEL rating, the Panel observed that neither the WSIB nor the WSIAT has any discretion to apply a different rating schedule or version of AMA Guides, as the prescribed schedule is set out in the WSIA and the regulation. The Panel concluded that the worker's low back impairment was correctly rated at 27% under the 3rd edition of the AMA Guides.

A worker is entitled to be assessed for a NEL award if they continue to have an impairment after reaching maximum medical recovery (MMR). *Decision No. 1054/23, 2023 ONWSIAT 1355*, confirmed that a NEL award is paid retroactively to the date of MMR and must reflect, as closely as possible, the worker's condition at that time. A subsequent deterioration in the worker's condition is not addressed by changing the initial NEL quantum from the date of MMR, but by a NEL redetermination. To receive entitlement to a NEL redetermination, objective medical evidence must establish that the worker's compensable condition significantly worsened after the MMR date. The Vice-Chair confirmed that the sole issue before the WSIAT was whether the NEL award for chronic pain disability was appropriately rated at 20%. Whether the worker was entitled to a redetermination due to significant worsening was outside of the WSIAT's jurisdiction. The Vice-Chair found that the worker's NEL award was appropriately rated at the time of MMR.

Decision No. 1236/23, 2023 ONWSIAT 1597, examined the quantum of a NEL redetermination following a total knee replacement surgery. The Panel found that arthritis and a torn meniscus should not be included in the redetermined NEL rating, as the knee replacement surgery had removed the physical structures causing those impairments. The worker's arthritis and torn meniscus had been included in the original NEL rating, but impairments that no longer exist should not be rated. The Panel noted that while the worker's total knee replacement surgery eliminated his arthritis and torn meniscus, it did not return his knee to full range of motion. The Panel found that abnormal range of motion should be factored into the NEL rating following the redetermination.

Occupational Disease

Occupational disease cases 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 rebuttable and irrebuttable presumptions for certain specified occupational diseases and exposures. The WSIB has also adopted policies and adjudicative advice documents that apply to 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.

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. *Decisions No. 699/18, 2023*

ONWSIAT 112, 1327/18, 2023 ONWSIAT 113, and 1328/18, 2023 ONWSIAT 114, were decided together as they involved similar facts and all three were decided following a 126(4) referral. In each case, a communications/dispatch firefighter claimed entitlement to benefits for breast cancer under the WSIA and OPM Document No. 23-02-01, "Cancers in Firefighters and Fire Investigators" (Cancers in Firefighters Policy). Amendments to the WSIA in 2014 introduced rebuttable presumptions of entitlement for various cancers in firefighters, including breast cancer. The Panel found there was no dispute between the parties that the rebuttable presumption of entitlement applies to a communications/dispatch firefighter, as they fall within the definition of "firefighter." The workers also had the requisite number of years of employment as a firefighter and breast cancer is one of the prescribed cancers. However, none of the workers were exposed to the hazards of a fire scene while working as a firefighter. As the requirements of the presumption were met, the outcome of the appeal turned on whether the presumption was rebutted. 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. The Panel found that the policy 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. Weighing evidence of work relatedness while determining whether the presumption had been rebutted would be inconsistent with the purpose of presumptions for occupational disease. The WSIB did not agree that the Cancers in Firefighters Policy was inconsistent with the applicable regulation and requested a reconsideration of the Panel's prior conclusion that an adjudicator can never consider the extent of workplace exposures in determining if the presumption is rebutted unless expressly authorized to do so by statute, regulation or policy. The Panel denied the WSIB's reconsideration request and concluded that it was not appropriate to weigh evidence of work relatedness in determining whether a presumption of causation is rebutted for occupational disease entitlement.¹ The Panel found that, when determining whether the presumption is rebutted, the analysis should focus on whether there is evidence of non-compensable causal factors sufficient to outweigh the presumption itself. The Panel majority found that the presumption had not been rebutted after examining each worker's individual non-compensable risk factors and allowed the appeals. The employer member dissented and would have denied the appeals based on reading the Cancers in Firefighters Policy as only applying to workers involved in fire suppression activities.

In *Decision No. 325/20*, 2023 ONWSIAT 1552, a Panel granted entitlement for prostate cancer to a firefighter. The worker did not meet the minimum employment duration for the presumption of work relatedness to apply. Therefore, his claim was

1 The WSIB revised the Cancers in Firefighters Policy after the release of *Decisions No. 699/18*, *1327/18* and *1328/18*. The new version states that the presumption can be rebutted if the worker had negligible work exposure to the hazards of a fire scene.

determined on its individual merits. The Panel granted entitlement as the worker had worked as a firefighter for 14 years prior to his prostate cancer diagnosis, which was just under the 15-year threshold. In addition to firefighting duties, which exposed the worker to various chemicals and soot, he spent approximately 50% of his time cleaning bunker gear without wearing personal protective equipment. This duty further exposed him to the byproducts of firefighting.

In *Decision No. 480/23*, 2023 ONWSIAT 1136, the worker's estate claimed entitlement for brain cancer due to exposure to herbicides and electromagnetic fields. The Panel found that, as brain cancer is not listed in Schedule 3 or 4 or WSIB policy, no presumptions applied. The worker's claim was subject to the same rules and principles that govern entitlement for a gradual onset injury, also known as a disablement claim. The Panel noted that the statutory presumption set out in section 13(2) of the WSIA does not apply to an injury by disablement. The worker's representative asked for a "common sense" approach, given the worker's exposure to hazardous chemicals and the evolving science on occupational risk factors for brain cancer. The Panel agreed that decision-makers should not wait for scientific certainty; however, the standards of proof continued to apply. The Panel denied entitlement as there was no basis upon which to grant entitlement for the worker's cancer. Medical opinions expressly concluded that the worker's cancer was likely not caused by his occupational exposures. Furthermore, the epidemiological evidence did not support a causal relationship between brain cancer and exposure to herbicides, pesticides and electromagnetic fields.

Section 14 of the WSIA creates a presumption that when 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. In *Decision No. 906/23*, 2023 ONWSIAT 1058, the issues under appeal were whether a firefighter had entitlement to benefits for PTSD and, if so, whether the worker's estate had entitlement to benefits flowing from his death due to suicide. The Panel allowed the appeal and found the criteria for entitlement under section 14 were met. There was no dispute that the worker was a first responder and the provisional diagnosis of PTSD, made prior to his death, was sufficient to establish entitlement. In addition, after the worker's death his PTSD diagnosis was confirmed by a psychologist who reviewed the case file and clinical notes. The Panel accepted the medical opinion that the worker's death by suicide was the result of his compensable PTSD and granted entitlement to survivors' benefits.

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. Employers can receive entitlement to cost relief under the Second Injury and Enhancement Fund (SIEF). The amount of cost relief 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.

In *Decision No. 1641/23*, 2023 ONWSIAT 1869, an employer seeking SIEF relief submitted that the worker's NEL award should be considered when determining the severity of the pre-existing condition. It was submitted that the worker's 11% whole person NEL award was offset by the 6% rating for prior acromioplasty, and this offset was more than 50% of the 11% for whole person impairment. Accordingly, it was submitted that the pre-existing condition in the left shoulder was of major severity. The Vice-Chair did not find this argument persuasive. The criteria for rating a NEL award and the criteria for determining the severity of a pre-existing condition for the purposes of SIEF relief are very different. The AMA Guides, used for determining NEL awards, rate impairment by considering factors such as abnormal motion, vascular or neurological conditions, and specific disorders and surgeries, even if there is no impairment to range of motion. To determine the severity of a pre-existing condition for the purposes of SIEF, OPM Document No. 14-05-03, "Second Injury and Enhancement Fund" indicates that the medical significance is assessed in terms of the extent that it makes the worker liable to develop a disability of greater severity than a normal person. The AMA Guides do not assess whether a worker's impairments make them liable to develop disabilities of a greater severity than a normal person. Given that the criteria for determining a NEL award and the quantum of SIEF relief are so different, the Vice-Chair found that the quantum of the NEL award is not relevant in determining the medical significance of the pre-existing condition for the purposes of SIEF relief. The Vice-Chair allowed the appeal in part and found, on the basis of the medical evidence on file, that the pre-existing condition was major and the employer was entitled to 75% SIEF relief.

Decision No. 532/23, 2023 ONWSIAT 1191, found that pregnancy does not fall within the definition of a pre-existing condition, as it cannot be considered an asymptomatic condition that becomes manifest post accident. Pregnancy is also not a functional abnormality or loss, and therefore cannot constitute a pre-existing disability. The Vice-Chair found that the SIEF program was created to provide cost relief to a specific group of employers based on a pre-existing disability or condition. SIEF relief was not designed to compensate for every condition or circumstance outside the employer's control. For example, delays in accessing treatment and global pandemics can have cost consequences for employers, but they are clearly outside the parameters of the SIEF policy. The employer's representative relied on several WSIAT decisions to support the submission that the worker's pregnancy constituted a pre-existing condition. However, these decisions were distinguishable from the facts of this case, as none of them analyzed pregnancy in the context of a request for SIEF relief. The Vice-Chair also expressed concern about the tone and substance of the employer representative's submissions regarding women and pregnancy, which were insensitive, lacked a factual foundation, and appeared to be based on personal conjecture. While a representative has a duty to zealously advocate for their client, this does not negate their responsibility to adhere to the WSIAT's *Practice Direction: WSIAT Code of Conduct for Representatives*.

Under the WSIA, employers are divided into two main categories: Schedule 1 and Schedule 2. Employers included in Schedule 1 contribute to the insurance fund by paying annual premiums. Schedule 2 is composed mainly of employers in governmental, public and major infrastructure-related industries that are individually liable for the benefits paid to their injured workers. *Decision No. 172/23*, 2023 ONWSIAT 868, involved a worker who had entitlement for lung cancer due to asbestos exposure. The worker's former employer, a school board covered by Schedule 2, sought to apportion some or all of the claim costs between the worker's prior employers or the school board's predecessor Schedule 1 account. The Panel found that the school board was the employer responsible for the costs of the worker's claim. The school board was also appropriately charged the full amount because there is no authority under the WSIA to apportion claim costs between Schedule 2 employers and Schedule 1 employers or accounts, including predecessor accounts of the same employer. Section 94 of the WSIA provides direction on determining the responsible Schedule 2 employer for an occupational disease claim. Pursuant to section 94(2), a Schedule 2 employer who is the last exposure employer, as was the case in this appeal, is the *prima facie* accident employer for the purposes of the claim.

Right to Sue Applications

The workplace safety and insurance system 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. Under section 31 of the WSIA, the WSIAT has exclusive jurisdiction to decide whether a worker's right to sue has been removed.

Unlike most WSIAT proceedings, right to sue applications do not result in a final determination of rights. The party seeking to sue faces further proceedings in court or before the WSIB. There is a great need for finality, so that all parties can pursue the appropriate proceedings.

There is a significant potential for abuse of process in requests to reconsider right to sue applications. As set out in the *Practice Direction: Right to Sue Applications*, a completed request to reconsider, including any supporting materials, should be received by the WSIAT and the other parties within 40 days of the date of decision. This timing does not apply to a request for clarification. The Tribunal Chair may exercise the statutory discretion to assign a late reconsideration request to a Vice-Chair or Panel.

In *Decision No. 229/23R*, 2023 ONWSIAT 1929, the applicants requested a reconsideration of a right to sue decision approximately three months after the expiry of the 40-day time limit. The Tribunal Chair found that this was not an appropriate case in which to exercise the statutory discretion to assign the late reconsideration request. The Chair noted that while there may be parallels to the WSIAT's jurisprudence on the extension of the statutory time limit to appeal or jurisprudence from the courts on the waiver of limitation periods, those precedents

must be evaluated with reference to the exceptional nature of reconsideration requests. Unlike a right of appeal or a right of action, a reconsideration is an exceptional remedy. The Chair found there was no reasonable explanation for the delay. The applicants indicated they had read and relied on the general Practice Direction on reconsiderations, however this was not a reasonable explanation for the delay as this document references the Practice Direction on right to sue applications. The Chair also found that, as reconsiderations are an extraordinary remedy under the WSIA and not a right of any party, it would not be appropriate or necessary for the WSIAT to include information about the reconsideration process in a final decision letter. The reconsideration request did not raise a significant issue that had a reasonable prospect of meeting the reconsideration threshold test. The original decision appropriately focused on the language of the relevant provision and utilized the modern principles of statutory interpretation to determine the meaning of section 28(4), which concerns the ability to continue a right of action when a motor vehicle, machinery or equipment is supplied without also supplying workers to operate the motor vehicle, machinery or equipment. The Chair also found that the Practice Direction on right to sue applications may be seen as creating a presumption of prejudice associated with a delay in requesting a reconsideration of a right to sue decision. The costs to parties associated with the additional reconsideration proceeding was not addressed by the applicants.

Section 11(2) of the WSIA confirms that, subject to sections 12 and 12.2, the insurance plan does not apply to workers who are executive officers of a corporation. If an executive officer obtains optional insurance under the WSIA, they can claim entitlement to workers' compensation benefits in exchange for a more limited right to sue. *Decision No. 919/23*, 2023 ONWSIAT 1672, addressed whether a respondent's right of action against an applicant was taken away. The respondent was an executive officer who had coverage for workers of his corporation and presumed the coverage extended to him. However, the respondent did not apply for optional coverage and did not provide the WSIB with consent to obtain optional coverage. The applicant argued that the respondent's intent is a relevant and important consideration in determining whether he is entitled to obtain benefits under the workers' compensation insurance plan. The Vice-Chair did not accept this argument, as there is no language in section 12 that indicates an executive officer can be a deemed worker without applying for and obtaining a declaration from the WSIB. The Vice-Chair concluded that the respondent was not a worker within the meaning of the WSIA and was not entitled to benefits under the plan. The respondent was therefore not statute barred from pursuing the civil action.

The Vice-Chair in *Decision No. 1725/22*, 2023 ONWSIAT 782, found a respondent's right of action was not taken away by the WSIA, as the respondent was an independent operator who had not obtained optional insurance at the time of the accident. The respondent did claim and obtain benefits for the workplace accident under the Quebec workers' compensation scheme. The applicant argued that the respondent would be given an opportunity to "seek and receive double recovery"

if the right of action was allowed to continue. The decision to claim and receive benefits under the Quebec workers' compensation scheme did not fall within the ambit of the statutory bar. The Vice-Chair found that the WSIAT did not have the authority to find that the civil action was an abuse of process, as the WSIAT's jurisdiction does not extend to determining whether a civil action should proceed for reasons beyond those set out in sections 27 and 28.

Other Legal Issues

The WSIAT continued to adjudicate procedural issues in 2023, including the issue of what constitutes a meaningful notice of appeal. Under section 125(2), a notice of appeal must be in writing and indicate why the WSIB decision is incorrect or why it should be changed. The Vice-Chair in *Decision No. 1134/23I*, 2023 ONWSIAT 1273, found the notice of appeal and subsequent correspondence did not indicate why the WSIB decision was incorrect or why it should be changed. The Vice-Chair noted that the filing of appeals without prior evaluation of whether significant grounds for the appeal exist delays other appeals with legitimate grounds for argument. The Vice-Chair requested further submissions from the worker's representative on why the WSIB decision was incorrect. If this information was not provided within eight weeks, the appeal would be dismissed. Subsequently, *Decision No. 1134/23I*, 2023 ONWSIAT 1638, dismissed the appeal as the requirement for filing a notice of appeal under section 125(2) had not been met and no further submissions were received.

Decision No. 891/23I, 2023 ONWSIAT 1139, found that a paralegal who had retired and surrendered his license with the Law Society of Ontario cannot represent a worker in an appeal at the WSIAT. The Panel found that he was precluded from providing legal services in this appeal as he did not fall within the exemptions in the *Law Society Act*, which include acting for a friend or neighbor. A friendly relationship is not the same as a friendship, and the Panel found that the relationship between the retired paralegal and the worker did not extend beyond this appeal.

Decision No. 443/23E, 2023 ONWSIAT 917, examined the factors to consider in a time extension application for an employer's cross appeal. In this case, the worker filed a notice of appeal three days prior to the expiry of the six-month time limit to appeal. Notice of appeal was not sent to the employer until after the expiry of the six-month time limit. The employer filed a notice of cross appeal within one month of receiving notice of the worker's appeal. The Vice-Chair granted a time extension for the employer to file a cross appeal. The Vice-Chair agreed that it is appropriate to provide a reasonable period of time for a respondent to file a cross appeal upon receiving notice from the WSIAT. To do otherwise would create a distinct procedural disadvantage for respondents. The Vice-Chair also agreed that, in considering whether there was an intention to appeal, one should consider the length of delay in forming the intention to appeal. This requires a consideration of when the appeal was filed with the WSIAT and when the notice of appeal was received by

the respondent. The Vice-Chair also found there was no evidence of bad faith in bringing the cross-appeal.

There were two decisions in 2023 that examined the transitional provisions relating to chronic mental stress claims (section 13) and presumptive PTSD entitlement for first responders (section 14). These decisions focused on the time to file a claim during the transitional period and whether there was discretion to extend the time limit.

Decision No. 240/22I, 2023 ONWSIAT 34, examined the language of section 13.1(5), which indicates that mental stress claims during the transitional period “must” be filed by July 1, 2018. The Vice-Chair found that a contextual reading of the WSIA favoured an interpretation of “must” in section 13.1(5) as directory rather than mandatory. In other words, there is discretion to extend the time limit in exceptional circumstances. Since the WSIA is remedial legislation explicitly intended to provide benefits for workers who have experienced workplace injuries, the WSIA should be given “such fair, large and liberal interpretation as best ensures the attainment of its objects.”

Decision No. 873/22, 2023 ONWSIAT 1842, examined the transitional provisions for presumptive entitlement for first responders with PTSD under section 14. Section 14(11) indicates that a claim made during the transitional period “must be filed on or before October 6, 2018.” The Panel considered *Decision No. 240/22I*, but distinguished it and found that the word “must” in section 14(11) is mandatory not directory. The Panel differentiated between sections 13.1(5) and 14(11), as the consequences under each section are different. Workers who do not receive a time extension under section 13.1(5) have limited further recourse and their claim could be nullified. On the other hand, failing to meet the time limit in section 14(11) does not result in a total nullity of a worker’s claim. A worker would be unable to avail themselves of the presumption set out in section 14, but could seek benefits under section 13. The Panel found that the legislature chose not to include exceptional circumstances to extend the time limit under section 14, and it was not for the WSIAT to displace that intent.

Applications for Judicial Review and Other Litigation

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)). 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 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 2023, seven judicial review applications were initiated concerning the following WSIAT decisions:

- *Decisions No. 916/22, 2022 ONWSIAT 1056 and 916/22R, 2022 ONWSIAT 2017*
- *Decision No. 1732/22, 2023 ONWSIAT 736*
- *Decisions No. 1327/18I, 2019 ONWSIAT 635, 1327/18I2, 2022 ONWSIAT 333 and 1327/18, 2023 ONWSIAT 113*
- *Decisions No. 1328/18I, 2019 ONWSIAT 636, 1328/18I2, 2022 ONWSIAT 335 and 1328/18, 2023 ONWSIAT 114*
- *Decisions No. 699/18I, 2019 ONWSIAT 634, 699/18I2, 2022 ONWSIAT 334 and 699/18, 2023 ONWSIAT 112*
- *Decisions No. 281/22, 2022 ONWSIAT 954 and 281/22R, 2023 ONWSIAT 389*
- *Decisions No. 1348/22, 2023 ONWSIAT 259 and 1348/22R, 2023 ONWSIAT 879*

In 2023, the Divisional Court heard eight applications for judicial review of WSIAT decisions.

- In April 2023, the Divisional Court dismissed the application for judicial review of *Decisions No. 1081/21*, 2021 ONWSIAT 1878 and *1081/21R*, 2022 ONWSIAT 1148 in *Liverpool v. (Ontario) Workplace Safety and Insurance Appeals Tribunal*, 2023 ONSC 2286.
- In June 2023, the Divisional Court dismissed the application for judicial review of *Decisions No. 1011/20*, 2021 ONWSIAT 995 and *1011/20R*, 2022 ONWSIAT 550 in *City of Toronto v. WSIAT and Beebeejaun*, 2023 ONSC 3875.
- In June 2023, the Divisional Court dismissed the application for judicial review of *Decisions No. 3658/17I*, 2020 ONWSIAT 1835 and *3658/17*, 2021 ONWSIAT 1488 in *Mihindukulasuriya v. WSIAT and Aramark Food Services*, 2023 ONSC 3461.
- In June 2023, the Divisional Court dismissed the application for judicial review of *Decisions No. 356/21*, 2021 ONWSIAT 1966 and *356/21R*, 2022 ONWSIAT 966 in *Dean v. 3150 Hawthorne Road Ltd.*, 2023 ONSC 3576. The WSIAT was not served with a notice of application in this matter and did not have an opportunity to participate. The Tribunal Counsel Office wrote to the parties to advise that, pursuant to the *Judicial Review Procedures Act*, the WSIAT had a right to participate in the judicial review. We asked the parties to notify the Tribunal Counsel Office if they initiate an appeal of the Divisional Court's decision.
- In September 2023, the Divisional Court dismissed the application for judicial review of *Decision No. 852/19*, 2022 ONWSIAT 542 in *Interpaving Limited v. Workplace Safety and Insurance Appeals Tribunal*, 2023 ONSC 5162.

The WSIAT is waiting for decisions in three matters heard by the Divisional Court in 2023.

- In October 2023, the Divisional Court heard an application for judicial review of *Decisions No. 916/22*, 2022 ONWSIAT 1056 and *916/22R*, 2022 ONWSIAT 2017.
- In October 2023, the Divisional Court heard an application for judicial review of *Decisions No. 136/17*, 2017 ONWSIAT 1694, *136/17R*, 2019 ONWSIAT 492 and *136/17R2*, 2020 ONWSIAT 942.
- In December 2023, the Divisional Court heard an application for judicial review of *Decisions No. 1435/15E*, 2015 ONWSIAT 1560, *1435/15*, 2018 ONWSIAT 389, *1435/15R*, 2019 ONWSIAT 1337, *1435/15R2*, 2019 ONWSIAT 2421, *1435/15R3*, 2020 ONWSIAT 977 and *1435/15R4*, 2021 ONWSIAT 1268.

Three applications for judicial review have been scheduled, or are expected to be heard, in 2024. These applications concern the following WSIAT decisions:

- *Decisions No. 2712/18*, 2018 ONWSIAT 3012 and *2712/18R*, 2019 ONWSIAT 540
- *Decisions No. 281/22*, 2022 ONWSIAT 954 and *281/22R*, 2023 ONWSIAT 389
- *Decisions No. 1348/22*, 2023 ONWSIAT 259 and *1348/22R*, 2023 ONWSIAT 879

In 2023, the WSIAT was named in two applications made under the *Human Rights Code* and in a notice of motion filed at the Superior Court of Justice.

- In 2023, the WSIAT was served with, and filed a response to, an application under section 34 of the *Human Rights Code*.
- In February 2023, the WSIAT was served with a notice of motion before the Superior Court of Justice regarding *Decision 755/16*, 2016 ONWSIAT 1635. A notice of abandonment was filed in March 2023, as the action was settled.
- In July 2023, the Human Rights Tribunal of Ontario dismissed an application alleging a violation of the *Human Rights Code* in *Bagnato v. WSIAT Tribunal*, 2023 HRT0 1105. The WSIAT was not asked to respond to this application and did not have the opportunity to participate.

Ombudsman Reviews

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

If the Office of the Ombudsman of Ontario receives a complaint about a WSIAT decision, it considers whether the decision is authorized by legislation, whether the decision is reasonable in light of the evidence, and whether the process was fair. In some cases, the Office of the Ombudsman of Ontario may make informal inquiries in order to satisfy itself that the decision was reasonable and the process fair.

If the Office of the Ombudsman of Ontario identifies issues that indicate the need for a formal investigation, it provides notice of an intent to investigate. The WSIAT has not received any intent to investigate notifications from the Office of the Ombudsman of Ontario since 2012. There were no outstanding intent to investigate files in 2023.

Tribunal Organization

OIC Appointees: Chair, Vice-Chairs and Members

The Chair acts as the WSIAT's chief executive officer (section 173 of the WSIA) and is responsible for the overall strategic direction and performance of the WSIAT.

Subsection 174(2) of the WSIA provides that, subject to subsection 174(3), a Chair or a 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. A three-member panel is comprised of the Chair or a Vice-Chair, one Member Representative of Employers, and one Member Representative of Workers. Five-member panels consist of the Chair and two Vice-Chairs or three Vice-Chairs, one Member Representative of Employers, and one Member Representative of Workers.

All appointees are recruited through a public, merit-based recruitment process. Appointments to the WSIAT are made on the recommendation of the Tribunal Chair and the Minister of Labour, Immigration, Training and Skills Development, reviewed by the Standing Committee on Government Agencies, and confirmed by the Lieutenant Governor in Council through an Order in Council (OIC).

Appointees are subject to the Member Accountability Framework, which includes the Chair, Vice-Chair and Member position descriptions and the WSIAT Members' Code of Conduct. The latter document sets out standards of conduct and the professional and ethical responsibilities of OIC appointees.

Lists of Vice-Chairs, 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 Tribunal Chair, who provides leadership to ensure that the WSIAT operates in keeping with its mandate, as defined in the WSIA, and within approved governance and accountability frameworks. The Chair also oversees business planning and ensures that the WSIAT fulfills its reporting obligations.

Executive Services is led by the Senior Manager, Executive Services, who is responsible for the operational management of OICs and helping the WSIAT achieve its strategic objectives. The Executive Services team includes the Counsel, Compliance & Strategic Initiatives, who is responsible for managing the frameworks

that mitigate risk and guarantee compliance with statutory instruments and directives. The Adjudication Support Group, which is responsible for processing all WSIAT decisions, is also part of the Executive Services team. The department's work is supported by administrative staff, led by the Manager, Chair's Office and Executive Communications.

In 2023, the Executive Services team:

- Developed a new strategic plan framework in collaboration with the WSIAT's Senior Management Team, which provides direction and focus for the organization.
- Welcomed five new Vice-Chairs and three new Members to the OIC appointee roster.
- Provided training and support to newly appointed OICs through the new orientation program, which applies an experiential approach to learning and promotes cohesion and collegiality among adjudicators.
- Supported OIC professional development by planning training days, overseeing professional development reviews and performance plans, and organizing more than 30 touchpoint meetings with the Chair.
- Ensured that stakeholders were informed about WSIAT operations and initiatives by holding two information sessions with the Chair and six outreach and training events.
- Led an access to justice working group that assessed the WSIAT's processes with reference to three access to justice indices. This assessment formed the basis for a multi-year access to justice plan for the WSIAT.
- Hosted the WSIAT's second Access to Justice Symposium. Speakers included the Honourable Thomas Cromwell, former justice of the Supreme Court of Canada; the Honourable David Piccini, Minister of Labour, Immigration, Training and Skills Development; David Corbett, Deputy Attorney General; and many others. Topics included cultural competency initiatives, the role of emerging technologies, and building a caring administrative justice system.
- Held touchpoint meetings with the Office of the Worker Adviser and the Office of the Employer Adviser to share feedback, discuss new initiatives, and identify opportunities for collaboration.
- Organized biannual meetings with workers' compensation appeals tribunals across Canada. Participants shared ideas and collaborated on issues of mutual interest, including access to justice, adjudicative practices, case law development and equity, diversity and inclusion initiatives.

- Continued to support the WSIAT's return to office plan, in which WSIAT staff work at the office a minimum of three days per week.
- Provided administrative support to OICs, helping them to release 1,867 decisions.
- Implemented a new electronic decision release process using E-Share, the WSIAT's secure, cloud-based file sharing service.

Office of the Vice-Chair Registrar

The Office of the Vice-Chair Registrar is the primary point of contact for appellants, respondents and representatives with an appeal or application at the WSIAT. Staff complete all initial processing of appeals and applications; try to resolve appeals through alternative dispute resolution and mediation; ensure that cases are ready for hearing; monitor cases up to the hearing date; and complete any post-hearing work.

In 2023, the department's primary goals were maintaining service and production levels, continuing to modernize, finding processing efficiencies, and enhancing access to justice.

The Office of the Vice-Chair Registrar operates under the guidance of the Vice-Chair Registrar and is led by the Director of Appeal Services. The department includes the Medical Liaison Office, which coordinates the assistance obtained from Medical Counsellors and Medical Assessors and provides training on medical topics.

In 2023, staff in the Office of the Vice-Chair Registrar:

- Released 2,172 cases to the Scheduling department, a 2% increase compared to 2022.
- Resolved 317 appeals through the Early Intervention Program, an increase of 18.7% compared to 2022.
- Reduced the average wait time for case records from 50 days to 10 days, well below the department's target of 60 days.
- Helped parties work electronically by signing them up for E-Share, a secure, cloud-based file sharing service.
- Improved the resolution of electronic policy documents and supplemental medical literature within case records, which facilitated working electronically.
- Launched the Navigation Services program, which helps self-represented parties file documents and prepare for hearings.

- Led the Practice Direction Project, which revised the WSIAT's Practice Directions to include more plain language.
- Participated in outreach efforts focused on customer service, including stakeholder events and training sessions.
- Recruited and trained new staff, which ensured the timely processing of appeals.

In 2023, staff in the Medical Liaison Office:

- Retained qualified Medical Assessors and Medical Counsellors.
- Recruited three new Medical Assessors specializing in internal medicine (respirology), occupational medicine, and radiology and oncology.
- Continued its efforts to share documents electronically by ensuring that 50% of the WSIAT's new Medical Assessors use the E-File system.
- Oversaw the update of four Medical Discussion Papers: "Post Traumatic Stress Disorder," prepared by Dr. Diane Whitney; "Addiction," prepared by Dr. Tony George; "Traumatic Brain Injury and Concussion," prepared by Dr. Wai Ng; and "Work-related Asthma," prepared by Dr. Susan Tarlo. A new paper, "Common Hand and Wrist Conditions," was prepared by Dr. Herb von Schroeder.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair is an expert legal department that fosters adjudicative excellence, provides confidential legal advice to the Tribunal Chair and OIC appointees, and ensures compliance with the *Freedom of Information and Protection of Privacy Act*.

The Office of the Counsel to the Chair is led by the Counsel to the Chair, with assistance from the Associate Counsels to the Chair, the Legal Writer/Editor, and administrative staff.

In 2023, the team in the Office of the Counsel to the Chair:

- Reviewed 54% of all released decisions, in accordance with the WSIAT's *Guidelines for Review of Draft Decisions*.
- Answered more than 600 on-call inquiries from OICs seeking advice on jurisdictional matters, workplace safety and insurance law, evidentiary issues and WSIAT policies and procedures.

- Advised the Tribunal Chair on complex reconsideration requests and provided research assistance on a variety of topics.
- Led orientation sessions for new appointees, as well as supplemental sessions for experienced OICs.
- Revised OIC orientation materials to provide an experiential approach to learning that emphasizes direct and active participation.
- Delivered professional development programs to staff and OICs to ensure they are apprised of statutory amendments, policy revisions and new case law. Topics included evidence law, procedural fairness, and loss of earnings benefits.
- Provided WSIAT staff with refresher training on the *Freedom of Information and Protection of Privacy Act*.
- Composed 45 original articles that provided OICs with up-to-date information on noteworthy case law.
- Updated the department's decision frameworks and produced the WSIAT's first style guide. These documents, which incorporate plain language principles, are scheduled to be released in 2024.
- Presented information and case law updates at stakeholder events, including sessions on using the WSIAT's decision database and conducting an examination-in-chief.
- Reviewed and revised the WSIAT's Practice Directions, as part of the Practice Direction Project.
- Co-chaired the 2nd Access to Justice Symposium. Staff led two panel discussions: "Hot Topics and Noteworthy Cases on Access to Justice and Workers' Compensation Law" and "Digital Equity, Access to Justice and Technology."
- Created an outreach program for paralegal students, with anticipated rollout in 2024.

In 2023, the Legal Writer/Editor processed and assigned keywords to 1,926 decisions and summarized 605 decisions. The Legal Writer/Editor summarized 31% of all decisions released in 2023, exceeding the department's goal of summarizing 30% of all decisions released each year.

Tribunal Counsel Office

The Tribunal Counsel Office is a centre of legal expertise at the WSIAT that provides neutral assistance in appeals and applications, particularly appeals and applications involving complex or novel issues. Lawyers in the Tribunal Counsel Office also act as in-house legal counsel.

The WSIAT's litigation is managed by the Tribunal General Counsel, with assistance from Tribunal Counsel Office lawyers and external counsel. The department's work is supported by a team of administrative staff, led by the Manager, TCO Administrative Services.

In 2023, the Tribunal Counsel Office:

- Provided neutral assistance in appeals and applications by making submissions, questioning hearing participants, and assisting with procedural issues.
- Processed particularly complex appeals and applications.
- Responded to eleven matters before the courts and other tribunals, including judicial review and human rights applications.
- Advised WSIAT staff on corporate matters such as contracts, human resources and compliance issues.
- Contributed to the development and revision of WSIAT policies and procedures.
- Relaunched the WSIAT's articling student program.

The Tribunal Counsel Office also contributed to the following committees, projects and events:

- Stakeholder information sessions and external outreach and training events. At one event, the Tribunal Counsel Office made a presentation on questioning a witness.
- The 2nd Access to Justice Symposium, a hybrid event held in the fall of 2023. The symposium had more than 300 attendees and featured prominent speakers from across Canada.
- The Access to Justice Task Force, which works on enhancing access to justice at the WSIAT. In 2023, the task force developed resources for self-represented parties and ensured that information on the WSIAT's external website is available to individuals who do not speak English or French.

- The Practice Direction Project, which is tasked with reviewing and revising the documents that guide WSIAT practice and procedures. In 2023 the project finalized the revised drafts, with an anticipated posting in the spring of 2024.
- The Professional Development Committee, Professional Development Days and other training initiatives, which foster adjudicative excellence and ensure the continuing professional development of staff and OICs. In 2023, professional development topics included disorders of the knee, secondary conditions, judicial review, bias and self-represented parties.
- The Accessibility Working Group which works to promote an inclusive and accommodating workplace. In 2023, the working group developed an accommodation request form and drafted a stakeholder accessibility survey, with anticipated delivery in 2024.

Scheduling

The Scheduling department coordinates the scheduling of hearing dates for pre-hearing conferences, mediations and hearings. Scheduling also assigns written appeals and reconsideration requests; secures interpreter services, regional boardrooms and the service of summonses; and makes arrangements for parties with accessibility needs, allowing them to fully participate in WSIAT proceedings.

The Scheduling department is led by the Manager, Scheduling Administration, with support from hearing coordinators and assistants.

In 2023, the Scheduling team successfully scheduled:

- 1,263 oral hearings by videoconference;
- 22 oral hearings by teleconference;
- 16 oral in-person hearings;
- 2 oral hybrid hearings, which are a combination of in-person and videoconference hearings; and
- 712 written hearings.

In 2023, the Scheduling department successfully maintained a reduced wait time to hearing for all appeals. This goal was achieved by meeting monthly hearing targets, which are based on oncoming appeal volumes, projections and adjudicative capacity. For total hearings, the wait time from the date an appeal was ready to proceed to the first offered hearing was 4.6 months, compared to 4.5 months

in 2022. For oral hearings, the wait time was 5.3 months, a slight increase from 4.7 months in 2022. The wait time for written appeals was 3.7 months, a slight decrease from 4.2 months in 2022.

Throughout 2023, the Scheduling department also managed adjournments, which occur when a hearing participant's circumstances change. New hearing dates were provided on a priority basis whenever possible.

In 2024, Scheduling staff plan to continue scheduling timely hearings and ensuring that their services are responsive and respect the needs and preferences of the parties.

Diversity and Anti-Racism Office

In 2023, the Diversity and Anti-Racism Office continued to build equity, diversity, inclusion and anti-racism competencies across the WSIAT. During this period, the Diversity and Anti-Racism Office team:

- Continued to advance the WSIAT's multi-year equity, diversity, inclusion and anti-racism (EDIA) roadmap and developed an inclusive competency building framework.
- Completed the WSIAT's inaugural diversity and inclusion survey and focus groups, providing insight into staff and OIC experiences with the WSIAT's equity, diversity and inclusion practices. The survey and focus groups also identified opportunities for improvement and future programs and policies.
- Launched a partner program with the Canadian Centre for Diversity and Inclusion, which provides educational webinars to staff and OICs on contemporary EDIA topics.
- Implemented a multi-year training plan to increase EDIA knowledge and competencies. The training focuses on building knowledge of anti-racism, unconscious bias, inclusive language, allyship, human rights in Canada, systemic racism and mental health awareness.
- Launched the WSIAT's 2023 EDIA commitments, which were included in staff and OIC performance plans. The commitments included learning about human rights in Canadian history, attending webinars provided through the partner program, and committing to self-care and wellness.
- Held a virtual graduation ceremony for the 2022 learning cohort who completed the Diversity, Equity and Inclusion Certificate and the Inclusive Leadership Certificate. There were 225 graduates in total: 150 staff and 75 OICs.

- Developed and implemented a training process where all newly hired staff and OICs complete EDIA training, including the Diversity, Equity and Inclusion Certificate. Newly hired management staff also complete the Inclusive Leadership Certificate. This training process ensures that new hires are introduced to the WSIAT's EDIA culture.
- Produced over 130 educational communications on cultural and inclusive days of significance.
- Provided enterprise-wide educational events on topics such as Black History Month, Yom HaShoah, Francophonie Month, Unleashing your Potential, and Indigenous Truth and Reconciliation.
- Presented at the WSIAT's 2nd Access to Justice Symposium.
- Provided guidance and advice to various committees and initiatives, ensuring that WSIAT policies, practices and programs incorporate an EDIA perspective.

Information and Technology Services

The Information and Technology Services department maintains the WSIAT's information technology infrastructure and information systems. It also supports the WSIAT's day-to-day operations and develops information technology and information management strategies and solutions.

In 2022, Information and Technology Services published a technology strategy that focuses on stabilizing, modernizing and transforming the organization's technology footprint, as well as fostering optimization and efficiency. In 2023, Information and Technology Services completed the stabilization phase and shifted its focus to modernization. In 2024, the department plans to enter the transformation stage by leveraging the WSIAT's modernized information technology infrastructure.

In 2023, the Information and Technology Services team:

- Generated more than 500 reports for senior managers, stakeholders and other individuals.
- Automated the creation and management of Zoom meetings to facilitate the scheduling of hybrid hearings.
- Provided virtual support to OICs and parties participating in teleconference and videoconference hearings.
- Applied optical character recognition to 16,170 electronic documents, allowing them to be searched electronically.

- Added 21 business process enhancements to tracIT, the WSIAT's case management system.
- Transitioned the WSIAT's business productivity toolset to Microsoft 365, built upon the new wsiat.ca domain.
- Modernized 28 in-house applications to ensure that they work seamlessly in both legacy and Microsoft 365 environments.
- Introduced VPN services, allowing for remote connectivity to WSIAT infrastructure.
- Signed a contract with a tier 1 data centre and began the process of migrating the WSIAT's on-site infrastructure and data, improving service redundancy and ensuring business continuity.
- Negotiated and renewed 46 contracts with vendors that provide technology hardware, software and professional services.
- Upgraded end-of-life hardware, including printers, laptops and cell phones.
- Created the IT Advisory Committee, which advises the Information and Technology Services team on fulfilling the department's mandate.
- Developed new strategies, standards and guidelines to steer technology change through the coming years, including a guideline on the use of ChatGPT.
- Transformed the department's work intake process, allowing staff to better plan for and track help requests.
- Commenced the process of modernizing tracIT by documenting current functionality and capabilities and feasibility testing third party tools.
- Began exploring how the WSIAT can establish a framework for investigating artificial intelligence and machine learning opportunities.
- Redesigned the Ontario Workplace Tribunals Library's website to enhance functionality and comply with the *Accessibility for Ontarians with Disabilities Act, 2005*.
- The Ontario Workplace Tribunals Library answered 806 inquiries concerning workplace safety, worker's compensation, labour relations, union certification, pay equity and legal and legislative research.
- Subscribed to Lexis+ Canada, allowing WSIAT staff to perform legal research using large language model processing.

- Partnered with VLex, an AI-powered legal research platform, to ensure that the WSIAT's decisions have broad circulation.
- Produced 551 official French translations.

Human Resources and Administration

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 remuneration and rewards. Human Resources continuously seeks to increase access to professional development opportunities, modernize internal operations, and develop future-proof processes and programming.

In 2023, the Human Resources team:

- Prioritized collective bargaining by working towards a new collective agreement with the union that represents Ontario's public sector employees.
- Drafted and reviewed policies and guidelines on hours of work, on-site attendance, working alone and after hours, temporary work arrangements, and workplace accommodation.
- 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.
- Redeveloped the WSIAT's performance management program by creating new performance ratings and training employees on how to use ADP Workforce Now, a cloud-based human resources information system.
- Continued to implement digital tools, such the organizational system Orginio, which support a modern and efficient talent development program. This initiative is part of the Human Resource Information Systems Optimization Project.
- Developed the WSIAT Orientation and Well-being (WOW!) program, which provides new employees with tools and information that can help them feel comfortable, confident, productive and engaged in their new roles.
- Sourced and began the process of procuring a new learning management system.

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

In 2023, the Administration Services and Emergency Management team:

- Supported the WSIAT's return to office program by adapting and reconfiguring workspaces and common spaces, allowing the WSIAT to serve a larger workforce more efficiently.
- Oversaw the construction of a new security centre, which houses emergency management and safety equipment and personnel.
- Co-ordinated the installation of a security camera system to support the safety and security of staff, OICs and visitors to the WSIAT's premises.
- Completed operational changes that prepared the Hamilton Hearing Centre for the return to office and the resumption of in-person hearings.
- Worked with the Centre for Addiction and Mental Health to train front-line staff on customer service and de-escalation.
- Provided operational support services in the areas of facility safety and maintenance, furniture and equipment management, space planning, and employee accommodation.

Finance

Finance is responsible for the WSIAT's financial operations, including internal financial management practices, financial reporting processes, and procurement procedures.

The department develops the fiscal budget, oversees the year-end external audit, and fulfills the WSIAT's financial reporting requirements by sending monthly, quarterly and yearly reports to federal and provincial agencies. Finance staff also provide accounting, financial, budgeting and procurement services to the WSIAT's employees and OICs, including monthly remuneration and payroll services for part-time OICs.

The Finance department's other key responsibilities include

- developing, implementing and maintaining internal financial controls;
- maintaining and overseeing the performance of financial systems;

- planning, developing and monitoring expenditures against the annual budget;
- establishing and maintaining banking relationships and overseeing the WSIAT's cash flow requirements;
- establishing, maintaining and ensuring compliance with procurement policies and procedures;
- providing senior management with accurate financial data; and
- maintaining relationships with external auditors.

In 2023, the Finance team:

- Continued to digitize its operations by finding 77 additional vendors for electronic funds transfers, bringing the total to 584 vendors.
- Procured 106 goods and services, an average of nine procurements per month.
- Provided timely quarterly budget forecast reports to the Ministry of Labour, Immigration, Training and Skills Development.
- Contributed to the 2024-2026 Business Plan and prepared the 2024-2026 financial budget.
- Ensured the successful completion of the 2023 external audit for the 2022 fiscal year.

Caseload Production and Activity

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 proceed through a two-part 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

In 2023, the WSIAT exceeded its long-term goal of maintaining a caseload inventory below 4,000 cases.

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 dormant 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 a 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 and 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 2023, the active appeals inventory totaled 3,569 appeals. This figure is 9% lower than the active appeals inventory at the end of 2022, which totaled 3,938 appeals. In 2023, the WSIAT exceeded its long-term goal of maintaining a caseload inventory below 4,000 cases (+/- 5%).

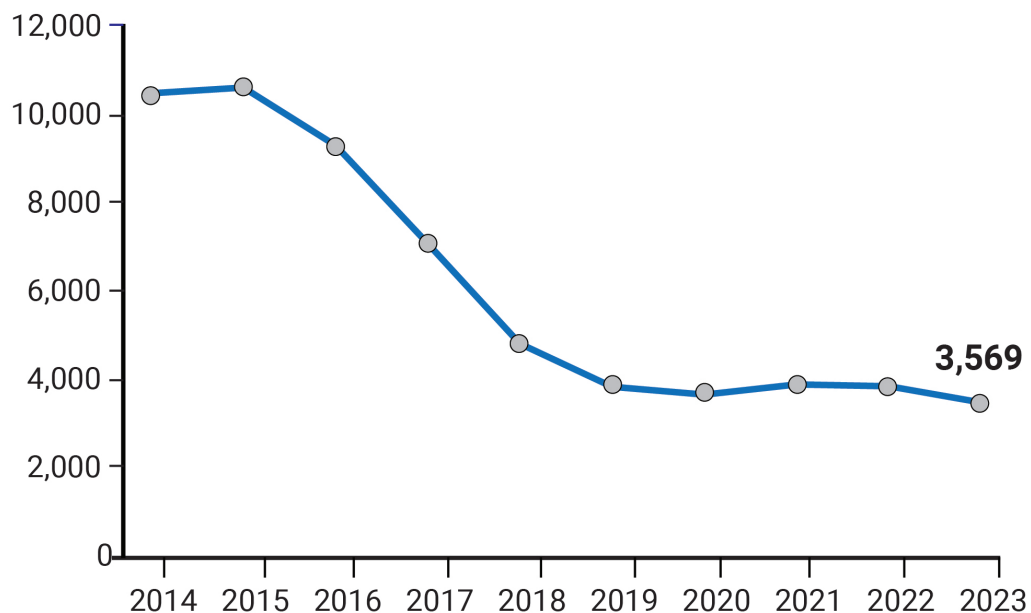
Chart 1(A) shows the active appeals inventory at the end of 2023, divided by processing stage.

Chart 1(A): Active Appeals in Process on December 31, 2023

Appeal Processing Stage	Number of Appeals at Stage
Notice of appeal stage	1,887
Early review stage	33
Substantive review	365
Hearing ready	89
Scheduling and post-hearing	859
Decision writing	336
Total cases in process	3,569

Chart 1(B) presents the year-end active appeals inventories from 2014 to 2023.

Chart 1(B): Active Appeals



Appeals Started

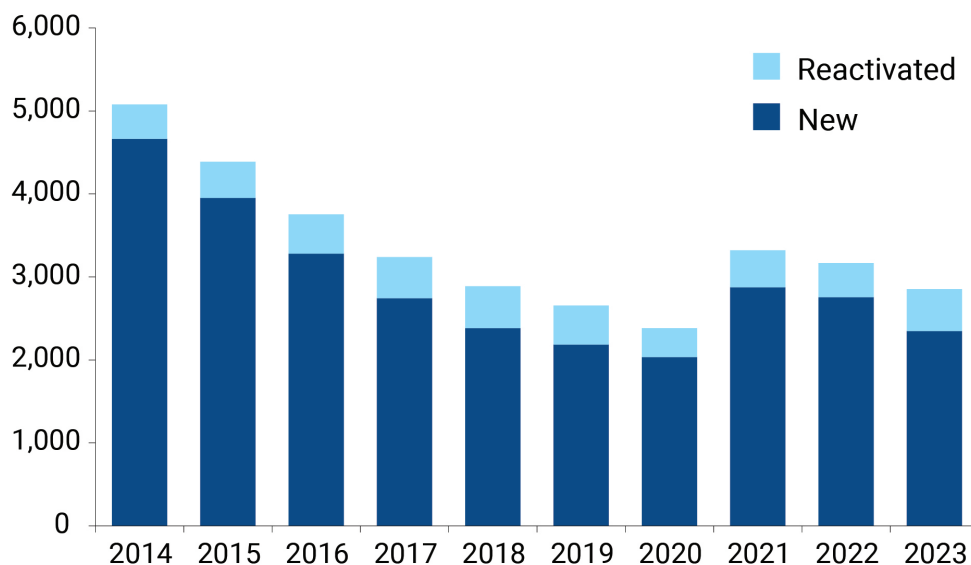
Appeals started include new appeals and reactivated appeals. New appeals are appeals that have been initiated at the WSIAT for the first time. Reactivated appeals are appeals that originated as new appeals and were made inactive due

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 reactivated. Once an appeal has been reactivated, WSIAT staff perform the administrative work required to make the case ready for a hearing.

In 2023, 2,853 appeals were started at the WSIAT. This figure includes new and reactivated appeals, and represents a decrease of 10% compared to the 3,168 appeals started in 2022. New appeals were 15% lower in 2023 than 2022 (2,346 in 2023 compared to 2,756 in 2022). Reactivated appeals were 23% higher in 2023 than 2022 (507 in 2023 compared to 412 in 2022). This change reflects the cyclical and fluctuating nature of new and reactivated appeals.

Chart 2 presents the number of appeals started from 2014 to 2023, divided into new and reactivated appeals.

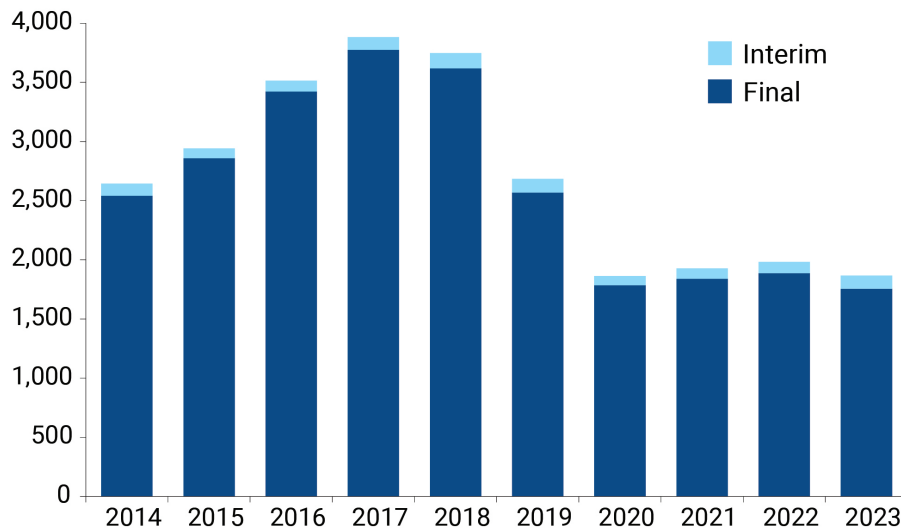
Chart 2: Appeals Started



Decisions Issued

In 2023, the WSIAT issued a total of 1,867 decisions. This figure includes 1,756 final decisions and 111 interim decisions. Total decisions issued in 2023 were 6% lower than in 2022, when 1,984 decisions were issued (1,887 final decisions and 97 interim decisions).

Chart 3 presents the WSIAT's annual decision production from 2014 to 2023, divided into final and interim decisions.

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.

In 2023, 2,355 appeals were closed by the WSIAT. Appeals closed by decision were 75% of the total (1,763). Appeals closed by withdrawal or abandonment were 25% of the total (592). Total appeals closed in 2023 were 8% lower than total appeals closed in 2022 (2,355 in 2023 compared to 2,548 in 2022).

Chart 4(A) shows the number of appeals closed in 2023 by closing type.

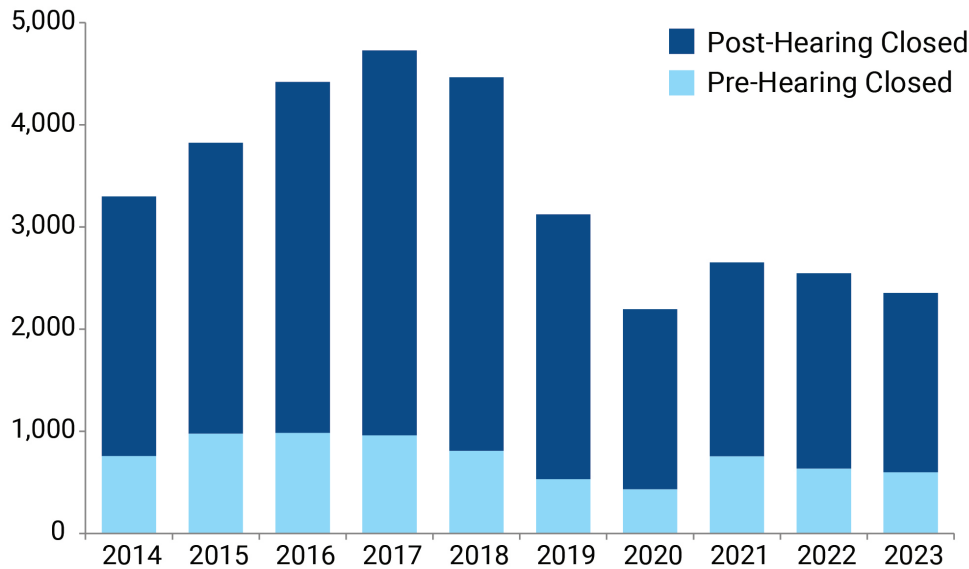
Chart 4(A): Appeals Closed in 2023

Closing Type	Number	Percent of Total Closed
Decision following hearing ¹	1,763	75%
Withdrawn or abandoned	592	25%
Total appeals closed	2,355	100%

¹ The number of appeals closed following a hearing may not equal the number of decisions released in a year due to administrative constraints at year end, which can prevent an appeal from being closed immediately after the decision is released.

Chart 4(B) presents the number of appeals closed at both the pre-hearing and post-hearing stage from 2014 to 2023.

Chart 4(B): Appeals Closed



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 an inactive appeal.

Some appellants take longer to proceed with an appeal because they are pursuing additional entitlement issues at the WSIB and/or obtaining additional evidence. While the WSIAT recognizes that there is often value in hearing related issues together, delaying the adjudication of an appeal can create prejudice for the parties and waste institutional resources. Appellants are encouraged to consider whether the additional issues being adjudicated by the WSIB are related to the original appeal issues, or if the additional issues can be decided in separate proceedings. The WSIAT is reviewing its guidelines on how issues that are related and relevant to an appeal should be addressed, in an effort to ensure that appeals are not unnecessarily delayed and hearings are not unnecessarily adjourned.

The inactive appeals inventory is comprised of appeals that were made inactive in 2023 or in prior years and have not been reactivated or closed by the end of 2023.

In 2023, 859 appeals were made inactive; 507 appeals were reactivated and returned to the active appeals inventory; and 167 inactive appeals were closed. At

the end of 2023, the inactive appeals inventory totaled 994 appeals. This figure is 23% higher than at the end of 2022, when the total was 804 appeals.

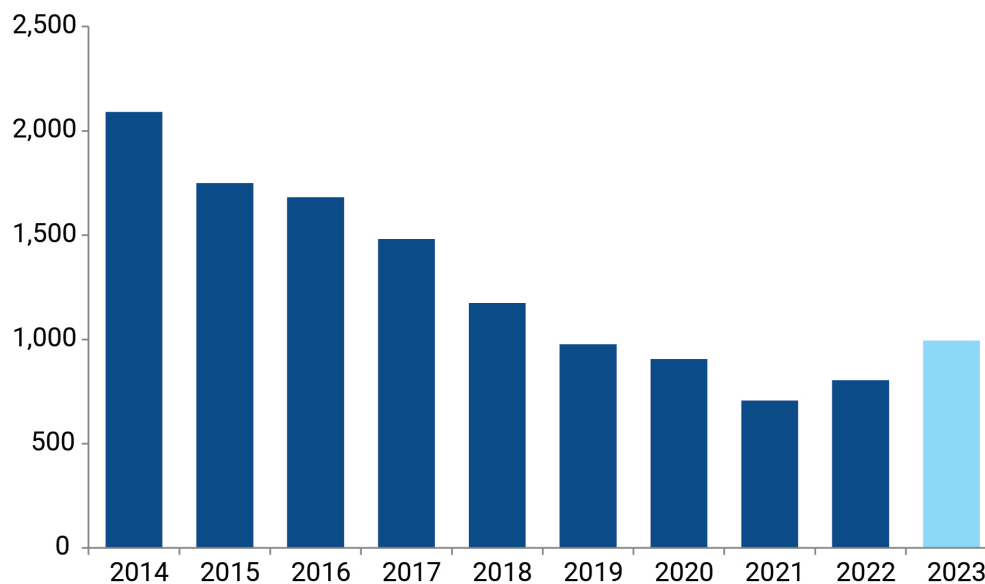
Chart 5(A) shows how the WSIAT's inactive appeals inventory evolved over 2023.

Chart 5(A): Inactive Appeals Inventory in 2023

Inactive Appeals Inventory	Number of Appeals
Inactive inventory at start of 2023	809
Made inactive in 2023	859
Reactivated in 2023	-507
Inactive appeals closed in 2023	-167
Inactive appeals inventory at end of 2023	994

Chart 5(B) presents the year-end inactive appeals inventory from 2014 to 2023.

Chart 5(B): Inactive Appeals Inventory



Timeliness of Appeal Processing

Median Age to Appeals Closed

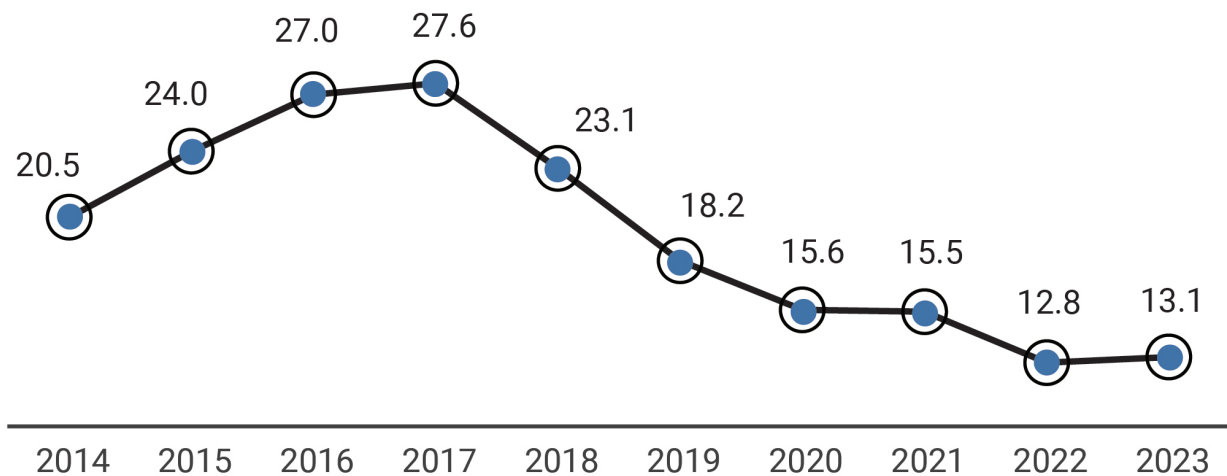
The median age to appeals closed is a time frame that begins on the date that the WSIAT receives a Notice of Appeal (NOA) form and ends on the date that the appeal is closed. This time frame is measured in months. Appeals are closed either by an issued decision, a withdrawal, or abandonment of the appeal by the appellant.

Since 2017, the median age to appeals closed has declined significantly. In 2017, the median age was 27.6 months. By 2021, this number had fallen to 15.5 months, followed by 12.8 months in 2022 and 13.1 months in 2023. The WSIAT's strategic objective is to close appeals within 12 months. This metric is contingent on a number of factors, including how quickly parties return the Readiness and COA forms.

In the spring of 2024, the WSIAT will launch a new, streamlined pre-hearing process. The new process is designed to reduce the time to hearing and the overall median age to appeals closed. A temporary increase in processing timelines is expected as appeals transition from the existing pre-hearing framework to the new framework. Overall reductions in the time to hearing are anticipated in 2025.

Chart 6 presents the median age to appeals closed from 2014 to 2023.

Chart 6: Median Age to Appeals Closed (in months)



Median Age to First Offered Hearing Date

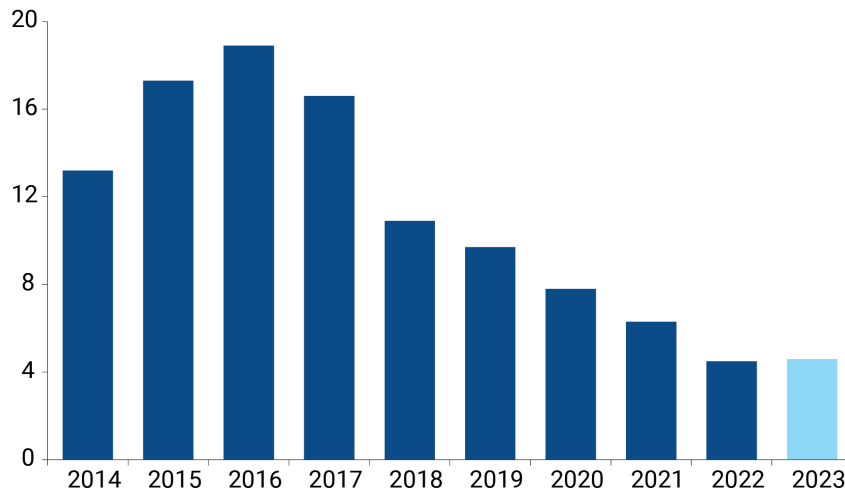
The WSIAT also measures the median age to the first offered hearing date. This time frame begins on the date that an appeal is confirmed ready to proceed, and ends on the first hearing date offered to the parties. The length of time to the hearing date is a critical time frame within the appeal completion period, which encompasses the period from the initiation of an appeal to its closure.

Since 2017, the median age to the first offered hearing date has declined significantly. In 2017, the median age was 16.6 months. By 2021, this number had fallen to 6.3 months, followed by 4.5 months in 2022 and 4.6 months in 2023. The WSIAT met its strategic objective of offering hearings within 6 months or less in 2023.

Videoconference hearings remain the WSIAT's default for oral hearings, with teleconference and in-person hearings available based on stakeholder interest, suitability, and public health information when applicable.

Chart 7 presents the median age to the first offered hearing date from 2014 to 2023.

Chart 7: Median Age to First Offered Hearing Date

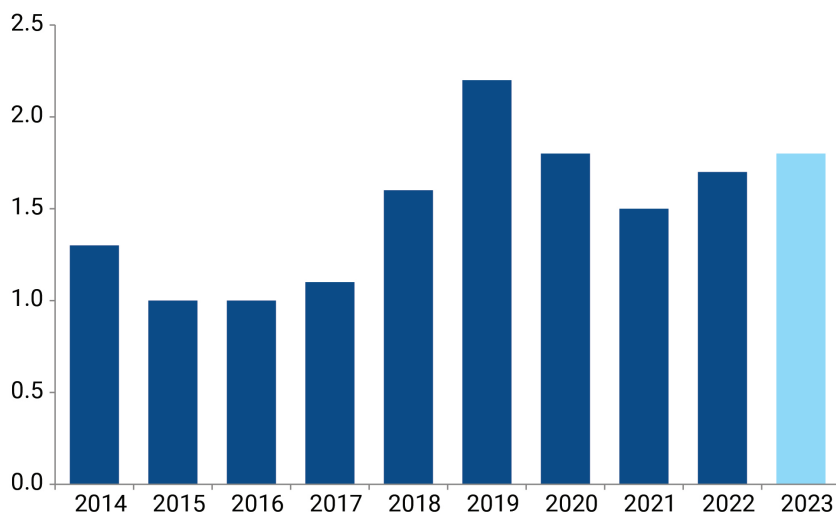


Median Age of Decision Writing

The median age of decision writing starts on the most recent date that the matter is ready for a decision and ends on the date that the decision is issued. Historically, the median age of decision writing has been less than 2 months. In 2023, it was 1.8 months, compared to 1.7 months in 2022.

Chart 8 presents the median age of decision writing from 2014 to 2023.

Chart 8: Median Age of Decision Writing

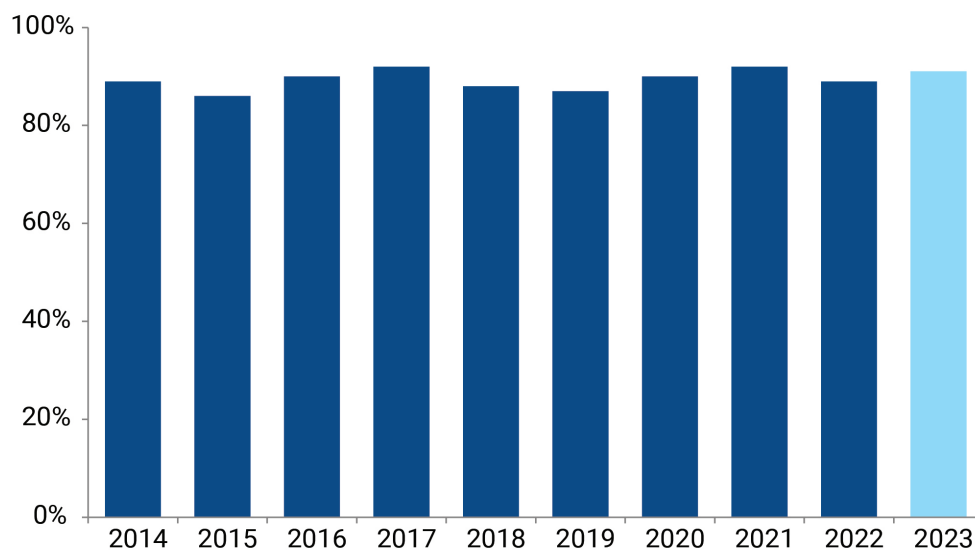


Final Decisions Issued Within 120 Days

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%. In 2023, the WSIAT exceeded this goal: 91% of all final decisions were issued within 120 days. In comparison, 89% of the WSIAT's decisions were issued within 120 days in 2022, and 92% were issued within 120 days in 2021.

Chart 9 presents the percentage of final decisions released within 120 days from 2014 to 2023.

Chart 9: Percentage of Final Decisions Released within 120 Days



Appeal Issue Type

A WSIAT appeal may involve more than one issue. Chart 10 shows the issues that appeared most frequently in WSIAT decisions released in 2023, as well as the percentage of decisions that adjudicated each issue.

Chart 10: Issues Appealed

Issue Type	Percentage ²
Loss of earnings	22%
New area of injury	9%
Non-economic loss quantum	8%
Non-economic loss	8%
Work transition	7%
Initial entitlement	7%
Multiple issues each totaling less than 1% of total ³	6%
Ongoing entitlement	6%
Second Injury and Enhancement Fund	6%
Other ⁴	4%
Health care benefits	4%
Psychotraumatic disability	4%
Chronic pain	3%
Recurrence	2%
Occupational disease	1%
Early and safe return to work	1%
Stress	1%

Hearings by Hearing Type

There are two major hearing types: oral and written. Oral hearings are comprised of videoconference, teleconference, in-person and hybrid hearings. Written hearings are divided into two types: hearings where the parties provide written submissions, and hearings that are resolved by proposed resolutions produced by the Early Intervention Program and reviewed by Vice-Chairs.

-
- 2 The total percentage is 99% due to rounding of the individual issue percentages.
 - 3 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.
 - 4 The term “other” is generally used for section 120 time limit appeals and appeals that examine whether an individual is an executive officer.

Generally speaking, written hearings are less complex than oral hearings. Written hearings do not require testimony from the parties or cross-examination. All of the appeal information needed to issue a decision is provided through written submissions.

The WSIAT conducted 2,015 appeal hearings in 2023. This figure is 2% lower than in 2022 (2,061). In 2023, written hearings represented 35% (712) of total appeal hearings and oral hearings represented 65% (1,303). This ratio of written to oral hearings is generally consistent with historical percentages. In 2022, written hearings represented 36% (751) of total appeal hearings and oral hearings represented 64% (1,310).

Videoconference hearings remain the WSIAT's default for oral hearings. There were 1,263 videoconference hearings in 2023, compared to 832 in 2022. In 2023 there were 22 teleconference hearings, compared to 469 in 2022.

The WSIAT announced the gradual increase in availability of in-person hearings in October 2022, pursuant to the *Interim Guideline on the Gradual Resumption of In-Person Hearings – Phase 2*. The WSIAT schedules in-person hearings when teleconference or videoconference hearing methods are not appropriate, such as when a party needs an accommodation. In 2023, the WSIAT held 18 in-person hearings, including 2 hybrid hearings. This figure is higher than in 2022, when the WSIAT held 9 in-person hearings. In-person hearings are expected to continue gradually increasing in 2024 in response to requests from parties.

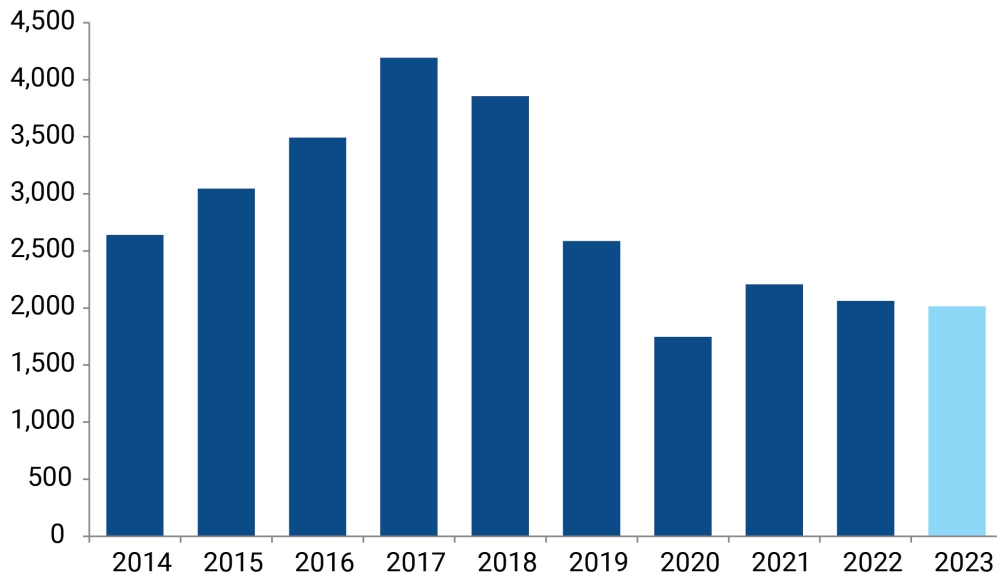
Chart 11(A) compares hearing types and their respective totals in 2023 and 2022.

Chart 11(A): Hearings Conducted in 2023 and 2022

Hearing Type	Heard in 2023	Heard in 2022	Percentage Comparison 2023 vs 2022
In-person	18	9	100%
Teleconference	22	469	-95%
Videoconference	1,263	832	52%
Written	712	751	-5%
Total Heard	2,015	2,061	-2%

Chart 11(B) presents the annual total number of hearings at the WSIAT from 2014 to 2023.

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 a 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. For more information, please see the *Practice Direction: Hearing Assignments*, which is available on the WSIAT's website.

The hearing adjudication type is dependent, in part, on the types of cases that were available for scheduling throughout the year. The proportion of tripartite hearings remained steady from 2022 to 2023. In 2023, tripartite Panels heard 37% of WSIAT hearings, compared to 36% in 2022. Vice-Chairs sitting alone heard 63% of WSIAT hearings in 2023, compared to 64% in 2022.

Chart 12 shows the percentage of appeals at the WSIAT by adjudication type in 2023 and 2022.

Chart 12: Hearing Adjudication Type

Adjudication Type	Heard in 2023	Heard in 2022
Tripartite Panels	37%	36%
Single Vice-Chair	63%	64%

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.

Charts 13(A) and (B) show party representation type at hearings in 2023.

Chart 13(A): Worker Representation in Worker Appeals

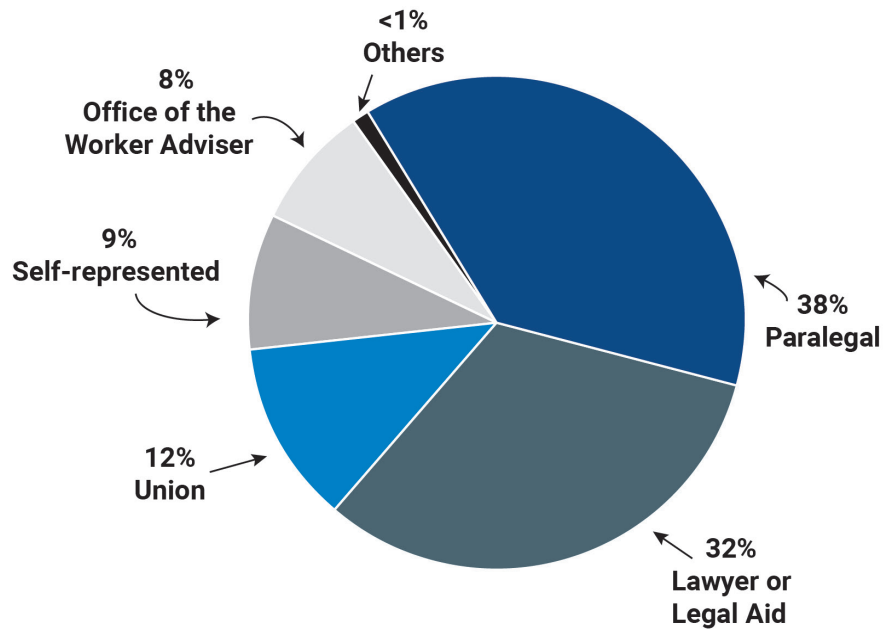
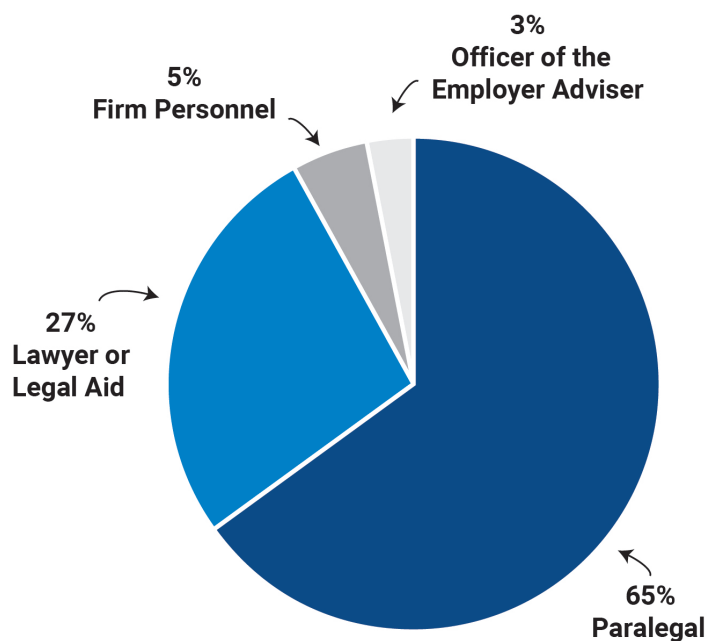


Chart 13(B): Employer Representation in Employer Appeals



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 2023, the WSIAT received 138 reconsideration requests, compared to 136 requests in 2022. The WSIAT issued 118 reconsideration decisions in 2023, compared to 111 decisions in 2022.

Chart 14 shows how the WSIAT's reconsideration inventory evolved over 2023.

Chart 14: Reconsideration Processing⁵ Activity in 2023

Reconsideration Requests	Process Count
Requests Received	138
Decisions Issued	118
Requests Pending Resolution	79

Electronic Services

The WSIAT launched E-File, its electronic filing service, on September 8, 2020. This application allows stakeholders to electronically file forms and other documents. In 2023, the E-Filing application received 13,310 submissions, compared to 12,305 submissions in 2022.

The WSIAT launched E-Share, its secure, cloud-based file sharing service, on March 28, 2022. 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. In 2023, the WSIAT provided 58,615 documents through E-Share, compared to 20,498 documents in 2022.

⁵ Reconsideration processing is excluded from all other charts and statistical references in the Caseload Processing section.

Financial Matters

A statement of expenditures and variances for the year ending on December 31, 2023 (Chart 15) is shown below.

Chart 15: Statement of Expenditures and Variances for the Year Ending December 31, 2023 (in \$000s)				
EXPENSE TYPE	2023 Budget	2023 Actuals	VARIANCE	
			\$	%
OPERATING EXPENSES				
Salaries and Wages	20,015	17,318	2,697	13.5%
Employee Benefits	4,323	3,758	565	13.1%
OTHER DIRECT OPERATING EXPENSES:				
Transportation and Communication	480	308	171	35.7%
Services	6,702	6,842	(140)	(2.1%)
Supplies and Equipment	1,140	1,149	(9)	(0.8%)
Total Other Direct Operating Expenditures	8,321	8,300	21	0.3%
Total - WSIAT	32,659	29,376	3,283	10.1%
Services - WSIB	620	651	(31)	(4.9%)
Interest Revenue	0	(340)	340	
TOTAL OPERATING EXPENSES	33,279	29,687	3,592	10.8%
ONE-TIME EXPENSES				
Severance Payment	125	96	29	23.0%
Capital Expenditures	200	69	131	65.6%
TOTAL EXPENDITURES	33,604	29,852	3,752	11.2%
Note:				
The above 2023 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 (\$302) is comprised of the following:				
CAPITAL FUND				
Amortization		467		
Fixed Assets Acquired		(561)	(94)	
OPERATING FUND				
Accrued Severance, Vacation Benefits, & HCSA		(26)		
Prepaid Expenses		(181)	(208)	
Difference			(302)	

The accounting firm Deloitte LLP has completed a financial audit of the WSIAT's financial statements for the year ending on December 31, 2023. The independent auditor's report is included as Appendix B.

Appendix A

Vice-Chairs and Members in 2023

This is a list of Vice-Chairs and Members whose Order in Council appointments were active during 2023 and their annual remuneration.¹

Name (Full-time Appointees)	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	\$191,165.08 ³
Dee, Garth	June 17, 2011	February 18, 2024	\$124,482.69 ³
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	March 8, 2028	\$153,184.64
Jacques, Karen	February 15, 2017	June 21, 2025	\$118,095.87 ³
Jepson, Kenneth	December 10, 2019	August 28, 2024	\$145,810.34
Kosny, Agnieszka	January 8, 2018	June 10, 2025	\$145,529.94
Lo-Wong, Ariel Sze Mun	June 22, 2023	June 10, 2025	\$0.00
Lai, Martha	December 22, 2021	December 21, 2025	\$136,077.76
Patel, Vandana	February 17, 2022	February 16, 2024	\$136,077.76
Patterson, Angus	June 13, 2010	March 31, 2024	\$155,542.92
Perryman, Natalie	January 5, 2018	February 15, 2028	\$153,746.14
Petrykowski, Lukasz	October 3, 2016	April 19, 2026	\$155,542.92
Rose, Elana	February 17, 2022	February 16, 2024	\$136,077.76
Ryan, Sean	May 28, 2020	May 27, 2025	\$155,542.92
Smith, Joanna	August 28, 2016	May 17, 2026	\$155,542.92
Members Representative of Employers			
Sacco, Carmine	February 21, 2018	March 8, 2028	\$123,934.34
Sahay, Sonya Toni	August 12, 2021	August 11, 2025	\$120,545.10
Thomson, David	May 18, 2017	August 10, 2027	\$125,840.78
Members Representative of Workers			
Agnidis, Zoe	August 19, 2021	August 18, 2025	\$112,525.22
Ferrari, Mary	July 15, 2016	July 14, 2026	\$125,840.78
Hoskin, Richard	June 13, 2011	September 30, 2025	\$125,840.78

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

2 Not including expenses.

3 Annual remuneration reflects both part-time and full-time Vice-Chair appointments during 2023.

Name (Part-time Appointees)	Initial Appointment	Term End Date	Annual Remuneration ¹
Vice-Chairs			
Ahlfeld, Pamela	September 16, 2021	September 15, 2025	\$87,640.00
Allen, Paul	February 24, 2016	February 23, 2026	\$100,815.00
Andal, Ramon	February 3, 2022	February 2, 2024	\$78,204.00
Baker, Andrew	June 28, 2006	December 31, 2023	\$191,165.08 ²
Bayefsky, Eban	July 30, 2020	July 29, 2025	\$28,516.00
Crystal, Melvin	May 3, 2000	May 2, 2024	\$76,081.00
D'Angelo, Claudia	February 17, 2022	February 16, 2024	\$87,443.00
Darvish, Sherry	July 30, 2020	January 17, 2023	\$0.00
Dee, Garth	June 17, 2011	February 18, 2024	\$124,482.69 ²
Durette, André	February 17, 2022	February 16, 2024	\$98,000.00
Ferguson, Nancy	July 30, 2020	July 29, 2025	\$17,115.00
Frenschkowski, JoAnne	March 4, 2013	March 8, 2026	\$71,930.00
Gananathan, Romona	June 22, 2023	June 21, 2025	\$0.00
Gehrke, Linda	November 4, 2015	November 3, 2025	\$72,862.00
Gordon, Mark	February 17, 2022	February 16, 2024	\$92,812.00
Hoare, Rhea	October 26, 2016	October 30, 2026	\$67,670.00
Hodis, Sonja	July 15, 2009	August 12, 2024	\$64,966.00
Horne, Ronald	May 10, 2017	May 9, 2027	\$66,355.00
Jacques, Karen	February 15, 2017	June 21, 2025	\$118,095.87 ²
Keil, Martha	February 16, 1994	February 17, 2024	\$88,699.00
Kesler, Marlene	January 7, 2021	July 12, 2025	\$55,122.00 ³
Kosmidis, Elizabeth	June 17, 2015	June 16, 2025	\$82,898.00
Logan, Elizabeth Louise	August 31, 2023	August 30, 2025	\$19,109.00
Manji, Shemin	June 22, 2023	June 21, 2025	\$26,497.00
Marafioti, Victor	March 11, 1987	March 22, 2024	\$66,709.00
McCaffrey, Grant	July 22, 2015	July 21, 2025	\$72,176.00
McLoughlin, Michael	August 29, 2019	August 28, 2024	\$48,339.00
Mitchinson, Tom	November 10, 2005	November 15, 2025	\$69,172.00
Morrow, Bernard	July 30, 2020	July 29, 2025	\$21,759.00
Onen, Zeynep	November 4, 2015	April 1, 2023	\$18,976.00
Peckover, Susan	October 20, 2004	October 19, 2025	\$74,959.00
Pollock, Bruce	February 15, 2017	February 20, 2027	\$41,953.00
Ramsay, Christopher	May 18, 2016	May 17, 2026	\$28,639.00
Salisbury, Robert	February 2, 2017	February 20, 2027	\$2,955.00
Smith, Eleanor	February 1, 2000	October 30, 2025	\$59,962.00
Somerville, Ann	October 4, 2017	November 30, 2023	\$37,521.00
Strachan, Daria	February 3, 2022	February 2, 2024	\$17,804.00
Walsh, (Hedy) Anna	October 7, 2021	October 6, 2023	\$8,717.00
Wong, Anita	July 30, 2020	July 29, 2025	\$86,121.00
Zehr, Chantelle	October 4, 2017	October 5, 2027	\$110,315.00

¹ Not including expenses.

² Annual remuneration reflects both part-time and full-time Vice-Chair appointments during 2023.

³ Annual remuneration reflects both part-time Member and Vice-Chair appointments during 2023.

Name (Part-time Appointees)	Initial Appointment	Term End Date	Annual Remuneration ¹
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Members Representative of Employers

Burkett, Gary	February 2, 2017	February 20, 2027	\$62,505.00
Chahal, Simi	February 17, 2022	February 16, 2024	\$36,669.00
Falcone, Mena	October 21, 2015	October 25, 2025	\$56,714.00
Gallant, Jean-Sébastien	February 17, 2022	February 16, 2024	\$19,497.00
Greenside, Patricia	January 8, 2018	February 22, 2028	\$61,493.00
Narayanan Iyer	October 5, 2023	October 4, 2025	\$0.00
Kesler, Marlene	January 7, 2021	July 12, 2025	\$55,122.00 ²
Moreau, Martial	February 17, 2022	February 16, 2024	\$41,462.00
Ouellette, Richard	April 26, 2017	April 25, 2027	\$53,156.00
Soden, Kristen	October 18, 2017	October 17, 2027	\$39,294.00
Suthanthirakaran, Sayanisa	October 5, 2023	October 4, 2025	\$0.00
Trudeau, Marcel	April 16, 2008	December 31, 2023	\$38,970.00

Members Representative of Workers

Carlino, Gerry	October 3, 2012	October 2, 2022	\$2,283.00
Grisdale, Robert	February 17, 2022	February 16, 2024	\$46,566.00
Mandoko, Junior	February 17, 2022	February 16, 2024	\$43,421.00
Patel, Nirav	October 5, 2023	October 4, 2025	\$0.00
Provato, Joseph	December 10, 2020	February 15, 2026	\$59,752.00
Roth, Stephen	February 24, 2016	February 23, 2026	\$66,782.00
Salama, Claudine	October 3, 2012	October 5, 2024	\$66,865.00
Signoroni, Antonio	September 29, 2010	January 6, 2024	\$15,586.00
Thompson, James	April 5, 2017	April 4, 2027	\$35,076.00
Tzaferis, Mary	December 7, 2016	December 6, 2026	\$61,006.00
Uche, Juliet	February 17, 2022	February 16, 2024	\$42,955.00

Senior Staff

Bhardwaj, Yuvraj.....	Director, Finance
Bisson, Nicole.....	Director, Appeal Services
Canzius, Lauren	Director, Diversity and Anti-Racism Office
Evans, Katharine	Counsel, Compliance & Strategic Initiatives
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
Woodrow, Rebecca.....	Tribunal General Counsel

¹ Not including expenses.

² Annual remuneration reflects both part-time Member and Vice-Chair appointments during 2023.

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 2023, there were five Medical Counsellors:

Dr. Cooper, Paul	Neurology (Chair of the Medical Counsellors)
Dr. Finkelstein, Joel	Orthopaedic Surgery
Dr. House, Ronald	Occupational Medicine
Dr. Watters, James	General Surgery
Dr. Whitney, Diane	Psychiatry

Appendix B

Deloitte.

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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, 2023, 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, 2023, 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
December 12, 2023

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2023

ACCOUNT DESCRIPTION	2023	2022
ASSETS		
CURRENT		
Cash	\$ 5,719,888	\$ 3,848,686
Due from Workplace Safety and Insurance Board (Note 3)	-	389,998
Prepaid expenses and advances	768,170	586,914
Recoverable expenses (Note 4)	280,120	244,197
Total Current Assets	6,768,178	5,069,795
CAPITAL ASSETS (Note 5)	870,501	776,446
Total Current and Capital Assets	\$ 7,638,679	\$ 5,846,241
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	\$ 4,200,608	\$ 2,683,481
Accrued severance benefits and vacation credits	2,412,168	2,438,603
Operating advance from Workplace Safety and Insurance Board (Note 6)	1,800,000	1,800,000
Total Current Liabilities	8,412,776	6,922,084
FUND BALANCES		
OPERATING FUND (Note 7)	(1,644,598)	(1,949,359)
CAPITAL FUND	870,501	873,516
Total Fund Balances	(774,097)	(1,075,843)
Total Liabilities and Fund Balances	\$ 7,638,679	\$ 5,846,241

APPROVED ON BEHALF OF WORKPLACE

 Chair

WORKPLACE SAFETY AND INSURANCE**APPEALS TRIBUNAL****Statement of Operations**

Year ended December 31, 2023

ACCOUNT DESCRIPTION	2023	2022
OPERATING EXPENSES		
Salaries and wages	\$ 17,318,351	\$ 17,072,487
Employee benefits (Note 8)	3,828,233	3,518,493
Transportation and communication	308,471	273,774
Services and supplies	7,317,989	6,924,858
Amortization	466,611	343,471
Sub-total of Operating Expenses	29,239,655	28,133,083
Services - Workplace Safety and Insurance Board ("WSIB") (Note 9)	650,557	629,400
TOTAL OPERATING EXPENSES	29,890,212	28,762,483
BANK INTEREST INCOME	(339,988)	(38,222)
NET OPERATING EXPENSES	29,550,224	28,724,261
FUNDS RECEIVED AND RECEIVABLE		
FROM WSIB	(29,851,970)	(29,231,157)
ANNUAL (SURPLUS) / DEFICIT	\$ (301,746)	\$ (506,896)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2023

CHANGES IN FUND BALANCES	Capital	Operating	Total
BALANCE - JANUARY 01, 2022	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)
Additions to capital assets	560,666	-	560,666
Amortization of capital assets	(466,611)	-	(466,611)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	26,435	26,435
Prepaid expenses (Note b)	(97,070)	278,326	181,256
Annual Surplus/(Deficit)	(3,015)	304,761	301,746
BALANCE - DECEMBER 31, 2023	870,501	(1,644,598)	(774,097)

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, 2023

CASH FLOWS	2023	2022
NET INFLOW/(OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	\$ 29,851,970	\$ 29,231,157
Cash receipts for recoverable expenses	1,335,668	2,157,314
Bank interest received	339,988	38,222
Expenses, recoverable expenses net of amortization	(29,095,758)	(29,949,415)
Sub-total Increase/(Decrease) in Cash	2,431,868	1,477,278
CAPITAL		
Acquisition of capital assets	(560,666)	(610,802)
NET INCREASE/(DECREASE) IN CASH	1,871,202	866,476
CASH, BEGINNING OF YEAR	3,848,686	2,982,210
CASH, END OF YEAR	\$ 5,719,888	\$ 3,848,686

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2023

1. GENERAL

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

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

2. SIGNIFICANT ACCOUNTING POLICIES

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

Basis of presentation

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

Revenue recognition

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

Accounting estimates

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

Capital assets

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

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

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2023

2. SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Employee benefits

(a) Pension benefits

The Tribunal provides pension benefits for all 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, 2023

3. CHANGE IN ACCOUNTING POLICY – ADOPTION OF NEW ACCOUNTING STANDARDS

The Tribunal adopted the following standards concurrently beginning January 1, 2023 prospectively: PS 1201 Financial Statement Presentation, PS 2601 Foreign Currency Translation, PS 3041 Portfolio Investments and PS 3450 Financial Instruments.

PS 1201 – Financial Statement Presentation

PS1201 Financial Statement Presentation replaces PS 1200 Financial Statement Presentation. This standard establishes general reporting principles and standards for the disclosure of information in government financial statements. The standard introduces the Statement of Remeasurement Gains and Losses separate from the Statement of Operations. Requirements in PS 2601 Foreign Currency Translation, PS 3450 Financial Instruments, and PS 3041 Portfolio Investments, which are required to be adopted at the same time, can give rise to the presentation of gains and losses as remeasurement gains and losses.

PS 2601 – Foreign Currency Translation

PS 2601 Foreign Currency Translation replaces PS 2600 Foreign Currency Translation. The standard requires monetary assets and liabilities denominated in a foreign currency and non-monetary items denominated in a foreign currency that are reported as fair value, to be adjusted to reflect the exchange rates in effect at the financial statement date. Unrealized gains and losses arising from foreign currency changes are presented in the new Statement of Remeasurement Gains and Losses.

PS 3041 - Portfolio Investments

PS 3041 Portfolio Investments replaces PS 3040 Portfolio Investments. The standard provides revised guidance on accounting for, and presentation and disclosure of, portfolio investments to conform to PS 3450 Financial Instruments. The distinction between temporary and portfolio investments has been removed in the new standard, and upon adoption, PS 3030 Temporary Investments no longer applies.

PS 3450 – Financial Instruments

PS 3450 Financial Instruments establishes accounting and reporting requirements for all types of financial instruments including derivatives. The standard requires fair value measurement of derivatives and portfolio investments in equity instruments that are quoted in an active market. All other financial instruments will generally be measured at cost or amortized cost. Unrealized gains and losses arising from changes in fair value are presented in the Statement of Remeasurement Gains and Losses.

Establishing fair value

The fair value of guarantees and letters of credit are based on fees currently charged for similar agreements or on the estimated cost to terminate them or otherwise settle the obligations with the counterparties at the reported borrowing date. In situations in which there is no market for these guarantees, and they were issued without explicit costs, it is not practicable to determine their fair value with sufficient reliability (if applicable).

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2023

3. CHANGE IN ACCOUNTING POLICY – ADOPTION OF NEW ACCOUNTING STANDARDS (CONTINUED)

Fair value hierarchy

The following provides an analysis of financial instruments that are measured subsequent to initial recognition at fair value, grouped into Levels 1 to 3 based on the degree to which fair value is observable:

Level 1 – fair value measurements are those derived from quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 – fair value measurements are those derived from inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (i.e., as prices) or indirectly (i.e., derived from prices); and

Level 3 – fair value measurements are those derived from valuation techniques that include inputs for the asset or liability that are not based on observable market data (unobservable inputs).

The fair value hierarchy requires the use of observable market inputs whenever such inputs exist. A financial instrument is classified to the lowest level of the hierarchy for which a significant input has been considered in measuring fair value.

As the remeasurement gain (loss) resulting from the adoption of the above accounting standards is nominal to the financial statements of the Tribunal, a Statement of Remeasurement Gains and Losses has not been prepared.

PS 3280 – Asset Retirement Obligations

PS 3280 Asset Retirement Obligations (ARO) establishes the accounting and reporting requirements for legal obligations associated with the retirement of tangible capital assets controlled by a government or government organization. A liability for a retirement obligation can apply to tangible capital assets either in productive use or no longer in productive use.

The new standard requires the recognition of a liability for legal obligations that exist as a result of the acquisition, construction or development of a tangible capital asset, or that result from the normal use of the asset when the asset is recorded, and replaces Section PS 3270, Solid Waste Landfill Closure and Post-Closure Liability (PS 3270). Such obligation justifies recognition of a liability and can result from existing legislation, regulation, agreement, contract, or that is based on a promise and an expectation of performance. The estimate of the liability includes costs directly attributable to asset retirement activities. When recording an asset retirement obligation, the estimated retirement costs are capitalized to the carrying value of the associated assets and amortized over the asset's estimated useful life. The amortization of the asset retirement costs follows the same method of amortization as the associated tangible capital asset.

This standard was adopted on January 1, 2023 on a prospective basis, and had no impact on the financial statements of the Tribunal.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2023

4. RECOVERABLE EXPENSES

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

Recoverable Expenses From	2023	2022
Shared services		
Ontario Labour Relations Board	\$118,198	\$102,755
Pay Equity Hearings Tribunal	5,910	5,808
Others		
Canada Revenue Agency HST rebate receivable	146,553	125,886
WSIB	0	389,998
Miscellaneous	9,459	9,748
Total	\$280,120	\$634,195

5. CAPITAL ASSETS

Type of Capital Asset	Cost	Accumulated Amortization	2023	2022
			Net Book Value	Net Book Value
Leasehold Improvements	\$4,340,977	\$4,213,357	\$127,620	\$61,216
Furniture and Equipment	490,635	462,676	27,959	7,595
Computer Equipment and Software	2,294,883	1,579,961	714,922	707,635
Total	\$7,126,495	\$6,255,994	\$870,501	\$776,446

6. OPERATING ADVANCE FROM WSIB

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

7. OPERATING FUND

The Operating Fund deficit of \$1,644,598 as of December 31, 2023 (2022 - \$1,949,359) 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, 2023

8. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$1,495,965 (2022 - \$1,378,279) 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 2023 amounted to a decrease of \$122,234 (2022 – \$71,447 decrease) 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 2023 amounted to an increase in the accrual of \$70,174 (2022 - \$65,626 decrease) 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 2023 amounted to an increase of \$25,625 (2022 - \$8,085 increase) over the prior year and is included in employee benefits in the Statement of Operations.

9. 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, 2023

10. COMMITMENTS

The Tribunal has commitments under several leases and maintenance contracts relating to computer and office equipment, software license fees and workplace learning solutions service contracts with remaining terms from 1-4 years. The minimum payments under these commitments are as follows:

Year	Payments
2024	\$525,657
2025	188,955
2026	120,101
2027	120,101
Minimum payments	\$954,814

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
2024	\$1,832,815
2025	1,507,732
Minimum payments	\$3,340,547

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