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WSIAT 2014 Annual Report

Ontario

Workplace Safety and Insurance
Appeals Tribunal

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

WSIAT 2014
Annual Report

Workplace Safety and Insurance Appeals Tribunal
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INTRODUCTION

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

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

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2014 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

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

CHAIR'S REPORT

> "... a number of potential, competent Vice-Chairs and Members continue to be concerned about the ten-year limit on appointments, and a number of them have withdrawn their applications for an appointment once they became aware of the ten-year limit."

MESSAGE FROM THE CHAIR

THE "APPEALS CUP" OVERFLOW

When an NHL team wins the Stanley Cup, the players often celebrate by filling the Stanley Cup with champagne, which occasionally overflows a little bit. Although the Appeals Tribunal cannot compete for the Stanley Cup, the Tribunal's "Appeals Cup" also overflows occasionally. The "Appeals Cup" is designed to hold approximately 4,000 active appeals; however, this year the cup received a massive appeals overflow and by year-end the active appeals inventory was extremely close to 9,000 active appeals.

In order to deal with the massive overflow, the Appeals Tribunal continues to attempt to expand its roster of competent Vice-Chairs and Members; however, a number of potential competent Vice-Chairs and Members continue to be concerned about the ten-year limit on appointments, and a number of them have withdrawn their applications for an appointment once they became aware of the ten-year limit. While the Tribunal and the legal community are familiar with the Tribunal's quality case law and continue to attempt to improve the quality of Ontario's administrative justice system, only the legal community and the Society of Ontario Adjudicators and Regulators (SOAR) have made submissions to the government in support of the need to retain the most competent adjudicators well beyond the ten-year limit. Some of those concerned bodies have quietly suggested that the Public Appointments Secretariat should consider the negative effect on Microsoft® and Apple® if Bill Gates and Steve Jobs had deliberately expelled their most competent employees after ten years. Some have suggested that if Microsoft® and Apple® had followed a ten-year limit, both those extremely successful corporations would now be in receivership.

While many boards and tribunals throughout Canada are impressed with the Appeals Tribunal quality of adjudication and its exemplary judicial review record, they are shocked at any information limiting the terms of quality, competent Vice-Chairs and Members to a ten-year term. As Winston Churchill once noted, "Criticism is easy; achievement is more difficult."

The current active appeals inventory of approximately 9,000 appeals does contain many difficult cases with complex medical and legal issues, multiple issues and extensive legal submissions. Fortunately, the extremely knowledgeable Vice-Chairs and Members can deal with those complex appeals and produce detailed decisions which consistently stand up to judicial scrutiny on judicial appeals.

If the Appeals Tribunal can continue to add top-line players to its appeals team, it still will not allow the Appeals Tribunal to compete for the Stanley Cup; however, it should allow the Tribunal and its team members to deal with the "Appeals Cup" overflow throughout 2015 and 2016.

HIGHLIGHTS OF THE 2014 CASES

CHAIR'S REPORT

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2014.

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

Appeals Under the WSIA

The WSIA provides for loss of earnings (LOE) benefits for workplace injuries and non-economic loss (NEL) benefits for permanent injury. The amount of LOE benefits depends on the extent to which the worker can return to the workplace and replace pre-injury earnings. There are statutory provisions setting out worker and employer obligations to co-operate in early and safe return to work. The WSIA also creates a re-employment obligation where workers have been continuously employed for at least one year. Work transition (WT), previously labour market re-entry (LMR), services and LOE benefits may be available where a worker is unable to return to work with the employer. LOE benefits are reviewable on "material change in circumstances," or annually at the Board's discretion, for 72 months following the accident date. When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72 months; however, subsequent amendments in 2002 and 2007 allow for review in a number of circumstances.

1269/14

LOE appeals represent a large portion of the Tribunal's caseload. LOE benefits are paid for loss of earnings resulting from a workplace injury. Previous Annual Reports have discussed the Tribunal's analysis of LOE entitlement for workers who develop occupational diseases after retiring from the workplace. Since LOE benefits are tied to the loss of earnings resulting from a compensable accident, LOE benefits are not payable unless the worker intends to keep working despite retirement. *Decision No. 1269/14*, 2014 ONWSIAT 2008, applied the same rationale to a worker who had no intention of returning to firefighting, the occupation in which he contracted the occupational disease. The worker's LOE benefits should be based on his most recent earnings as a courier, as should section 48(3) survivor benefits.

904/14

The 2013 Annual Report noted two lines of analysis with respect to entitlement to LOE benefits when an injured worker is terminated from suitable modified work. Both approaches examine the circumstances surrounding the termination to determine whether there is a causal link between the termination and the injury. One approach finds that, if the termination is unrelated to the injury, the worker is not entitled to LOE benefits. The other approach holds that, even if the termination is unrelated to the injury, it is still

necessary to enter into a secondary analysis to determine whether the compensable injury continued to make a significant contribution to the subsequent loss of earnings. The two lines continued in 2014. *Decision No. 904/14*, 2014 ONWSIAT 1597, is of interest for its analysis of the two approaches. It agreed with the cases undertaking a secondary analysis. The central question is whether the earnings prior to termination should still be considered to be available to the worker. The focus should be on the worker's actions, not the employer's motivations. The worker will have introduced an intervening event negating the significance of the compensable injury if the worker's conduct is such that the worker should be held responsible for the loss of the employment opportunity.

1180/14

Board policy defines suitable work as post-injury work that is safe, "productive," consistent with the worker's functional abilities and restores the worker's pre-injury earnings to the extent possible. It can include short-term training which leads to a job with the employer. *Decision No. 1180/14*, 2014 ONWSIAT 1454, considered the Board policy definition of "productive work" as requiring an objective benefit to the employer's business. The worker was entitled to LOE benefits when the employer's offer of home-based English courses was not "productive work" as it did not constitute short-term training that would lead to a suitable job with the employer.

2137/13

Decision No. 2137/13, 2014 ONWSIAT 620, is one of the first decisions to consider section 63(1)(b) of the WSIA, which provides that, with the Board's approval, a worker of a Schedule 2 employer may agree to accept a specified amount in lieu of payments under the Act. *Decision No. 2137/13* found that the worker was entitled to partial LOE benefits in addition to payments under a leave agreement which had been entered for reasons related to a compensable disability. There was no evidence that the worker agreed to waive her WSIA benefits or that the Board had approved the agreement.

851/14
1069/14

Several 2014 appeals considered the re-employment obligation. Section 41(5) of the WSIA requires the employer to offer an injured worker the first opportunity to accept suitable employment that may become available. *Decision No. 851/14*, 2014 ONWSIAT 1781, found that a worker was entitled to full benefits under section 41(13)(b) for one year because the employer had failed to offer the worker suitable modified duties without explanation and without evidence of undue hardship. *Decision No. 1069/14*, 2014 ONWSIAT 2027, considered the re-employment obligation of a personnel agency. The personnel agency had assigned the worker to modified work at a client who later directed the agency to remove the worker for inattention at work. The issue was whether the personnel agency had breached its re-employment obligation when it did not provide further modified work to the worker. *Decision No. 1069/14* found that the modified work at the client was not sustainable. While the client may have been within its rights to ask that the worker be removed, the personnel agency had a continuing obligation to provide suitable and sustainable work.

1856/14
365/14

Decision No. 1856/14, 2014 ONWSIAT 2345, is one of the first decisions to consider the re-employment obligation in the construction industry. Board policy under the WSIA and Ontario

Regulation 35/08 provides that a worker is considered "unable to work" if the worker is absent from work, works less than regular hours or requires accommodated or modified work that pays or normally pays less than the regular pay, regardless of whether the employer reimburses the worker for an actual loss of earnings. The employer argued that there was no re-employment obligation since the worker did not miss work and had been maintained at his pre-injury rate of pay. *Decision No. 1856/14* found, however, that the injured worker's inability to perform heavy overhead work meant that he could not resume his pre-injury job. Also, the modified job was in the employer's shop, not on the construction site. The position was not normally available in the construction industry and the rate of pay was not set by market conditions. Accordingly, there was a re-employment obligation since the worker was "unable to work." Where an injured worker has been re-employed but then terminated within six months, there is a presumption that the re-employment obligation has been breached. The test is whether the worker was fired for reasons unrelated to the compensable work injury. *Decision No. 365/14*, 2014 ONWSIAT 739, found that there was no breach when the injured worker was fired because he did not provide medical documentation confirming his need to be absent from work on numerous occasions. The employer was entitled to take disciplinary measures for unauthorized absences and there was no indication of bad faith.

1104/12
1126/13

Turning to NEL awards, these often require the Tribunal to interpret the complicated and technical American Medical Association's *Guides to the Evaluation of Permanent Impairment* (3rd edition revised) (AMA Guides), which is the prescribed NEL rating schedule under Ontario Regulation 175/98. Despite the detail in the AMA Guides, there are situations where its provisions do not easily apply. *Decisions No. 1104/12*, 2014 ONWSIAT 15, and *1126/13*, 2014 ONWSIAT 19, upheld the use of the Board's adjudicative advice document, *Permanent Impairment (NEL) Rating Guideline for Upper and Lower Extremity Repetitive Strain Injuries (RSI)* in situations where it is not practical to use the AMA Guides. The AMA Guides indicate that repetitive strain injuries should be evaluated after working six to eight hours; however, logistically this is almost always impossible. *Decisions No. 1104/12* and *1126/13* noted that the ratings assigned under the adjudicative advice document were higher than those under the AMA Guides.

2157/09

The WSIA introduced limits on entitlement for mental stress and there is related Board policy. Section 13(4) of the WSIA provides that a worker is not entitled to benefits for mental stress except as provided in subsection (5). Section 13(5) provides for entitlement for mental stress that is an acute reaction to a "sudden and unexpected traumatic event" arising out of and in the course of employment; however, the worker is not entitled to benefits for mental stress caused by an employer's decisions relating to employment. Previous Annual Reports have noted that Charter challenges have been brought to section 13(4) and (5) and the Board's traumatic mental stress policy. The first decision to consider this issue on the merits was released in 2014. After an extensive review of general workers' compensation principles, Charter jurisprudence and expert epidemiological evidence (including evidence from experts that there was an association between job stress and the onset of mental disabilities), *Decision No. 2157/09*, 2014 ONWSIAT 938, found that the section 13 limits create a distinction based on the ground of mental disability which was substantively discriminatory,

violating section 15 of the Charter. (Note: *Decision No. 2157/09* specifically did not consider the section 13(5) provision that excludes entitlement for mental stress caused by an employer's decisions or actions.) After considering the parties' submissions and other provincial approaches, the Panel found that the statutory limits and policy were not justified under section 1 of the Charter.

Decision No. 2157/09 is of particular interest for its reasons for rejecting the argument that treating mental stress the same as physical injury might result in blanket coverage. There was no evidence that applying the same principles of legal causation would likely result in blanket coverage. Rather, the Tribunal's mental stress cases have required a careful analysis of the law and evidence and take a multi-factorial approach to causation. For example, a workplace injuring process is not established if the mental disorder arises solely from the worker's misperception of events. Consideration must be given to such issues as whether there are co-existing or prior non-work stressors that may have caused or contributed to the onset of the mental disorder and their relative significance, and to whether the worker has any prior psychiatric history or pre-disposing personality features relevant to the question of causation.

1945/10I3
480/11

Since the findings in *Decision No. 2157/09* are limited to the facts of the case, parties in outstanding Charter challenges are being given an opportunity to make submissions on its reasoning. See, for example, *Decision No. 1945/10I3*, 2014 ONWSIAT 286. *Decision No. 1945/10I3* is also of interest for its procedural ruling that the Charter challenge should not include issues concerning section 126 of the WSIA and whether the policy is inconsistent with WSIA. If the Charter challenge is successful, there would be no ruling that the policy is inconsistent with the WSIA but, rather, a finding that section 13(4) and (5) is constitutionally invalid. And see *Decision No. 480/11*, 2014 ONWSIAT 1527, which found that it was not necessary to consider submissions on the Charter or the Ontario *Human Rights Code* since the worker's subjective perception of the facts was not consistent with the Tribunal's findings and a reasonable observer would not view the stressors as likely to cause the injury in question. The worker's emotional breakdown was covered by the crumbling skull exception to the thin skull rule and, therefore, did not arise out of and in the course of employment. In obiter, *Decision No. 480/11* commented that the average worker test (applied in mental stress appeals under the earlier Acts) may be helpful in weighing whether the worker's perception of events is sufficiently reliable to base a finding of causation. It is relevant to consider whether the events would normally be expected to be stressful to the average worker, as long as the specific facts of the worker's case are also considered.

Board Policy Under the WSIA

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

applies, or the Board may ask the Tribunal to reconsider a decision in light of Board policy.

1057/09

There was one section 126(4) referral in 2014. *Decision No. 1057/09I2*, 2012 ONWSIAT 1547, had previously referred the 1996 clothing allowance policy to the Board after finding it was not authorized by the Act since there was a lack of evidence to support the stated reasons for the policy change. The 1996 policy had reduced the clothing allowance for soft back braces by 50%. As of 2006, the policy was changed to reinstate the full allowance. The Board directed the Tribunal to apply the 1996 policy, stating that it has a broad discretion to develop and implement a clothing allowance policy and the Tribunal does not have jurisdiction under section 126(4) to review the process by which the Board implemented policy. The Board did not comment on the substance of the Panel's concerns.

While *Decision No. 1057/09*, 2014 ONWSIAT 205, accepted that the Board has a broad policy discretion, it found that the Tribunal has the authority to determine its own jurisdiction and that it has the jurisdiction to refer a policy to the Board when it finds that the policy is not authorized by the Act. While the Board's section 126(8) direction may be intended to be binding, it would be assumed that there would be an explanation for the direction. Assuming the Panel agreed with the Board that section 126(4) was not applicable, *Decision No. 1057/09* found for the worker on the merits and justice. The soft brace caused severe clothing damage and the 50% clothing allowance did not reflect the actual damage.

1167/13R

In 2014, the Board asked the Tribunal to reconsider *Decision No. 1167/13*, 2013 ONWSIAT 2027, because, in its view, the decision had failed to apply Board policy that LOE benefits continue for a maximum of two weeks in cases where a NEL review results in a 0% rating. *Decision No. 1167/13R*, 2014 ONWSIAT 1238, denied the reconsideration request on several grounds, including that a careful review of the facts indicated that the policies were not directly applicable. The worker had two NEL assessments and *Decision No. 1167/13R* accepted the worker's submission that the second assessment only showed the combined impairment, not that the second assessment had been rated at 0%. While the Board's policy interpretation may be different, the interpretation in *Decision No. 1167/13* was reasonable and there was no fundamental error of law or process which would meet the high threshold test for granting a reconsideration request.

204/14

In interpreting Board policy, the Tribunal considers the governing statutory provisions as well as the Ontario *Human Rights Code* and the Charter of Rights. The Tribunal also considers the interaction between Board policies. *Decision No. 204/14*, 2014 ONWSIAT 301, considered policy definitions and provisions relating to pre-existing impairments, pre-existing disabilities and pre-accident impairments in several Board policies in deciding how to interpret Board policy which allows for apportionment of NEL benefits for "pre-existing impairment." Considering the various policies, a "pre-existing impairment"

exists where there have been past periods of disability, impairment or illness which have required treatment and disrupted employment. A "pre-existing condition" is not sufficient to permit apportionment under the policy.

1981/13

While section 126 only requires the Tribunal to apply applicable policies, Board practice and adjudicative advice documents which do not meet the formal requirements for section 126 policy may be considered if they provide useful guidance. Several 2014 decisions considered the Board's Formulary Drug Listing Decisions which are based on recommendations by the Board's Drug Advisory Committee (DAC). The Drug Formularies are used to assist in deciding a worker's entitlement under section 33(1) of the WSIA, to such health care as is "necessary, appropriate and sufficient as a result of the injury." See, for example, *Decision No. 1981/13*, 2013 ONWSIAT 2530, which considered a request for a drug which was not on a Drug Formulary because studies did not indicate any therapeutic advantage and it was significantly more expensive than alternative safe and effective medication. The Tribunal applied the Drug Formulary since there was no evidence the drug improved the worker's condition or that alternative medication was not effective and safe for him.

51/14

The Board has an informal historical practice of granting 100% NEL awards in cases involving terminal illness to recognize poor prognosis and to compensate for further expected deterioration. In cases involving deceased workers, it is also Board practice to grant a 100% NEL award if the compensable condition is the primary cause of a worker's death and to apportion the NEL award in other cases based on the medical significance of the compensable condition and its relative contribution to the worker's death. *Decision No. 51/14*, 2014 ONWSIAT 2165, accepted the Board's practice of awarding 100% NEL awards for reduced life expectancy and further expected deterioration. This was consistent with the approach in the AMA Guides and not prohibited by the Guides or legislation. Given that it was also the Board's historical approach, it would be unfair and inconsistent to take a different approach. *Decision No. 51/14* noted, however, that this approach would likely not be appropriate unless the worker had lived with terminal illness with a poor prognosis for a reasonable time, nor where a traumatic injury caused the worker's death soon after the accident. Since the worker's compensable asbestos-related disease was a significant cause of his death along with other significant causes, the worker was entitled to a 50% NEL award.

Right to Sue Applications

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

1228/14

An issue which has been noted in previous Annual Reports is the interaction between the WSIA and the *Insurance Act*. In *Decision No. 1228/14*, 2014 ONWSIAT 1408, a statutory accident benefits (SABs) insurer sought a determination that the

respondent's right to claim statutory accident benefits was removed by the joint operation of section 28 of the WSIA, and section 59(1) of the *Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*, or, alternatively, a declaration that the respondent was entitled to claim workers' compensation benefits. *Decision No. 1228/14* held that the Tribunal's authority under section 31(1) does not extend to considering the restrictions on the right to claim SABs under the Insurance Act. This is consistent with *Decision No. 234/03*, 2003 ONWSIAT 154. *Decision No. 1228/14* is also of interest for its comments on the role of Board policy and industry questionnaires in section 31 applications. Once the Board establishes a standard industry approach that is consistent with the Act and policy, there is considerable interest in ensuring that the guidelines are consistently followed to achieve consistency of application and to further workers' and employers' understanding of the applicable rules.

1770/14

In *Decision No. 1770/14*, 2014 ONWSIAT 2217, the issue was whether the plaintiff, an American resident, had a substantial connection with Ontario such that her right to sue for damages arising from a motor vehicle accident in Ontario should be taken away. *Decision No. 1770/14* discussed the development of the legal substantial connection test which is applied in deciding the constitutional limits of provincial workers' compensation legislation. Board policy also indicates that five or fewer days in Ontario in the course of a year is not a substantial connection. While Board policy is not binding in section 31 applications, the need to maintain consistency means that the Tribunal will require valid reasons to depart from Board policy. In this case, the result under both the law and Board policy was the same. The level of the employer's activity in Ontario was irrelevant as the worker had almost no connection with Ontario.

727/13

Decision No. 727/13, 2014 ONWSIAT 1128, considered whether section 26(2) of the WSIA creates an absolute bar against an action by a worker against an executive officer and, if not, what standard should apply. Prevailing Tribunal case law supports the conclusion that section 26 does not create an absolute bar to action against an executive officer for personal misconduct. *Decision No. 727/13* agreed with *Decision No. 649/94* (1996), 40 W.C.A.T.R. 56, that the standard is whether the executive officer was acting in an employment-related capacity in the conduct which is the subject of the civil action.

1003/13

Finally, *Decision No. 1003/13*, 2014 ONWSIAT 1114, is of interest for its discussion of why Rule 51.06 of the Rules of Civil Procedure cannot be relied on in Tribunal proceedings to argue that a party is precluded from taking a position which is contrary to the position in the pleadings in the civil action.

Employer Issues

Appeals involving employer issues, such as classifications, transfers of cost, adjustments of experience rating accounts and Second Injury and Enhancement Fund (SIEF) relief, continued to form a significant part of the Tribunal's caseload in 2014.

1034/14

The Tribunal frequently considers SIEF appeals including issues of interpretation and application of the Board's SIEF policy. The quantum of SIEF relief is generally determined in accordance with the matrix in the policy which is based on the severity of the accident and the medical significance of the pre-existing condition. There is also a less frequently used provision, which provides for 50% relief if there has been an aggravation of a pre-existing condition or if there is evidence that the disability following the accident has been prolonged because of a pre-existing condition. *Decision No. 1034/14*, 2014 ONWSIAT 1903, is of interest for its discussion of the interaction between this provision and the matrix. Both are subject to the over-arching policy requirement of either a pre-accident disability which causes or contributes to the accident, or a pre-existing condition which prolongs or enhances disability. *Decision No. 1034/14* cited *Decision No. 393/01*, 2001 ONWSIAT 2923, which had obtained submissions from the Board regarding the 50% SIEF provision. While Board practice is to use the matrix since it is more accurate, a decision-maker could immediately grant 50% relief if entitlement was based on aggravation of a pre-existing condition or the disability became enhanced because of a pre-existing condition, subject to later review. *Decision No. 1034/14* found that the policy structure was consistent with this explanation and that 50% SIEF could be granted initially in certain circumstances for compensation and health care costs only, subject to review at a later date using the more detailed matrix. The 50% relief provision continued to be part of the policy but it applied in limited circumstances and would be superseded by the matrix if the employer applied for relief over 50% or if there is a permanent impairment.

2348/11

When the Board implements a Tribunal decision requiring a retroactive experience rating adjustment, the Board considers updated information. In *Decision No. 2348/11*, 2013 ONWSIAT 2623, an employer appealed a retroactive adjustment which resulted in little benefit to the employer when updated information was used. There were no special circumstances and the policy allowed for retroactivity up to six years. While it was appropriate for the Board to recalculate the employer's CAD-7 charges and refunds using updated information, the recalculations should have been limited to the years affected by the original decision. The appeal was allowed with respect to retroactive adjustments in other years.

1894/13

Decision No. 1894/13, 2014 ONWSIAT 143, is the first Tribunal decision to consider the application of the Workwell audit to a personnel agency which provides temporary personnel to long-term care facilities. The employer argued that since it was not the owner of the buildings or the equipment, it should be excluded from the complying with certain provisions of the *Occupational Health and Safety Act* (OHSA) and various items in the Workwell audit. While *Decision No. 1894/13* agreed, in general, that not all provisions of the Workwell audit apply to all employers, it rejected the argument that virtually the entire Workwell survey did not apply simply because the employer did not own the facilities. The employer met the definition of employer within the OHSA; therefore, it must comply with applicable OHSA obligations.

Occupational Disease

Occupational disease cases, which involve workplace exposure to harmful processes or substances, raise some of the most complicated legal, medical and factual issues. Occupational diseases are compensable if they fall under the statutory definition of "occupational disease" or "disablement." The WSIA contains various rebuttable and irrebuttable presumptions for specified occupational diseases and exposures, and the Board has adopted policy on other diseases and exposures. In addition, there are less formal adjudicative advice documents which may be helpful in adjudicating other occupational diseases.

515/14
2574/11
2184/12
2307/12R

As *Decisions No. 515/14*, 2014 ONWSIAT 945, *2574/11*, 2014 ONWSIAT 298, *2184/12*, 2014 ONWSIAT 605, and *2307/12R*, 2014 ONWSIAT 1211, illustrate, the statutory presumptions only apply if the criteria which trigger them are first established on a balance of probabilities. Where no presumption applies, the Tribunal considers the appeal on its merits, applying the usual standard of proof. *Decision No. 2574/11* commented that the enactment of a presumption with respect to colon cancer and firefighting is not evidence supporting a probable causal linkage in a case where the presumption does not apply. Rather, the presumption is a framework for considering evidence.

1265/14
474/12

Where Board policy applies, there may be issues about the interpretation of the policy, including levels of exposure required in the policy. *Decision No. 1265/14*, 2014 ONWSIAT 1519, considered the Board's policy on gastro-intestinal cancer and asbestos exposure which requires exposure of a "continuous and repetitive nature." While an occupational hygienist had referred to "occasional" exposure as occurring if a task occurred on a weekly or monthly basis or if the worker spent 25% to 50% of the work shift potentially exposed, *Decision No. 1265/14* found that such exposure was of a "continuous and repetitive nature" under the policy. This was consistent with the interpretation in an Occupational Disease Policy and Research Branch (ODPRB) research report that "continuous" refers to exposure that is ongoing and not just a brief exposure such as six months. "Repetitive" describes frequency and is meant to exclude a single exposure event or exposure that was occasional or incidental. *Decision No. 474/12*, 2014 ONWSIAT 570, also considered Board policy on asbestos exposure and gastro-intestinal cancer. While the policy only applied to "asbestos workers," this was not limited to work in the asbestos industry but could include employment with a mining company with the designated exposure. It was also not necessary for a worker to show performance of activities involving asbestos exposure during his entire working career. As long as the worker was exposed to levels of asbestos satisfying the policy criteria for some portion of his work career, he was entitled to benefits. *Decision No. 474/12* agreed with *Decision No. 25/13*, 2013 ONWSIAT 437, that an assessor's opinion is not necessary where the policy criteria are met.

829/14
2307/12R

As discussed above, while the Tribunal is not required to apply less formal adjudicative advice documents, they are considered where they provide relevant and helpful guidance and information. *Decision No. 829/14*, 2014

ONWSIAT 1450, rejected an argument that ODPRB reports do not comply with the Tribunal's Practice Direction: *Expert Evidence* because there was no *curriculum vitae* for the industrial hygienists who prepared them. The Practice Direction only applies to evidence provided by the parties for the first time at the Tribunal level. A similar result was reached in *Decision No. 2307/12R*.

911/14

The adjudicative advice in the Chronic Obstructive Pulmonary Disease (COPD) binder has been considered in a number of Tribunal cases. *Decision No. 911/14*, 2014 ONWSIAT 2359, contains an interesting discussion of the role and use of the COPD binder. It notes that the binder specifically states that it is not Board policy, but presents and explains a matrix of potential causal factors to consider. While magnitude of exposures is undoubtedly a key factor, other factors are: age at onset and latency; possible clinical markers; type of exposure; occupations and industry groups; and influences on risk impairment. *Decision No. 911/14* is also of interest for its application of the binder's provisions on rounding up or down of values for pack years of smoking and dust years of exposure.

2089/12

Finally, the WSIA contains specific provisions for allocating costs in occupational disease claims. Section 94(2) provides that the Schedule 2 employer that last employed the worker in the employment in which an occupational disease occurs is the worker's employer for the purposes of the WSIA. In *Decision No. 2089/12*, 2014 ONWSIAT 538, the issue was whether the costs of the worker's mesothelioma should be charged to the first or second Schedule 2 employer. While there were four potential sources of asbestos exposure, three were speculative. Since it was probable that the worker was exposed to asbestos while working for the first Schedule 2 employer, and not probable that he was exposed at the second one, the costs were correctly charged to the first Schedule 2 employer.

Other Legal Issues

In addition to the Charter challenges involving traumatic mental stress, discussed above, Charter challenges were raised with respect to the age limits on LOE benefits under section 43(1)(c) of the WSIA, and the offset of Canada Pension Plan (CPP) disability benefits from supplementary benefits under section 147(4) of the pre-1997 Act.

512/06R

Decision No. 512/06R, 2013 ONWSIAT 2621, denied a request to reconsider *Decision No. 512/06*, 2011 ONWSIAT 2525, in which the majority concluded that the section 43(1)(c) limits LOE benefits for workers injured at age 63 or older, did not violate section 15(1) of the Charter. The majority applied the appropriate Charter analysis and provided reasons for its conclusions. While the worker submitted an analysis of new statistical information, this did not constitute significant new evidence which would likely have changed the result of the original decision. The new evidence does not contradict findings that the two-year limitation of benefits does not disadvantage the majority of injured workers who returned to work.

1786/11I2

In *Decision No. 1786/11I2*, 2014 ONWSIAT 944, the Attorney General of Ontario moved to dismiss the worker's Charter challenge to section 43(1)(c) on the grounds that it was an abuse of process since the parties would be required to relitigate previously decided issues. The worker's expert evidence was substantially similar to that considered in *Decision No. 512/06* and the law was substantially the same. *Decision No. 1786/11I2* dismissed the motion. Prior Tribunal decisions are not binding on decisions involving other parties and it would constitute a declining of jurisdiction to dismiss the appeal without addressing the Charter issue. While there are situations when a party would not be permitted to relitigate and the doctrines of issue estoppel and abuse of process would apply, that was not the situation where different workers are involved, each with a statutory right to appeal. Ultimately, there will be a need to address the issue of consistency in Tribunal decision-making; however, there has been only one prior decision on the particular Charter issue and Tribunal decisions may diverge when case law is developing.

829/10

Decision No. 829/10, 2013 ONWSIAT 2597, contains a good review of the Tribunal's jurisdiction with respect to considering and applying the equality provisions in the Charter and the Code. The party raising the issue must provide detailed argument on how specific provisions offend the Charter or the Code. While there was not an adequate basis to consider a number of the worker's arguments, *Decision No. 829/10* considered in more detail the challenge to the offset of CPP disability benefits from section 147(4) supplementary benefits. Section 147(11) requires the Board to have regard to any CPP payments received for a compensable injury in determining the amount the worker is likely to be able to earn in suitable and available employment. The Board has developed policies on how it will do this. *Decision No. 829/10* found no discrimination on an enumerated ground, since the distinction is not based on disability but whether benefits are received for the same injury under a different scheme. The purpose underlying the policy is to offset section 147 benefits by CPP benefits to avoid overcompensation. When considered in the context of the compensation scheme as a whole, taking into account that the Board is the last insurer, there was no substantive discrimination.

537/10R2

Since the 2007 amendments to the *Law Society Act* (LSA), which introduced paralegal regulation, the Tribunal has taken steps to ensure that paralegals who represent parties at the Tribunal meet the Law Society's requirements. *Decision No. 537/10R2*, 2014 ONWSIAT 960, considered section 1(8) para. 1 of the LSA, which provides that a person is deemed not to be practising law where the person is acting in the normal course of carrying on a profession or occupation governed by another Act that specifically regulates the activities of persons engaged in that profession or occupation. The representative relied on a number of Acts and Regulations, including the *Accessibility for Ontarians with Disabilities Act, 2005*, the *Accessibility Standards for Customer Service*, the *Child and Family Services Act*, and the *Canada Corporations Act*; however, none of these contain provisions regulating the activities of individuals engaged in any profession or occupation.

Accordingly, the individual did not have standing to represent the party.

2381/13I 556/06R

Finally, the Tribunal had occasion in 2014 to consider how its decisions interact with subsequent Board proceedings. *Decision No. 2381/13I*, 2014 ONWSIAT 37, considered an appeal from a Board decision that the employer had offered suitable modified work. *Decision No. 2381/13I* noted that *Decision No. 667/11*, 2011 ONWSIAT 1284, had previously found that the worker was entitled to a new LMR assessment because the mistrust between the worker and employer had effectively put an end to any potential for return to work with the employer. *Decision No. 667/11* did not contemplate the possibility of the worker returning to the employer. Accordingly, the job offer was unsuitable and the worker was entitled to LOE benefits. *Decision No. 556/06R*, 2014 ONWSIAT 428, considered a Board request to reconsider *Decision No. 556/06*, 2008 ONWSIAT 1798, which had awarded full LOE benefits from June 2003. Subsequent investigation by the Board's Regulatory Services Division resulted in the worker being charged with 10 counts of knowingly making false or misleading statements in connection with claims for mileage for medical appointments and two counts of failing to report a material change in circumstances in connection with employment. The worker pleaded guilty to 10 counts of knowingly making false or misleading statements and one count of failing to report a material change in circumstances. Applying the Tribunal's usual threshold test, the new evidence – constituted substantial new evidence. A new hearing will be held on the merits.

JUDICIAL REVIEW

The Tribunal was successful on all challenges to its decisions on applications for judicial review in 2014.

The Tribunal has compiled an impressive record on judicial review over its 29-year history. The Tribunal has released over 66,000 decisions, but only once has a final decision of a court quashed a Tribunal decision. Dozens of decisions of the courts have stated that the Tribunal is an expert body and its decisions are deserving of deference. The Tribunal's judicial review record is a demonstration of the excellence of the Tribunal's decisions, and the outstanding work of the Tribunal's adjudicators and staff.

Only judicial review applications where there was some significant activity during 2014 have been included in this Annual Report. There are a number of other applications for judicial review not referred to here which have been adjourned for various reasons, and have not been finally concluded.

General Counsel and lawyers from the Tribunal Counsel Office represent the Tribunal in court in most instances, and co-ordinate all responses to judicial review applications and other court applications where outside counsel are used.

1 *Decisions No. 512/06I*, 2007 ONWSIAT 164, *512/06*, 2011 ONWSIAT 2525, and *512/06R*, 2013 ONWSIAT 2621

This was the first case where a Tribunal decision on the *Canadian Charter of Rights and Freedoms* (Charter) was subject to judicial review.

The worker injured his back in 2001, when he was 63 years of age. The Board paid the worker loss of earnings (LOE) benefits until May 31, 2002, when the worker turned 65, which was also the mandatory retirement date set by the employer.

The worker appealed to the Tribunal for LOE benefits after May 31, 2002, for his back, and also for benefits for a right shoulder injury. In *Decision No. 512/06I* a single Vice-Chair denied the appeal for the worker's right shoulder, but granted the worker entitlement to LOE benefits from May 31, 2002 until February 5, 2003 (which was two years after the injury), pursuant to section 43(1)(c) of the WSIA.

The worker then alleged that limiting entitlement to LOE to two years post-injury for those workers over age 63 contravened section 15(1) of the Charter.

The Ontario Attorney General participated in the Tribunal hearing. The Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA) were invited to participate as intervenors. The OWA accepted, and became co-counsel with the worker's representative. The OEA withdrew from the appeal.

The hearing reconvened with a full Panel to consider the Charter issue. In *Decision No. 512/06*, the majority of the Panel found there was no breach of the Charter. The Vice-Chair dissented and found there was a breach of section 15(1) the Charter.

The majority considered the historical context of workers' compensation law, the background to the dual award scheme, and the evidence of expert witnesses. It found the workplace insurance plan operates primarily as an insurance scheme, rather than a social benefits program.

The majority characterized the test for whether the Act violates section15(1) of the Charter to be (a) if the Act creates a distinction based on an enumerated ground, and (b) if there is a distinction, whether it is discriminatory in that it perpetuates disadvantage or stereotyping. The worker alleged there was a discriminatory distinction based on age. The majority agreed that there was a distinction on an enumerated ground, but did not agree that the distinction perpetuated disadvantage or stereotyping.

The majority noted there had been no Charter decision in a Canadian court which had successfully challenged the termination of benefits at age 65. The majority also noted that age 65 is still when most people retire, and that it was reasonable for an insurance plan to rely on actuarial probabilities and terminate benefits at age 65 rather than continuing payments for life. The worker himself had not demonstrated that he would have worked after age 65 or had any expectation of being employed after age 65, and in fact did not work after age 65.

Although the worker was not disadvantaged himself based on age, the majority went on to consider the comparator group as a whole. It noted that almost all workers injured after age 61 return to work, meaning most are not disadvantaged by the two-year statutory limit. Further, a two-year limit takes into account the life circumstances of those persons in their sixties, as opposed to those in their twenties. Workers at age 65 are eligible for other sources of income, such as CPP. Viewed contextually, the majority found the two-year limit does not perpetuate prejudice of workers aged 63 and older. Even if section 43(1)(c) did violate section 15(1) of the Charter, it constituted a reasonable limit under section 1 of the Charter.

In his dissent, the Vice-Chair found that the workplace insurance scheme was both an insurance scheme for employers and a social benefits program for workers. He found that section 43(1)(c) was discriminatory as it failed to consider the disadvantaged position of older workers, and limited their entitlement to benefits they might be entitled to if they had been younger. The Vice-Chair found that section 43(1)(c) was not saved under section 1 of the Charter. The Vice-Chair would have allowed the worker LOE benefits until age 71.

The worker commenced an application for judicial review. After the Tribunal filed its Record, counsel for the worker attempted to submit new evidence for the judicial review. As the respondents objected, counsel for the worker then attempted to commence an application to reconsider *Decision No. 512/06*, while the judicial review was still pending. As the respondents objected to this approach as well, the worker decided to withdraw the judicial review and pursue a further reconsideration at the Tribunal. The respondents consented to the withdrawal, though the Tribunal insisted on payment of costs incurred from producing the Record.

The worker then filed a request for reconsideration of the WSIAT decision. Since the original Tribunal Vice-Chair had passed away, a new Vice-Chair had to be assigned to hear the reconsideration.

The reconsideration was denied in *Decision No. 512/06R*. The new Vice-Chair did not accept the worker's argument that there was substantial new evidence not available at the time of the hearing which would likely have changed the outcome of the decision.

In January 2014, the worker filed a new application for judicial review, this time of *Decisions No. 512/06* and *512/06R*. Factums were filed by the worker, the employer and the Attorney General, as well as by two intervenors: the Industrial Accident Victims Group of Ontario (IAVGO), and the Schedule 2 Employer's Group. The judicial review was heard on December 1, 2014, by Marrocco ACJ, Nordheimer and Horkins JJ.

The Divisional Court unanimously dismissed the judicial review. In the decision [2014 ONSC 7289] dated December 17, 2014, the Court agreed with the majority of the Tribunal that the WSIA is not a social benefits scheme. The Court also found the two-year limit on LOE benefits in section 43(1)(c) was not discriminatory and not contrary to section 15(1) of the Charter. Benefits were not denied to workers because of a stereotypical attitude, but bec ause of the evidence before the Tribunal that 90% of workers retire by age 65, and 90% of injured workers over 61 recover within two years.

As the Court noted [at para. 31], if the WSIA provided that injured workers were to receive LOE benefits until they died, that would imply people would work until they die. "Both intuitively and statistically this seems incorrect."

The Court said that even if it was wrong about that, section 43(1)(c) was saved by section 1 of the Charter. This was because it accepted the majority's finding that any limitation on rights here was justified by a pressing and substantial objective of paying LOE benefits for wage loss resulting from injury in a financially responsible way. Not paying benefits past the age workers would likely have retired was in accordance with this objective.

Referring again to the evidence before the Tribunal that 90% of workers retire by age 65, and 90% of injured workers over 61 recover within two-years, the Court agreed that section 43(1)(c) minimally impairs entitlement for injured workers over age 65.

> "This kind of determination lies at the very core of the Tribunal's mandate and competence. It is a finding of fact made on the basis of a detailed review and weighing of the evidence. The Tribunal made no error of law in arriving at this conclusion."

The Court was not persuaded that it should follow more generous approaches in other provinces, because Ontario is entitled to deference on how it wants to compensate injured workers.

Although the standard of review for WSIAT decisions on constitutional questions is correctness, the Court affirmed that it will give deference to WSIAT Charter decisions on underlying matters such as the nature of the workers' compensation scheme, the balancing of competing interests, and the purpose of its home statute.

2 *Decisions No. 10/04*, 2004 ONWSIAT 984, *10/04R*, 2004 ONWSIAT 2779, *10/04R2*, 2005 ONWSIAT 1961, and *10/04R3*, 2012 ONWSIAT 36

The decisions in this worker's case resulted in a complex factual matrix on judicial review. The worker was injured in July 1986. He was paid total disability benefits until he returned to work in December 1986. In December 1987, he claimed he suffered a new injury. He was paid total disability benefits until May 1989, when he was granted a 7% permanent disability pension. He was paid a section 147(4) supplement from November 1989 until November 1991, when the Board terminated the supplement.

The worker was (following an appeal to WSIAT and the release of *Decision No. 1546/00*, 2000 ONWSIAT 2432) granted a section 147(2) supplement from November 1991 until March 1995. The Board sponsored the worker to attend university from 1995 to 1998, during which time he received section 147(2) benefits. By 2000, the worker's pension had increased to 15%.

The worker asked the Board for section 147(2) benefits from November 1989 to November 1991. The Appeals Resolution Officer (ARO) denied the appeal for section 147(2) benefits on the basis that the worker was not involved in Board-approved vocational rehabilitation (VR) activities between 1989 and 1991.

In another ARO decision, the worker was denied section 147(4)(b) benefits after August 9, 1998.

The worker appealed to WSIAT, seeking: a section 147(2) supplement from November 1, 1989 to November 1, 1991; a section 147(4) supplement after August 9, 1998; and a finding that he sustained a new accident in December 1987, rather than a recurrence of the 1986 injury.

At the worker's request, his appeal was considered as a written case.

In *Decision No. 10/04*, the Vice-Chair held: the worker was entitled to a section 147(2) supplement rather than a section 147(4) supplement from November 1989 to November 1, 1991; the worker was not entitled to a section 147(4) supplement after August 9, 1998; and the December 23, 1987 incident was a recurrence.

In regards to the period from November 1989 to November 1991, the Vice-Chair found that the Board had been in error in characterizing the section 147(4) benefits granted during this time as a "temporary" supplement, given the mandatory language contained in section 147(7). However, the Vice-Chair found that the Board's initial decision to award the section 147(4) benefit was in error because, during that period, the worker was participating in a VR program; therefore, as of that date he should have been awarded a section 147(2) supplement rather than a section 147(4) supplement.

In regards to section 147(4) benefits after August 9, 1998, the Vice-Chair noted that the worker had already completed a VR program and had an earning *capacity* (as opposed to

his actual earnings) that approximated his pre-accident earning capacity under section 147(2). Consequently the worker was not entitled to a section 147(4) supplement after August 1998.

The worker asked the Tribunal to reconsider *Decision No. 10/04* on the grounds that the Tribunal had no authority to terminate a section 147(4) supplement, that in regard to the period after August 1998, the Tribunal had failed to consider the increase in the worker's permanent pension, and that the December 23, 1987 accident was a new accident, rather than a recurrence.

The Vice-Chair denied the reconsideration. He found the worker should never have received a section 147(4) supplement in the first place, because the evidence demonstrated that as of 1989 the worker would have benefitted from VR. Accordingly he should have received a section 147(2) supplement, which was what the Vice-Chair had granted. A worker cannot receive both a section 147(2) and a 147(4) supplement at the same time. The Vice-Chair held the Tribunal has jurisdiction to determine eligibility for a section 147(4) supplement, though it may not be rescinded once entitlement is established.

The Vice-Chair also found the increase in the worker's pension was taken into account in the original decision, and that the December 1987 accident was a recurrence rather than a new accident.

The worker's application for a second reconsideration was denied by the same Vice-Chair in *Decision No. 10/04R2*. The worker's applications for six further reconsiderations were denied by the Tribunal Chair. The worker retained counsel and commenced a ninth reconsideration application. Submissions made on behalf of the worker alleged a breach of procedural fairness, in that the original Vice-Chair did not notify the worker that his section 147(4) benefits for the period November 1989 to November 1991, were at risk in the appeal.

In *Decision No. 10/04R3*, a new Vice-Chair denied the application for reconsideration. In his reasons, the Vice-Chair stipulated that he was only considering the procedural fairness arguments, as this had not been raised in prior reconsideration applications. These arguments were: whether the Vice-Chair committed a procedural error in not giving the worker notice that his initial entitlement to section 147(4) benefits would be an issue under consideration; whether the Vice-Chair committed a procedural error in not advising the worker of the downside risk arising from his request for section 147(2) benefits from November 1, 1989 to November 1, 1991; and if either of these errors did exist, whether correcting them would likely produce a different result.

In regards to notice, the Vice-Chair acknowledged that initial entitlement to section 147(4) benefits was not identified in the list of issues in *Decision No. 10/04*, and the worker and employer were not given an opportunity to provide submissions on this issue. However, the parties were made aware that section 147 was in issue, and that should have been sufficient to put the parties on notice that the interplay between the different parts of section 147 was within the scope of the appeal. Section 147 is a comprehensive scheme of supplementary benefits for a permanent impairment, and its provisions cannot be read on a compartmentalized basis. Where a worker has claimed section 147(2) benefits, it is not reasonable to argue that the Tribunal is precluded from considering section 147(4) benefits for the same period. In any event, the notice question is no longer relevant as the worker had received two detailed reconsideration decisions.

In regards to downside risk, the Vice-Chair held there was no downside risk for the worker when he claimed section 147(2) benefits for the period November 1989 to November 1991. He noted that the original Vice-Chair did not remove the applicant's entitlement to section 147 supplementary benefits for the period of November 1, 1989 to November 1, 1991. Rather, he simply found that the applicant was entitled to those benefits on the basis of section 147(2) and not section 147(4). Not only was the worker's appeal on the issue granted, his benefits were increased for that period. It was not reasonable to characterize this result as a downside risk.

Following the release of this decision, the worker commenced an application for judicial review. The worker was self-represented. The judicial review was heard in Thunder Bay on June 18, 2013, before Justices Matlow, Lederer, and Mulligan.

In written reasons [2013 ONWSIAT 4317] dated August 1, 2013, the Divisional Court unanimously dismissed the worker's application. The Court found that, based on the worker's submissions to the ARO as well as a reading of section 147, the worker knew that his section 147(4) supplement would be in issue when he appealed to the Tribunal for a section 147(2) supplement for the same time period. The Court found there was no downside risk, as the worker received more benefits as a result of the Tribunal decision. Further, it was likely that, had the worker not appealed, the Board's error in granting a section 147(4) benefit for a two-year period would not have been discovered and the section 147(4) supplement would have stayed as it was, i.e., for a two-year period only.

The worker sought leave to appeal the Divisional Court's decision to the Ontario Court of Appeal. The Tribunal filed responding materials.

On January 23, 2014, the Court of Appeal unanimously dismissed the worker's application for leave to appeal with costs, per Justices Rosenberg, Cronk and Tulloch.

The worker, still self-represented, then applied for leave to the Supreme Court of Canada. The Tribunal filed responding materials. On May 29, 2014, the worker's application for leave to appeal was dismissed by the Supreme Court of Canada, per Justices Abella, Rothstein and Moldaver.

Decisions No. 292/11, 2011 ONWSIAT 2205, and *292/11R*, 2012 ONWSIAT 1186

K, a part-time personal support worker, drove two patients to a prearranged location, then returned to her car. While sitting in her car reviewing a list of her clients to determine the rest of her activity that day, another vehicle struck her car. K sued the driver, and the company that owned the other vehicle, for damages.

The company was a Schedule 1 employer and the other driver was a worker in the course of his employment. The company applied to the Tribunal to take away K's right of action, alleging K was an employee in the course of her employment at the time of the accident. K alleged she was an independent operator, and that she was not in the course of her employment.

The Vice-Chair carefully reviewed the evidence, cited the relevant law and policy, and found that the preponderance of evidence demonstrated that K was a worker, rather than an independent operator.

The Vice-Chair also found that K was in the course of her employment at the time of the accident. Although there were periods during

the day when the worker was not in the course of her employment, at the time K's vehicle was struck she was engaged in an activity reasonably incidental to her employment.

The Vice-Chair thus found that K's right of action against the driver and company was taken away.

An application for reconsideration was dismissed by the same ViceChair.

The worker commenced an application for judicial review. The worker alleged the Tribunal's decision was unreasonable not to find she was an independent operator rather than a worker at the time of the accident, and also unreasonable to find that she was in the course of employment at the time of the accident. The Tribunal and the employer filed responding factums.

Judicial reviews are supposed to be brought within six months of the decision being challenged. Since it took the worker 16 months to bring the judicial review, the company brought a motion to dismiss the judicial review for delay. The Tribunal supported the motion.

The case was heard on April 9, 2014, in Ottawa, before Justices Whitten, Thomas, and Minnema. After hearing submissions from all parties on the motion and the merits of the judicial review, the Court reserved its decision on both matters. On May 22, 2014, the Court released its judgement [2014 ONSC 2297].

The Court denied the employer's motion to dismiss. The Court found that the delay was not unreasonable in the circumstances. The Court noted that during the time in question counsel for the worker had been on maternity leave, the worker had travelled out of the country to see ailing parents, and the worker herself was diagnosed with cancer. The Court stated [at para. 19] that "it cannot be said that the impugned time is of such a magnitude to have caused an unreasonable delay."

The Court then went on to unanimously dismiss the application for judicial review. In upholding the Tribunal's decision, the Court stated [at para. 30]:

> The decision was transparent, clear, and easy to understand, and the outcome, being the finding that the appellant was an employee in both roles, is easily defensible in respect of the facts and the law.

On the second and third issues, the Court stated [at paras. 31, 32]:

> Again, the decision was transparent, clear and easy to apprehend, and the finding that the appellant was in the course of her employment is easily defensible in respect of the facts and the law.
>
> There is nothing before us to suggest that the decisions of the Tribunal were anything but rational. For these reasons we dismiss the application.

The Tribunal did not seek costs. However, the company sought costs of over $31,000. Noting the worker had cancer and was living on $104 a week, the Court awarded no costs.

4 *Decision No. 1032/08*, 2012 ONWSIAT 1477

The worker appealed to the Tribunal for initial entitlement for a 1986 injury to his face, additional entitlement for his right shoulder, which the

worker related to a 2004 injury to his right elbow, and LOE benefits after September 28, 2005.

The Panel allowed initial entitlement for the scar on the worker's face. However, as it was not substantial or cosmetically offensive, the Panel found there was no eligibility for compensation. The Panel also denied entitlement for the worker's shoulder condition, as it was not caused by work or the elbow injury. The Panel confirmed the termination of LOE benefits as of September 28, 2005.

In May 2014, the worker commenced an application for judicial review. The main issue related to whether the worker's shoulder pain was related to an elbow injury. The worker had counsel at the Tribunal hearing, but was self-represented on his application for judicial review. Attempts to resolve issues relating to new materials the worker filed on judicial review were not successful.

The Tribunal filed its factum, in which it raised the timeliness of the worker's judicial review application, and challenged the worker's new materials.

The judicial review was heard in Sudbury in October 2014, before the Panel of Marrocco ACJ, Corbett and Horkins JJ. The Court's decision, released on October 27, 2014 [2014 ONSC 6178], unanimously dismissed the judicial review. The Court found [at para. 2] that although the Tribunal's arguments on timeliness and the worker's new materials had considerable merit, "we prefer to rest our decision on the merits of the application rather than these preliminary issues."

Referring to the Tribunal's weighing of the medical evidence, the Court stated [at para. 10]:

> This kind of determination lies at the very core of the Tribunal's mandate and competence. It is a finding of fact made on the basis of a detailed review and weighing of the evidence. The Tribunal made no error of law in arriving at this conclusion. And while there is evidence on both sides of the question, the Tribunal's conclusion cannot be said to have been made without evidence or as a result of a fundamental mischaracterization of the evidence. We are not entitled to substitute our view of the evidence for that of the Tribunal, even if we consider that we might have come to a different conclusion.

5 *Decision No. 1357/13*, 2013 ONWSIAT 1948

A family services worker became upset when she received a telephone call advising her of the death of a three-year-old client. The worker had an emotional reaction to the news and claimed she was unable to return to work. The Board denied entitlement for traumatic mental stress. The worker appealed to the Tribunal.

The Panel found the worker was entitled to benefits for traumatic mental stress, as she had suffered an acute reaction to a sudden and unexpected traumatic event while she was in the course of employment. Further, the way the worker learned of the death through a phone call exacerbated the shock. The worker was also concerned about her potential personal liability. Eventually, she was unable to continue working in her job.

The Panel applied Board policy and found the triggering event was identifiable, objectively traumatic, and unexpected in the normal course of employment. The Panel also found the worker's acute reaction led to a psychological injury, causing the worker's loss of earnings. The

Panel directed the Board to assess the worker's entitlement to benefits.

In March 2014, the employer commenced an application for judicial review. The Tribunal has filed its responding factum. The judicial review is scheduled to be heard in March 2015.

Decisions No. 113 5/12, 2013 ONWSIAT 1001, and *1135/12R*, 2013 ONWSIAT 2674

An apprentice who worked for an auto repair shop helped his employer deliver a derelict vehicle to a recycling/scrap dealer. This worker steered the vehicle down a public street while being pushed from behind by his employer's vehicle. Once they arrived at the scrap yard, the worker remained in the derelict vehicle while a bobcat pushed it on to a weigh scale. Due to a failure to communicate, when the bobcat pushed the vehicle off the scale it was immediately crushed by a crane while the worker was still inside. The worker suffered serious injuries.

The worker commenced an action against the scrap yard, and three employees of the scrap yard. These defendants then commenced a third party action against the worker's employer.

The worker received statutory accident benefits (SABs). The insurance company which provided these benefits, and the third parties, applied to the Tribunal under section 31 of the WSIA for a determination of whether the worker's right of action was taken away. The only issue was whether the worker and the three workers of the scrap yard were in the course of their employment when the accident occurred.

The Vice-Chair found on the balance of probabilities that both the worker and the defendant's employees were in the course of their employment when the accident happened. The lawsuit brought by the worker was barred by section 28 of the WSIA, and the grounds for the third party action no longer existed. Consequently, the worker was entitled to benefits from the insurance plan.

The worker commenced an application for judicial review. Following the Tribunal's request for the worker to amend his proceedings to add the Tribunal as a party, the Tribunal filed its Record of Proceedings. The Tribunal has filed its responding factum. The judicial review will be heard in April 2015.

Decision No. 2214/13, 2014 ONWSIAT 615

In 1967, the worker, then employed as a police officer, suffered injuries to his upper body when he was attacked by a prisoner. He left the police force two years later. He then embarked on a career operating garages, working for a truck rental company, and as a millwright. He was involved in a motor vehicle accident in 1973, and suffered a number of work accidents including various low back injuries. The WSIB denied ongoing entitlement for the low back, and initial entitlement for the neck, shoulders and arms. The worker appealed to the Tribunal.

Due to the date of the 1967 accident, the pre-1985 Act applied to the worker's appeal.

The Panel held the worker did not have ongoing entitlement for the low back or shoulders as a result of the 1967 accident. However, the Panel found the 1967 accident caused a temporary aggravation of a pre-existing back and neck condition.

The worker, who is self-represented, has commenced an application for judicial review. The Tribunal has asked the worker to confirm whether he will be providing the transcript of the Tribunal hearing, at which time the Tribunal will file its Record of Proceedings. In June 2014, the worker asked the Tribunal to postpone its activities related to the judicial review application so that he could receive legal direction from the OWA regarding his application. The Tribunal agreed to the worker's request and is waiting for the worker to confirm his next steps before proceeding with filing its Record of Proceedings.

Decisions No. 1769/11, 2011 ONWSIAT 2656, and *1769/11R*, 2013 ONWSIAT 558

The worker was employed in two jobs, one in construction and one in a night club. He was injured on the construction job. He was initially granted WSIB benefits calculated on the short-term basis of his earnings from his concurrent employment with both employers.

The worker had an inconsistent employment history. When his long-term benefits were calculated, the benefits were based on a finding that the night club job was only short-term. The worker appealed, alleging that his long-term average earnings should be the same as his short-term earnings.

The appeal was denied. The Panel examined the worker's employment history, as well as the two concurrent jobs. It found the worker's employment pattern demonstrated short-term, nonpermanent employment, which included both the worker's concurrent jobs. Board policy established that it was not fair to calculate long-term earnings on the basis of non-permanent jobs. The Panel agreed with the Board that the long-term earnings should be calculated on the basis of average earnings from all concurrent employment during the recalculation period.

The worker's application for reconsideration was dismissed by a different Vice-Chair.

In November 2014, the worker commenced an application for judicial review. It is not clear why there was a delay of almost three years in commencing the judicial review application. The Tribunal is waiting for the applicant to order the transcript of the Tribunal hearing, following which the Tribunal will file the Record of Proceedings.

Decisions No. 959/13, 2013 ONWSIAT 1281, and *959/13R*, 2013 ONWSIAT 2345

The worker's appeal for entitlement for NEL benefits for his low back, and to LOE benefits from August 17, 2010, was denied by the Tribunal Panel.

The worker was a foreman with a paving company who injured his back at work in April 2009. The Panel found that the worker's compensable condition resolved by the time the WSIB terminated LOE benefits in 2010, as the worker's non-compensable factors were responsible for his complaints. Further, the Panel found the worker had been offered suitable work at no wage loss.

The worker's application for reconsideration was denied. In the reconsideration decision, the same Vice-Chair clarified that there had been no ruling on the worker's potential psychological entitlement, so there was nothing that would preclude the worker from pursuing entitlement at the WSIB pursuant to the chronic pain or psychotraumatic disability policies.

In December 2013, the worker commenced an application for judicial review. Counsel for the worker and the Tribunal have agreed the judicial review will not proceed until the worker has obtained a ruling on psychological/chronic pain entitlement from the WSIB.

10 *Decisions No. 2175/10*, 2010 ONWSIAT 2538, and *2175/10R*, 2011 ONWSIAT 1640

The worker appealed for initial entitlement for specific injuries to both knees. The employer claimed the worker had knee problems when the worker was hired, that the worker did not report the injury, and that his knee problems were not related to work. After hearing testimony from a number of witnesses and reviewing the medical evidence, the Vice-Chair denied the appeal. She found significant discrepancies about the date of the accident, whether the accident was reported, and the nature of the injuries.

The worker commenced an application for judicial review. The worker filed an affidavit with his factum, which the Tribunal objected to. The judicial review was scheduled to be heard on February 28, 2013.

However, following discussions with the worker's counsel, the judicial review was adjourned *sine die* on consent. *Decision No. 2175/10* explicitly made a finding based only on whether there was entitlement on the basis of a chance event. The worker returned to the Board for a decision on whether there was entitlement on the basis of disablement.

The Board denied entitlement for disablement. The worker appealed this issue to the Tribunal. It was heard on November 13, 2014, and at the end of 2014, the decision was pending. If the worker is satisfied with the ruling of the Tribunal on the issue of disablement, the judicial review will be abandoned. If the worker is not satisfied, the judicial review will proceed on both the issue of chance event and disablement.

11 *Decision No. 398/14*, 2014 ONWSIAT 514

B was a passenger in a car driven by P, his co-worker. B was injured when P's car went off the road. B applied for, and received, statutory accident benefits . The insurer of the driver of the car applied to WSIAT for an order that B's right of action was taken away.

Both B and P had been hired to work on a construction project at a cottage in a rural area. They were staying at a nearby motel, which was booked and paid for by their employer. P was paid some monies for mileage by the employer for the use of his car. Both B and P were given a *per diem* for food and other expenses while working remotely. While working at the cottage they drove to a restaurant, located in the town closest to their worksite, for their lunch break. The accident occurred after lunch, on the way back to the worksite. The main issue was whether B and P were in the course of employment at the time of the accident.

The Vice-Chair characterized the issue as whether B was involved in an activity that was reasonably incidental to employment at the time of the accident. He reviewed Board policy and noted that, although the general rule was that a person is not in the course of employment after leaving the worksite, there was an exception for workers travelling on their employer's business and who

must stay overnight at a motel paid for by their employer.

Further, although a worker is often not in the course of employment during a lunch break, Tribunal decisions have taken a broader approach to what is reasonably incidental when travelling workers are staying overnight at accommodations paid for by their employer. Lunch breaks in this situation have been viewed to be reasonably incidental to employment.

The Vice-Chair noted that workers can still take themselves out of the course of employment if they were engaged in a personal activity at the time of the accident that was not connected to their employment. The Vice-Chair found that in this case there was no personal activity other than going to lunch. The workers had eaten at the closest and only restaurant in the area. After lunch the two workers proceeded directly back towards the worksite.

The Vice-Chair found that B's right of action was taken away.

In September 2014, B commenced an application for judicial review. There is an issue about whether all the appropriate parties have been named in the style of cause. Once this is resolved the Tribunal will file its factum.

Other Legal Matters

Actions in Superior Court

Decision No. 1065/06, 2012 ONWSIAT 2152

Decision No. 1065/06 denied the worker's appeal for initial entitlement for traumatic mental stress. In January 2013, the worker served WSIAT with a Statement of Claim and Amended Statement of Claim.

Although the Statement of Claim does not mention *Decision No. 1065/05*, and does not name any of the Panel members individually, it was apparent that the worker was suing WSIAT because of that decision.

The worker also named as defendants the Crown, the Ministry of Health, the Ontario Human Rights Commission, Health Professions Appeal and Review Board and the Ontario Labour Relations Board. She was seeking damages of $1,500,000, as well as other relief. The action related to how the worker's perceived wrongs have been handled by a variety of institutions.

Crown Law Office Civil (CLOC) agreed to represent a number of defendants, including the Tribunal. CLOC brought a motion to dismiss the action or in the alternative to strike out the Statement of Claim. The motion was heard in January 2014, and the decision was released on June 4, 2014 [2014 ONSC 2267]. The action was dismissed against WSIAT and all the defendants, with the exception that the worker could amend her pleadings as against the Crown.

Decisions No. 691/05, 2008 ONWSIAT 402, and *691/05R*, 2013 ONWSIAT 1292

Following four days of hearing, the Panel allowed this selfrepresented worker's appeal in part. The worker was granted initial entitlement to benefits for his neck, and for various periods of temporary partial disability benefits. He was denied initial entitlement for an injury to his upper and mid-back, for a permanent impairment for his upper, mid-back and neck, for labour market re-entry (LMR), and for reimbursement of travel expenses. The WSIB's determination of the worker's future economic loss (FEL) award and his supplemental employee benefits were found to be correct.

In July 2013, the Tribunal and the Board were served with a Notice of Application, issued out of the Superior Court of Justice, asking that *Decisions No. 691/05* and *691/05R* be set aside. The Tribunal wrote to the worker to advise that he had clearly commenced proceedings in the wrong court. The Tribunal informed the worker that if he wanted to challenge the Tribunal's decisions, he was required to bring an application for judicial review in the Divisional Court. The Tribunal further advised the worker that if he did not immediately file a Notice of Abandonment, the Tribunal would bring a motion to dismiss the application.

The worker abandoned his action in August 2013.

In February 2014, the worker commenced a new action against the WSIB and the Tribunal, this time claiming relief of over $6,000,000. Much of the claim contains allegations against the WSIB, but the claim also takes issue with the Tribunal's decisions, alleging errors and bad faith. It alleged the worker had been threatened by one of the Panel members. The worker also served the Tribunal with what appears to be a surreptitious recording.

The Tribunal and the Board each brought a motion to dismiss the worker's action. The motions were scheduled for October 22, 2014. The worker subsequently advised that he wanted to adjourn the motions. The motions are now scheduled to be heard on February 23, 2015.

Ontario Human Rights Tribunal

Case Involving Paralegal

A paralegal that had represented a number of injured workers before the Tribunal brought an application to the Human Rights Tribunal of Ontario (HRTO), alleging that WSIAT discriminated against him in the provision of services on the grounds of disability and reprisal or threat of reprisal.

The paralegal's Law Society of Upper Canada (LSUC) status appeared in the Law Society's Lawyer and Paralegal Directory as "suspended administratively." WSIAT became aware of this and gave him an opportunity to show that he was in good standing with the Law Society or that he was exempt under the *Law Society Act* or a Regulation of the Law Society.

The paralegal did not respond, so he was removed as representative from two WSIAT appeals. The workers in both appeals were notified.

The Law Society Manager of Membership Services subsequently advised WSIAT that the paralegal's administrative suspension had been an error. He also advised that the paralegal's current status of "Not Providing Legal Services – Other" prevented the paralegal from providing legal services. However, he advised that the paralegal could change his LSUC status at any point, and thus be able to provide legal services.

Well before the LSUC's characterization of the paralegal's status, TCO staff had identified serious concerns with respect to the paralegal's ability to properly represent workers at WSIAT. TCO referred the paralegal's conduct to the Tribunal Chair under the Tribunal's Practice Direction: *WSIAT Code of Conduct for Representatives* and Practice Direction: *Representatives.*

The Tribunal Chair gave the paralegal an opportunity to make submissions on the referral

and the remedy, if any, which might be imposed. The paralegal did not respond despite the Chair extending the time for submissions. The Tribunal Chair considered the matter based on the material submitted by TCO and decided to refer the issue of the paralegal's conduct to the Law Society.

In his application to the HRTO, the paralegal alleges that: (1) the Tribunal failed to accommodate him; (2) the Tribunal sent letters to his clients incorrectly informing them of his LSUC status (as a form of reprisal); and (3) the Tribunal sent another letter to another one of his clients (as a form of reprisal) because someone who was assisting the paralegal (Mr. B) requested a meeting with the Tribunal Chair.

> "Over its 29-year history…[t]he Tribunal has released over 66,000 decisions, but only once has a final decision of a court quashed a Tribunal decision."

Mr. B was listed as the paralegal's representative in the application to the HRTO. On September 25, 2013, the HRTO issued an interim decision removing Mr. B and his organization as representatives for the paralegal since Mr. B was not licenced and did not fall under any – Law Society By-Law 4 exemption.

WSIAT received a letter from the HRTO requesting that a Response be filed. WSIAT filed its Response, and also made a Request for an Order During Proceedings that the application be dismissed as it was outside the jurisdiction of the HRTO or, in the alternative, that the HRTO hold a summary hearing to determine whether the application should be dismissed because it had no reasonable prospect of success.

On January 9, 2014, in a Case Assessment Direction decision, the HRTO granted WSIAT's Request for a summary hearing to determine whether the paralegal's application should be dismissed on the basis that there was no reasonable prospect that it would succeed. A summary hearing was scheduled for June 2, 2014, by teleconference.

The paralegal failed to attend the summary hearing. The HRTO issued a decision on June 3, 2014 [2014 HRTO 784], dismissing the application as abandoned due to the paralegal's failure to attend.

OMBUDSMAN REVIEWS

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

When the Ombudsman's Office receives a complaint about a Tribunal decision, the Office considers whether the decision is authorized by the legislation, whether the decision is reasonable in light of the evidence and whether the process was fair. In some cases, the Ombudsman's Office may make informal inquiries in order to satisfy itself that the decision was reasonable and the process fair. If the Ombudsman's Office identifies issues which indicate the need for a formal investigation, the Tribunal will be notified of the Ombudsman's intent to investigate. While an Ombudsman investigation may result in a recommendation to reconsider, this is unusual. Generally, the Ombudsman concludes that there is no reason to question the Tribunal's decision.

The Tribunal typically receives a few notifications of the Ombudsman's intent to investigate each year. In 2014, however, the Tribunal did not receive any new intent to investigate notifications, nor did it receive any intent to investigate notifications in 2012 or 2013. There were no outstanding intent to investigate files in 2014.

TRIBUNAL REPORT

TRIBUNAL ORGANIZATION

Vice-Chairs, Members and Staff

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 2014 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Executive Offices

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

The Chair is responsible for the overall strategic direction and performance of the Tribunal. The Chair provides leadership to the Tribunal to ensure that it operates within its mandate, as outlined in the *Workplace Safety and Insurance Act, 1997*, and within approved governance and accountability requirements of the government.

The Chair's Office manages the recruitment, appointment and re-appointment process for Order in Council (OIC) appointees (adjudicators) to WSIAT, and in doing so, works with the Public Appointments Secretariat and the Ministry of Labour. The Office also responds to correspondence from parties and stakeholders. The Chair works closely with the Appeals Administrator, Counsel to the Chair and General Counsel on case-related matters.

In 2014, the Chair's Office focused its work on OIC recruitment and re-appointments. Three part-time Vice-Chair competition postings appeared on the Public Appointments Secretariat's website; new appointments were received late in the year and in early 2015. Recruitment of new Vice-Chairs is a key strategy to addressing the high appeals caseload.

The Executive Director is responsible for the administration of the Tribunal's operations according to the strategic direction and approval of the Chair; managing the Tribunal's quality control processes; developing policies and procedures for effective administration and appeal processing in compliance with statutory obligations; supporting the educational needs of OIC appointees; and overseeing the preparation of the Tribunal's business and case management plans and quarterly reports. The Executive Director leads Tribunal operations through a talented senior management team.

The Tribunal's administration is independent from the Workplace Safety and Insurance Board (WSIB) and the Ministry of Labour. In addition to the departments outlined in the following pages, the Tribunal administers its own human resources and finance functions, and staff and adjudicator training. The Tribunal also provides shared services to the Ontario Labour Relations Board and the Pay Equity Hearings Tribunal pursuant to a Shared Services Agreement.

The Tribunal's Human Resources Department is led by the Associate Director of Human Resources and Labour Relations. This Department provides the entire range of labour relations and human resources functions to Tribunal managers and staff. These functions include: payroll, pension and benefits; staffing and recruitment; compensation and performance management; employee and labour relations; health, safety and wellness;

corporate staff training and development; and support for the business planning cycle.

The Tribunal's Human Resources plan consists of three main priorities: leveraging organizational efficiencies, strengthening organizational capacity, and cultivating an inclusive, accessible and healthy work environment. These key priorities strategically align with the Tribunal's mission to provide exceptional quality public service. In 2014, business process reviews examined efficiencies and aligned workflow strategies to address the high volume of appeals. Organizational capacity was reinforced through targeted recruitment initiatives, including the Tribunal's internship program, and cross-training development opportunities. Enhancements to the Tribunal's employee health, safety and wellness programs included renewed accessible recruitment and selection tools, enriched individual accommodation plans and return-to-work processes, expanded emergency response information and procedures, and the launch of an accessible health, wellness and professional development platform. In addition, a refresh of the Tribunal's Occupational Health and Safety policy was complemented by the introduction of a Health and Safety Awareness training program and a Workplace Hazardous Materials Information System (WHMIS) course.

The Tribunal's Finance Department is led by the Manager, Financial Management and Controllership. This group processes all Tribunal financial transactions, including payments to the part-time OIC appointees. They maintain the bank account and request monthly reimbursement of funds from WSIB. Other activities include maintenance of the Tribunal's financial system, development of the annual budget, preparing monthly, quarterly and annual financial reports and assistance with the annual audit.

The Adjudication Support Group reports into the Executive Offices to the Executive Assistant to the Chair. This group processes and releases all decisions prepared by Tribunal Panels and Vice-Chairs.

Reporting into the Executive Offices, the OIC professional development committee is composed of the Orientation Vice-Chair, General Counsel, Counsel to the Chair, the Executive Director, the Manager of the Medical Liaison Office and the Executive Assistant to the Chair. In 2014, the committee developed and co-ordinated the presentation of three professional development sessions for all Tribunal adjudicators. Also, three smaller professional development sessions were prepared and presented to align with current issues on the hearing schedule. During the last quarter of 2014, the Orientation Vice-Chair and the Executive Assistant to the Chair planned the OIC orientation programs for presentation in early 2015. Support for OIC training and the new adjudicator orientation are provided by the staff in the Executive Offices with the supervision of the Executive Assistant to the Chair.

The Executive Director is responsible for the preparation of caseload reports for the Ministry and leads the Backlog Reduction Committee. The Committee is comprised of the Appeals Administrator, the Director, Appeal Services, the Executive Assistant to the Chair, and the Director, Information and Technology Services. The group meets regularly to discuss the caseload, targets, and strategies to reduce the inventory and improve the timelines to hearing.

A large number of incoming appeals from the WSIB has caused a high active inventory at WSIAT. The Tribunal's notice of appeal process is flexible, efficient and effective at coping with the high caseload. Due to attrition in the adjudicator roster, cases are ready to be heard, but there are not enough WSIAT Vice-Chairs to hear them.

The Tribunal is taking all possible steps to nimbly respond to the high volume of cases.

As an adjudicative agency in Ontario, and the final level of appeal in the workplace safety and insurance system, the Tribunal focuses on quality adjudication and reasoned decisions, supported by strong process, developed and implemented consistent with the rules of natural justice. These pillars promote finality in the system.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) has been in existence since the creation of the Tribunal in 1985. It is a small, expert legal department which is separate from the Tribunal Counsel Office (TCO) and is not involved in making submissions at hearings. Publications Counsel is also a member of OCC. In 2014, the OWTL Librarians moved from OCC to the Information and Technology Services Department.

OCC Lawyers

Draft review, which has been described in prior Annual Reports, is the responsibility of OCC lawyers. OCC lawyers also provide advice to the Chair and Chair's Office with respect to a range of matters, including accountability documents, practice and procedure, complicated reconsideration requests, post-decision inquiries, Ombudsman inquiries, conduct matters and other complaints. In addition, in 2014 OCC lawyers provided advice on accessibility issues and corporate occupational health and safety policy.

Professional development continued to be important, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. OCC lawyers completed the orientation training for three part-time Vice-Chairs appointed in late 2013 and updated the orientation materials in anticipation of further Order-in-Council appointments. While OCC provides professional development sessions to adjudicators and staff, there was a particular focus in 2014 on issues of interest to mid-level OICs. Several professional development sessions were designed and presented to them. OCC lawyers also continued work on various knowledge management resources to facilitate OIC access to information on law, policy and procedure through electronic means.

OCC lawyers are also responsible for assisting the Tribunal in meeting its obligations under the *Freedom of Information and Protection of Privacy Act* (FIPPA). OCC lawyers handle FIPPA requests and appeals and provide advice on privacy matters. Assistance is also provided with respect to records management issues.

Publications Counsel

During 2014, the Tribunal released approximately 2,800 decisions, which were all processed by Publications Counsel. These form part of the over 66,000 decisions released since the Tribunal's creation in 1985. The interval between the release of a decision and its addition to the Tribunal's database was reduced from approximately six weeks to approximately five weeks.

All Tribunal decisions are published and available free of charge through the Tribunal's searchable database on the Tribunal's website at wsiat.on.ca. A database record is created for each decision which includes keywords and a link to the full text. Many records also contain a summary of the decision. In 2014, Publications Counsel wrote summaries for 39% of released decisions. The Tribunal database is searchable on a number of

fields and the full text of Tribunal decisions is available free of charge on the website of the Canadian Legal Information Institute (CanLII) and on a paid basis on the LexisNexis (Quicklaw) website.

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

Office of the Vice-Chair Registrar

The staff of the Office of the Vice-Chair Registrar (OVCR) are the primary point of contact for appellants, respondents and representatives with an appeal or application at the Tribunal. They complete all initial processing of appeals. On receipt of an appeal, the Tribunal gives notice to the parties. When the appellant advises they are ready to proceed to a hearing, the Tribunal requests the claim or firm files from the Board. The Tribunal then prepares the appeal for hearing, ensuring that the appeal documents are complete and that the case is ready for hearing.

The Tribunal's pre-hearing staff utilize a variety of alternative dispute resolution techniques to resolve appeals prior to the hearing. Staff trained in communication and conflict resolution work with both represented and unrepresented parties.

The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. On referral by Tribunal staff and the parties to the appeal, the Vice-Chair Registrar may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and issue agenda. The process may be oral or written and results in a written decision with reasons. Requests to have a matter put to the Vice-Chair Registrar are raised with OVCR staff. The Vice-Chair Registrar also determines whether a file has been abandoned during the early stages of an appeal.

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

The Early Review Department

The Early Review Department is responsible for the initial processing of all Tribunal appeals. Staff review all Notices and Confirmations of Appeals to ensure that they are complete and meet legislative requirements. They also identify appeals that can be heard by way of a written process.

Early Review staff review appeals to determine whether there are any jurisdictional or evidentiary issues that would prevent the Tribunal from deciding an appeal. On occasion, appeals may be withdrawn by the appellant while the parties pursue other options.

Vice-Chair Registrar Teams

All files are assigned to pre-hearing staff for substantive review to ensure that they are ready for hearing. This instrumental step reduces the number of cases that are adjourned or require post-hearing investigations due to an incomplete issue agenda, outstanding issues at the Board, or incomplete evidence. Staff respond to party correspondence and queries and to Vice-Chair or Panel instructions up to the hearing date.

The Alternative Dispute Resolution (ADR) Department

Staff in the ADR Department monitor appeals that are dormant or inactive and work with the

Vice-Chair Registrar to close those appeals that have been abandoned. This work allows other pre-hearing staff to focus on active appeals proceeding to hearing. ADR services may be offered to the parties of an active appeal in an attempt to: resolve the issues in dispute without a formal hearing; simplify multi-issue appeals prior to proceeding to a hearing; and/or discuss significant problems (e.g., the absence of evidence, alternative courses of action). For suitable appeals, the ADR services offered may include a formal mediation held by a Tribunal mediator. If an agreement consistent with law and Board policy is reached, a Tribunal Vice-Chair will review the matter and may issue a decision incorporating the terms of the executed agreement. If issues remain in dispute following the ADR services, the appeal is prepared for a hearing.

Tribunal Counsel Office

The Tribunal Counsel Office (TCO) is a centre of legal and medical expertise at the Tribunal. In addition to administrative support staff, TCO consists of three sections, all of which work closely together, and all of which report to the General Counsel: the TCO lawyers, the TCO legal workers, and the Medical Liaison Office.

Hearing Work

Under the Tribunal's case processing model, TCO oversees appeals which raise the most complex medical, legal or policy issues. These appeals are streamed to TCO from the Early Review Department, or are assigned to TCO for post-hearing work at the direction of a Panel or Vice-Chair. TCO also handles applications for reconsideration of Tribunal decisions.

Pre-hearing Work

When a complex appeal is received by TCO prior to a hearing, the case is assigned to a lawyer. The case is carried by that lawyer until the final decision is released. The lawyer resolves legal, policy and evidentiary issues that arise prior to the hearing, provides assistance to the parties if there are procedural questions concerning the appeal, and attends at the hearing to question witnesses and make submissions on points of law, policy, procedure and evidence.

Post-hearing Work

After a hearing, a Tribunal Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. In those circumstances, the Vice-Chair or Panel sends a written request for assistance to the Post-hearing Manager in the Tribunal Counsel Office. The request is then assigned to a TCO legal worker or lawyer, depending on the complexity of the matters involved. The legal worker or lawyer carries out the directions of the Panel or Vice-Chair, and co-ordinates any necessary input from the parties to the appeal.

Typical post-hearing directions include instructions to obtain important evidence (usually medical) found to be missing at the appeal, to request a report from a Tribunal medical assessor, or to arrange for written submissions from the parties and TCO lawyers.

TCO Lawyers

TCO has a small group of lawyers with significant expertise in workplace safety and insurance law, and administrative law. As noted above, lawyers in TCO handle the most complex appeals involving legal and medical issues. TCO lawyers also provide technical case-related advice to legal workers in TCO and the Office of the Vice-Chair Registrar.

Examples of appeals handled by TCO lawyers include complex occupational disease appeals, employer assessment appeals, appeals involving

difficult procedural issues, and appeals which raise constitutional and *Charter of Rights and Freedoms* issues. A bilingual TCO lawyer is available to assist with French language appeals.

A large component of TCO lawyer work involves providing non-appeal related advice to other departments of the Tribunal. Matters such as negotiating contracts, security, human resource issues, training, and liaison with organizations outside the Tribunal all require input from TCO lawyers.

General Counsel and TCO lawyers represent the Tribunal on applications for judicial review of Tribunal decisions, and on other Tribunalrelated court matters.

TCO Legal Workers

TCO legal workers handle exclusively post-hearing appeal work and reconsiderations. They are a small, highly trained group which works diligently to ensure the directions of Panels and Vice-Chairs are completed quickly, thoroughly and efficiently.

The TCO Post-hearing Manager directs and assigns work to the TCO legal workers. The Post-hearing Manager also reviews and analyzes the types of post-hearing requests, the reasons for adjournments of hearings, and monitors the progression of the post-hearing and reconsideration caseload.

Emergency Management and Security

Security at the Tribunal is a priority. The Tribunal is committed to providing a safe and accessible environment for staff, adjudicators and parties.

General Counsel is the Chair of WSIAT's Emergency Management and Security (EMS) Committee. The EMS Committee meets regularly to review security concerns, develop and revise security policies, and to make recommendations to ensure the safety of everyone at the Tribunal.

The Chair of the EMS Committee is supported by an EMS Deputy Lead, who is responsible for reporting to the EMS Committee on incidents involving workplace violence and security. The EMS Deputy Lead co-ordinates emergency evacuations, emergency drills and emergency response personnel. The Deputy Lead also co-ordinates Tribunal emergency and security policies, security systems, and procedures and training for EMS personnel.

Medical Liaison Office

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

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

MLO Staff

Jennifer Iaboni, RN, is the Manager of MLO. Jennifer has an outstanding clinical nursing background, having worked in surgical nursing at Toronto Western Hospital, Centenary Health Centre and York Central Hospital. In addition to 11 years experience in critical care, Jennifer gained valuable experience while working as a Nurse Case Manager and a Nurse Consultant at the WSIB.

The MLO Manager is assisted by a full-time MLO Officer. At the end of 2014, a competition was underway for a highly qualified candidate to fill this position.

Medical Counsellors

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

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

At the post-hearing stage, Panels or Vice-Chairs may need further medical information to decide an appeal. These adjudicators may request the assistance of MLO in preparing specific questions for Medical Assessors. Medical Counsellors assist MLO by providing questions for the approval of the Panels or Vice-Chairs, and by recommending the most suitable Medical Assessor.

Medical Assessors

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

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

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

in educating Tribunal staff and adjudicators in a general way about a medical issue or procedure coming within their area of expertise.

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

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

The Appointment Process for Medical Assessors

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

MLO Resources Available to the Public

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

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

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

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

TCO Support Staff

TCO and MLO share a small group of dedicated support staff. Working under the direction of the Supervisor of Administrative Services, TCO support staff assist the lawyers, nurses and legal workers with case-tracking input, file management, preparation and filing of court documents, and general support duties.

Scheduling Department

The Tribunal's Scheduling Department is led by the Appeals Administrator. Once an appeal is hearing ready, the Department receives a request to schedule a hearing date from the Tribunal Counsel Office or the Office of the Vice-Chair Registrar. The Department co-ordinates the hearing schedule for all appeals, oral and written, heard by the Tribunal. The Tribunal conducts hearings in both English and French. The Tribunal schedules hearings in Hamilton, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto and Windsor. The Department uses a long-standing scheduling model that allows for consultation with parties in the setting of hearing dates. As well, the Department arranges for interpreters, regional boardrooms, service of summonses, the scheduling of pre-hearing conferences and determines the amount of time designated for a hearing and the hearing location.

Pre-hearing adjournment requests are decided by the Appeals Administrator.

Information and Technology Services

The Information and Technology Services Department (ITS) designs, develops and implements the following information and information technology services for the Tribunal:

- manages the operations of the Ontario Workplace Tribunals Library (OWTL);
- develops policies and strategies for delivering, sustaining and improving information services and information technologies;
- develops, maintains and improves information and information technology resources;
- implements procedures to protect, organize and maintain the Tribunal's information and information systems;
- designs and delivers end-user assistance programs;
- plans and evaluates the organization's productivity and provides individual and unit feedback regarding caseload management; and,
- implements procedures and processes to ensure that information is made available in ways that are consistent with the principles, laws and directives governing language, content and accessibility and that information is managed in accordance with rules – governing collection, use, disclosure and retention.

Library and Research Services

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

available to members of the public to use, when licensing permits.

In 2014, the central reference line, reference desk and reference database were fully operational. Library staff answered over 827 questions concerning workplace safety, workers' compensation, labour relations, union certification, pay equity matters and general legal/legislative research. The anonymized reference database allows staff to develop training tips by using answers to questions and further assisting users in their research. The library continues to add public documents to the Ontario Workplace Tribunals Library website to meet the increased demand for online access to our specialized collections.

As well, in 2014, the following projects were undertaken:

- WSIAT Legislative Historical Resources were digitized and catalogued;
- OLRB union certificates continued to be digitized and indexed for easier access;
- prepared and presented eight training modules for WSIA and OLRB; and,
- developed dedicated wiki and training materials for articling students.

Policy Development and Implementation

The Tribunal's main policies relating to information services include the *Recorded Information Management Policy*, *Privacy Guidelines Policy*, *Policy Regarding Use of Information Technology* and the *OIC Computer Support Policy*. These policies are reviewed regularly to determine if revisions are necessary or desirable. In 2014, the *OIC Computer Support Policy* was modified to reflect new recommendations regarding computer equipment for OIC remote access.

Technology Procurements and Equipment Upgrades

In 2014, the Department improved its disaster preparedness by introducing a second storage area network (SAN) into its data centre. The first phase of the project involved acquiring and assembling all of the components and the second phase involved integrating the new SAN into the environment and partnering it with the original SAN in a fail-over configuration. Also in 2014, the Department upgraded eight of its high speed scanning systems.

Portal and Software Development

In addition to enhancements to existing modules and reporting systems, a number of entirely new modules were created for the Tribunal's custom-built caseload and administration management applications. The Tribunal's intranet portals were updated with new content, and new online training materials were introduced. Working in collaboration with the Office of the Counsel to the Chair, the developers undertook several efforts that further unified two of the Tribunal's main knowledge portals. The developers finalized the implementation of new software that evaluates web and portal content for compliance with common software standards (including those applicable to the Tribunal under the *Information Accessibility Standards Regulation*).

User Support and Technology Training

Throughout 2014, Information and Technology Services staff ensured that IT resources and services were available to all of the Tribunal's OICs and employees. As part of their regular duties, technicians granted and revoked access

privileges, created and managed permissions profiles for applications and shared folders, and managed the Tribunal's information backup protocols. The staff also conducted new user orientation and topical seminars for adjudicators and for staff throughout the course of the year. They partnered with private firms (service providers) to ensure that internet sites were effectively hosted, incoming email was effectively routed and filtered, and that the Tribunal's computer room protection equipment was continually monitored and serviced at the regular quarterly and annual service intervals.

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

The Department maintains a comprehensive IT Help Request service. This service is accessed electronically by staff and by OICs from any computer workstation at the Tribunal and from any Tribunal-configured remote connection. In 2014, through this service, the Department handled 4,982 support service requests. The distribution of types of support services was similar to the distribution in previous years. Seventy-three per cent of the support requests were for software application support. This was followed by requests for equipment servicing (10%), connection assistance (7%), and network account management (6%). Equipment booking and topical training requests accounted for the remainder (4%).

Information Management and Privacy

The Department supported the Tribunal and facilitated the annual implementation of the Tribunal's electronic records schedules. This involved providing managers with detailed information about files subject to review and deletion, assisting managers in their retention and deletion responsibilities and ensuring that records of deletion were filed as required.

Department staff also co-ordinated the Tribunal's privacy program by answering questions from staff and managers throughout the Tribunal on privacy matters, reporting claim file privacy incidents to the WSIB, and by referring complex privacy matters to counsel in the Office of the Counsel to the Chair.

French Language Translation Services

The Tribunal offers services in French to its Francophone stakeholders in accordance with the *French Language Services Act* of Ontario. The translator is responsible for the translation of materials for Francophone parties to appeals, as well as for the translation of electronic and print materials published by the Tribunal.

Caseload and Production Reporting

In 2014, the Department provided regular feedback to individuals, teams and to the senior management team regarding caseload intake, caseload movement and productivity. As in previous years, the Department's statistician compiled and distributed these reports according to weekly, monthly and quarterly schedules.

Production and Systems Infrastructure Planning

In the fourth quarter, the Department produced its caseload movement plan for 2015. Included in this plan is a multi-year forecast for incoming new appeals and corresponding targets for individual and team performance as necessary to implement the plan.

Also in the fourth quarter, the Department prepared its annual multi-year IT infrastructure plan. This plan includes budgeting and cost estimates for IT equipment and services.

CASELOAD PROCESSING

Introduction

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

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

CHART 1

ACTIVE CASES ON DECEMBER 31, 2014

Notice Process	
Cases active in Notice stage processing	2,528
	2,528
Resolution Process	
Early Review stage	92
Substantive Review	2,914
Hearing Ready	77
Scheduling and Post-hearing	2,819
WSIAT Decision Writing	408
	6,310
Total Active Cases	**8,838**

Caseload

At the end of Year 2014, there were 8,838 active cases within these two process stages. Chart 1 shows the distribution in more detail.

Active Inventory

The level of the Tribunal's active inventory is affected by three factors: the number of incoming appeals in a year, the number of appeals that are confirmed as ready to proceed in that year, and the number of hearings and other appeal dispositions that are achieved in the year. In 2014, these factors combined to produce a 19% overall increase in the active inventory as compared to the 2013 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

CHART 2

ACTIVE CASELOAD

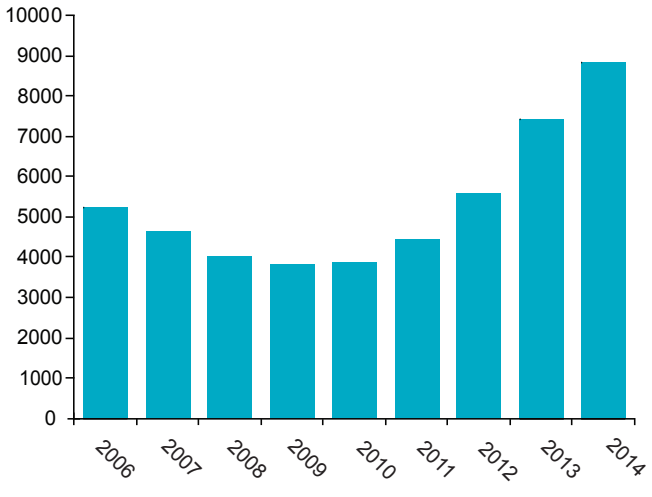


CHART 3

INCOMING APPEALS

Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2014, the Tribunal's overall intake from new appeals and reactivations totaled 5,079 and this represented a total decrease of 13% as compared with the 2013 intake total. "Reactivations" are appeals in which the appellant has indicated a readiness to proceed with the appeal following an inactive period during which the appellant may have acquired new medical evidence, received another final decision from the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions at the Board's Appeals Branch.

CHART 4

CASES DISPOSED OF IN 2014

Pre-hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	426
Withdrawn	753
	1,179
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	76
Withdrawn	12
With Final Decisions	2,535
	2,623
Total (Pre-hearing and Hearing)	
Without Tribunal Final Decisions	1,267
With Tribunal Final Decisions	2,535
	3,802

Case Resolutions

The Tribunal achieves case resolutions (also known as case dispositions) in a number of different ways. The most frequent source of case resolution is through a written Tribunal decision following an oral or written hearing process. The WSIA requires written reasons. Also, the Board requires written reasons to implement a decision. Other methods of dispute resolution, used primarily in the pre-hearing areas, are: telephone discussions regarding issue agendas and evidence; file reviews for jurisdiction issues or compliance with time limits; and, where two parties are participating, staff mediation.

As shown in Chart 4, the Tribunal disposed of 3,802 cases in 2014. This included 1,179 "Pre-Hearing" and 2,623 "Hearing" dispositions.

Timeliness of Appeal Processing

Chart 5 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2014, the percentage of cases resolved within nine months was lower than it was in 2013. (In 2014, 25% of cases were resolved within nine months, compared to 30% in 2013.)

The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Chart 6 shows that the typical length of time for this stage in the appeals process was longer than it was in year 2013 (13.3 months in 2014, compared to 10.7 months in 2013).

An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 7, in 2014, this target was achieved 85% of the time.

Hearing and Decision Activity

Chart 8 depicts the Tribunal's Hearing and Decision production. In 2014, the Tribunal conducted 2,661 hearings and issued 2,644 decisions. The Tribunal strives to achieve decision-readiness following completion of the first hearing. Some cases require post-hearing work following the first hearing, and some hearings are adjourned requiring a

CHART 5

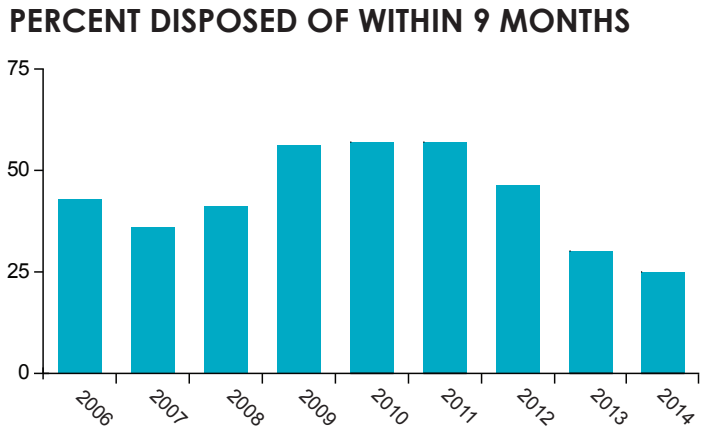


CHART 6

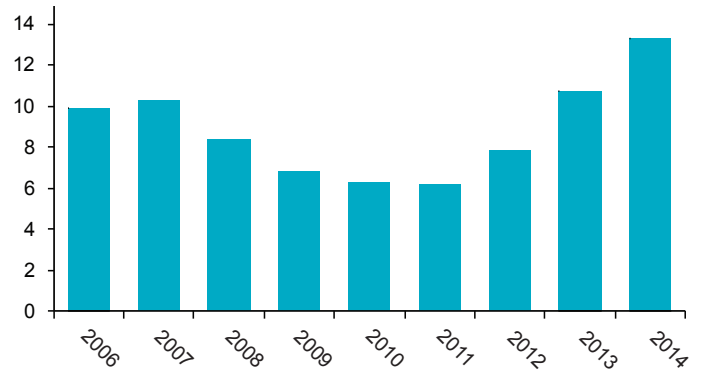


CHART 7

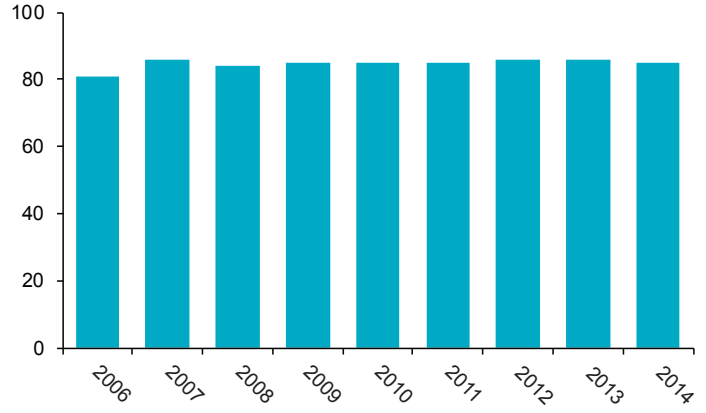
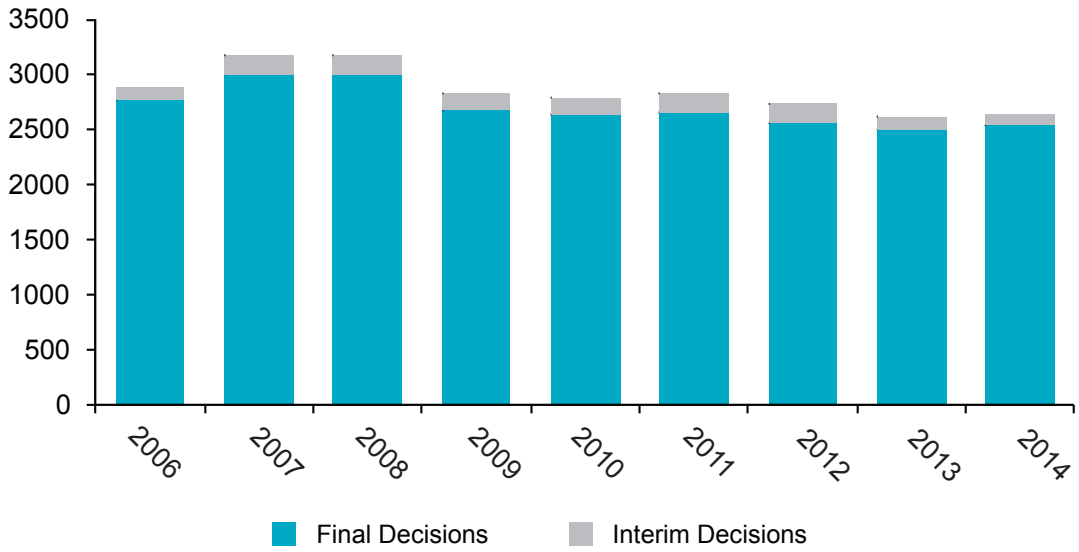


CHART 8

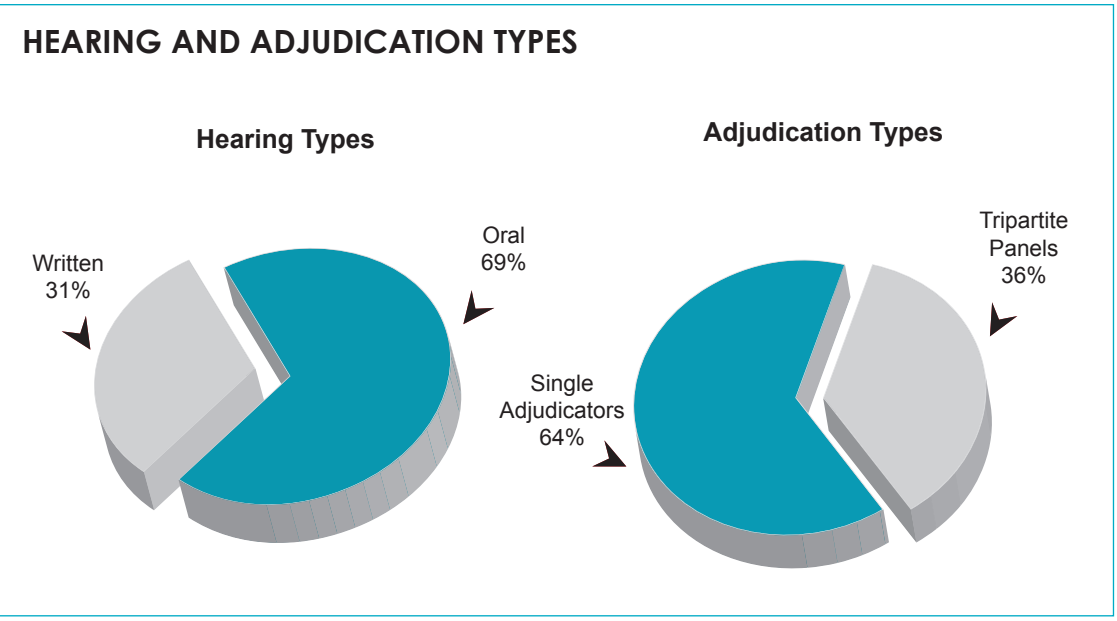


subsequent hearing before the same or a different Vice-Chair or Panel. Most cases require only a single hearing.

Hearing Type

In 2014, the percentage breakdown of hearing types was as follows: oral hearings continued to be the most common hearing type at 69%, followed by written hearings at 31%. The percentage of single adjudicator hearings increased in 2014 to 64% (from 59% in 2013); tripartite panels decreased to 36% of cases heard. Chart 9 presents these hearing characteristics.

CHART 9

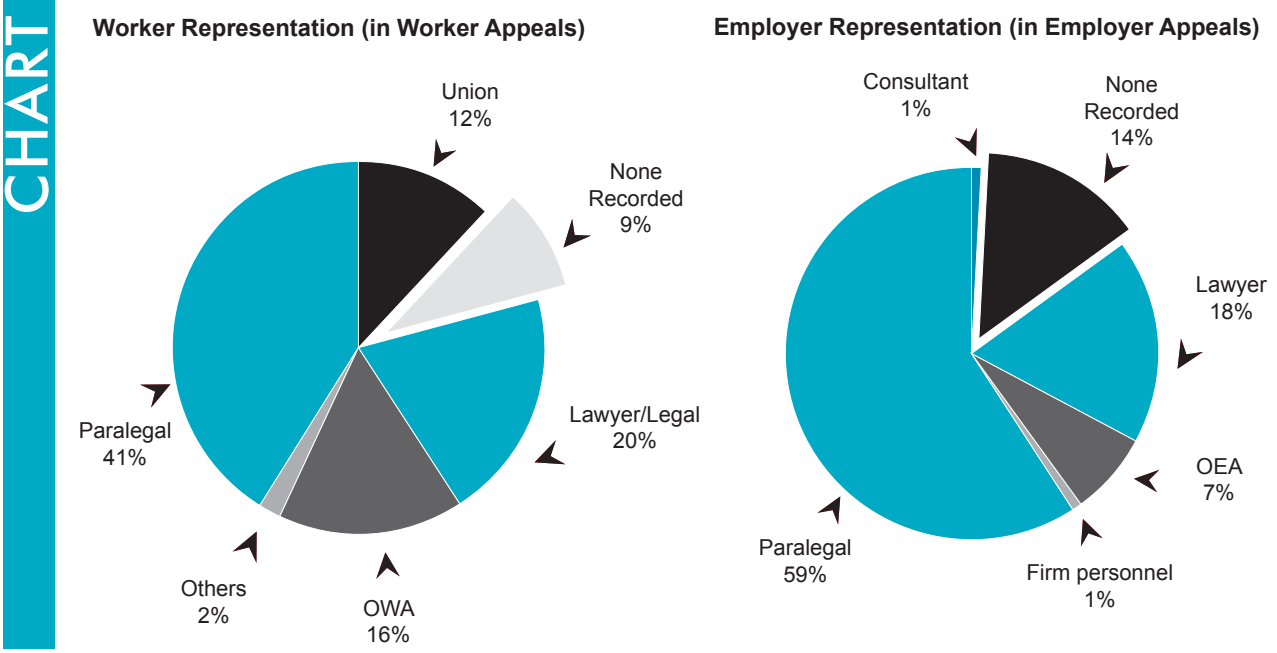


Representation at Hearing

Tribunal statistics show that for injured workers, 41% were represented by paralegals; 20% by lawyers and legal aid; 16% by the Office of the Worker Adviser; and, 12% by union representatives. The remaining 11% is allocated among various non-categorized representation, for instance, family friend, family member or MPP office. Employers were represented before the Tribunal as follows: 59% were represented by paralegals; 18% were represented by lawyers; 7% by the Office of the Employer Adviser; 1% by consultants and 1% by firm personnel. The remaining 14% are non-categorized. These statistics are presented in Chart 10.

CHART 10

WORKER AND EMPLOYER REPRESENTATION



Caseload by General Appeal Issue Type

In 2014, Entitlement-related cases constituted the majority of cases (98%). Special Section cases (Right to Sue and Access) comprised typically small portions (2%). Charts 11 and 12 provide historical comparisons of incoming cases and cases disposed in 2014.

Dormant and Inactive Cases

The Tribunal's overall caseload includes some that are not active. This includes cases at the

CHART 11

INCOMING CASES BY APPEAL TYPE FOR THE YEARS 2010-2014

	2010		2011		2012		2013		2014	
TYPE	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	65	1.6%	63	1.4%	60	1.2%	65	1.1%	54	1.1%
Medical Exam	0	0.0%	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Access	197	4.8%	108	2.4%	108	2.1%	78	1.3%	57	1.1%
Total Special Section	**262**	**6.4%**	**171**	**3.7%**	**169**	**3.3%**	**143**	**2.4%**	**111**	**2.2%**
Preliminary (not yet specified)	0	0.0%	1	0.0%	2	0.0%	1	0.0%	3	0.1%
Pension	1	0.0%	2	0.0%	0	0.0%	1	0.0%	0	0.0%
N.E.L./F.E.L.*	11	0.3%	5	0.1%	4	0.1%	4	0.1%	0	0.0%
Commutation	1	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	165	4.1%	340	7.4%	401	7.7%	262	4.5%	290	5.7%
Entitlement	3465	85.3%	3889	85.1%	4474	86.1%	5265	89.9%	4490	88.4%
Ext post WSIB dec deadline	137	3.4%	154	3.4%	139	2.7%	171	2.9%	173	3.4%
Jurisdiction Time Limit	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation **	2	0.0%	1	0.0%	0	0.0%	1	0.0%	1	0.0%
Classification	11	0.3%	2	0.0%	2	0.0%	0	0.0%	5	0.1%
Interest NEER	0	0.0%	0	0.0%	1	0.0%	1	0.0%	0	0.0%
Total Entitlement-related	**3793**	**93.4%**	**4394**	**96.1%**	**5023**	**96.7%**	**5706**	**97.5%**	**4963**	**97.7%**
Jurisdiction	8	0.2%	6	0.1%	5	0.1%	5	0.1%	5	0.1%
	4063		**4571**		**5197**		**5854**		**5079**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 13, 14 and 15. *The NEL/FEL category represents appeals related to the non-economic and future economic loss pension criteria introduced by Bill 162. **The Vocational Rehabilitation category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

CHART 12

BREAKDOWN OF CASE DISPOSITIONS BY APPEAL TYPE FOR THE YEARS 2010-2014

	2010		2011		2012		2013		2014	
	No.	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Leave	1	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	73	1.9%	62	1.6%	54	1.4%	47	1.3%	48	1.3%
Medical Exam	0	0.0%	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Access	182	4.7%	117	3.1%	99	2.5%	86	2.3%	66	1.7%
Total Special Section	**256**	**6.5%**	**179**	**4.7%**	**154**	**3.9%**	**133**	**3.6%**	**114**	**3.0%**
Preliminary (not yet specified)	0	0.0%	0	0.0%	0	0.0%	1	0.0%	3	0.1%
Pension	4	0.1%	4	0.1%	1	0.0%	0	0.0%	0	0.0%
N.E.L./F.E.L.*	35	0.9%	11	0.3%	5	0.1%	3	0.1%	2	0.1%
Commutation	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	131	3.4%	198	5.2%	285	7.3%	312	8.3%	290	7.6%
Entitlement	3287	84.1%	3225	84.2%	3309	84.6%	3113	83.1%	3198	84.1%
Ext post WSIB dec deadline	153	3.9%	186	4.9%	147	3.8%	177	4.7%	188	4.9%
Jurisdiction Time Limit	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation**	13	0.3%	3	0.1%	0	0.0%	0	0.0%	0	0.0%
Classification	21	0.5%	18	0.5%	4	0.1%	2	0.1%	0	0.0%
Interest NEER	1	0.0%	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	**3645**	**93.2%**	**3645**	**95.2%**	**3752**	**95.9%**	**3608**	**96.3%**	**3681**	**96.8%**
Jurisdiction	8	0.2%	6	0.2%	5	0.1%	4	0.1%	7	0.2%
	3909		**3830**		**3911**		**3745**		**3802**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 13, 14 and 15. *The NEL/FEL category represents appeals related to the non-economic and future economic loss pension criteria introduced by Bill 162. **The Vocational Rehabilitation category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

preliminary "notification" (or Notice of Appeal) stage, specifically those cases which have not been moved into resolution processing because the appellants have not completed the necessary filing requirements. These cases are referred to as "dormant at the notice of appeal stage." Cases that are dormant will be moved again into active processing when appellants resume active participation. When this does not occur within the overall maximum time frame for the notice stage, the Tribunal will close the case.

The second category of "not active" cases is used to describe appeals that were made "inactive" after the notice process had been completed (i.e., after the cases had been "confirmed" ready to proceed and after they had been moved into the Tribunal's resolution processing stage). Cases are placed in this inactive category by request of the appellant or by a Tribunal Vice-Chair. The most common reasons for placing a file in the inactive category are to allow an appellant to pursue additional medical reports; obtain a representative; or/and obtain a final ruling from the Workplace Safety and Insurance Board pertaining to an issue raised at the Tribunal hearing.

In 2014, the number of dormant cases decreased to 1,739 from 1,862 at the end of 2013, and the number of inactive cases decreased to 2,089 from 2,338. Taken as a whole, this meant that the number of not active cases decreased by 9% in 2014.

Post-decision Workload

The post-decision workload is derived from three sources: Ombudsman follow-ups (Chart 13), Reconsideration requests (Chart 14) and Judicial Reviews (Chart 15). The post-decision workload is predominantly driven by Reconsideration requests. In year 2014, 145 Reconsideration requests were received.

CHART 13

OMBUDSMAN COMPLAINTS, ACTIVITY AND INVENTORY SUMMARY

New Complaint Notifications Received	0
Complaints Resolved	0
Complaints Remaining	0

CHART 14

RECONSIDERATION REQUESTS, ACTIVITY AND INVENTORY SUMMARY

Inquiries (Pre-reconsideration) Remaining	52
Reconsideration Requests Received	145
Reconsideration Requests Resolved	169
Reconsiderations Remaining	74

CHART 15

JUDICIAL REVIEWS, ACTIVITY AND INVENTORY SUMMARY

Judicial Reviews at January 1st	17
Judicial Reviews Received	7
Judicial Reviews Resolved	6
Judicial Reviews Remaining	18

A Statement of Expenditures and Variances for the year ended December 31, 2014 (Chart 16) is included in this report.

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2014. The Independent Auditor's Report is included as Appendix B.

CHART 16

STATEMENT OF EXPENDITURES AND VARIANCES
YEAR ENDED DECEMBER 31, 2014 (IN $000s)

	2014 BUDGET	2014 ACTUAL	2014 VARIANCE $	2014 VARIANCE %
OPERATING EXPENSES				
Salaries & Wages	11,107	11,111	(4)	(0.0)
Employee Benefits	2,194	2,316	(122)	(5.6)
Other Direct Operating Expenses				
Transportation & Communication		837		
Services	8,421	6,178	996	11.8
Supplies & Equipment		410		
Total Other Direct Operating Expenses	8,421	7,425	996	11.8
TOTAL - W.S.I.A.T.	21,722	20,852	870	4.0
Services - W.S.I.B.	500	523	(23)	(4.6)
Interest Revenue	-	(9)	9	0.0
TOTAL OPERATING EXPENSES	**22,222**	**21,366**	**856**	**3.9**
ONE TIME EXPENSES				
Severance Payments	100	49	51	51.0
Active Caseload Reduction Strategy	200	-	200	100.0
TOTAL EXPENDITURES	**22,522**	**21,415**	**1,107**	**4.9**

Note: The above 2014 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 $108 is comprised of:

Capital Fund		
Amortization	87	
Fixed assets acquired	(12)	75
Operating Fund		
Accrued severance & vacation benefits	78	
Prepaid expenses	(45)	33
		$ 108

APPENDIX A

TRIBUNAL REPORT

VICE-CHAIRS AND MEMBERS IN 2014

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

Full-time	Initial appointment
Chair	
Strachan, Ian J.	July 2, 1997
Vice-Chairs	
Baker, Andrew	June 28, 2006
Crystal, Melvin	May 3, 2000
Darvish, Sherry	August 12, 2009
Dee, Garth	June 17, 2009
Kalvin, Bernard	October 20, 2004
Keil, Martha	February 16, 1994
Martel, Sophie	October 6, 1999
McCutcheon, Rosemarie	October 6, 1999
Noble, Julia	October 20, 2004
Patterson, Angus	June 13, 2007
Ryan, Sean	October 6, 1999
Members representative of employers	
Christie, Mary	May 2, 2001
Wheeler, Brian	April 19, 2000
Members representative of workers	
Grande, Angela	January 7, 2000
Hoskin, Kelly	June 13, 2007

Part-time	Initial appointment
Vice-Chairs	
Alexander, Bruce	May 3, 2000
Clement, Shirley	September 1, 2005
Cooper, Keith	December 16, 2009
Dempsey, Colleen L.	November 10, 2005
Dimovski, Jim	November 19, 2014

Part-time	Initial appointment

Vice-Chairs (continued)

Doherty, Barbara	June 22, 2006
Falcone, Mena	October 17, 2012
Frenschkowski, JoAnne	March 4, 2013
Gale, Robert	October 20, 2004
Goldberg, Bonnie	May 27, 2009
Goldman, Jeanette	June 22, 2006
Hodis, Sonja	July 15, 2009
Jepson, Kenneth	December 10, 2014
Josefo, Jay	January 13, 1999
Lang, John B.	July 15, 2005
Lawford, Michele	May 29, 2013
MacAdam, Colin	May 4, 2005
Mackenzie, Ian	October 9, 2013
Marafioti, Victor	March 11, 1987
McKenzie, Mary E.	June 22, 2006
Mitchinson, Tom	November 10, 2005
Moore, John	July 16, 1986
Mullan, David	July 5, 2004
Nairn, Rob	April 29, 1999
Netten, Shirley	June 13, 2007
Parmar, Jasbir	November 10, 2005
Peckover, Susan	October 20, 2004
Petrykowski, Luke	October 3, 2012
Shime, Sandra	July 15, 2009
Smith, Eleanor	February 1, 2000
Smith, Joanna	August 28, 2013
Smith, Marilyn	February 18, 2004
Sutherland, Sara	September 6, 1991
Sutton, Wendy	May 27, 2009
Ungar, Susan	September 11, 2013

Members representative of employers

Blogg, John	November 14, 2012
Davis, Bill	May 27, 2009
Phillips, Victor	November 15, 2006
Purdy, David	December 16, 2009
Sahay, Sonya	November 29, 2008
Tracey, Elaine	December 7, 2005
Trudeau, Marcel	April 16, 2008
Young, Barbara	February 17, 1995

Part-time	Initial appointment
Members representative of workers	
Besner, Diane	January 13, 1995
Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Carlino, Gerry	October 3, 2012
Crocker, James	August 1, 1991
Ferrari, Mary	July 15, 2005
Gillies, David	October 30, 2002
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988
Salama, Claudine	October 3, 2012
Signoroni, Antonio	October 1, 1985

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS EFFECTIVE 2014

	Effective
Bruce Alexander	July 9, 2014
Gerry Carlino	October 3, 2014
Keith Cooper	December 16, 2014
James Crocker	November 1, 2014
Melvin Crystal	May 3, 2014
Bill Davis	August 13, 2014
Garth Dee	February 19, 2014 (full-time)[1]
Barbara Doherty	August 13, 2014
Mena Falcone	October 17, 2014
JoAnne Frenschkowski	March 4, 2014
Robert Gale	October 20, 2014
Bonnie Goldberg	July 9, 2014
Jeanette Goldman	September 17, 2014
Sonja Hodis	August 13, 2014
Faith Jackson	November 1, 2014
John Moore	May 1, 2014
Shirley Netten	September 17, 2014
Angus Patterson	April 1, 2014
Luke Petrykowski	October 3, 2014
David Purdy	December 16, 2014
Claudine Salama	October 3, 2014
Sandra Shime	September 17, 2014

1 Garth Dee's Order in Council as a part-time Vice-Chair was revoked by this Order, which also reappointed him as a full-time Vice-Chair.

Reappointments (continued)	Effective
Ian J. Strachan	July 1, 2014
Sara Sutherland	September 6, 2014
Wendy Sutton	July 9, 2014
Brian Wheeler	January 7, 2014

NEW APPOINTMENTS DURING 2014

	Effective
Jim Dimovski, part-time Vice-Chair	November 19, 2014
Kenneth Jepson, part-time Vice-Chair	December 10, 2014

SENIOR STAFF

Susan Adams	Tribunal Executive Director
David Bestvater	Director, Information and Technology Services
Debra Dileo	Director, Appeal Services
Noel Fernandes	Manager, Financial Administration & Controllership
Martha Keil	Vice-Chair Registrar
Janet Oulton	Appeals Administrator
Carole Prest	Counsel to the Chair
Dan Revington	Tribunal General Counsel
Lynn Telalidis	Associate Director, Human Resources and Labour Relations

MEDICAL COUNSELLORS

Dr. John Duff, Chair of Medical Counsellors	General Surgery
Dr. Emmanuel Persad	Psychiatry
Dr. David Rowed	Neurosurgery
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Anthony Weinberg	Internal Medicine

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Independent Auditor's Report

To the Chair of the Workplace Safety and Insurance Appeals Tribunal

We have audited the accompanying financial statements of the Workplace Safety and Insurance Appeals Tribunal, which comprise the balance sheet as at December 31, 2014, the statements of operations, changes in fund balances and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these 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.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 2014, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Chartered Professional Accountants, Chartered Accountants
Licensed Public Accountants
March 2, 2015

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Balance Sheet

As at December 31, 2014

	2014	2013
ASSETS		
CURRENT		
Cash	**$ 1,591,793**	$ 892,924
Receivable from Workplace Safety and Insurance Board	**1,126,133**	1,613,348
Prepaid expenses and advances	**372,470**	328,215
Recoverable expenses (Note 3)	**175,573**	158,273
	3,265,969	2,992,760
CAPITAL ASSETS (Note 4)	**72,109**	146,708
	$ 3,338,078	$ 3,139,468
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,495,112**	$ 1,266,693
Accrued severance benefits and vacation credits	**3,302,704**	3,224,758
Operating advance from Workplace Safety and Insurance Board (Note 5)	**1,400,000**	1,400,000
	6,197,816	5,891,451
FUND BALANCES		
OPERATING FUND (Note 6)	**(2,931,847)**	(2,898,691)
CAPITAL FUND	**72,109**	146,708
	(2,859,738)	(2,751,983)
	$ 3,338,078	$ 3,139,468

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

..... Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2014

	2014	2013
OPERATING EXPENSES		
Salaries and wages	**$ 11,110,585**	$ 11,074,654
Employee benefits (Note 7)	**2,442,701**	2,518,089
Transportation and communication	**837,166**	856,972
Services and supplies	**6,531,233**	6,823,648
Amortization	**86,617**	107,396
	21,008,302	21,380,759
Services - Workplace Safety and Insurance Board (WSIB) (Note 8)	**523,425**	502,959
TOTAL OPERATING EXPENSES	**21,531,727**	21,883,718
BANK INTEREST INCOME	**(8,776)**	(8,436)
NET OPERATING EXPENSES	**21,522,951**	21,875,282
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	**(21,415,196)**	(21,799,539)
NET UNFUNDED OPERATING EXPENSES	**$ 107,755**	$ 75,743
ALLOCATED TO		
CAPITAL FUND	**$ (74,599)**	$ (975)
OPERATING FUND	**(33,156)**	(74,768)
	$ (107,755)	$ (75,743)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2014

	Capital	Operating	Total
BALANCE - JANUARY 1, 2013	$ 147,683	$ (2,823,923)	$ (2,676,240)
Additions to capital assets	106,421	-	106,421
Amortization of capital assets	(107,396)	-	(107,396)
Severance benefits and vacation credits (Note a)	-	(83,339)	(83,339)
Prepaid expenses (Note b)	-	8,571	8,571
Net unfunded expenses - 2013	(975)	(74,768)	(75,743)
BALANCE - DECEMBER 31, 2013	146,708	(2,898,691)	(2,751,983)
Additions to capital assets	12,018	-	12,018
Amortization of capital assets	(86,617)	-	(86,617)
Severance benefits and vacation credits (Note a)	-	(77,946)	(77,946)
Prepaid expenses (Note b)	-	44,790	44,790
Net unfunded expenses - 2014	(74,599)	(33,156)	(107,755)
BALANCE - DECEMBER 31, 2014	**$ 72,109**	**$ (2,931,847)**	**$ (2,859,738)**

Note a) Severance benefits and vacation credits 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, 2014

	2014	2013
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 21,902,411**	$ 21,688,860
Cash receipts for recoverable expenses	**775,090**	838,814
Bank interest received	**8,776**	8,436
Expenses, recoverable expenses net of amortization of $86,617 (2013 - $107,396)	**(21,975,390)**	(22,450,198)
	710,887	85,912
CAPITAL		
Acquisition of capital assets	**(12,018)**	(106,421)
NET INCREASE (DECREASE) IN CASH	**698,869**	(20,509)
CASH, BEGINNING OF YEAR	**892,924**	913,433
CASH, END OF YEAR	**$ 1,591,793**	$ 892,924

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2014

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 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 "PSA-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.

2. SIGNIFICANT ACCOUNTING POLICIES (continued)

Employee benefits

(a) Pension benefits

The Tribunal provides pension benefits for all of its permanent employees (and to non-permanent employees who elect to participate) through the Public Service Pension Fund (PSPF) and the Ontario Public Service Employees' Union Pension Fund (OPSEU Pension Fund) 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 voluntarily resigns is only entitled to severance benefits for service accrued up to June 30, 2010. All non-union employees who voluntarily resign are 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.

3. RECOVERABLE EXPENSES

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

	2014	2013
Shared services		
Ontario Labour Relations Board	**$ 79,067**	$ 87,487
Pay Equity Hearings Tribunal	**5,464**	4,504
Secondments		
Ministry of Attorney General	**-**	6,064
Office of the Employer Adviser	**9,558**	-
Service Ontario	**25,795**	-
Others		
Canada Revenue Agency HST rebate receivable	**43,993**	41,638
Employee amounts receivable	**11,695**	18,580
Total	**$ 175,573**	$ 158,273

4. CAPITAL ASSETS

			2014	2013
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Leasehold improvements	**$3,071,986**	**$3,048,913**	**$ 23,073**	$ 39,192
Furniture and equipment	**676,044**	**655,162**	**20,882**	23,625
Computer equipment and software	**546,033**	**517,879**	**28,154**	83,891
	$4,294,063	**$4,221,954**	**$ 72,109**	$ 146,708

5. OPERATING ADVANCE FROM WSIB

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

6. OPERATING FUND

The Operating Fund deficit of $2,931,847 as of December 31, 2014 (2013 - $2,898,691) represents future obligations to employees for severance and vacation credits, less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $921,263 (2013 - $962,403) 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 2014 amounted to an increase of $46,349 (2013 - $55,370) 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 2014 amounted to an increase in the accrual of $31,597 (2013 - $27,969) 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.

8. SERVICES – WSIB

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

9. COMMITMENTS

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

2015	$ 359,610
2016	239,289
2017	55,740
Minimum payments	$ 654,640

9. COMMITMENTS (continued)

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

2015	$ 1,554,609
2016	1,670,625
2017	1,670,625
2018	1,670,625
2019 and thereafter	1,670,625
Minimum operating lease payments	$ 8,237,109

The current lease which expires on October 31, 2015 is renewed for ten years commencing November 1, 2015 with two further options to extend the lease for 5 years each.

10. CONTINGENT LIABILITIES

The Canada Revenue Agency (CRA) completed a review of remuneration paid by the Tribunal to Part-time Order-in-Council appointees (OICs) for the years 2007, 2008 and 2009 and determined that the remuneration paid is considered pensionable employment income and issued an assessment to the Tribunal for CPP contributions (employer and employee shares) for these years. The Tribunal has submitted that part-time OICs are considered fee-for-service vendors and not employees and filed an appeal to the Tax Court of Canada.

The outcome of this appeal is not determinable as at December 31, 2014 and accordingly no provision has been made in these financial statements for any liability that may result. Any loss resulting from these claims will be recognized in the year when it becomes known.