

Workplace Safety and Insurance Appeals Tribunal

Business Plan

2015

Part 1 – Executive Summary

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) is a highly regarded, specialized, independent adjudicative agency within the Ontario administrative justice system which hears appeals from final decisions of the Workplace Safety and Insurance Board (WSIB).

The Tribunal succeeds in implementing its mandate within the spirit of the guiding principles through the leadership of the Chair and the senior management team and the professional and dedicated work of staff, full-time Order-in-Council (OIC) adjudicators, and part-time fee-for-service OIC adjudicators.

The adjudicator team is comprised of vice-chairs, members representative of workers and members representative of employers who are appointed through Ontario's Public Appointments Secretariat. Hearings take place before a vice-chair sitting alone or a tripartite panel consisting of a vice-chair, member representative of workers and a member representative of employers. Adjudicators issue a written, anonymized and public decision disposing of an appeal.

OIC complement

In 2014, the Tribunal continued the recruitment process for new part-time vice-chairs; the recruitment process will continue in 2015.

Government Appointees Directive: the 10 year term limit

The implementation of the 10 year term limit for provincial appointees will have an effect on the Tribunal's adjudicative roster. As noted on the Public Appointment Secretariat's web site at September 29, 2014, during 2016 and 2017, the following percentages of OICs will have 10 or more years of service: 82% of full-time vice-chairs; 62% of part-time vice-chairs; 100% of full-time members; and 68% of part-time members. Overall, the Tribunal's exposure to the 10 year term limit is 69% of the OIC complement.

Appeal caseload: status

In 2012 and 2013, the Tribunal experienced a high level of incoming appeals from the WSIB. As projected, the volume of incoming appeals started a small decline in 2014.

At the end of the third quarter, September 30, 2014, the Tribunal's active caseload was 8,667 appeals. This is an increase of 16.6% from December 31, 2013.

Appeal Caseload: backlog reduction

The Tribunal plans for a gradual increase to decision numbers as part-time vice-chairs are added to the roster, trained and available to work.

The Tribunal's pre-hearing process is effective, efficient and appropriately seeks to close cases where parties are not actively pursuing an appeal. The Tribunal uses both oral and written hearing processes, which allocates resources efficiently.

Part 2 – Mandate, Mission and Guiding Principles

WSIAT Mandate

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

Mission Statement

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

Guiding Principles

The guiding principles of the Tribunal are:

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

Part 3 – Strategic Directions

OIC Complement

Continuing to build on work in 2013 and 2014, recruitment for additions to the part-time vice-chair roster will continue. The Tribunal seeks quality adjudicators who are available for Tribunal work. The Chair is targeting a complement of 60-65 active vice-

chairs, with the possibility of further recruitment. At September 30th, there were 45 active vice-chairs.

Appeals Volume

The decision and caseload targets are integrally connected to the availability of a roster knowledgeable vice-chairs and member representatives.

Over the 2015-2017 business planning period the Tribunal will work to increase the adjudicator complement and thereby increase the number of final decisions. During this planning period the inventory accrual will slow and the case inventory is targeted to begin a slow decline.

Staffing Complement

For the duration of the high appeal inventory, including 2015 through 2017, the full staff complement will be required in the production areas, with minimal to zero vacancies, to seek dispositions, and to manage and provide client service for the high volume of appeals.

IT environment and e-file transfer

The Tribunal must maintain the technological environment to support and facilitate effective and efficient case processing.

Part 4 – Overview of Programs and Activities

Appeals Adjudication

The Tribunal's primary activity is final decision making in the workplace safety and insurance system. While it uses a variety of mechanisms to resolve appeals, it does so primarily through a hearings-based adjudication process.

Pre-hearing preparation is carried out by staff in the Office of the Vice-Chair Registrar and, in more complex cases, by Tribunal counsel. This work consists of notifying the Board and parties of record of an appeal; organizing the documents in the appeal record; coordinating the collection of evidence and submissions; and identifying issues for the parties.

Hearings take place before Order-in-Council appointees (a vice-chair sitting alone or a tripartite panel consisting of a vice-chair, member representative of workers and a member representative of employers) through either a written or oral hearing process. Adjudicators issue a written anonymized and public decision disposing of an appeal. Hearings of the Tribunal take place in Toronto and in regional centers throughout the Province of Ontario. Vice-chairs and panels receive legal assistance from lawyers in the Office of Counsel to the Chair.

Pre-hearing staff also use a variety of dispute resolution mechanisms to dispose of appeals without a hearing. They determine whether there are jurisdictional or evidentiary issues which would prevent the Tribunal from deciding an appeal. Mediation services are offered where both parties participate in the appeal, and there are no complex factual, medical or legal issues under consideration. Mediations that result in recommendations must be reviewed by a vice-chair and confirmed by written decision in order to be implemented by the WSIB.

Shared Services

The Tribunal provides services on behalf of the Ontario Labour Relations Board and the Pay Equity Hearings Tribunal pursuant to a Shared Service Agreement. These consist of photocopying, incoming and outgoing mail processing, and the administration of the Ontario Workplace Tribunals Library.

Part 5 – Activities Involving Stakeholder Groups

Senior Tribunal staff and OICs attend meetings held by worker and employer stakeholder groups such as the Ontario Mining Association, the Canadian Association of Workers' Advisors and Advocates, and several organizations of Schedule 1 and 2 employers.

In addition, Tribunal staff and OICs participate in conferences and educational programs sponsored by external organizations such as the Ontario Bar Association, the Society of Ontario Adjudicators and Regulators (SOAR) and Lancaster House. These programs address legal and procedural issues, and provide outreach opportunities with a wide range of stakeholders.

The Tribunal holds periodic meetings of its Advisory Group, an assembly of stakeholders that includes worker and employer advocates and representatives of the WSIB. These meetings offer a forum for feedback and discussion among all interested groups. These sessions provide an opportunity for the Tribunal to inform stakeholders about recent developments such as the Tribunal's caseload initiatives, recently approved Practice Directions, and appeal processes.

The Tribunal continues its dialogue with the WSIB and its various representatives in different contexts, to facilitate administrative and procedural matters involving both agencies.

Part 6 – Environmental Scan - Factors affecting caseload

High Quality Decisions - Changing complement of OIC appointees

At the end of September 2014, the active vice-chair roster¹ was 45. This is an increase from 44 active vice-chairs at the end of 2013.

The Tribunal Chair plans to increase the complement of active part-time vice-chairs to increase the number of final decisions and address the active caseload.

The Tribunal's recruitment approach in 2014 sought to increase visibility of the postings to reach a wider range of candidates by approaching diverse organizations to place a link to the posting on their website. The Canadian Association of Black Lawyers, the Womens' Law Association and the Hellenic Canadian Lawyers' Association agreed to post a short announcement on their web sites directing candidates to the PAS posting. The posting was also noted on the web sites of the Ontario Bar Association and the Society of Ontario Adjudicators and Regulators.

The Tribunal will continue work towards adding to the OIC complement to achieve a roster of 60-65 active vice-chairs, or more. The timeline to achieve and maintain a roster of 60-65 is at risk due to the implementation of the 10 year term limit to appointments.

The part-time vice-chair roster provides flexibility and cost savings in comparison to a complement comprised only of full-time appointees.

Appeal Volumes

To date in 2014, the Tribunal has experienced a slight decline in the high number of incoming appeals received from the WSIB. The Tribunal's active caseload is projected to end the year at approximately 9,150 appeals. The caseload accrued due to high incoming volume of appeals from the WSIB at a time of attrition and transition in the Tribunal's OIC roster.

The Tribunal's plan for 2015 to 2017 forecasts the number of final decisions to increase with additions to the vice-chair roster and for the number of incoming appeals to gradually reduce. Both these factors play roles in reducing the active inventory.

Achieving decision targets is contingent on a roster of knowledgeable OICs who are prepared to spend time on Tribunal work. The implementation of the 10 year term limit, without access to the exceptional circumstances provision, will affect the Tribunal's OIC roster.

¹ An active vice-chair is one who released one or more final decisions in a quarter.

Part 7 – Key Objectives and Strategies

Objectives

The Tribunal's primary objective in 2015 is to provide high quality adjudication, in pre-hearing and hearing processes and in written reasons, in accordance with the principles of natural justice and within a reasonable timeline.

Risks

- A. OIC Complement (Strategic and Workforce Risk)
- B. Appeal Volumes (Operational Risk)

Strategies

The Tribunal has identified strategies to achieve the Tribunal's mandate and mission in keeping with the guiding principles. To continue to provide high quality adjudication in a high volume environment the Tribunal will:

- recruit knowledgeable and available adjudicators;
- maintain staffing levels in pre-hearing groups to seek dispositions, manage caseload and to innovate the flow of cases to hearing;
- attract and retain employees;
- ensure that information systems are sufficient to manage the demands of increasingly complex technological environment; and
- continue OIC training with focus on mid-experience adjudicators.

WSIAT 2015 Case Management Plan

Objective: high quality adjudication in a high volume environment

Introduction

The Tribunal is the final level of appeal in the workplace safety and insurance system. The Tribunal focusses on quality adjudication, supported by strong process, developed and implemented consistent with the rules of natural justice. These pillars promote finality in the system.

The Tribunal has in place case management tools to monitor the appeal inventory. The Tribunal's pre-hearing process is effective, efficient and appropriately seeks to close cases where parties are not actively pursuing an appeal. The Tribunal uses both oral and written hearing process to allocate resources efficiently.

The Tribunal has experienced a high level of incoming appeals at a time of attrition in the adjudicator complement. As a result, the Tribunal's main areas of focus are vice-

chair recruitment, reducing the inventory and providing client service to parties to appeals.

Overview for 2015

The case management focus for 2015 will be to:

- continue pre-hearing process for cases ready to proceed to hearing schedule;
- seek pre-hearing dispositions in appropriate cases;
- use the written hearing process as appropriate;
- schedule hearings without increasing decision writing times; and
- recruit new vice-chairs to increase hearing and decision capacity.

This involves:

- training new vice-chairs efficiently and effectively;
- a full pre-hearing staff complement with minimal to zero vacancies to manage caseload and respond to client inquiries; and
- developing training topics geared toward mid-experience OICs.

Active inventory

The 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 that year; and the number of decisions and other appeal dispositions that are achieved in the year.

At the beginning of 2014, the Tribunal's appeal inventory was 7,437. This inventory level includes a caseload of 4,000-4,200 appeals that would comprise the active inventory in the usual course of the process. A caseload target of 4,000-4,200 appeals is an estimate of volume where timelines are not attenuated. At the end of Q3-2014, the Tribunal's active inventory was 8,667.

Each week, the Tribunal receives additional appeals; therefore, resolving a high caseload requires dispositions to exceed the number of incoming appeals for a sustained period of time.

In 2014 the volume of incoming appeals has started to decrease. The Tribunal forecasts that the number of incoming appeals will be slightly lower again in 2015.

The rate of inventory accrual declined: 410 cases per quarter in 2014 in comparison to 460 per quarter in 2013.

The final decision forecast for 2014 is approximately 2,500.

Measuring timeliness

Final decisions released in 120 days

The Tribunal's goal is 85% of final decisions released in 120 days. In 2013, the Tribunal released 86% decisions within 120 days. At the end of the third quarter of 2014, the Tribunal also released 86% of final decisions in 120 days.

Long term target: 65% of cases closed in 9 months

Tribunal's long term target is 65% of cases closed in 9 months. This figure is primarily influenced by two factors: the availability of representatives to accept hearing dates; and the number of available, experienced adjudicators. The Tribunal's hearing schedule volume must balance vice-chair availability and writing time. Too high a caseload adversely affects adjudicator writing time, which leads to decisions over 120 days old.

Time to hearing – first offered date

The Tribunal measures the median interval of the first hearing date offered to the parties. In 2013, the median time was 10.7 months. At Q3-2014, the median time was 13.0 months.

For oral hearings, representatives are offered two proposed dates before the Tribunal sets a date. Therefore, a portion of the wait time to a hearing date may be as a result of a representative's availability.

Planning for 2016 and 2017

With the addition of qualified and productive vice-chairs to the roster at a rate that exceeds attrition, it should be possible to increase the number of oral hearings per month and/or the number of written cases assigned. Renewing and increasing the vice-chair roster is the foundation of the Tribunal's forecasts to increase case closures.

Renewing the complement at a rate that exceeds attrition is at risk due to the implementation of the 10 year term limit on OIC appointments.

In 2016 and 2017, the Tribunal's production planning calls for dispositions from final decisions to increase with increases to the vice-chair roster.

Increasing hearing and decision production to peak levels have planning implications:

- Additional hearing rooms will be required in Toronto; and
- Hearing room rental and travel costs associated with regional locations will rise.

Financial Resources

Table 1: WSIAT Budget Request: 2015

Summary	2014 Approved Budget	2014 Projection	2015 Budget Request	2016 Projection	2017 Projection
Operating Expenses					
Salary & Wages	11,107	11,257	12,157	12,157	12,157
Benefits	2,194	2,332	2,431	2,431	2,431
Transportation & Communication	1,043	876	949	996	1,006
Services	6,962	6,398	6,858	7,005	7,122
Supplies & Equipment	416	421	418	406	396
Total – WSIAT	21,722	21,284	22,813	22,995	23,112
Services – WSIB	500	525	530	510	510
Revenue	0	(10)	(10)	(10)	(10)
Total Expenditures / Budget Request	22,222	21,799	23,333	23,495	23,612
One-Time Expenses	300	100	300	300	300
Grand Total Expenditures / Budget Request	22,522	21,899	23,633	23,795	23,912

October 2014
WSIAT