

# **Workplace Safety and Insurance Appeals Tribunal**

## **Business Plan**

**2016 to 2018**

### **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 adjudicator team is comprised of vice-chairs and members representative of workers and employers who are Order in Council appointees, recruited through the Public Appointments Secretariat.

Hearings take place before a vice-chair sitting alone or a tripartite panel. Adjudicators issue a written, anonymized and public decision disposing of an appeal.

A large number of incoming appeals from the WSIB caused a high active inventory at WSIAT at a time of attrition in the OIC roster. This means there were cases ready to be heard but not enough vice-chairs to hear them. The incoming volume resulted in waves of cases that move through the stages of the Tribunal's process. It is taking longer than usual to resolve an appeal.

The Tribunal is recruiting new vice-chairs to increase the number of appeals heard and reduce the time to hearing and case resolution.

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.

### **Achievements in 2015**

#### **a) Caseload: positive trends**

- New vice-chair appointments resulted in a net increase to the vice-chair roster;
- Rate of dispositions is increasing;
- Overall trend of incoming appeals is decreasing in comparison to the highs from WSIB in 2012 and 2013; and
- Growth in the active inventory has slowed.

b) Vice-Chair complement: increasing

In 2015, the Tribunal recruited new part-time vice-chairs. During the last quarter of 2014, 2 new vice-chairs were appointed, for a year-end total of 46 vice-chairs. At September 30, 2015, the roster reached 52 vice-chairs.

## **Mandate, Mission and Guiding Principles**

### WSIAT Mandate

The Workplace Safety and Insurance Appeals Tribunal (the “WSIAT” or “Tribunal”) hears and decides 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.

## **Strategic Directions, 2016-18**

### OIC Complement

- Increase vice-chair roster

Build on work in 2015 to recruit new additions to the part-time vice-chair roster. The Tribunal seeks qualified and competent adjudicators who are available for Tribunal work. The target complement is 60 vice-chairs by December 31<sup>st</sup>, with a further increase to 70 by March 31, 2016. There is a possibility of further recruitment.

At September 30<sup>th</sup>, 2015 there were 52 vice-chairs.

Monitor the implementation of 10 year term limit for OIC appointments found in OPS Agencies and Appointments Directive.

### Appeals Volume

- caseload volume to peak and begin slow decline during 2016-18

Continue trends that developed in 2015:

- increase the vice-chair roster;
- increase dispositions; and

- monitor lower incoming appeal volumes from WSIB.

These trends will result in reducing the active inventory and the timelines to decide an appeal.

Progress to reduce the caseload is integrally connected to the availability of a roster of knowledgeable vice-chairs and member representatives.

Over the 2016-2018 business planning period the Tribunal will work to increase the adjudicator complement and thereby increase the number of decisions and dispositions. In the first year of this planning period the case inventory is forecasted to stop growing and begin a slow decline.

### Staffing Complement

- increase staffing to support case resolutions and flow to hearing

For the duration of the high appeal inventory, including 2016 through 2018, additional processing staff will be required in the production areas to review files, seek dispositions, and to manage and provide client service for the high volume of appeals.

### IT environment

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

### Temporary Funding Increase

The Tribunal will seek temporary funding to support a higher vice-chair complement, more processing staff and hearing room rentals (as required).

## **Overview of Programs and Activities**

### Appeals Adjudication

The Tribunal's primary activity is final decision making in the workplace safety and insurance system with respect to worker benefits issues and employer/revenue issues. The Tribunal uses a variety of mechanisms to resolve appeals, and is primarily 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 services consist of photocopying, incoming and outgoing mail processing, and the administration of the Ontario Workplace Tribunals Library.

### **Activities Involving Stakeholder Groups**

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.

### **Environmental Scan - Factors affecting caseload**

#### High Quality Decisions - Changing complement of OIC appointees

At the end of September 2015, the vice-chair roster was 52. This is an increase from 46 vice-chairs at the end of 2014.

The Tribunal Chair plans to increase the complement of part-time vice-chairs to increase the capacity to decide appeals and thereby reduce the active caseload.

The Tribunal worked to increase visibility of the postings by reaching out to a wider range of candidates through diverse organizations that agreed to place a link to the posting on their website or circulate the information to members. 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 to add to the OIC complement to achieve a roster of 70 vice-chairs.

Achieving and maintaining a roster of expert, experienced and productive vice-chairs is at risk due to the implementation of the 10 year term limit to appointments.

At September 30, 2015, 48% of all OICs have reached or exceeded 10 years of experience at WSIAT. For the vice-chair and member rosters, 42% and 60% respectively have reached or exceeded 10 years of experience.

### Appeal Volumes

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.

For 2016 through 2018, the Tribunal plans to increase the number of final dispositions using the additions to the vice-chair roster. Also, the Tribunal will monitor the number of incoming appeals from the WSIB; it is important for that number to gradually drop to prior levels. Both these factors play a role in reducing the active inventory and reducing the time to decide an appeal.

Achieving decision targets is contingent on a roster of knowledgeable OICs who are prepared to spend time on Tribunal work. The term limit in the OPS Agencies and Appointments Directive continues as a risk factor for the WSIAT. The Tribunal will work with the Ministry of Labour to use the exceptional circumstances provision on a case by case basis to keep expert, experienced and/or productive adjudicators.

## **Key Objectives and Strategies**

### Objectives

The Tribunal's primary objectives for 2016 through 2018 is to provide high quality adjudication, in pre-hearing and hearing processes and in written reasons, in accordance with the principles of natural justice.

During this 3 year planning period, the Tribunal expects the caseload to peak and begin to decline. After a lag period, a reduction in delays is expected to follow the caseload decline.

### 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;
- increase staffing in production areas 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
- OIC training.

## WSIAT Caseload Management Plan, 2016-18

### Caseload update at September 30, 2015

The WSIAT experienced an increase in active inventory and delays to case resolution due to high incoming appeals from the WSIB from 2012 to 2013 at a time of transition in the Tribunal's adjudicative roster. As a result, the Tribunal could not increase case resolutions to meet the high number of incoming appeals.

The Tribunal is pleased to report on positive trends:

- The vice-chair complement is increasing;
- The number of vice-chairs releasing decisions is increasing;
- The number of dispositions per quarter is increasing; and
- The number of incoming appeals from WSIB has dropped from the high volume in 2012-2013.

### Vice-Chair complement

**Table 1: Vice-Chair Complement by Year**

Year	New VCs appointed	Total VC roster
October 1 to December 31, 2014	2	46
January 1 to March 31, 2015 (Q1)	4	48
April 1 to June 30, 2015 (Q2)	1	49
July 1 to September 30, 2015 (Q3)	5	52

### Timeline to hearing: status at September 30, 2015

At September 30, 2015, the time to first offered hearing date is 18.1 months (median) for all hearing types.

The Tribunal forecasts that the time to hearing and case resolution will start to improve after the caseload has peaked and begins to decline. It is difficult to predict at what point the improvement will appear in the statistics.

With the addition of new vice-chairs in 2015 and in preparation for more vice-chairs on the roster in 2016, the Tribunal is working to hire new staff to increase the flow of cases to hearing and case resolution.

Ultimately, reducing the time to hearing requires a vice-chair roster sufficient to increase dispositions above the incoming volume of appeals over a sustained period of time.

The goal is to offer a hearing date within 8 months of a party confirming that s/he is ready to proceed.

## Plans and Targets for 2016-18

- Vice-Chair recruitment
  - Increase roster to 70, with possibility of further recruitment
  - work to broaden candidate pool by pushing notice of PAS postings to various and diverse legal organizations
  
- Increase Full Time OIC complement
  - Request PAS posting for full time vice-chairs in Q4-2015
  - Request PAS posting for full time members in Q4-2015
  
- Vice-Chair retention
  - Monitor PAS implementation of 10 year rule for experienced adjudicators
  - Use exceptional circumstances on a case by case basis to retain expertise, experience and/or productivity
  
- Increase number of processing staff
  - Facilitate efficient and effective OIC adjudication;
  - Resolve issues considering appropriate range of dispute resolution options;
  - Continuous process improvement;
  
- Train new Vice-Chairs
  - Work to minimize time from appointment to productivity

## Financial Resources

**Table 2: WSIAT Budget Request: 2016**

Summary	2015 Approved Budget	2015 Projection	2016 Budget Request	2017 Projection	2018 Projection
<b>Operating Expenses</b>					
Salary & Wages	11,272	11,219	11,703	11,905	12,017
Benefits	2,427	2,394	2,535	2,598	2,626
Transportation & Communication	909	839	909	914	914
Services	6,676	6,820	6,895	7,024	6,779
Supplies & Equipment	418	479	461	461	461
<b>Total – WSIAT</b>	<b>21,702</b>	<b>21,751</b>	<b>22,503</b>	<b>22,902</b>	<b>22,798</b>
Services – WSIB	530	530	530	530	530
Revenue	(10)	(7)	(8)	(8)	(8)
<b>Total Expenditures / Budget Request</b>	<b>22,222</b>	<b>22,274</b>	<b>23,025</b>	<b>23,424</b>	<b>23,320</b>
One-Time Expenses	300	754	2,360	3,840	3,691
<b>Grand Total Expenditures / Budget Request</b>	<b>22,522</b>	<b>23,028</b>	<b>25,385</b>	<b>27,264</b>	<b>27,011</b>

October 2015  
WSIAT