

# **Workplace Safety and Insurance Appeals Tribunal**

## **Business Plan**

**2017 to 2019**

### **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 the chair, 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 the chair, 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 adjudicators 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 and members to increase the number of appeals heard and reduce the time to hearing and case resolution.

While the Tribunal's pre-hearing process is effective, efficient and appropriately seeks to close cases where parties are not actively pursuing an appeal, there will be a general review. In 2017, amongst other projects, the Tribunal will explore the effectiveness of mediation and video conferencing to resolve cases, and thereby contribute to reducing the time to hearing.

#### **Achievements in 2016**

- a) Caseload: positive trends
  - net increase in the vice-chair roster;
  - rate of dispositions increased in comparison to 2015;
  - overall trend of incoming appeals is lower in comparison to the highs from WSIB in 2012 and 2013; and
  - the active inventory has decreased in 2016.

b) Vice-Chair complement: increasing

In 2016, the Tribunal recruited new part-time vice-chairs. At September 30, 2016, the roster reached 63 vice-chairs, which is an increase from the prior year end of 53.

## **Mandate and Mission Statement**

### 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, 2017-19

### OIC Complement – High Quality Decisions and Changing Complement of OICs

- Increase vice-chair and member roster

Build on work in 2016 to recruit new additions to the vice-chair and member roster. The Tribunal seeks qualified and competent adjudicators who are available for Tribunal work. The target complement is 70 vice-chairs, with the possibility of further recruitment.

At September 30<sup>th</sup> there were 63 vice-chairs. There are vice-chair candidates in the appointment process; if they are appointed, there are sufficient numbers for the complement to reach 70 vice-chairs by December 31, 2016.

The agency will work to manage the influx of a significant number of new adjudicators in keeping with the primary goal of quality adjudication and reasoned decisions. This work involves strategically implementing the 10 year term limit for appointments to keep expertise and the capacity to train and mentor new appointees.

### Appeals Volume and Timeliness

- caseload volume to continue to decline during 2017-19
- time to hearing to start to decline in 2017

Continue trends that developed in 2016:

- increase dispositions;
- monitor lower incoming appeal volumes from WSIB.

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

In 2017 the Tribunal will work to increase the adjudicator complement and thereby position the agency to increase the number of decisions and dispositions in 2017-18 and during the caseload reduction period.

During 2017, the aim is to see the time to hearing start to decline.

### Staffing Complement

- increased staffing to support case resolutions and flow to hearing

For the duration of the caseload reduction period, including 2017 through 2019, the additional processing staff recruited in 2016 will be required to review files, seek dispositions, and to manage and provide client service for the high volume of appeals.

### IT environment

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

### Temporary Funding Increase

The Tribunal seeks funding to support an increase in the vice-chair and member complement, more processing staff, hearing room rentals (as required), and information technology to support caseload reduction initiatives.

## **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 (the chair, a vice-chair sitting alone or a tripartite panel consisting of the chair or 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. Adjudicators 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 currently offered; the types of cases in this stream are under review to ensure effective use of resources and to assist the Tribunal's work to reduce the caseload and time to hearing. Mediation outcomes must be confirmed by written decision of the chair, a vice-chair or panel 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 and the Society of Ontario Adjudicators and Regulators (SOAR). 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, 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 2016, the vice-chair roster was 63. This is an increase from 53 vice-chairs at the end of 2015.

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

The Tribunal has 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. Postings were 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 and maintain a roster of 70+ vice-chairs and to maintain a productive roster of member representatives.

Achieving and maintaining a roster of expert, experienced and productive vice-chairs is affected by the 10 year term limit to appointments. Using exceptional circumstances to recommend beyond the 10 year policy limit will be reviewed on a case by case basis, using a strategic approach to achieve a core of experienced adjudicators who are suitable for hearing complex cases and mentoring new appointees.

At September 30, 2016, 35% of the Tribunal's vice-chair roster was in their first 2 year term appointment<sup>1</sup>. This compares to 13% at January 1, 2015. This is an exciting and interesting time to develop and train a new wave of adjudicators at the WSIAT; this renewal requires the support of a core group of experienced adjudicators.

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<sup>1</sup> 22 of 63

## Appeal Volumes and Timeliness

For 2017 through 2019, the Tribunal plans to increase the number of final dispositions using the additions to the vice-chair roster and by exploring project opportunities. The Tribunal will also monitor the number of incoming appeals from the WSIB; it is important for that number to remain lower than peak years.

Reducing the timelines requires dispositions to exceed incoming appeals for a sustained period.

Achieving decision targets is contingent on a roster of knowledgeable OICs who are prepared to spend time on Tribunal work. The Tribunal will work with the Ministry of Labour to use the exceptional circumstances provision strategically and on a case by case basis to create a core of expert, experienced and productive adjudicators.

## **Key Objectives and Strategies**

### Objectives

The Tribunal's primary goal is to provide high quality adjudication, reasoned decisions and strong process, developed and implemented in accordance with the principles of natural justice.

The objective for 2017 is to achieve the start of the timeline reductions.

The objective for the planning period of 2017-19 is to record progress reducing the timelines towards a return to service levels of a first offered hearing date within 8 months.

### Risks

- A. OIC Complement (Strategic and Workforce Risk)
- B. Timelines and 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 increased 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;

- develop and test initiatives that effectively use adjudicator time and reduce the time to hearing; and
- continue to train OICs to manage the effects of the 10 year rule on the experience level of the roster.

WSIAT, October 2016

## WSIAT Caseload Management Plan, 2017-19

### Caseload update at September 30, 2016

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 has increased in comparison to the same periods in 2015; and
- The number of incoming appeals from WSIB has dropped from the high volume in 2012-2013.

### Vice-Chair complement

**Table 1**

	New VCs appointed	Total VC roster
October 1 to December 31, 2015	2	53
January 1 to March 31, 2016 (Q1)	4	57
April 1 to June 30, 2016 (Q2)	6	63
July 1 to September 30, 2016 (Q3)	1	63 <sup>2</sup>

### Vice-Chairs releasing final decisions

**Table 2**

	Year 2015				Year 2016		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Active Inventory	9087	9310	9405	9434	9300	8938	8651
No. of VC's Releasing Final Decisions	43	47	48	51	52	52	55
Total Final Decisions Released	649	708	691	811	820	853	846

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<sup>2</sup> Includes resignation of a new appointee

Caseload Reduction Goal:

**Time from a party confirming ready to proceed to first offered hearing date  
= 8 months by 2020**

Timeline to hearing: status at September 30, 2016

At September 30, 2016, the time to first offered hearing date is 18.7 months (median) for all hearing types.

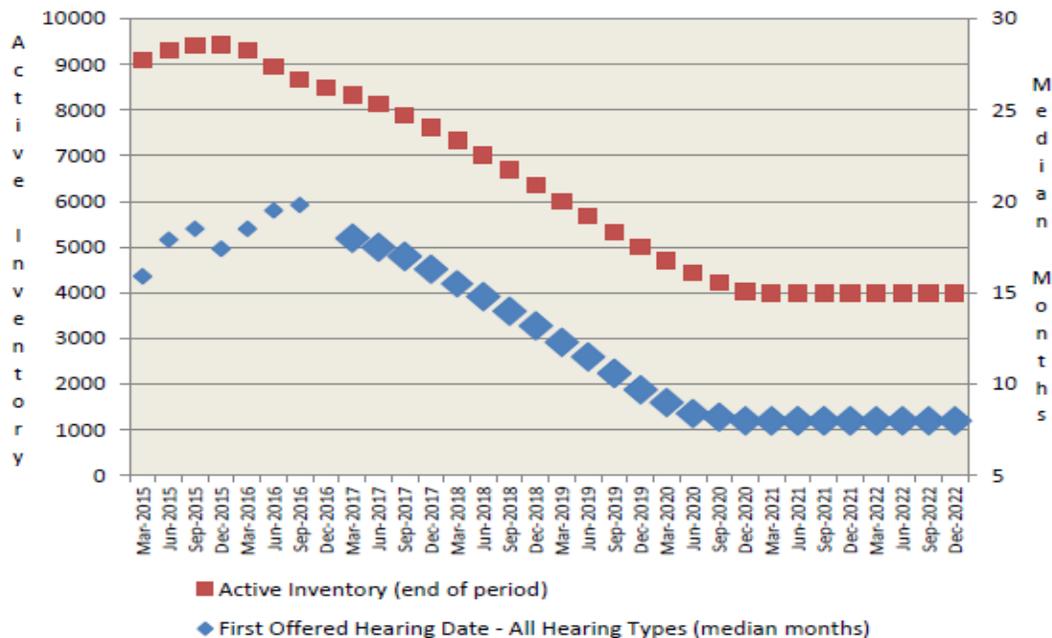
Year to date in 2016, the caseload has steadily declined. The Tribunal estimates a 1+ year lag between the caseload peak and a reduction in the timelines. The caseload peaked in November 2015. Reducing the timelines is estimated to take the full caseload reduction period, to the end of 2020.

With the further addition of new vice-chairs in 2016 and work to increase the vice-chair complement further, the Tribunal has hired more processing staff to increase the flow of cases to hearing and case resolution in preparation for increased hearing volume in 2017. With the recent appointment of a new Chair, the agency will explore project opportunities in 2017.

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.

## Assuming Time frame will begin to fall after Q4-2016



### Summary of activity in 2016

#### *Vice-Chair recruitment*

During the last quarter of 2015 and to September 30, 2016, there were 4 vice-chair competitions and 4 competitions for Members representative of workers and employers.

**Table 3**

PAS 1587	Part Time Vice-Chair	October 06, 2015 - November 03, 2015
PAS 1594	Full Time Vice-Chair	November 17, 2015 – December 15, 2015
PAS 1598	Full Time Worker Member	December 9, 2015 – January 6, 2016
PAS 1599	Full Time Employer Member	December 9, 2015 – January 6, 2016
PAS 1610	Part Time Vice-Chair	January 26, 2016 – February 23, 2016
PAS 1698	Part Time Vice-Chair	July 12, 2016 – September 23, 2016
PAS 1699	Part Time Worker Member	July 12, 2016 - September 23, 2016
PAS 16100	Part Time Employer Member	July 12, 2016 - September 23, 2016

### *Vice-Chair appointments*

Between January 1 and September 30, 2016, the Tribunal received 11 new part time vice-chair appointments:

- Nine (9) completed orientation training;
- One (1) is expected to attend the next scheduled orientation session; and
- One (1) individual resigned.

The Tribunal has a sufficient number of candidates in the appointment process to achieve a complement of 70 vice-chairs by December 31, 2016.

### *New OIC Orientation training*

In 2016, orientation sessions for new vice-chairs occurred in February, April, and August. Depending on the timing of new appointments, we are hoping to schedule the next session in early December and then in 2017.

## Plans and Targets for 2017-19

### 2017: Achieving improvement in time to hearing

#### *Vice-Chair recruitment*

- increase roster to 70+
- part time vice chair postings at PAS as necessary
- continue work to broaden candidate pool by pushing notice of PAS postings to various and diverse legal organizations

#### *Full Time OIC complement*

- Request PAS posting for full time vice-chairs
  - Seek competent candidates to increase complement
- Request PAS posting for full time members
  - Seek competent candidates to increase complement

#### *Vice-Chair retention*

- Use exceptional circumstances on a case by case basis to retain core roster comprised of expertise and experience

#### *Increased number of staff*

- Facilitate efficient and effective OIC adjudication;
- Resolve issues considering appropriate range of dispute resolution options;
- Continuous process review and improvement;

#### *Adjudicator training*

- Work to minimize time from new vice-chair orientation training to productivity

- develop training sessions to ensure 2<sup>nd</sup> and 3<sup>rd</sup> term OICs are trained and exposed to complex issues to manage implementation of 10 year term limits on appointments

## Financial Resources

Summary	2016 Budget Approved	2016 Projection	2017 Budget Request	2018 Projection	2019 Projection
<b>OPERATING EXPENSES</b>					
Salaries and Wages	11,703	11,557	11,980	12,150	12,322
Employee Benefits	2,535	2,643	2,687	2,827	2,897
Transportation and Communication	909	907	932	932	932
Services	6,885	7,089	7,272	7,178	7,220
Supplies and Equipment	461	459	557	482	482
<b>Total - WSIAT</b>	<b>22,492</b>	<b>22,656</b>	<b>23,428</b>	<b>23,568</b>	<b>23,852</b>
Services - WSIB	530	530	530	530	530
Revenue	(8)	(5)	(5)	(5)	(5)
<b>Total Expenditures/Budget Request</b>	<b>23,015</b>	<b>23,181</b>	<b>23,953</b>	<b>24,093</b>	<b>24,377</b>
ONE-TIME EXPENSES	2,304	2,434	4,734	4,310	4,337
<b>Grand Total Expenditures/Budget Request</b>	<b>25,319</b>	<b>25,615</b>	<b>28,687</b>	<b>28,403</b>	<b>28,714</b>

WSIAT  
October 2016