

Workplace Safety and Insurance Appeals Tribunal

Business Plan

2018 to 2020

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 (OIC) 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.

During 2016 and 2017, the Chair, Executive Director and staff in the Executive Offices worked to recruit vice-chairs and members to increase the number of appeals heard and reduce the time to hearing and case resolution. This work has resulted in a substantial decrease to the active inventory and an associated decline in the time to hearing. The quarterly median time to first hearing has decreased in 2017 from 19.9 months to 14.9 months.

Achievements in 2017

a) Caseload: positive trends

- The active inventory has decreased;
- Net increase in the vice-chair roster; and
- Median time to first offered hearing date declined

b) Vice-Chair complement: increased

The Tribunal recruited new part-time vice-chairs to contribute to caseload reduction work. At September 30, 2017, the roster reached 69 vice-chairs, which is an increase from 53 at the end of 2015 and 67 at the end of 2016.

The Tribunal also worked to recruit new members representative of workers and employers. At September 30, 2017, there was a net increase of 3 members. The goal

is to add 13 more members by year end, enabling the agency to meet its regional hearing needs.

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.

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 or a vice-chair sitting alone or a tripartite panel consisting of the chair or a vice-chair and a 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 is offered in the format of mediation-adjudication. Parties also have the option to submit a proposed resolution to the Tribunal for review. The *Workplace Safety and Insurance Act, 1997* (WSIA) provides at s.16 that an agreement between a worker and his or her employer to waive or forego any benefits to which the person is or may become entitled to under the act is void. Vice-Chairs of the tribunal review mediation outcomes to determine whether they are consistent with law and policy. Further, resolutions are 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 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.

During 2017, the Tribunal established an Outreach Council of practitioners in the area of workplace safety and insurance who frequently appear before the Tribunal. The group offers the opportunity to obtain valuable stakeholder feedback about pressing issues in a timely fashion.

The Tribunal is currently reviewing the structure of its Advisory Group and plans to meet with the Advisory Group in 2018.

The Tribunal continues its dialogue with the WSIB to facilitate administrative and procedural matters involving both agencies.

Environmental Scan - Factors affecting caseload

1. Excellence in adjudication - Changing complement of OIC appointees

At the end of September 2017, the vice-chair roster was 69. This is an increase from 53 vice-chairs at the end of 2015 and 67 at the end of 2016.

The Tribunal worked throughout 2017 to increase the complement of vice-chairs to increase the capacity to decide appeals and thereby reduce the timeline to hearing. The agency has also worked to add to the roster of members to renew and maintain a productive and available roster.

At September 30, 2016, 38% of the Tribunal's vice-chair roster was in their first 2 year term appointment. This compares to 13% at January 1, 2015. The new group of adjudicators contributes to an exciting and interesting time in training and development; this renewal requires the support of a core group of full time, experienced adjudicators.

2. Appeal Volumes and Timeliness

For 2018 through 2020, the Tribunal will focus on hearings in the regions to reduce the time to hearing to 12 months across the province. Project opportunities will also be explored, for instance, assigning resources to the reconsideration applications to reduce the time to decision.

The Tribunal will continue to monitor the number of incoming appeals from the WSIB and communicate about issues to contribute to the effective administration of the system.

Achieving excellence in adjudication in a specialized area is contingent on a roster of knowledgeable OICs who are prepared to spend time on Tribunal work.

3. Caseload Trends

The Tribunal is monitoring the following legislative and other changes to determine the effect on caseload, complexity, and adjudicator and staff complements, in the short and longer term.

- As the time to hearing decreases, Schedule 1 employers will more often need to consider whether cost consequences could arise from the outcome of an appeal at the Tribunal. This in turn may increase the number of employers that would participate in hearings, which increases the length of the hearing time scheduled and perhaps the complexity of the appeal. Increased participation from employers at the Tribunal level could also increase opportunities to mediate as a method to resolve appeals.
- On a related note, the planned changes to the WSIB's Rate Framework appear to be aimed for implementation on January 1, 2020. The Tribunal will keep in touch with the WSIB to monitor and anticipate whether employers will have foundational issues to appeal under the new framework. This could result in a one-time surge of a large number of appeals during the initial phase(s) of implementation.
- The amendments to WSIA related to mental stress and associated updates to policy at the WSIB are key substantive issues for the system to address; this will be monitored as a training topic for the agency's staff and adjudicators.

- In 2016, Regulation 175/98 now includes administrative penalties for claim suppression; the new provision comes into force January 1, 2018. Appeals, if any, arising from this change are anticipated later in the planning period.

Strategic Directions, 2018-20

1. OIC Complement – High Quality Decisions and Changing Complement of OICs

OIC Recruitment Summary

The target complement for the vice-chair roster was 70 qualified and competent adjudicators who are available for tribunal work. The agency appreciated the Ministry's agreement to increase as high as 80 vice-chairs if that would assist reducing the caseload and timelines to hearing.

At the end of September, 2017, the vice-chair roster was 69. By December 31st, the agency anticipates that the net effect of recruitment and attrition will be a complement of 67. Due to the success achieved in reducing the caseload during 2017, recruiting a complement of 80 vice-chairs will not be necessary.

The agency has also worked to increase the complement of members representative of workers and employers. The agency's goal is to add 13 members within the next few months, bringing the complement to 39.

At present, the adjudicator roster is comprised of 52 women appointed as adjudicators to the agency, for a percentage of 52%, which exceeds the recommended target of 40%. The agency is actively monitoring this balance.

The recruitment work, and the Ministry's invaluable support of recruitment work, has positioned the agency to complete the caseload and timeline reduction over the next 2 years, forecast to occur at the end of 2019.

The agency will work to manage the addition of a number of new adjudicators in keeping with the primary goal of quality adjudication and reasoned decisions. The implementation of the 10 year rule requires a focus on adjudicator training to ensure that there is succession planning for complex issues and complex case management.

Full Time Adjudicators

Training for complex issues and complex case management will be supported by the work to increase the full time adjudicator roster. The Tribunal seeks to increase the full time vice-chair complement to between 18 and 20 and seeks to work with a full time member complement of 6-7. The agency believes that it is key to have a roster of full time experienced adjudicators to train and mentor new appointees.

Performance Management Plan

During 2017, the WSIAT started the development of a performance management plan for OIC adjudicators. The Tribunal has now reviewed the performance management plans that in place in Quebec, British Columbia and Alberta for their Workers Compensation Appeals Tribunals. During 2018, the agency will complete development

and implement the performance management plan. This plan will support continuing professional development for the adjudicators, decision making excellence, strong hearing management skills and the re-appointment process.

2. Goals for Caseload and Time to Hearing

- caseload volume to continue to decline during 2018-19
- time to hearing to within 12 months across the province in 2018

In 2017, the Tribunal worked to increase the adjudicator complement and this has resulted in an increase in the number of decisions and dispositions.

During 2018, the Tribunal will set up a regional office located in Hamilton, co-located with the Ministry of Labour offices.

3. Process Review

A general review of the Tribunal's process was commenced in 2017 and will be completed in 2018. This will include consulting internally, with the community and revising practice directions. The opportunities to use mediation to resolve appeals will also be reviewed.

In terms of projects, the agency will also complete a review of the reconsideration process. Beginning in the fall of 2017, greater resources were allocated to reduce the time that it takes to complete the reconsideration process. In 2017, the Tribunal's exploration of video conferencing was well received by the representatives participating in the pilot project. The Agency will continue work to use video conferencing to resolve suitable cases, and thereby contribute to reducing the time to hearing in the regions. The work to roll out video conferencing across the province will continue for suitable cases and interested representatives.

Next year, the Tribunal will work towards e-filing of appeal forms, with the goal of making the process available in 2019.

4. Staffing Complement

- Continue increased staffing to support hearings and decision release

For the remainder of the caseload reduction period, 2018 and 2019, additional processing staff continue to be required to support hearings, decision processing and renewal projects.

5. Temporary Funding Increase

The Tribunal seeks one-time funding to support the increase in the part time per diem adjudicator complement, hearing room rentals (as required) and travel costs, and information technology to support caseload reduction initiatives.

Key Objectives and Strategies

Objectives

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

The key objectives for 2018 are to reduce timelines to first offered hearing date across the province to under 12 months; to implement an OIC performance management plan; and to complete the end-to-end process review.

The objective for the planning period of 2018-20 is to improve the time to first offered hearing date to less than 8 months by the end of 2019; implement changes flowing from the process review and to renew programs related to the OIC complement, including refocused attention on consistency in decision making.

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 complement of processing staff to arrange hearings, release decisions and manage caseload demands;
- attract and retain employees;
- ensure that information systems are sufficient to manage the demands of increasingly complex technological environment;
- continue to train OICs to manage the effects of the 10 year rule on the experience level of the roster; and
- complete and implement any changes arising from process review.

Human Resources

The agency's FTE request for 2018 is 181 (base: 172; and 9 FTEs to support caseload reduction efforts). This is a modest increase to the base budget complement of FTEs and is primarily comprised of an increase to the full time vice-chair roster.

WSIAT Caseload Management Plan, 2018-20

Caseload update at September 30, 2017

The Tribunal is pleased to report on positive trends:

- The active inventory has declined during 2017;
- The median time to first offered hearing date has declined to 14.8 in the third quarter from 20.0 in the third quarter of 2016; and
- There are more vice-chairs and members on the OIC adjudicator roster.

Vice-Chair complement

	New VCs appointed	Total VC roster – end of period
January to December 2016	14	67
January to September 30, 2017	9	69

Vice-Chairs releasing final decisions

	Year 2016				Year 2017		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Active Inventory	9,300	8,938	8,651	8,163	7,660	7,151	6,534
No. of VC's Releasing Final Decisions	52	52	55	57	60	62	67
Total Final Decisions Released	820	853	846	905	925	930	965
Average Released per Vice-Chair	15.8	16.4	15.4	15.9	15.4	15.0	14.4

Complement of Members Representative

	New Members appointed	Total Member roster – end of period
January to December 2016	3	25
January to September 30, 2017	5	27

Timeline to hearing: status at September 30, 2017

During the 3rd quarter 2017, July to September, the time to first offered hearing date was 14.8 months. Year to date, taking into consideration the hearing dates over three quarters, the time to first offered hearing date for year to date 2017 is about 17 months.

During 2018, the goal is to offer a first hearing date within 12 months in all the regional hearing centers.

By the end of December 2019, the Tribunal's goal is to have reduced the time to first offered hearing date to less than 8 months.

Focus on Regional Hearings in 2018

The hearing schedule in 2018 will focus on the regional hearing centres, with an estimated emphasis of 70% of hearings in the regions and 30% in Toronto. This focus to reduce the time to hearing in the regions will result in additional spending on hearing room rentals and travel costs.

Regional Office: Hamilton

The agency is excited to set up a regional hearing centre in Hamilton during 2018 and is appreciative of the Ministry's support and facilitation of this project.

The office will have two hearing rooms; one (1) of which will be set up with a particular focus on video conferencing. The hearing rooms will be supported by a caucus room, a waiting area, a reception desk and space for adjudicators to work between hearings.

Renovation and set up costs for the Hamilton office will be incurred during 2018. Lease and related costs will be included in the base budget moving forward.

Video Conferencing

The agency will continue to roll out the opportunity for interested representatives to proceed by video conferencing in suitable cases. The hearing method is voluntary, as the model relies on the representative to have an office arrangement suitable to connect to the Tribunal.

With the introduction of the Hamilton Office, the agency will explore offering a video conference option to those representatives who do not have an office arrangement suitable to host a session at their own location.

Active Inventory

During 2018, the Tribunal will seek to reduce the active inventory to between 4,500 and 4,700 cases.

Achieving Plans and Targets for 2018-20

2018: Achieving time to hearing at or under 12 months across the province

Vice-Chair recruitment

- The agency has worked to address recruitment and re-appointments through to the end of 2018
- During the summer of 2018, the agency will review the roster and assess recruitment needs

Full Time OIC complement

- Increase full time vice-chair complement to 18
- Maintain full time member complement at 6 or higher

Increased number of staff

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

Adjudicator training

- Training sessions to ensure 2nd and 3rd term OICs are trained and exposed to complex issues, complex case management and a wide selection of medical issues.

**Financial Resources
2018-20 Business Plan**

	2017 Budget Approved	2017 Projection	2018 Budget Request**	2019 Projection	2020 Projection
OPERATING EXPENSES					
Salaries and Wages	11,272	12,294	11,272	11,272	11,272
Employee Benefits	2,427	2,706	2,427	2,427	2,427
Transportation and Communication Services	909	932	909	909	909
Supplies and Equipment	6,666	7,255	6,666	6,666	6,666
Total - WSIAT	21,692	23,779	21,692	21,692	21,692
Services - WSIB	530	530	530	530	530
Revenue	(5)	(5)	(5)	(5)	(5)
Total Expenditures/Budget Request	22,217	24,304	22,217	22,217	22,217
One-Time Expenses	6,470	4,796	8,951	8,178	6,736
Grand Total Expenditures/Budget Request	28,687	29,100	31,168	30,395	28,953

**The WSIAT has asked to discuss the base funding with the Ministry of Labour and the topic will be brought forward to the 2019 Business Plan.

WSIAT
October 2017