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WSIAT 2013 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 2013
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).

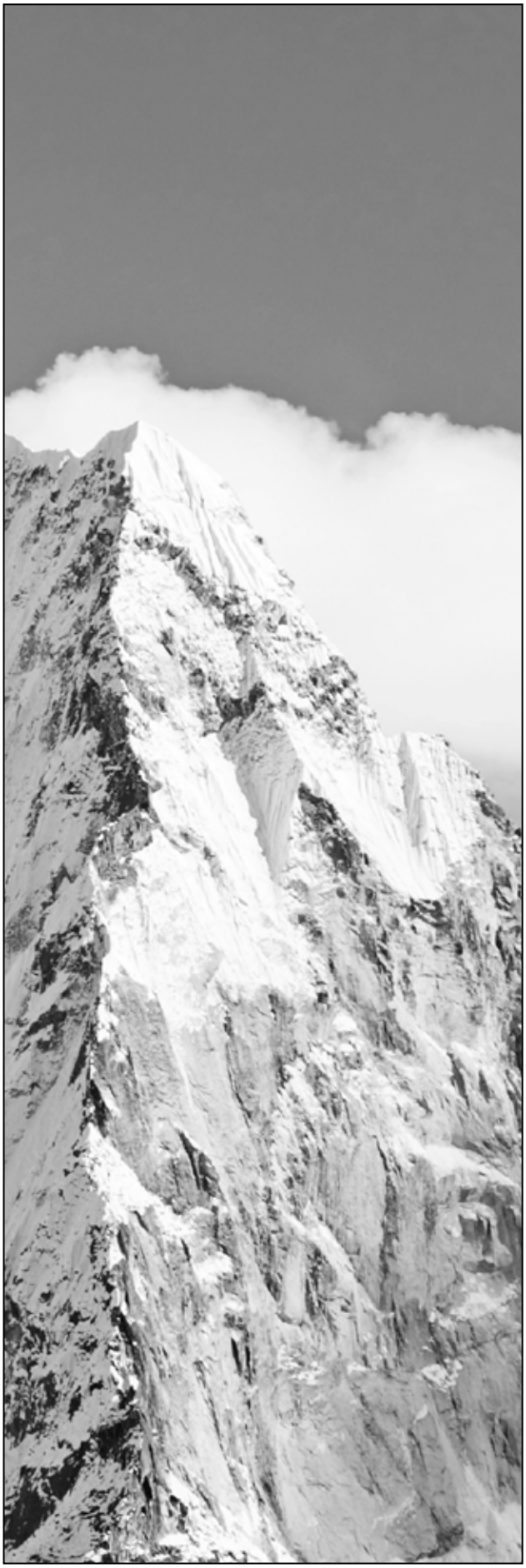
The WSIA, replacing the *Workers' Compensation Act*, came into force January 1, 1998. The Tribunal is a separate and independent adjudicative institution. It was formerly known as the Workers' Compensation Appeals Tribunal, until the name was changed pursuant to section 173 of the WSIA.

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 2013 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

MESSAGE FROM THE CHAIR



SCALING THE APPEALS MOUNTAIN

As more appeals continue to drop on the Tribunal, the appeals hillside which once contained 4,000 active appeals has been raised to a mountain height of 8,000 active appeals.

While the Appeals Tribunal continues to search for a team of Sir Edmund Hillarys who can help scale the appeals mountain and reduce it once again to a hillside of 4,000 active appeals, attempts to scale the mountain in 2013 became a herculean task because of the limited Tribunal resources.

Although the Appeals Tribunal is gradually expanding its roster of competent Vice-Chairs and Members, it is a gradual process and one which is made more difficult by the decisions of some adjudicators to retire and by others to seek judicial appointments or positions at other commissions, boards and tribunals. While the Tribunal has been fortunate to retain a number of its most experienced and most competent Vice-Chairs and Members, a number of potential competent adjudicators are now concerned about recent interpretations of the Provincial Appointments Directive and the 10-year limit on appointments. Unless prospective adjudicators are within 10 years of their retirement dates, they are reluctant to leave any current positions in order to assume a Vice-Chair or Member position which may not last beyond the ten-year period. The Tribunal and the legal community made submissions along with the Society of Ontario Adjudicators and Regulators (SOAR) concerning the Appointments Directive and the need to retain the most competent people. As a result of those submissions, the government amended the Appointments Directive to add an "exceptional circumstances" provision which allowed recommendations for reappointments to extend beyond the ten-year limit. Hopefully, that interpretation will continue and allow Ontario's administrative justice system to retain the services of its most competent adjudicators.

While the appointment of new competent Vice-Chairs and Members should allow the Appeals Tribunal to eventually scale the appeals mountain, financial pressures and concerns of applicants regarding a 10-year limit have slowed additions to the Tribunal adjudicative team and resulted in delays in appeal processing and the hearing process. If the Appointments Directive is interpreted in a manner which provides reassurance to the injured worker, employer and legal communities, as well as all prospective Sir Edmund Hillarys,

it should shorten the timelines and allow the Tribunal to scale its way to the peak of the Appeals Mount Everest.

This "quest for quality" at the Appeals Tribunal resurrects the message in the Tribunal's 2009 Annual Report, which started out with a quote from Robbie Burns:

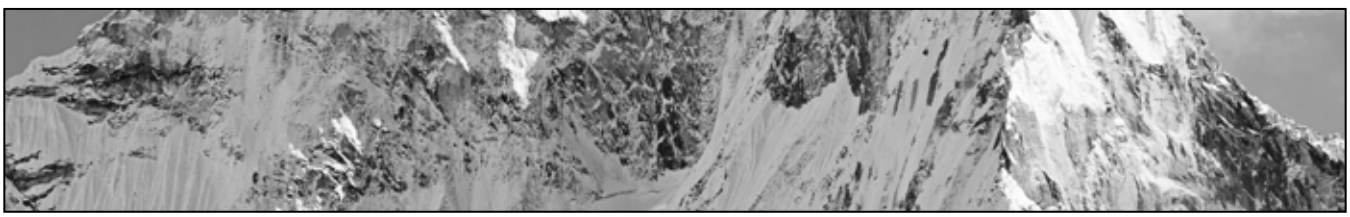
> *Oh, wad some Power the giftie gi'e us*
> *To see oursel's as others see us!*

That message went on to state: "While Robbie Burns was not a Tribunal decision-maker, his comment concerning self-awareness does resonate with the Appeals Tribunal. As the Tribunal strives to improve the quality of its process and decisions as part of an ongoing quest to improve the quality of Ontario's administrative justice system, we are always interested in how parties to appeals, their representatives, the Court system and the public, view the Tribunal. To date, that perception has generally been positive – a perception which can be attributed in large measure to the expertise of long-serving Vice-Chairs and Members as well as the skills of experienced staff. Ontario's workplace safety and insurance system is fortunate in having a number of long-serving, dedicated individuals who are committed to delivering quality adjudication."

> "Ontario's workplace safety and insurance system is fortunate in having a number of long-serving, dedicated individuals who are committed to delivering quality adjudication."

While the most competent adjudicators and staff members will continue to play key roles in scaling the appeals mountain, those dedicated individuals will require more teammates who can handle large caseloads and deliver quality final decisions at the Tribunal level. To assist the competent team members, the Appeals Tribunal must focus on a "whole person adjudication" approach and combine all appeals from individuals who have multiple claims at the Board and file multiple appeals at the Tribunal, so Vice-Chairs and Panels may deal with all issues and appeals for the same appellant in a single hearing and not use scarce resources to schedule multiple hearings for the same appellant. Knowledgeable representatives should also be aware that filing multiple reconsideration requests also places a significant drain on Tribunal resources and adversely affects those appellants who are waiting for their first hearing at the Appeals Tribunal. While the key factor in scaling the appeals mountain is the addition of competent Vice-Chairs and Members, significant assistance can come from competent members of the injured worker, employer and legal communities, who give quality advice to clients about the appeals process and the need to avoid multiple appeals and reconsideration applications, which place a drain on the resources of the entire workplace safety and insurance system in Ontario.

As Robbie Burns would advise them, they all need "to see oursel's as others see us."



HIGHLIGHTS OF THE 2013 CASES

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2013.

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, including amendments contained in the *Government Efficiency Act, 2002* (GEA), effective November 26, 2002, and Schedule 41 of the *Budget Measures and Interim Appropriation Act, 2007*, effective July 1, 2007. 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 impairment. 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 a worker's and employer's 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. Labour market re-entry (LMR) or, under current Board policy, work transition (WT) services and LOE benefits may be available where a worker is unable to return to work with his 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. LOE and NEL appeals represent a large portion of the Tribunal's case law.

2450/12
893/13
1158/13

As noted in previous Annual Reports, difficult adjudicative issues may arise where a worker's employment is terminated following a workplace accident, since the Tribunal must determine whether the resulting loss of earnings flows from the compensable injury or the termination. Several 2013 decisions have noted that there are two lines of analysis in Tribunal decisions. Both approaches examine the circumstances surrounding the termination to determine whether there was a causal link between the termination and the injury. One approach finds 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 worker's subsequent loss of earnings. The other approach finds that, if the termination is unrelated to the injury, the worker is not entitled to LOE benefits. *Decision No. 2450/12*, 2013 ONWSIAT 713, contains a good review of the case law but did not need to decide which analysis it preferred since the worker was not entitled to further LOE benefits on either analysis. In *Decision No. 893/13*, 2013 ONWSIAT 2241, the Vice-Chair preferred the first approach, finding that there should be a further analysis of the circumstances surrounding the termination to determine whether it broke the chain of causation between the workplace injury and the loss of earnings. A settlement under the *Employment Standards Act* in which the employer agreed to amend its records to reflect that the worker's employment was terminated due to lack of suitable work, was found to be persuasive evidence that the compensable injury played a role in the termination of the worker's employment. In *Decision No. 1158/13*, 2013 ONWSIAT 1564, on the other hand, the worker's termination for unrelated reasons was found to be an

intervening event such that the subsequent loss of earnings did not result from the workplace injury. The worker was still entitled, however, to LOE benefits for compensable surgery since he was not able to perform even the modified work from which he had been terminated during this period.

1869/09

Decision No. 1869/09, 2012 ONWSIAT 2779, considered the effect of a plant closure on LOE benefits. The worker was not entitled to benefits as he had not co-operated in LMR and was terminated for cause while the employer was attempting to find suitable modified work. The employer subsequently closed. *Decision No. 1869/09* held that this did not entitle the worker to further LOE benefits. Business closure after a termination is not described in Board policies as a reason for reopening LOE benefits after non-co-operation. The Vice-Chair commented that this is not necessarily an unfair result. Generally, a worker who has been out of the work force for a number of years is in a different situation from a worker who has co-operated in early and safe return to work and participated in modified work. Generally a worker's work readiness after a delay of several years will not be the same as that of a worker who co-operated. The loss of earnings was due to the worker's non-co-operation and not the business closure.

1118/12
1908/12
538/13
865/13

Several cases in 2013 considered entitlement to LOE benefits during a strike when the employer offers suitable modified work but the worker refuses to cross the picket line. *Decision No. 1118/12*, 2013 ONWSIAT 1546, contains the most detailed analysis of this issue. It reasoned that the Board's policy on strikes is subject to the condition precedent in section 43 that the loss of earnings must result from the injury. The policy provides that, generally, benefit entitlement remains the same during a strike. The policy requires a determination of whether the worker is not able to continue working due to the strike. This is a similar analysis to that under section 43. If the worker chooses not to cross a picket line for personal reasons, the inability to continue working is the result of a personal choice, not the work-related injury. While there could be situations where the job is not available because the worker cannot cross the picket line due to repercussions or penalties, the modified work in *Decision No. 1118/12* was suitable and available to the worker during the strike. Other employees were crossing the picket line without problem and the worker did not contact the employer to discuss safety concerns. *Decisions No. 1908/12*, 2012 ONWSIAT 2707, and *538/13,* 2013 ONWSIAT 1183, reached a similar result. In *Decision No. 865/13*, 2013 ONWSIAT 1167, on the other hand, the worker was entitled to benefits during the strike since the evidence established that the worker's ability to work during the strike was not sustainable due to delayed medical treatment.

644/13
748/13
1666/12

Where a worker is receiving entitlements under other schemes, disputes may arise about what should be included in the worker's post-accident earnings basis for the purposes of determining LOE benefits. A number of decisions in 2013 considered such issues. *Decision No. 644/13*, 2013 ONWSIAT 812, agreed with earlier decisions that severance benefits should not be factored into the calculation of LOE benefits since severance benefits are not earnings from post-injury employment. *Decision No. 748/13*, 2013 ONWSIAT 1525, agreed with this analysis and concluded that severance benefits should also not be deducted from payments made under section 41(13) for an employer's failure to fulfill its re-employment obligations. *Decision No. 1666/12*, 2013 ONWSIAT 1866, agreed with earlier decisions that Canada Pension Plan (CPP) disability benefits should not be included in earnings basis, and also found that Old Age Security (OAS) benefits should not be included since they are not related to a worker's employment. OAS is a monthly benefit available to all Canadians aged 65 or over who fulfill certain residence requirements. Employment history

is not a factor in determining eligibility for OAS benefits.

207/13
1738/13
233/13

There are also specific provisions in the WSIA requiring consideration of other statutory entitlements. Section 43(5) provides that LOE benefits "must reflect any disability payments paid to the worker under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the injury." A question has arisen as to whether there should be a full offset of CPP disability benefits if the worker also has some less significant non-compensable conditions. *Decision No. 207/13*, 2013 ONWSIAT 922, applied *Decision No. 1311/11*, 2011 ONWSIAT 2422, which offset LOE benefits by only 90% of the CPP disability benefits when the predominant complaint related to the compensable injuries and the worker was able to work with the non-compensable problems; however, more recently *Decisions No. 1738/13*, 2013 ONWSIAT 2467, and *233/13*, 2013 ONWSIAT 1428, reasoned that CPP disability benefits are only granted when a worker cannot work. Where the worker was previously able to work despite significant non-compensable conditions, the LOE should be reduced by the full amount of the CPP disability benefits since the workplace injury is the predominant cause of the subsequent inability to work.

699/13I

A similar argument was considered under section 48(23) which governs survivors' death benefits. Section 48(23) states that "the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the deceased worker." *Decision No. 699/13I*, 2013 ONWSIAT 2391, upheld the Board's policy of offsetting 100% of CPP survivor benefits caused by a compensable injury in order to avoid double compensation. The Panel noted that the Weiler Report stated that the *Canada Pension Plan* is intended to establish a minimum floor for all Canadian workers and that provincial workers' compensation should serve as the last insurer that makes up remaining income losses.

946/13

In *Decision No. 946/13*, 2013 ONWSIAT 1085, the worker had a high income, well above the statutory maximum. He submitted that his CPP disability benefits should be offset from his actual earnings rather than the statutory maximum so that the amount of under-compensation arising from the statutory maximum would be reduced. In rejecting this argument, *Decision No. 946/13* found that the WSIA deems the worker's earnings to be at the statutory maximum. It follows that any calculation required by the Act or policy involving pre-accident earnings must be based on the statutory maximum. This is consistent with section 43(5) para. 2, which requires that the net average earnings that a worker is able to earn after an injury reflect CPP disability benefits. The merits and justice provision did not warrant a departure from the application of the law and policy in this case. The provisions are not ambiguous or unclear. The intent of section 54 is to limit entitlement for persons with earnings that exceed the statutory maximum.

2421/12

Turning to NEL awards, these often require the Tribunal to interpret the complicated and technical American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3rd edition revised) (AMA Guides), which is the prescribed NEL rating schedule under Ontario Regulation 175/98. *Decision No. 2421/12*, 2013 ONWSIAT 1335, considered an argument that the NEL award for the worker's left elbow impairment should take into account loss of grip and pinch strength and the worker should have received a higher rating on a whole person basis, because he had a congenital right arm problem. *Decision No. 2421/12* found that in general, grip and pinch measurements are functional tests and are not used for evaluating impairment under the AMA Guides. However, if loss of strength represents an additional impairing factor not already taken into account, it may be measured and the loss rated. Since it appeared

that the worker's loss of strength had not already been considered, the worker was entitled to recalculation of the NEL awards. The worker was not entitled to an increase to take into account his non-compensable congenital right arm problem, however, since the Act intends a NEL assessment to compensate only for permanent impairment resulting from a workplace injury. It would also be contrary to Board policy, which provides a mechanism for factoring out pre-existing non-compensable injuries.

147/10

The WSIA introduced limits on entitlement for mental stress and the Board has adopted policy on these limits. Section 13(4) provides that a worker is not entitled to benefits from 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. During 2013, the Tribunal continued to consider mental stress appeals under the WSIA and Board policy. Under Board policy, a traumatic event must be clearly and precisely identifiable, objectively traumatic and unexpected in the normal course of the worker's employment. Appeals often involve police or emergency workers and there may be an issue about what is routine or unexpected in their jobs. *Decision No. 147/10*, 2013 ONWSIAT 186, is an example of such a case. The worker was a dispatcher for a police department who had taken a call from a person who was wanted by the police and wanted to turn himself in. The worker initiated a possible pick-up of the caller but the caller did not turn himself in and, one week later, killed two men. *Decision No. 147/10* found that there was a linear and strong connection between the worker taking the routine call and the killing of the two men by the caller one week later. While it was not uncommon or unexpected for the dispatcher to receive calls about imminent or actual violence, it was unexpected that there would be delayed and grievous consequences. The worker later came to understand that she was not to blame for what the caller did, but it was objectively traumatic at the time and not an event that would be normally encountered in daily routine.

1098/13

Decision No. 1098/13, 2013 ONWSIAT 2313, is another example of the type of situation which meets the statutory and policy requirements for traumatic mental stress. The worker was a correctional officer who had developed a psychiatric condition following the death of a prisoner in circumstances where prison guards had been given instructions to act in a way that resulted in a risk of death. There was no evidence that the instructions were provided for the purpose of protecting guards or other prisoners. The prisoner's death was sufficiently unusual that it fell within the requirements of section 13(5). It was not necessary to determine whether the worker was correctly diagnosed with post-traumatic stress disorder. As discussed in *Decision No. 483/11*, 2011 ONWSIAT 2257, Board policy on stress is not limited to a diagnosis of PTSD nor is it limited to situations in which the worker witnessed the event. It was also not necessary to determine whether section 13(4) and (5) of the WSIA was incorporated into the federal *Government Employees Compensation Act* (GECA), because the worker was entitled to benefits even if section 13(4) and (5) of the WSIA applied.

1354/07

The question of whether the section 13 limits on entitlement for mental stress apply to appeals for chronic occupational stress that are subject to GECA also arose in *Decision No. 1354/07*, 2013 ONWSIAT 360. Extensive submissions were made on the development of GECA and workers' compensation, the application of GECA to disablement claims and the application of GECA to stress claims, including an analysis of Tribunal decisions regarding GECA and disablement, and of case law regarding GECA and stress. Since *Decision No. 1354/07* found that the worker was not entitled to benefits for stress in any event, it was not necessary to decide the GECA issue; however, the summary of submissions in

Decision No. 1354/07 should be of use in future decisions.

422/13

Finally, the WSIA introduced a six-month time limit for appealing most Board decisions within the Board, as well as a six-month time limit for appealing final Board decisions to the Tribunal. In some cases, there may be a dispute whether a Board letter is a "decision" for the purposes of the time limit. *Decision No. 422/13*, 2013 ONWSIAT 638, is one of the first to consider the Board's policy definition of a "decision letter" as one that explains the rationale including any applicable policies, outlines the information used to make the decision, and advises both parties of their right to object to the decision. In applying this policy, *Decision No. 422/13* commented that when a letter involves an important legal issue for which a time limit applies, fairness requires that the letter identify this so that the letter may be directed for appropriate action.

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 when making a decision. Section 126(2) provides that the Board is to notify the Tribunal of applicable policy and 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. Policy issues may also arise in other circumstances; for example, the Board may ask the Tribunal to reconsider a decision in light of Board policy or it may be necessary for the Tribunal to interpret Board policy or to decide which version of a policy applies.

1057/09I2

In 2013, there were no new section 126(4) referrals. In 2012, *Decision No. 1057/09I2*, 2012 ONWSIAT 1547, had referred the 1996 clothing allowance policy to the Board under section 126(4) of the WSIA. At the close of 2013, the post-hearing activity in this matter was completed and a decision was pending.

716/13
717/13

Previous Annual Reports have noted that the Board did not have a policy on entitlement to LOE benefits 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, Tribunal cases have held that LOE benefits are not payable to retired workers unless the worker intends to keep working despite his retirement. Tribunal decisions have also held that the payment of spousal benefits does not require that the worker be entitled to LOE benefits and that spousal benefits should be based on the statutory minimum in such circumstances. The Tribunal continued to apply this analysis in 2013. See, for example, *Decisions No. 716/13*, 2013 ONWSIAT 1650, and *717/13*, 2013 ONWSIAT 1225. These decisions are also of interest for their discussion of the Board's policy on what constitutes a "decision letter" for the purposes of meeting the time limit to appeal.

1164/13

Previous Annual Reports have also noted that Board policy often changes over time. The rights and obligations of parties may vary significantly depending on which version of a policy applies. Tribunal cases have previously found that section 126 policy is similar to legislation since the Tribunal must apply it and, accordingly, the presumption against retroactivity applies. *Decision No. 1164/13*, 2013 ONWSIAT 2068, is of interest for its application of this principle in the context of the new work reintegration policies, which introduced the concepts of work reintegration (WR) and suitable occupation (SO) in place of labour market re-entry (LMR) and suitable employment or business (SEB). These policies have been amended since their initial adoption. The issue in *Decision No. 1164/13* was whether the worker was entitled to FEL

supplementary benefits under section 43(9) of pre-1997 Act while conducting a job search in 2011. *Decision No. 1164/13* found that the applicable Board policy was the policy in place at the time of the operating level decision, notwithstanding any intervening amendments. Although the applicable Board policy did not provide explicitly for job searching as a work transition or labour market re-entry activity, *Decision No. 1164/13* found that the worker's job search activity was a reasonable work transition activity which would likely assist the worker in obtaining employment. While the Board cannot be expected to sponsor a job search over a prolonged period, the period was not unreasonable, particularly given the labour market at the time.

838/13

In interpreting Board policy, the Tribunal will consider the governing statutory provisions as well as the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. Board policy provides that in determining entitlement to LMR plans, the Board must have regard to the worker's rights under the Code, that workers are entitled to equal treatment and that the Board considers any non-work-related disability when conducting an LMR assessment. In *Decision No. 838/13*, 2013 ONWSIAT 1809, the worker argued that this policy entitled her to full LOE benefits because she could not participate in an LMR plan due to a non-compensable post-accident injury. *Decision No. 838/13* found, however, that the policy applies to LMR services and does not directly address LOE benefits. To be suitable, an LMR plan must accommodate both compensable and non-compensable conditions. The worker also argued that the wording of section 43(4)(a) entitled her to full LOE benefits until she completed the plan and that no reduction for failure to complete the plan due to post-accident non-compensable problems was allowed. *Decision No. 838/13* rejected this on the grounds that section 43(4) has to be interpreted in the context of section 43(1), which provides benefits for loss of earnings resulting from the injury.

8/13

Finally, *Decision No. 8/13*, 2013 ONWSIAT 66, considered the Board's guidelines for dealing with appeal time limits for appeals within the Board. While Board guidelines and Adjudicative Advice documents are not "policies" for the purposes of section 126, they provide useful guidance and the Tribunal may consider them. The guideline in force at the time set out several factors to consider on time extensions and provided that broad discretion will be applied where appeals are brought within one year of the date of the decision. The guideline was interpreted to mean that, where a delay is not lengthy, a time extension will be granted. The phrase "broad discretion" makes it clear that it is not mandatory to grant an extension where the delay is less than one year but, in the absence of factors such as bad faith that would make it inappropriate to grant an extension, the time extension will be granted and no further explicit reasons are needed.

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 by the Act. Right to sue applications may raise complicated issues such as the interaction between the WSIA and other statutory schemes in Ontario and other jurisdictions.

1383/13

In *Decision No. 1383/13*, 2013 ONWSIAT 2002, the issue was whether the defendants, a transport company and truck driver who were both resident in New Brunswick, had a "substantial connection" to Ontario so as to fall within the scope of the WSIA. *Decision No. 1383/13* relied on *Decision No. 382/10*, 2011 ONWSIAT 707, which held that the object of the WSIA is to secure a civil right within the province. If an employer has one or more workers

engaged in work in or about in industry Ontario, it is an "employer" under the WSIA, regardless of its location. *Decision No. 1383/13* also considered the Board's policy on non-resident workers, which identifies the major consideration as the amount of time that a worker spends working in Ontario. Generally, a worker who works in Ontario for 11 or more days a year has a substantial connection to Ontario. While there were some factors that did not support a connection to Ontario, the defendant driver spent more than 11 days in Ontario. Accordingly, the defendants had a substantial connection to Ontario and the plaintiff's right of action was taken away.

1138/12

Decision No. 1138/12, 2013 ONWSIAT 1159, considered another right to sue application arising out of a motor vehicle accident. Two teachers were killed while driving back from a workshop organized by their union. They had travelled about 40 kilometres to attend the workshop and then had gone shopping at a location about seven kilometres from the workshop. *Decision No. 1138/12* found that the fundamental inquiry was whether the employer had some role in the activities being performed at the time of the accident. The fact that workers undertake professional development does not necessarily put them in the course of employment where the employer has no direction or control with respect to the professional development. Pursuant to the collective agreement, the employer's only role was to allow the teachers to attend without loss of pay or benefits. Accordingly, the two teachers were not in the course of employment. Even if they had been while attending the workshop, they made a distinct departure from their employment when they undertook a shopping trip for personal reasons.

2064/12

Family businesses present unique considerations because the arrangements with family members are often casual, unwritten and implied. This is particularly a concern where children are involved in an accident. In *Decision No. 2064/12*, 2013 ONWSIAT 452, the plaintiff was the 18-year-old stepson and brother of co-owners of a convenience store. He was injured when he was asked to mind the cash register while his stepfather visited a friend in hospital. Even when an individual performs a role related to the purposes of the employer's industry, *Decision No. 2064/12* held that some form of employment relationship must be present to justify workers' compensation coverage and remove the right to sue. *Decision No. 2064/12* applied *Decision No. 577* (November 20, 1986), an early Tribunal decision which identified remuneration, intention and control as three factors to consider in deciding whether an individual is a worker. Considering these factors, the plaintiff was performing a favour for his stepfather and was not in an employment relationship.

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, continue to form a significant part of the Tribunal's caseload.

1562/12

The Board has developed three experience rating programs for employers, which are based on the size of the employer and whether they are engaged in construction. The MAPP program was most recently created for smaller employers. *Decision No. 1562/12*, 2013 ONWSIAT 881, is the first case to consider an appeal arising from the migration of an employer from MAPP to CAD-7, the experience rating program for the construction industry, because the employer's annual premiums exceeded $25,000. As a preliminary matter, *Decision No. 1562/12* found that the Tribunal has jurisdiction to consider appeals under section 83(3) dealing with the application of an experience rating program to a particular employer, even though section 123(2) para. 4 provides that the Tribunal does not have jurisdiction on appeals from decisions under section 81(1) to (6) and section 83(1) and (2). *Decision No. 1562/12* rejected an argument that the Board's policy provides that when a firm migrates from MAPP to CAD-7, the

calculation of a surcharge or refund is done by rating the accident costs of the valuation year only. The Board's chief actuary had submitted that there was no authority to differentiate the calculation for firms which had migrated from firms which had not migrated. *Decision No. 1562/12* found that the actuary's position was the more correct application of Board policy.

244/13
1033/13I

The Tribunal frequently considers SIEF appeals, including issues of interpretation and application of the Board's SIEF policy. For example, *Decision No. 244/13*, 2013 ONWSIAT 630, considered whether the medical impact of an accident on a specific worker should be the basis for determining the severity of an accident under the SIEF policy. Consistent with more recent decisions, which have placed more emphasis on interpreting Board policy, the focus should be on the general case and not the specific facts. *Decision No. 1033/13I*, 2013 ONWSIAT 1287, is one of the few cases to consider an employer's right to access information in a worker's file for the purposes of appealing a retroactive adjustment of its CAD-7 experience rating account to reflect an increase in SIEF relief. The information generally consisted of medical documentation about the worker's condition and how it affected his functional abilities with respect to return to work, and two related claim files. *Decision No. 1033/13I* noted that entitlement to retroactive experience rating adjustment depends centrally on the employer's diligence in pursuing SIEF relief in a timely way. The question of when and how the worker's symptoms manifested themselves over time is relevant to this issue. Accordingly, access was granted, except for a few pages containing personal information which were not relevant to the claim. The related claims files were also relevant, given that SIEF relief was granted in relation to injuries resulting from the prior accidents.

200/13

Finally, *Decision No. 200/13*, 2013 ONWSIAT 2087, is of interest for its discussion of cost transfers. Section 84 and Board policy allow the Board to transfer the cost of a claim from an accident employer to a third party employer if the accident was caused by the negligence of another Schedule 1 third party worker or employer. There is also policy which provides cost relief for motor vehicle accidents involving a negligent third party who is not covered under Schedule 1. This policy was introduced to provide a method of cost relief for employers when Ontario enacted no-fault motor vehicle insurance. The worker in *Decision No. 200/13* was a bus driver who witnessed an accident between an unidentified car and an unidentified pedestrian and subsequently developed a significant mental disorder. The Board had disallowed the request for cost relief because it found there was no duty of care on the part of the pedestrian or car driver to the worker. In allowing the employer's appeal for 100% cost relief, *Decision No. 200/13* found that the accident was due to the negligence of either the driver or the pedestrian and that they were likely not covered by Schedule 1. Even if they were covered by Schedule 1, Board policy would apply to transfer costs from the bus driver's employer to the employer of the negligent individual. The standard for cost transfers under both policies is negligence and does not involve considerations of foreseeability and duty of care.

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 statutory presumptions for specified occupational diseases and exposures and the Board has adopted policy on other diseases and exposures.

1355/11

Section 134 of the WSIA allows the Tribunal to "establish a list of health professionals upon whom the tribunal may call for

assistance in determining matters of fact in a proceeding." These health professionals, or medical assessors, are often called on to provide a medical opinion in cases which are not covered by Board policy or statutory presumptions. For example, in *Decision No. 1355/11*, 2012 ONWSIAT 2878, the worker was diagnosed with acute myelogenous leukemia (AML) after working for 12 years as a firefighter. The Board policy on cancer and firefighters provided a presumption for AML if the duration of employment as a firefighter was 15 years. Since the worker did not meet this criteria, *Decision No. 1355/11* considered the case on the merits based on the evidence. It accepted the report of the Tribunal medical assessor that there is a strong association between benzene and AML. The worker likely had exposure to benzene while working as a firefighter. The assessor also stated that the worker was a firefighter for 12 years which exceeded the reasonable average latency of 11 years cited in the literature. The medical assessor also noted that the timing of exposure to benzene was significant since the worker was a firefighter for the most critical 10 years prior to diagnosis. While the worker had been a smoker, he was smoke-free for seven years prior to the diagnosis.

25/13

Decision No. 25/13, 2013 ONWSIAT 437, provides a good illustration of the role of Board policy in an occupational disease appeal where the policy requirements are met. The worker had colorectal cancer and had worked as an asbestos worker for over 20 years. While the employer made various submissions, there was no conflicting evidence. *Decision No. 25/13* found that it was not necessary to undertake further investigations since the policy requirement of 20 years latency was met. Board policy is developed to avoid the necessity of addressing complex science in each case. The Board will have reviewed the epidemiology and determined what exposure facts are sufficient for it to be likely that work exposure has been a significant contributing factor. The Board will also have been aware of other possible etiologies when developing the policy. If the facts described in the policy are not established, claims may still be considered on the merits and justice.

248/13

Decision No. 248/13, 2013 ONWSIAT 1009, considered an amendment to Board policy on sinter plant exposure, which deleted a requirement of six months work exposure. As of 1994, Board policy provides that it is "persuasive evidence" that a worker's lung cancer is work-related if the worker worked in any process in the sinter plant as practiced at any time. There was evidence that Board practice was to interpret the new policy as providing for more discretion, rather than meaning that any exposure was sufficient. Internal guidelines for the Medical and Occupational Disease Policy Branch (MODPD) indicated that only claims by non-smokers would be allowed for less than six months exposure. The appeal was denied as the worker had cumulatively less than one month exposure and *Decision No. 248/13* agreed with the MODPD that the epidemiology did not support a relationship for exposure of less than one month. The Tribunal, however, did not necessarily accept the recommendation to deny entitlement to workers with fewer than six months of exposure unless they were non-smokers. This strict limit might not be consistent with Board policy and it might be appropriate to consider the specific facts of the exposure between one and six months.

556/13

Decision No. 556/13, 2013 ONWSIAT 851, is an example of a case where there is no applicable Board policy. In denying the worker's appeal that her non-Hodgkin's lymphoma was related to workplace exposure to second-hand smoke for eight years, *Decision No. 556/13* noted that the only expert evidence on causation was a review of the epidemiology by a respirologist retained by the Board. The epidemiological evidence suggested a low relative risk with respect to the relationship between second-hand smoke and cancers other than lung cancer and, possibly, nasal or maxillary sinus cancer. While there was no Board policy directly on non-Hodgkin's

lymphoma, the Panel considered it relevant to keep in mind the criteria used in other policies. There is a well-recognized relationship between lung cancer and asbestos, but Board policy requires 10 years of clear and adequate asbestos exposure and a 10-year latency period.

Other Legal Issues

665/10I2

Previous Annual Reports have noted several outstanding proceedings which raise Charter challenges to the section 13 limitations on traumatic mental stress and policy under section 13. While no decision has yet issued on the merits, several decisions addressed interesting preliminary matters. In *Decision No. 665/10I*, 2010 ONWSIAT 1283, the Tribunal had previously found that the worker did not have entitlement for acute mental stress pursuant to section 13(4) and (5) of the WSIA. In 2013, *Decision No. 665/10I2*, 2013 ONWSIAT 1630, commented on the "average worker test" in the course of deciding whether the worker would have had entitlement if not for section 13(4) and (5). The test asks whether it is reasonable that workers of average mental stability would perceive the workplace events to be mentally stressful and, if so, whether such average workers would be at risk of suffering a mental reaction to such perceptions. *Decision No. 665/10I2* noted that while Tribunal decisions have justified the average worker test on the basis that it assists in identifying whether there is a work-related injury process, it could conflict with the thin skull doctrine if used vigorously and mechanically. *Decision No. 665/10I2* found that there was no good reason to consider the average worker test in finding that the worker would have had entitlement but for section 13(4) and (5). The hearing will reconvene to consider the Charter challenge to section 13(4) and (5).

480/11I3
1945/10I2

It appears that the average worker test will also be addressed in proceedings in *Decision No. 480/11I3*, 2013 ONWSIAT 1876, which found that, subject to Charter and Code issues, the worker was not entitled to benefits for traumatic mental stress under section 13. The Panel will now consider whether the worker suffered a "disablement" under the WSIA. Submissions were invited on the appropriate test, including any Charter values or Code submissions on the average worker test. *Decision No. 1945/10I2*, 2013 ONWSIAT 2172, another appeal involving a Charter challenge to section 13(4) and (5) of the WSIA, is of interest for its procedural rulings, particularly with respect to the role of an intervenor.

273/10I
512/06R

A Charter challenge based on age discrimination has been raised with respect to sections 43(1)(c) and 45(1) in *Decision No. 273/10I*, 2013 ONWSIAT 1700. Section 43(1)(c) limits LOE benefits to two years entitlement where the worker is 63 years or older at the time of the accident. Section 45(1) limits retirement benefits for workers who are 64 years of age or older on the date of the injury. *Decision No. 273/10I* found that the worker would have continued working past age 67 but for his compensable injury. But for his age, he met the other legislative requirements for LOE benefits and loss of retirement income benefits. The hearing will reconvene to consider the constitutional challenge. This is the first time that such a challenge has been raised with respect to section 45(1). The majority in *Decision No. 512/06,* 2011 ONWSIAT 2525, previously found that section 43(1)(c) did not violate section 15(1) of the Charter and, even if it did, it was a reasonable limit under section 1. In 2013, *Decision No. 512/06R*, 2013 ONWSIAT 2621, denied a reconsideration request on the grounds that new evidence presented on the reconsideration would not change the result of the original decision and no defect had been identified in the reasons on the application of the Charter to the facts of that case.

1696/13I

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. Tribunal decisions continue to find that the Tribunal has jurisdiction to engage in an inquiry into the status of unlicensed paralegals who do not appear to be covered by one of the exceptions in the LSA and Bylaw 4. Section 1(8) para. 4 of the LSA contains an exemption for "[a]n employee or volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal." *Decision No. 1696/13I*, 2013 ONWSIAT 2105, found that this provision applies to a union employee acting on behalf of a member of the same union, but not on behalf of a member of a different union or a non-union member. Neither the *Law Society Act* nor Bylaw 4 provides for any "fairness" exceptions to the licensing and prescribed exemption requirements.

173/05I

When a worker dies without a will, disputes may arise about who has authority to pursue the appeal on behalf of the worker's estate. The Tribunal is guided by the *Succession Law Reform Act* (SLRA). Where the worker has left no will, the persons entitled to a share of the estate are the spouse and children of the deceased as defined in the SLRA. The SLRA definition of spouse does not include a common law spouse. In *Decision No. 173/05I*, 2013 ONWSIAT 467, the common law spouse of the deceased worker applied for authority to pursue the appeal; however, the application was rejected. The Vice-Chair found that the most important factor to consider was the applicant's effort to notify the deceased's sons and obtain their consent. It did not appear that the applicant had made any direct attempt to contact the sons and the applicant's representative had only attempted to telephone them. This did not meet the requirements of the Tribunal's Practice Direction on *Appeals Involving Deceased Workers*. The decision did not bar the applicant from obtaining additional evidence and reapplying to the Tribunal.

468/08R

In *Decision No. 468/08R*, 2103 ONWSIAT 1493, a request for reconsideration was made about four years after the release of the original decision. The Tribunal's Practice Direction on *Reconsiderations* provides that, generally, it is not advisable to reconsider a decision after more than six months from the date of the decision. A delay of more than six months is a factor which may be weighed in deciding whether it is advisable to reconsider a decision. The relevant delay is the date from the original decision to the date the reconsideration request was made, not the date the reconsideration decision is issued. While a four-year delay did not preclude reconsideration, considerable weight was given to it in this case. Unlike several reconsideration requests which had been granted despite a similar delay, there was no lack of a full hearing process, nor was there any evidence that was not previously available.

2381/12

Finally, *Decision No. 2381/12*, 2012 ONWSIAT 2796, is of interest for its discussion of how to approach medical information obtained from various Internet sites. The Vice-Chair stated that great caution must be applied when considering information from Internet sites. Three factors should be considered in deciding the probative value of such information: the nature of the website (implicit or explicit pecuniary gain, promotion of a particular perspective); the author of the document (qualifications, pecuniary interest); and the nature of the document (controversial issues, different perspectives, and whether it was peer-reviewed).

APPLICATIONS FOR JUDICIAL REVIEW AND OTHER PROCEEDINGS

Judicial Review

The Tribunal was successful on all challenges to its decisions on applications for judicial review in 2013.

The Tribunal has compiled an impressive record on judicial review over its 28-year history. The Tribunal has released over 63,000 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 2013 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. 3164/00, 2000 ONWSIAT 3599, 3164/00R, 2001 ONWSIAT 1067, and 3164/00R2, 2012 ONWSIAT*

The worker worked in a donut shop. She injured her back in 1994. She was paid total benefits for about a month, then returned to work, and went off again for a further seven months. In September 1997, she was fired. In October 1997, she was granted entitlement for a right elbow disability arising out of her job duties.

The worker appealed for entitlement for a FEL award and further vocational rehabilitation arising out of the back injury. She also appealed ongoing entitlement for the right elbow condition. Finally, she appealed for entitlement for fibromyalgia, which she alleged arose out of either the back or the elbow injury.

In *Decision No. 3164/00*, released in December 2000, the Vice-Chair granted entitlement to a FEL award and vocational rehabilitation assistance for the back injury. The Vice-Chair denied entitlement for fibromyalgia and the right arm/elbow.

On the first reconsideration the worker submitted additional medical documentation in support of her claim for fibromyalgia. However, the Vice-Chair found it was insufficient to warrant reopening the appeal. The worker made five more reconsideration requests which the Tribunal Chair found did not meet the threshold to be assigned for review by another Panel or Vice-Chair.

In January 2011, the worker retained new counsel and commenced an application for judicial review. The Tribunal expressed concern about the timeliness of this application, which was commenced 10 years after the Tribunal's initial decision. In May 2011, the worker's counsel asked if the Tribunal would consent to adjourn the judicial review while the worker pursued a seventh reconsideration. The Tribunal agreed.

In *Decision No. 3164/00R2*, released on March 6, 2012, a different Vice-Chair denied a further application for reconsideration. In this instance, the Vice-Chair was also not persuaded by the additional medical evidence. He noted that the evidence submitted in support of the reconsideration was actually reply evidence, obtained in an attempt to refute the Tribunal's conclusion, rather than new evidence. Further, he did not find the additional evidence demonstrated that the original decision should be reconsidered.

The worker decided to proceed with the judicial review. The Tribunal served a supplementary record, and the worker and the Tribunal filed their factums. The Tribunal also brought a motion to dismiss the judicial review for delay. The motion and judicial review were scheduled to be heard on December 5, 2012.

The Divisional Court Panel of Justices Aston, Hackland and Lederer unanimously granted the Tribunal's motion to dismiss for delay. The Court noted that the judicial review was commenced 18 years after the initial injury, 15 years after the second injury, and 10 years after the Tribunal's original decision. There was a three-year gap between the Tribunal's sixth reconsideration and the commencement of the judicial review. In exercising its discretion, the Court took into account the length of the delay, the lack of a reasonable explanation for the delay, and the prejudice suffered as a result of the delay due to the destruction of the hearing tapes and the integrity of the process.

The worker filed a notice of application for leave to appeal the Divisional Court decision to the Court of Appeal. On March 15, 2013, Sharpe, Epstein and Pepall JJ.A. dismissed the application for leave to appeal.

The worker applied to the Supreme Court of Canada, for leave to appeal the Court of Appeal's dismissal of her application for leave to appeal. The Tribunal filed responding materials. On August 22, 2013, the worker's application for leave to appeal was dismissed without costs by McLachlin C.J., Abella and Cromwell JJ.

2 *Decisions No. 1110/06, 2006 ONWSIAT 2463, 1565/08I, 2008 ONWSIAT 2055, 1565/08, 2010 ONWSIAT 1128, and 1565/08R, 2011 ONWSIAT 323*

The worker injured his back at work in June 1990. He was granted temporary benefits and an 18% NEL award. He was granted a FEL sustainability award at D1 in 1992. He was also granted a FEL supplement while he participated in a vocational rehabilitation program. He was undergoing a retraining program to become a civil engineering technician when he was involved in a motor vehicle accident in 1993, forcing him to quit the program.

At R1 in 1994, the worker was granted a FEL award based on earnings which assumed he had been able to complete the training program.

In 1997, the Board ruled that the worker had recovered from the 1990 accident and his ongoing back problems were actually the result of a pre-existing back condition. The worker's entitlement was revoked retroactive to September 1990. The worker appealed to the Tribunal.

In *Decision No. 1110/06*, the Tribunal determined the worker's pre-existing condition had been asymptomatic at the time of the 1990 injury, so the work injury was a significant factor contributing to the worker's ongoing impairment. The Panel held that the worker had ongoing entitlement, that he had a permanent impairment, and that the entitlement to benefits he had at the time of the 1997 Board decision should be restored. The Board was directed to reinstate the worker's benefits and determine his past and ongoing benefits.

Following *Decision No. 1110/06*, in 2007 the Board made a new FEL determination. The Board found the worker was only partially disabled because of his work injury, and his inability to work was due to the 1993 motor vehicle accident. The Board reinstated the NEL award, but did not grant a full FEL award. The Board awarded a smaller FEL award starting in 1993 as it determined he could have worked as a civil engineering technician but for the non-compensable motor vehicle accident. The worker appealed to the Tribunal again.

In *Decision No. 1565/08I*, the Panel spent the first day of hearing considering the role of a person who appeared at the hearing with the worker and who characterized herself as a "facilitator." Following a lengthy discussion, it was decided that this

person would characterize herself as a "friend" of the worker. As a friend she would qualify under the exemption for a representative as set out in By-Law 4 passed pursuant to the *Law Society Act*. However, the Panel brought the circumstances of the case to the attention of the Tribunal Chair.

When the hearing reconvened the Panel considered the worker's arguments that he was totally disabled before his motor vehicle accident and, hence, he was entitled to a full FEL award.

In *Decision No. 1565/08*, the Panel found the worker was not totally disabled before the motor vehicle accident. Further, the motor vehicle accident had a significant impact on the worker. The Panel found that the worker's inability to earn beyond the level determined by the Board was because of the motor vehicle accident. As a result the Panel upheld the worker's D1 and R1 FEL award as determined by the Board.

However, at the R2 date the Board had found the worker would have been able to earn the average earnings of a fully qualified civil engineering technician and, hence, have a lower FEL award. The Panel allowed the worker's appeal in part on that issue, finding he would only have been able to make entry level earnings. Thus, the worker was entitled to a partial FEL award commencing in 1993. The Panel also confirmed the Board's NEL determination.

In *Decision No. 1565/08R*, a different Vice-Chair denied the worker's application to reconsider *Decision No. 1565/08*, finding the threshold to reconsider had not been met.

The worker commenced an application for judicial review of *Decisions No. 1565/08* and *1565/08R*. The worker was self-represented. The Notice of Application for Judicial Review contained a myriad of allegations of breaches of natural justice, bias, and decisions made on no evidence. The Notice of Application also alleges that the second Panel was barred from making certain findings in light of the conclusions in the earlier decision, *Decision No. 1110/06*.

In light of the allegations in the Notice of Application and pursuant to its usual practice, the Tribunal asked the worker to order the transcripts of the Tribunal hearings for the Record of Proceedings. The worker refused. The Tribunal ordered the transcripts itself, and filed a Record of Proceedings which included the transcripts.

The worker brought a motion for an order to remove the transcripts from the Record, and to remove many of the materials pertaining to *Decision No. 1110/06*. The motion was heard in September 2011, by Madam Justice Swinton. The Tribunal filed a factum for use on the motion.

Following oral argument by the worker and Tribunal Counsel, Justice Swinton dismissed the worker's motion, accepting the Tribunal's arguments that, in the light of the allegations contained in the Notice of Application, the transcripts and materials from the prior appeal are properly included in the Record of Proceedings. Costs in the cause were awarded to the Tribunal.

The Divisional Court Registrar later dismissed the worker's judicial review because he failed to file his factum and perfect his application within a year of filing the judicial review. The worker brought a motion to set aside Registrar's dismissal and to extend the time to file his factum. The Tribunal did not consent to the motion, but also did not oppose it. On June 20, 2012, the motion was granted.

The worker delivered his factum in July 2012. He did not pursue the natural justice arguments initially set out in the Notice of Application. The hearing of the judicial review was scheduled for December 2012, but was adjourned at the request of the worker's counsel, who had recently been retained by the worker to attend for the hearing of the application. The application was heard October 25, 2013. In reasons released November 25, 2013, the Divisional Court

(Justices Himel, Sachs and Warkentin) unanimously dismissed the application, finding that both *Decisions No. 1565/08* and *1565/08R* carefully and reasonably dealt with the issues before the Tribunal.

3 *Decision No. 2484/11*, 2012 ONWSIAT 340

The worker injured her wrist at work in 2006. She then stopped work in 2007 when she was diagnosed with tenosynovitis in the same wrist. She appealed entitlement to LOE benefits from September 2007 to February 2008, and from March 2008. The Vice-Chair allowed the worker's appeal in part, finding she was entitled to full loss of earnings benefits from September 2007 to October 2007, but not after that date.

However, the Vice-Chair also found on the evidence that the worker had failed to accept suitable work offered by the employer. Even though the worker was subsequently granted entitlement under the chronic pain policy, the Vice-Chair found this did not mean she was incapable of performing the work offered.

The worker commenced a reconsideration application, and then withdrew it to start an application for judicial review. In her factum the worker argued that WSIAT's decision was unreasonable, and also that she was entitled to notice of the consequences of her refusal to accept modified work, in accordance with insurance principles. The judicial review was heard on March 20, 2013. The Divisional Court Panel of Justices Swinton, Brown and Lederer unanimously dismissed the application for judicial review.

In its reasons, the Divisional Court noted that there was no error of law by the Tribunal, and there was ample evidence to support its finding of notice. The Court stated [at para. 5] that the Tribunal's "finding that the applicant was capable of trying to do the modified work was reasonable based on the evidence and its finding respecting the applicant's credibility." The Court was also not persuaded that principles of insurance law now applied to cases determined under the WSIA, as it specifically held [at para. 6]: "We reject the argument that the case law relating to the obligations of private insurers with their insureds has any application to the obligations of the Workplace Safety and Insurance Board, which operates under a specialize statutory regime."

The worker filed a motion for leave to appeal to the Court of Appeal. The Tribunal filed a responding factum. On October 10, the Court of Appeal dismissed the worker's application for leave to appeal, as per Pepall, MacPherson and Watt JJ.A.

4 *Decisions No. 834/09*, 2010 ONWSIAT 1816, and *834/09R*, 2011 ONWSIAT 902

In this right to sue application, the applicants sought determinations as to whether the rights of action of Ms. M and Ms. R were taken away by the WSIA. Both Ms. M and Ms. R suffered serious injuries in a motor vehicle accident that occurred on November 18, 2005, when their van, driven by Ms. M, spun out while they were travelling on a highway. After the van came to rest, both Ms. M and Ms. R exited the van. While they were at the rear of the van, another driver, Mr. K, lost control his van near the same location where Ms. M had lost control of the van she was driving. Both Ms. M and Ms. R were struck by Mr. K's van, and suffered severe injuries including the amputation of one leg each.

Ms. M was scheduled to work the morning of the accident. She attended the offices of A (the company) and delivered flowers to a synagogue. She loaded up the van with items to be delivered to a banquet hall for the next day's event.

Ms. R was not scheduled to work the day of the accident. She attended at A, the company's office, in the morning to collect her pay cheque. She intended to then meet her mother for lunch. Ms. M offered to drive Ms. R to the restaurant. They left the company's offices together in the van. After

leaving the office, they stopped at the company's storage facility, where they loaded additional items for an upcoming event. The accident happened after leaving the storage facility.

Ms. M, Ms. R and their family members brought actions against various individuals and entities. The right to sue application was brought by the sole proprietor of the company, and the company from whom the van was leased, with a co-application brought by Mr. K and his company and the owner of his van, and the company which maintained the highway.

A, the company, was not registered with the Board at the time of the accident.

At issue in the application was: whether A was a Schedule 1 employer; whether Ms. M and Ms. R were workers or independent contractors and whether they were in the course of their employment at the time of the accident; whether Mr. K was acting in the course of his employment at the time of the accident; and whether, if the actions of Ms. M and/or Ms R were taken away, the *Family Law Act* (FLA) claims were also taken away by the WSIA.

The Vice-Chair found that it was not necessary to decide A's classification but, rather, whether A, a party décor business, was a Schedule 1 employer at the time of the accident. She found that while the words "party décor" are not specifically included in Schedule 1, the various components that make up party décor are found in Schedule 1. She found that A was compulsorily covered under Schedule 1.

The Vice-Chair found that both Ms. M and Ms. R were workers of A at the time of the accident. However, she found that Ms. M was in the course of her employment at the time of the accident, while Ms. R was not. She further found that Mr. K was in the course of his employment at the time of the accident.

The Vice-Chair concluded that Ms. R's action and that of her FLA claimants was not taken away by the WSIA. However, she found that Ms. M's action against the sole proprietor, Mr. K, Mr. K's employer, and the company which maintained the highway was taken away by the WSIA. The right of action of the FLA claimants in Ms. M's action was not taken away by the WSIA.

The Vice-Chair made no determination with respect to rights of action against the highway and the Ontario Ministry, as they did not participate in the application.

Both Ms. M and the applicants made requests for reconsideration of the decision. The reconsideration requests were denied.

Ms. M then commenced an application for judicial review, seeking a declaration that, at the time of the accident: 1) A was not a Schedule I employer; 2) Ms. M was not a "worker" as defined by the *Workplace Safety and Insurance Act*; and 3) Ms. M was not in the course of her employment.

The Tribunal sent several follow-up requests to the applicant's counsel to provide transcripts so that the Tribunal could prepare and file the Record of Proceedings. The applicant's counsel failed to respond and ultimately the Tribunal filed the Record without the transcripts. The applicant's counsel then filed the transcripts separately.

The applicant's counsel delivered a factum in December 2012. The Tribunal was the first to file a responding factum. Responding factums were then filed by the co-respondents. The judicial review was heard on June 5, 2013, by the Divisional Court Panel of Justices Herman, Molloy and Harvison Young.

At the hearing of the judicial review, the Court raised the issue of the Tribunal's standing and expressed concern with the Tribunal's factum. The Court was of the view that, in light of the fact that there were co-respondents on the application, the Tribunal ought not to have taken the position in its factum that the

Tribunal's decisions were reasonable. Counsel for the Tribunal took the Court through the Children's Lawyer [*Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309 (C.A.)] decision of the Ontario Court of Appeal on the standing issue. She also submitted that the Tribunal participation was appropriate in light of the complexity of the issues before the Court and the Tribunal's expertise, and the fact that the participation of the co-respondents was speculative at the time the Tribunal prepared its factum.

On July 19, 2013, in a lengthy decision, the Divisional Court unanimously dismissed the judicial review. The Court found [at para. 44] the Tribunal's reasons were "justified, transparent, and intelligible, and its conclusions fall well within the range of possible outcomes." The Court did not address the *Children's Lawyer* decision or the fact that no other respondent had filed a factum at the time the Tribunal had filed its factum, yet it did note a concern about the Tribunal's standing in this case.

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

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.

He was (following an appeal to WSIAT and the release of *Decision No. 1564/00*, 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 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 1, 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 vocational rehabilitation

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 vocational rehabilitation. 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 section 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*. In regards to the period from November 1989 to November 1991, the Vice-Chair confirmed that the Tribunal may find that section 147(4) benefits can be rescinded where they should never have been granted. Here the worker was entitled to section 147(2) benefits because he could have benefitted from vocational rehabilitation services.

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*, the new Vice-Chair denied the application for reconsideration. In his reasons, the Vice-Chair stipulated that he was only considering the procedural fairness arguments, which had not been raised in prior reconsideration applications. These 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.

> "Procedural fairness does not require an adjudicative body to give a party advance notice of the significance that it attaches to a particular piece of evidence. Once the parties have been afforded the opportunity to address the issue, the Tribunal is entitled to make its own findings without further notice."

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 were 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.

The Divisional Court unanimously dismissed the worker's application. In its written reasons dated August 1, 2013, 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's responding materials were served and filed in early October, and the Tribunal has now been served with the worker's reply factum. The Court of Appeal's decision on the leave to appeal motion will be released in due course based on the written record and factums.

6 *Decision No. 2410/11*, 2012 ONWSIAT 803

A plaintiff was struck by a pickup truck that was clearing snow in her employer's lot. The truck was driven by GB and owned/leased by FB. She commenced an action against GB and FB, who were brothers involved in the snow clearing business. She also sued D, the company that leased the truck to them. The leasing company applied to the Tribunal for an order taking away the right of action against the brothers. The Vice-Chair held that the right of action was not taken away against any of the defendants.

A representative for the plaintiff's employer attended the hearing as an observer. Following the hearing, the representative contacted the Tribunal and supplied a copy of the snow removal contract. The plaintiff did not object to the admission of this evidence, and the respondent explicitly consented, so the contract was admitted and relied upon by the Vice-Chair in her decision.

The issues were whether the plaintiff was in the course of her employment at the time of the accident, whether section 28(4) of the WSIA took away the

right of action against all defendants, and whether GB was a worker in the course of employment at the time of the accident. The Vice-Chair considered the contract which had been admitted after the hearing. She concluded that the employer owned the parking lot and controlled its maintenance. The Vice-Chair referred to prior Tribunal decisions which have generally held that a worker is found to be in the course of employment if the worker was in an employer-controlled parking lot while coming to work, as this is reasonably incidental to employment. She held the plaintiff was in the course of her employment when she was injured.

However, section 28(4) of the WSIA provides that a right of action is not taken away if any employer, other than the worker's employer, supplied a motor vehicle, machinery or equipment on a purchase or rental basis without also supplying workers. Here the snow removal truck was rented and D, the leasing company did not provide workers, so the plaintiff's right to sue was not taken away against D. The issue was whether the right of action was taken away against GB and FB, neither of whom participated in the hearing.

The Vice-Chair followed previous Tribunal decisions which have held that the section 28(4) exemption only applies to the employer who supplied the vehicle without also supplying workers, that is, the employer who supplied the vehicle without also supplying workers is the only entity against whom the action may proceed. Other employers and workers are still protected from suit. As stated in *Decision No. 1785/04*, 2007 ONWSIAT 2968 [at para. 79]: "The removal of the right to sue applies to employers who had workers in the course of employment at the time of the accident, but not to employers who do not have that essential compensation nexus."

However, the Vice-Chair found on the evidence, including the contract that was submitted after the hearing, that because GB was an owner and was driving the truck at the time of the accident, GB and FB were not workers acting in the course of their employment. Hence the right of action was also not taken against GB and FB.

D, the rental company, commenced an application for judicial review of *Decision No. 2410/11*. The judicial review was heard on December 18, 2013, and unanimously dismissed by Himel, Sachs and Nolan JJ.

In its decision, the Divisional Court began by noting that the issue fell squarely within the Tribunal's area of experience and expertise, so the applicable standard of review was reasonableness. It then reviewed D's arguments.

The Court did not accept the D's argument that it was "blindsided" by the Tribunal's handling of the evidence of the contract. The applicant had consented to the admission of the contract and had an opportunity to make submissions in response to the plaintiff. The Court also rejected D's position that the contract should not have been found to be a significant piece of evidence, as that determination was one the Tribunal was entitled to make when weighing the evidence.

The Court did not accept D's argument that the Tribunal was required to advise it in advance of the significance it was attaching to the contract, stating [at para. 16]: "Procedural fairness does not require an adjudicative body to give a party advance notice of the significance that it attaches to a particular piece of evidence. Once the parties have been afforded the opportunity to address the issue, the Tribunal is entitled to make its own findings without further notice."

D's argument that the Tribunal's finding on the contract issue constituted an abandonment of its investigative mandate and raised a reasonable apprehension of bias was also rejected. The Court noted as the applicant, D, had the onus to establish the plaintiff's right of action was taken away. Further, as a prior Tribunal decision had pointed out, for right to sue applications the Tribunal is less

likely to exercise its investigative mandate than for other types of appeals.

D's third argument, that the Tribunal had not properly weighed the evidence, was not accepted. The Court noted [at para. 19] that fact-finding by the Tribunal deserves considerable deference from the Court: "It was up to the Tribunal to weigh the evidence before it. There is no suggestion that the Tribunal misapprehended the evidence or ignored relevant evidence. Choosing to attach more weight to documentary evidence than to sworn testimony is not an error in law."

Similarly, the fourth argument, that the Tribunal erred in not giving more weight to the fact that neither FB nor the snow-clearing business was registered with the WSIB, was not an error, but a reasonable finding based on the evidence before it.

Finally, D argued that the Tribunal's decision failed to determine whether FB was a worker or employer at the time of the accident. The Divisional Court cited [at para. 21] *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16: "A decision-maker is not required to make an explicit finding on each constituent element leading to its final conclusion. In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met." Here there was no reason advanced to protect FB from suit under the WSIA. As the lessee of the truck, the right of action was not taken away against him.

7 *Decisions No. 1791/07*, 2007 ONWSIAT 2212, *1791/07R*, 2008 ONWSIAT 634, and *1791/07R2*, 2009 ONWSIAT 2214

The worker, a kitchen helper, injured his neck in November 2004. He was granted LOE benefits from May 9, 2005 until the end of 2010. Entitlement was extended to include his low back, shoulders, and chronic pain disability. The worker was also granted a 45% NEL award for chronic pain.

The worker appealed the denial of entitlement for carpal tunnel syndrome, entitlement for a psychotraumatic disability, and the amount of the NEL award for chronic pain. The Tribunal held that the worker had no entitlement for carpal tunnel syndrome, that he was not entitled to a psychotraumatic award, and that he was not entitled to an increase in his NEL award. The worker commenced an application for judicial review. The Tribunal served and filed its Record, and was in the process of preparing its factum when it was noted that the worker's counsel had referred to evidence in his factum that was not before the Tribunal. After discussions with the worker's counsel, it was agreed that this judicial review would be put on hold while the worker pursued a further reconsideration.

The further reconsideration was denied by *Decision No. 1791/07R2* on September 21, 2009.

The worker revived his application for judicial review. The application was heard in June 2010, by a Divisional Court Panel comprised of Justices Herold, Jennings and Lederman. At the outset of the hearing, the worker's lawyer abandoned the application in respect of the psychotraumatic disability award. The Court unanimously dismissed the application in respect of entitlement to benefits for carpal tunnel syndrome. Although the time to seek leave to appeal a decision of the Divisional Court is 15 days, over eight months later the worker brought a motion to extend the time to seek leave to appeal to the Court of Appeal. The Tribunal opposed the extension.

On March 30, 2011, Karakatsanis J.A. (as she then was) denied the time extension. She noted there was no evidence the applicant had formed the intent to seek leave to appeal within 15 days, the delay here was significant, the applicant's allegations about illness and being unable to find counsel were unsubstantiated and not compelling, there would be prejudice to the Tribunal if an extension was granted, and in any event there was no merit to the appeal.

Over a year later, the worker asked the Supreme Court to review the decision of Karakatsanis J. The Supreme Court Registrar was of the view that there was no final order of the Court of Appeal and that the Supreme Court therefore had no jurisdiction. He suggested that the worker's recourse was go back to the Court of Appeal to try to have the order of Karakatsanis J. reviewed by a three-member Panel of the Court of Appeal. However, by the time the worker went back to the Court of Appeal, he was out of time to ask for such a review and so had to ask the Court of Appeal to extend the time in which to ask a three-member Panel of the Court of Appeal to review the order of Karakatsanis J. The Tribunal opposed the worker's time extension request and filed a factum.

On July 12, 2012, the Court of Appeal dismissed the worker's time extension request. Justice Laskin noted that the Court of Appeal's Rules require that motions for review be brought within four days of the challenged decision. He set out the factors to be considered in deciding motions to extend time. He found that, even excusing the worker's error in initially bringing his matter to the Supreme Court, he did not bring his motion to the Supreme Court until 12 months after Karakatsanis J.A.'s decision. Justice Laskin found that, in light of the absence of prejudice to the Tribunal, he would be inclined to discount the importance of the lengthy unexplained delay if he saw any merit in the worker's proposed appeal. However, he found no merit in his appeal, even assuming that the worker would be allowed to revive the claim for psychotraumatic disability that he abandoned before the Divisional Court. Justice Laskin noted that the Tribunal considered all of the medical evidence. The Tribunal simply reached a different conclusion on the medical evidence from the conclusion the worker argues for. Justice Laskin found that the submission that the Tribunal's decisions are unreasonable is not even arguable.

The worker then brought a motion before a panel of three judges to review Justice Laskin's order. The Tribunal opposed the motion and filed a factum.

On September 26, 2012, the Court of Appeal (Justices MacPherson, Blair and Armstrong) dismissed the worker's motion, with costs to the Tribunal fixed at $500. In brief reasons, the Court stated that it agreed with Laskin J.A.'s analysis and order, and also agree with Karakatsanis J.A.'s underlying decision.

The worker then brought an application to the Supreme Court of Canada, seeking leave to appeal the September 26, 2012 decision of the Court of Appeal. On February 28, 2013, the Supreme Court of Canada dismissed the leave application with costs, per Justices Fish, Rothstein and Moldaver. The worker, now self-represented, then requested the Supreme Court to reconsider its decision. The Registrar of the Supreme Court of Canada advised the Tribunal that it did not need to respond to the reconsideration request until further notice.

In the meantime, the Tribunal demanded, and received, payment of all costs for the dismissal of the applications to the Court of Appeal and the Supreme Court of Canada.

Decision No. 2432/11, 2013 ONWSIAT 20

The worker was injured in his employer's parking lot. He sued the other worker who was involved in the accident. The defendant brought a right to sue application for a finding that the worker's right of action was taken away by the WSIA.

In *Decision No. 2432/11*, the Tribunal found that the worker was a worker in the course of employment at the time of the accident, and so his right of action was taken away by the WSIA.

The worker then made a claim to the Board for benefits and provided a copy of the Tribunal decision to the Board. Based on the Board's parking lots policy, the Board Adjudicator found that the worker was not in the course of employment at the time of the accident, and denied the claim for benefits. The Board decision did not refer to *Decision No. 2432/11*.

The worker then commenced an application for judicial review of the Tribunal's *Decision No. 2432/11*. He argued that the contradictory decisions of the Tribunal and the Board had left him with no right to sue in tort, and no right to receive benefits under the WSIA.

The Board agreed to review its decision. The worker's lawyer agreed that the respondents did not have to file responding materials on the judicial review application unless and until the worker notified the respondents that it would proceed with the judicial review.

The Board then reversed its decision and granted entitlement to benefits. The worker agreed to abandon the judicial review as against the Tribunal and all other respondents except for the Board. The worker sought substantial costs of the judicial review application from the Board on the basis that it was the Board's actions that made the judicial review application necessary.

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

The worker appealed a number of issues to the Tribunal. His appeal was allowed in part, granting him initial entitlement to a neck injury and loss of earnings benefits for periods in 1998, 1999 and 2000. However, he was denied entitlement for other issues, including a back injury, suitability of his SEB, an LMR reassessment, a FEL supplement, and an increase in his NEL award.

Several years later the worker commenced a reconsideration application, alleging improper conduct by two of the Tribunal Panel members assigned to his appeal. A different Vice-Chair found no evidence to support the allegation against the original Panel members. The worker's application to reconsider the appeal regarding the suitability of his SEB was also denied.

In July 2013, the worker commenced an action in Superior Court asking to set aside *Decisions No. 691/05* and *691/05R*. Since it was clear the worker was really seeking to judicially review these decisions, his action had been commenced in the wrong court. The Tribunal agreed to allow the worker to abandon his action without costs.

There was some suggestion that the worker was planning on commencing another action against the Tribunal, which would also be improper. However, at the end of the year the Tribunal had not been served with any additional pleadings.

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

The worker injured his back in 2001, when he was 63 years of age. The Board paid the worker LOE until May 31, 2002, when the worker turned 65, which was also the mandatory retirement date of 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 benefits to two years post-injury for those workers over age 63 contravened section 15(1) of the *Canadian Charter of Rights and Freedoms*.

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 of 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 section 15 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, 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 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 decisions. Since the original Tribunal Vice- Chair has 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.

11 *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 is returning to the Board for a decision on whether there is entitlement on the basis of disablement. If the worker is satisfied with the ruling of the Board (and if necessary, the Tribunal) on the issue of disablement, the judicial review will be abandoned. At the end of the year, the worker was still pursuing the disablement issue.

12 *Decisions No. 1093/11*, 2011 ONWSIAT 1801, *1093/11R*, 2011 ONWSIAT 2848, and *1093/11R2*, 2013 ONWSIAT 2409

The worker injured his back in 1986. He injured his shoulder in 1993. Tribunal *Decision No. 1022/02R3*, 2007 ONWSIAT 2461, found the worker was entitled to benefits for his shoulder on a disablement basis. The Board then granted entitlement to an LMR assessment to identify an appropriate suitable employment or business (SEB). By then the worker had bought and was running a convenience store. An ARO decision found the SEB was a retail trade manager, and based the worker's temporary disability benefits and his FEL award on a deemed mid-entry wages for this SEB. The worker appealed to the Tribunal, alleging the SEB was not suitable, and the deemed wages were too high.

The worker's appeal was denied. The Vice-Chair found that the SEB of retail trade manager was appropriate because it included the job the worker had been doing since 2000. The worker was operating his own small store. This employment was suitable given the worker's restrictions and his vocational background.

The Vice-Chair also found that the deemed wages were suitable. Even though benefits are usually calculated based on actual wages, since the worker was self-employed the actual earnings did not reflect his actual wages. The worker lived above his store in Quebec, and used the store's vehicle and food. He paid his spouse a salary. The Vice-Chair also found it was appropriate to use the Ontario-based wage calculation even though the worker now resided in Quebec.

The worker's application for reconsideration was denied. The worker argued the Vice-Chair was biased towards the worker because she questioned the accuracy of the worker's tax returns, and that the Vice-Chair failed to consider factors that would suggest the earning capacity should have been based on higher wages. In *Decision No. 1093/11R*, the Vice-Chair found that there was no reasonable apprehension of bias, as she had not suggested the applicant cheated on his tax returns as the worker alleged. *Decision No. 1093/11* relied on Tribunal jurisprudence in calculating appropriate earnings for self-employed workers, and this does not demonstrate

bias. Further, the Vice-Chair pointed out that she had found the Board's calculation, which was based on average rather than high end wages, was appropriate.

In June 2012, the applicant commenced an application for judicial review. The Tribunal agreed to file its factum by the end of March. The judicial review was scheduled to be heard in May 2013. However, in preparing its responding factum, the Tribunal noted a document in the applicant's Application Record that had not been in the record before the Tribunal. The Tribunal objected to this document being submitted for the first time on judicial review, and the applicant asked if he could withdraw the judicial review application without prejudice to bring a further reconsideration at the Tribunal. The Tribunal agreed, on the condition that the applicant pay the Tribunal's costs of $500. The applicant agreed, and the judicial review application was abandoned.

In March 2013, the applicant commenced a further request for reconsideration of the WSIAT decisions. He did not challenge the appropriateness of the SEB or the use of deemed Ontario wages for the SEB, but objected to the table used by the Board and submitted that the new information he submitted on the second reconsideration suggested that the wage information used by the Board was inappropriate and that other information would be more reasonable. The reconsideration was assigned to the original Vice-Chair.

In *Decision No. 1093/11R2*, the Vice-Chair found that the new evidence did not provide a more accurate calculation of the worker's future economic loss of earnings arising from the injury. The Vice-Chair acknowledged that it was inaccurate for *Decision No. 1093/11R* to equate "mid-range" wages with "average" wages as found at paragraph 14 of *Decision No. 1093/11R*: "mid-range" wages refer to the average wage earned by workers with a certain level of experience in their field. An "average" wage is the average of the wages earned by all workers of all levels of experience in that field of work. However, the Vice-Chair noted that the Board in this case used mid-range rather than average wages and the Board's decision was upheld by the Tribunal in *Decisions No. 1093/11* and *1093/11R*. Correction of the erroneous terminology found at paragraph 14 of *Decision No. 1093/11R* would not lead to a different result since the decision ultimately upheld the Board's use of mid-range wages. The Vice-Chair also found that even if the Financial Services Commission does not use the tables in question for part-time employment, this does not necessarily mean that the Board cannot use the tables in this fashion, especially when its policies refer to these tables. The reconsideration request was denied.

13 *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 pre-arranged 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, a bus struck her car, causing injuries. K sued the bus company and the bus driver for damages. The bus company applied to the Tribunal for a determination 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 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 activity reasonably incidental to her employment.

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

An application for reconsideration was dismissed by the same Vice-Chair.

The worker has commenced an application for judicial review. At the end of the year the Tribunal was working on a responding factum.

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

The worker's appeal for entitlement for a NEL 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.

In December 2013, the worker commenced an application for judicial review. The Tribunal filed an appearance and will be preparing a Record of Proceedings.

Other Legal Matters

Human Rights Tribunal of Ontario

CASE NO. 1

A worker was unhappy with her WSIAT decision. She brought an application to the Human Rights Tribunal of Ontario (HRTO), alleging discrimination on the basis of disability, sex and family status. The worker characterized her application as being about services, rather than the WSIAT decision itself.

WSIAT took the position that the worker's application had nothing to do with services, that it was in fact an attack on the merits of the WSIAT decision, and that the HRTO had no jurisdiction to consider an appeal of WSIAT's decision.

The HRTO Vice-Chair agreed that most of the worker's submissions appeared to relate to the results of the WSIAT decision and WSIAT's adjudicative process. However, the HRTO Vice-Chair was unable to conclude that it was plain and obvious that the application did not fall within the HRTO's jurisdiction. She directed the worker to file a more detailed statement of the alleged discrimination, which was to be provided to WSIAT.

WSIAT declined to file a complete response to the application. It filed a Request for an Order During Proceedings to dismiss the application on the grounds that the HRTO had no jurisdiction to consider the subject matter of the allegations. In the alternative WSIAT requested the application be deferred until the worker's request for reconsideration of the WSIAT decision had been completed.

On March 8, 2011, the HRTO Vice-Chair granted WSIAT's request and dismissed the application on the basis that the HRTO had no jurisdiction to consider any of the allegations except for one, and for that allegation she agreed that it should be deferred until after the WSIAT reconsideration.

In November 2011, the worker wrote to the HRTO, alleging that WSIAT had closed her reconsideration. She asked for an Order During Proceedings to reactivate her original complaint. The HRTO asked her to clarify her allegation, and the HRTO Registrar sent a letter to WSIAT instructing WSIAT not to respond until the HRTO provided further direction.

There was no further communication from the HRTO, until WSIAT received a Case Assessment Direction from an HRTO Vice-Chair, stating WSIAT had failed to respond within the time limit and ordering WSIAT to explain what the status of the worker's reconsideration was.

WSIAT requested the HRTO reconsider its finding that WSIAT failed to respond within the time

limit. WSIAT simultaneously filed submissions demonstrating the extensive efforts that had been made to process the worker's reconsideration over the past year, and argued that any delay was due to the worker withdrawing her own reconsideration and that her letters were difficult to understand. WSIAT again noted that the HRTO has no supervisory jurisdiction over WSIAT decisions.

In an Interim Decision dated March 14, 2012, an HRTO Vice-Chair agreed that the HRTO Registrar had directed WSIAT not to respond unless directed, and no such direction had been provided by the HRTO to WSIAT. The HRTO Vice-Chair also held that it was not necessary to obtain further submissions from WSIAT. She agreed the WSIAT reconsideration process had not concluded, and there was no basis to revive the worker's application. The worker's Request was denied.

In April 2012, the worker filed another Request to reactivate her HRTO application.

The HRTO Registrar responded that, as the worker had not given any indication that the WSIAT reconsideration process had been completed, nor provided a copy of an order or decision from the WSIAT proceeding, the worker's Request would not be considered at that time.

In August 2012, WSIAT issued a decision denying the worker's reconsideration request.

The worker subsequently filed a further Request to reactivate her HRTO application.

WSIAT took the position that the worker's HRTO application should not be reactivated because the worker had commenced another proceeding before WSIAT, namely a Right to Sue Application. The worker's Right to Sue Application arose from the same facts and events that gave rise to the worker's initial WSIAT appeal and subsequent reconsideration request. Therefore, WSIAT argued that the HRTO's reasoning in deferring the worker's HRTO Application still applies.

In September 2012, the worker filed another application with the HRTO. This application also names WSIAT as the respondent.

The HRTO issued an interim decision in October 2012, reactivating the worker's application. The HRTO Vice-Chair directed that a summary hearing be held to determine whether the application should be dismissed on the basis that there is no reasonable prospect that the worker will be able to establish, on a balance of probabilities, that a failure to offer to pay for child care resulted in an infringement of the applicant's Code-protected rights.

The HRTO Vice-Chair also directed the worker to make submissions at the summary hearing, on her recent application, and to explain what it relates to. The Tribunal was successful in obtaining a ruling, over the worker's objection, to have a court reporter record the summary hearing.

A summary hearing via teleconference was heard on April 15, 2013. The HRTO released its decision on August 9, 2013.

In the decision, the HRTO Vice-Chair determined that the applicant's discrimination claim was barred by the common law doctrine of judicial immunity. The Vice-Chair stated [at para. 32]: "The doctrine of judicial immunity prevents the applicant from pursuing a human rights Application based on a procedural ruling made by WSIAT in the course of exercising its quasi-judicial functions."

The HRTO Vice-Chair concluded that the worker's application had no reasonable prospect of success. As such, the application was dismissed.

CASE NO. 2

A paralegal that had represented a number of injured workers before the Tribunal brought an application to the 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.

Mr. B was listed as the paralegal's representative in the application. 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 on October 10, 2013, enclosing a copy of the paralegal's application and requesting that a Response be filed by November 14, 2013.

WSIAT filed a Response by the deadline. WSIAT also made a Request for an Order During Proceedings requesting 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 November 25, 2013, the HRTO sent the paralegal a letter enclosing WSIAT's Response and giving him until December 9, 2013, to provide a reply, if any. The HRTO also indicated that if he provided a Reply, a copy of it should be delivered to WSIAT.

WSIAT did not receive a Reply from the paralegal by December 9, 2013. WSIAT also did not receive a Response to WSIAT's Request, which was due on November 28, 2013.

On December 16, 2013, WSIAT contacted the HRTO for an update. The HRTO advised that the paralegal had not filed a Reply to WSIAT's Response or a Response to WSIAT's Request. The HRTO indicated that WSIAT's Request would be assigned to a Vice-Chair and that a determination would be made shortly.

WSIAT is currently awaiting the HRTO's decision on WSIAT's Request for an Order During Proceedings.

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 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 2013, the Tribunal did not receive any new intent to investigate notifications and there were no outstanding intent to investigate files. In one case, the Ombudsman's Office had previously advised the Tribunal that there appeared to be some confusion with respect to whether a document was part of the record and the party had requested a reconsideration on other grounds. A decision issued in 2013 clarified that the document was part of the record but denied the party's reconsideration request because the threshold test was not met.

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 2013 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Executive Offices

The Chair, the Executive Director and their 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 in 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 to WSIAT, and works with the Public Appointments Secretariat and the Ministry of Labour in this regard. 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.

The Executive Director is responsible for the administration of the Tribunal 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; support of 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 co-ordinates Tribunal operations through a talented senior management team.

In 2013, the Executive Offices focused its work on OIC recruitment, with five competition postings appearing on the Public Appointments Secretariat's website, and on OIC training. These strategies are key components to addressing the high appeals caseload.

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, staff and adjudicator training and participates in 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.

In 2013, significant investment was made to the Tribunal's accessibility program. Enhanced employment practices, including recruitment and selection, and documented processes for the development of individual accommodation plans for employees with disabilities and the return to work of employees absent from work due to their disabilities underscored the Tribunal's commitment to providing an accessible and inclusive environment. The development of the Employment Accommodation

and Return to Work Policy served to highlight the Tribunal's commitment to provide timely and effective employment accommodation and return to work for employees and OIC appointees with injuries, illnesses or disabilities. Further comprehensive training on the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005, Ontario Regulation 191/11 – Integrated Accessibility Standards Regulation* (IASR), and the Human Rights Code (the Code) as it pertains to people with disabilities, was delivered to all active employees and order-in-council appointees.

Enhancements to the Tribunal's corporate training program were also made in 2013. In addition to the delivery of IASR and the Code training, corporate employee training included privacy information sessions for staff; refresher workplace discrimination and harassment prevention (WDHP) and workplace violence prevention (WVP) for managers; standard first aid and emergency management and security training for designated staff; as well as enrichments to the comprehensive orientation program for new staff.

The Tribunal's Finance Department is led by the Manager, Finance. 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 2013, the committee developed and co-ordinated the presentation of three professional development sessions for all Tribunal adjudicators. Further, the Orientation Vice-Chair oversaw the delivery of three separate orientation program sessions for new adjudicators, due to the length of time between appointments. 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.

As in prior years, in 2013, the Tribunal provided shared services to the Ontario Labour Relations Board and the Pay Equity Hearings Tribunal pursuant to a Shared Services Agreement.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) has existed 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 in hearings. Publications Counsel and the OWTL Librarians are also members of OCC.

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, complicated reconsideration requests, post-decision inquiries, Ombudsman inquiries, conduct matters and other complaints. Of particular note in 2013, OCC lawyers provided advice on the accessibility initiatives the Tribunal implemented in compliance with the requirements in the *Accessibility for Ontarians with Disabilities Act, 2005*, the *Integrated Accessibility Standards* (O. Reg. 191/11) and the *Accessibility Standards for Customer Service* (O. Reg. 429/07).

OCC lawyers also provided advice on the review of the Tribunal's Practice Directions which was initiated this year.

Professional development continued to be important in 2013, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. OCC lawyers revised the orientation materials for new adjudicators in light of recent legal and policy developments. Three orientation sessions on workplace safety and insurance law and policy were delivered to new Order-in-Council appointees, including five new part-time Vice-Chairs. In addition, OCC lawyers were active in developing and delivering ongoing professional development sessions to adjudicators and staff.

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 2013, the Tribunal released and Publications Counsel processed approximately 2,800 decisions. These form part of the over 63,000 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 continues to be approximately six 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 2013, 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.

Library 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, where licensing permits.

The Library continues to add public documents to the OWTL website to meet the increased demand for online access to our specialized collections. Workshops and training programs were delivered to adjudicators and staff at our client tribunals, covering topics such as searching WSIAT databases, What's New on CanLII and Quicklaw, Legal and Legislative Research and Gale Databases. The Information Products line was further developed with the digitization of the Human Rights Tribunal of Ontario Board of Inquiry Decisions. The OLRB collective bargaining union certificates continue to be digitized and are available online.

In April 2013, at the request of the Human Rights Tribunal of Ontario (HRTO), the Library ceased providing services to HRTO staff and clients. HRTO

clients with reference questions are referred to the HRTO and Human Rights Legal Support Centre.

Office of the Vice-Chair Registrar

The staff of the Office of the Vice-Chair Registrar (OVCR) provide 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 by the Tribunal. 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 also utilize a variety of Alternative Dispute Resolution (ADR) 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 an expedited 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.

Mediation Services

Mediation services are offered to parties to resolve appeals without proceeding to a formal hearing. If an appellant requests mediation, the Tribunal reviews the appeal to determine whether it is suitable for mediation and contacts the responding party to determine if the respondent is willing to explore a mediated resolution. If the appeal is not suitable for mediation (e.g., credibility is an issue, or a respondent does not want to participate), the appeal is re-streamed and prepared for a hearing.

Where both parties are amenable and the appeal is suitable for mediation, the appeal is assigned to a mediator for substantive review. The mediator may contact the parties in advance of the mediation date to discuss options for resolving the appeal, to clarify issues or to identify outstanding information. At the mediation, the mediator works with the parties in a neutral and confidential setting to arrive at a jointly acceptable resolution to an appeal. Mediations are

typically conducted as face-to-face meetings but teleconferences are used where appropriate.

If the mediation results in the parties reaching a resolution, an agreement is formalized in writing and submitted to the parties for their signatures. The executed agreement is then submitted to a Vice-Chair for review. If the Vice-Chair is satisfied that the resolution is consistent with law, Board policy and is reasonable based on the facts of the case, the Vice-Chair will issue a brief, written decision incorporating the terms of the agreement. Where an appeal is not resolved through mediation efforts, it is prepared for 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 Tribunal related 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.

In addition, Shelley Quinlan is the MLO Officer and has a baccalaureate in nursing from Ryerson University. She worked in critical care nursing for a number of years, and then at WSIB, first as a nurse case manager and then a NEL clinical specialist.

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 is 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.

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. In 2013, the Scheduling Department experienced a significant increase in

demand for oral and written appeals. The high case inventory has resulted in longer wait times for hearing dates.

Information and Technology Services

The Information and Technology Services Department (ITS) designs, develops and implements information management, information technology and workflow solutions for the Tribunal.

The Department provides the following services:

- develops policies, strategies and plans 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, 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.

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 2013, an appendix to the *OIC Computer Support Policy* was modified to reflect new recommendations regarding computer equipment for OIC remote access, and an appendix to the *Policy Regarding Use of Information Technology* was amended to further restrict the utilization of portable media devices.

Technology Procurements and Equipment Upgrades

In 2013, all of the Tribunal's computer workstations were upgraded. The new equipment was delivered beginning in May and the installation process was concluded at the end of June. Also in 2013, the Tribunal upgraded three electronic copying systems in the reproduction centre. The new copiers went into operation at the end of August. Other equipment acquisitions in 2013 included new scanners (two high-volume and six flatbed) and new digital recorders (30 sets).

Portal and Software Development

In addition to enhancements to existing modules and reporting systems, five 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 the orientation and staff development section of the staff portal was entirely redeveloped. Working in collaboration with the Counsel to the Chair's Office, the developers made significant progress on a multi-year project that establishes linkages between two of the Tribunal's main knowledge portals. The developers also implemented a software system that evaluates web and portal content for compliance with common software standards (including those applicable to the Tribunal under the *Integrated Accessibility Standards Regulation*).

User Support and Technology Training

Throughout 2013, 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 2013, through this service, the Department handled 5,477 support service requests. The distribution of types of support services was similar to the distribution in previous years. Seventy-two per cent of the support requests were for software application support. This was followed by requests for user set-up (10%), equipment servicing (9%), and connection assistance (6%). Equipment booking and topical training requests accounted for the remainder (3%).

Information Management and Privacy

The Department supported the Tribunal and facilitated the effective 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 our public website, as well as print materials published by the Tribunal.

Caseload and Production Reporting

In 2013, 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 2014. 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, 2013

Notice Process	
Cases active in Notice stage processing	2,780
	2,780
Resolution Process	
Early Review stage	78
Substantive Review	1,346
Hearing Ready	96
Scheduling and Post-hearing	2,656
WSIAT Decision Writing	481
	4,657
Total Active Cases	**7,437**

NOTE: Charts 1-12 exclude post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial Review) are summarized in Charts 13,14 and 15.

Caseload

At the end of Year 2013, there were 7,437 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 2013, these factors combined to produce a 33% overall increase in the active inventory as compared to the 2012 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

CHART 2

ACTIVE CASELOAD

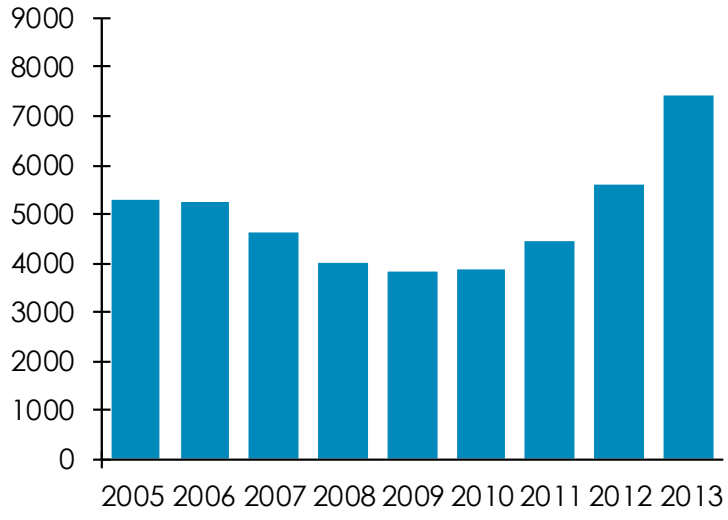


CHART 3

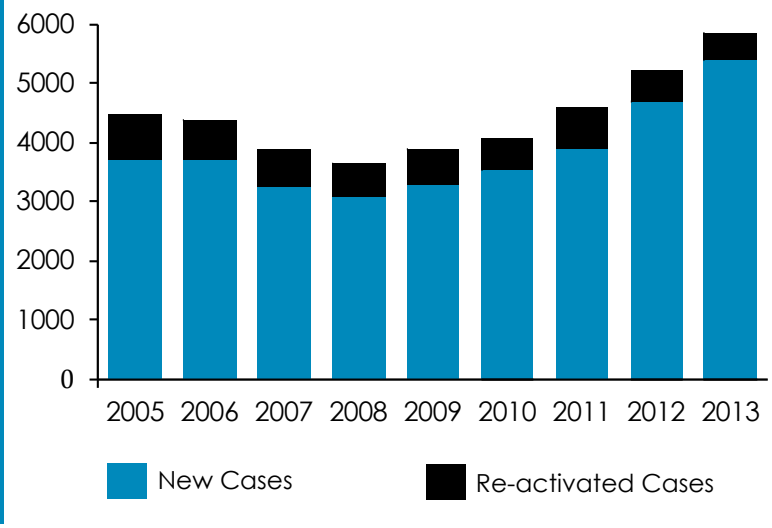


CHART 4

CASES DISPOSED OF IN 2013

Pre-hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	452
Withdrawn	694
With Final Decisions (declared abandoned)	6
	1,152
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	69
Withdrawn	6
With Final Decisions	2,518
	2,593
Total (Pre-hearing and Hearing)	
Without Tribunal Final Decisions	1,221
With Tribunal Final Decisions	2,524
	3,745

Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2013, the Tribunal's overall intake from new appeals and reactivations totaled 5,854 and this represented a total increase of 13% as compared with the 2012 intake total. "Reactivations" are appeals in which the appellant has indicated a readiness to proceed with their 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.

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 3,745 cases in 2013. This included 1,152 "Pre-hearing" and 2,593 "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 2013, the percentage of cases resolved within nine months was lower than it was in 2012. (In 2013, 30% of cases were resolved within nine months, compared to 46% in 2012.)

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 2012 (10.7 months in 2013, compared to 7.9 months in 2012).

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 2013, this target was achieved 86% of the time.

Hearing and Decision Activity

Chart 8 depicts the Tribunal's Hearing and Decision production. In 2013, the Tribunal conducted 2,618 hearings and issued 2,614 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 subsequent hearing before the same or a different Vice-Chair or Panel. Most cases require only a single hearing.

CHART 5

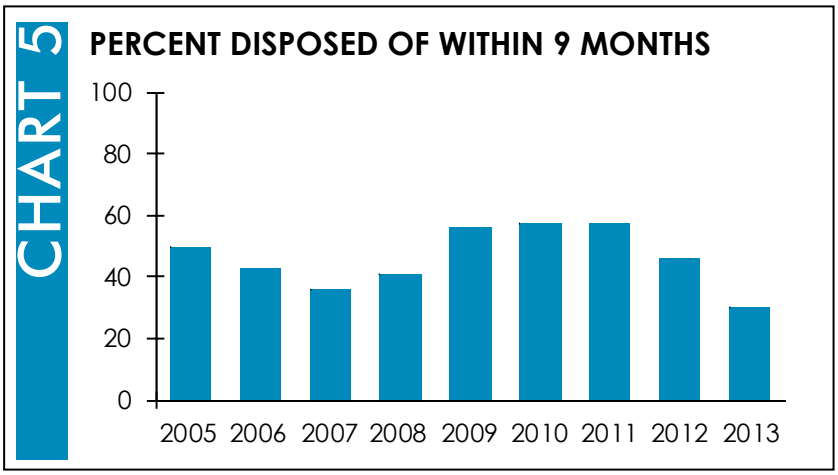


CHART 6

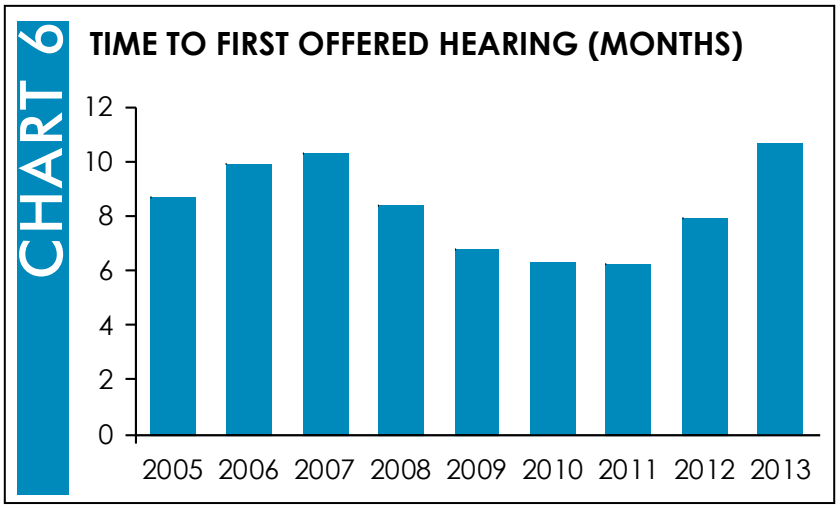


CHART 7

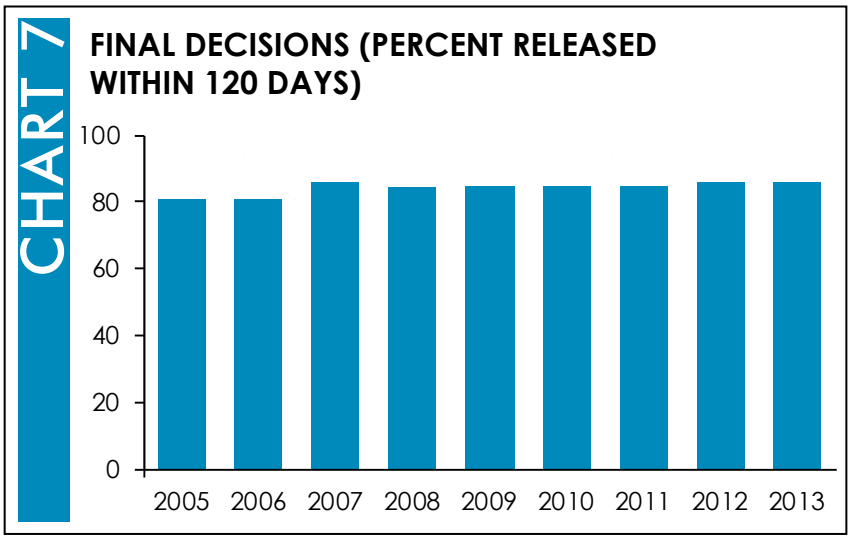
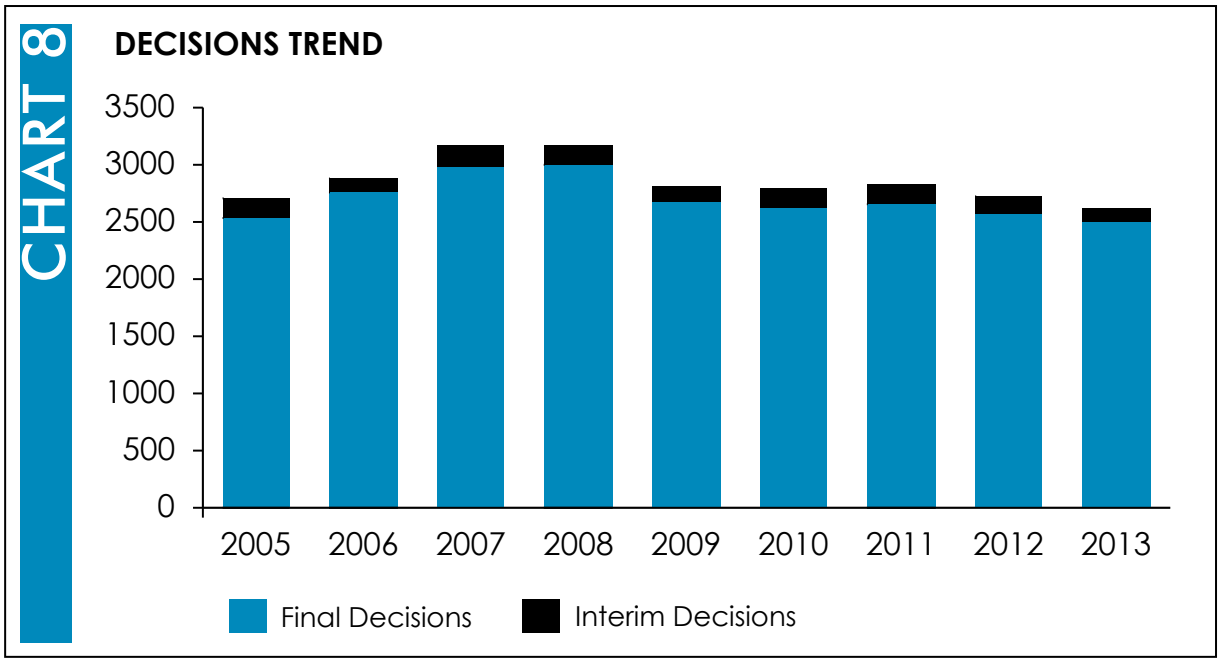


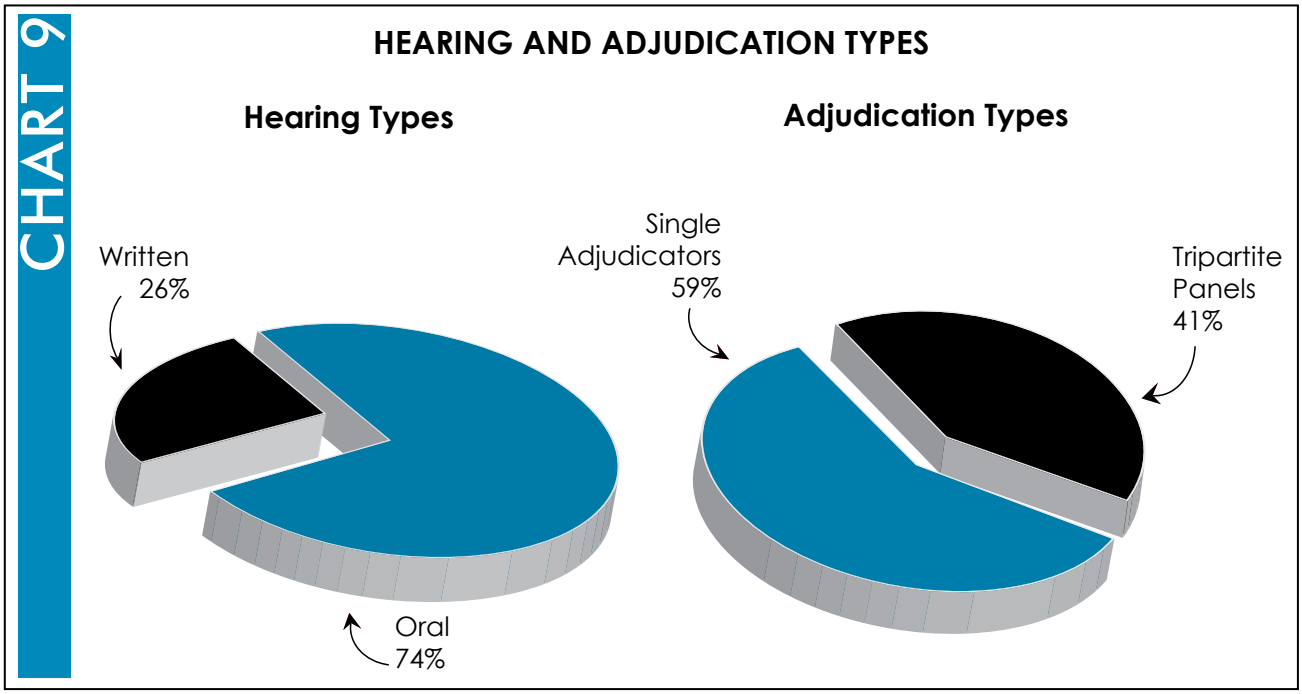
CHART 8



Hearing Type

In 2013, the percentage breakdown of hearing types was as follows: oral hearings continued to be the most common hearing type at 74%, followed by written hearings at 26%. The percentage of single adjudicator hearings decreased in 2013 to 59% (from 62% in 2012); tripartite panels increased to 41% of cases heard. Chart 9 presents these hearing characteristics.

CHART 9

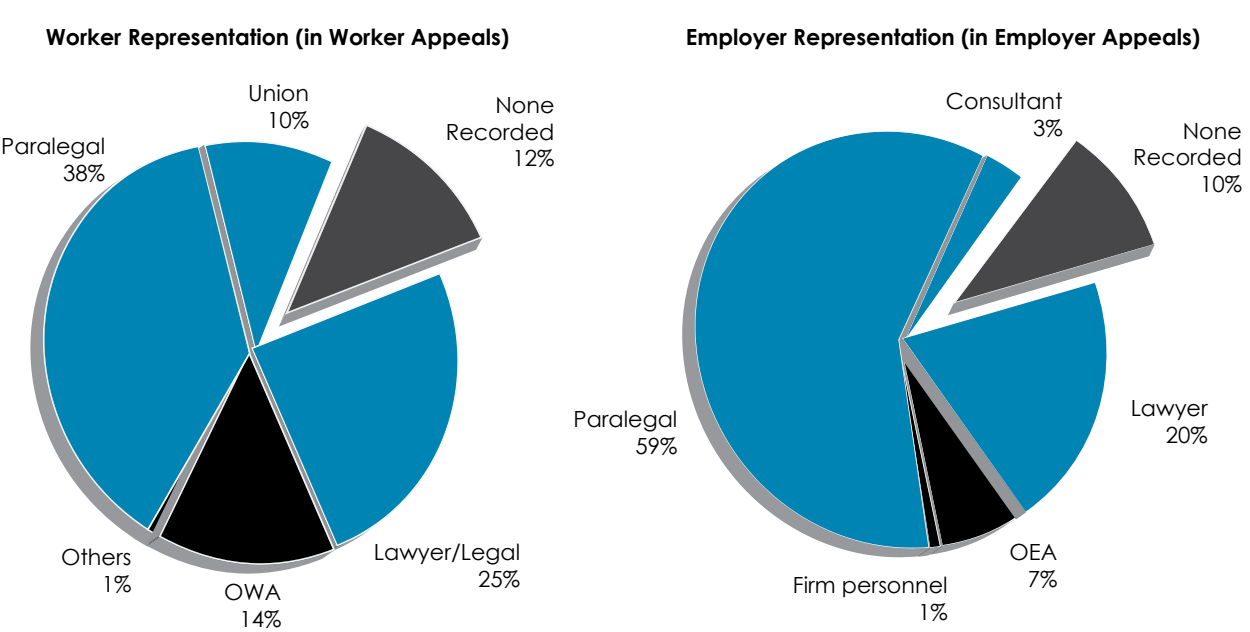


Representation at Hearing

Tribunal statistics show that for injured workers, 38% were represented by paralegals; 25% by lawyers and legal aid; 14% by the Office of the Worker Adviser; and, 10% by union representatives. The remaining 13% 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; 20% were represented by lawyers; 7% by the Office of the Employer Adviser; 3% by consultants and 1% by firm personnel. The remaining 10% are non-categorized. These statistics are presented in Chart 10.

CHART 10

WORKER AND EMPLOYER REPRESENTATION



Caseload by General Appeal Issue Type

In 2013, 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 2013.

CHART 11

INCOMING CASES BY APPEAL TYPE FOR THE YEARS 2009 – 2013

	2009		2010		2011		2012		2013	
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	67	1.7%	65	1.6%	63	1.4%	60	1.2%	65	1.1%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Access	185	4.7%	197	4.8%	108	2.4%	108	2.1%	78	1.3%
Total Special Section	**252**	**6.5%**	**262**	**6.4%**	**171**	**3.7%**	**169**	**3.3%**	**143**	**2.4%**
Preliminary (not yet specified)	5	0.1%	0	0.0%	1	0.0%	2	0.0%	1	0.0%
Pension	3	0.1%	1	0.0%	2	0.0%	0	0.0%	1	0.0%
N.E.L./F.E.L.*	21	0.5%	11	0.3%	5	0.1%	4	0.1%	4	0.1%
Commutation	0	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	106	2.7%	165	4.1%	340	7.4%	401	7.7%	262	4.5%
Entitlement	3331	85.4%	3465	85.3%	3889	85.1%	4474	86.1%	5265	89.9%
Ext post WSIB dec deadline	143	3.7%	137	3.4%	154	3.4%	139	2.7%	171	2.9%
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 **	6	0.2%	2	0.0%	1	0.0%	0	0.0%	1	0.0%
Classification	20	0.5%	11	0.3%	2	0.0%	2	0.0%	0	0.0%
Interest NEER	1	0.0%	0	0.0%	0	0.0%	1	0.0%	1	0.0%
Total Entitlement-related	**3636**	**93.2%**	**3793**	**93.4%**	**4394**	**96.1%**	**5023**	**96.7%**	**5706**	**97.5%**
Jurisdiction	12	0.3%	8	0.2%	6	0.1%	5	0.1%	5	0.1%
	3900		**4063**		**4571**		**5197**		**5854**	

*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 2009-2013

	2009		2010		2011		2012		2013	
	No.	%	No.	%	No.	%	No.	%	No.	%
Leave	0	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	60	1.5%	73	1.9%	62	1.6%	54	1.4%	47	1.3%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Access	189	4.6%	182	4.7%	117	3.1%	99	2.5%	86	2.3%
Total Special Section	**249**	**6.1%**	**256**	**6.5%**	**179**	**4.7%**	**154**	**3.9%**	**133**	**3.6%**
Preliminary (not yet specified)	2	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Pension	10	0.2%	4	0.1%	4	0.1%	1	0.0%	0	0.0%
N.E.L./F.E.L.*	46	1.1%	35	0.9%	11	0.3%	5	0.1%	3	0.1%
Commutation	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	121	3.0%	131	3.4%	198	5.2%	285	7.3%	312	8.3%
Entitlement	3437	84.2%	3287	84.1%	3225	84.2%	3309	84.6%	3113	83.1%
Ext post WSIB dec deadline	166	4.1%	153	3.9%	186	4.9%	147	3.8%	177	4.7%
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**	4	0.1%	13	0.3%	3	0.1%	0	0.0%	0	0.0%
Classification	37	0.9%	21	0.5%	18	0.5%	4	0.1%	2	0.1%
Interest NEER	0	0.0%	1	0.0%	0	0.0%	1	0.0%	0	0.0%
Total Entitlement-related	**3823**	**93.6%**	**3645**	**93.2%**	**3645**	**95.2%**	**3752**	**95.9%**	**3608**	**96.3%**
Jurisdiction	12	0.3%	8	0.2%	6	0.2%	5	0.1%	4	0.1%
	4084		**3909**		**3830**		**3911**		**3745**	

*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.

Dormant and Inactive Cases

The Tribunal's overall caseload includes some that are not active. This includes cases at the 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 2013, the number of dormant cases increased to 1,862 from 1,595 at the end of 2012 and the number of "inactive" cases decreased to 2,344 from 2,519. Taken as a whole, this meant that the number of not active cases increased by 2% in 2013.

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 2013, 188 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	37
Reconsideration Requests Received	188
Reconsideration Requests Resolved	170
Reconsiderations Remaining	103

CHART 15

JUDICIAL REVIEWS, ACTIVITY AND INVENTORY SUMMARY

Judicial Reviews at January 1st	15
Judicial Reviews Received	6
Judicial Reviews Resolved	4
Judicial Reviews Remaining	17

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2013 (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, 2013. The Independent Auditor's Report is included as Appendix B.

CHART 16

STATEMENT OF EXPENDITURES AND VARIANCES YEAR ENDED DECEMBER 31, 2013 (IN $000S)

	2013 BUDGET	2013 ACTUAL	2013 VARIANCE $	2013 VARIANCE %
OPERATING EXPENSES				
Salaries & Wages	11,107	11,075	32	0.3
Employee Benefits	2,194	2,318	(124)	(5.7)
Transportation & Communication	1,043	857	186	17.8
Services	6,962	6,471	491	7.1
Supplies & Equipment	416	468	(52)	(12.5)
TOTAL - W.S.I.A.T.	21,722	21,189	533	2.5
Services - W.S.I.B.	500	503	(3)	(0.6)
Interest Revenue	-	(8)	8	0.0
TOTAL OPERATING EXPENSES	**22,222**	**21,684**	**538**	**2.4**
ONE TIME EXPENSES				
Severance Payments	100	116	(16)	(16.0)
Active Caseload Reduction Strategy	200	-	200	100.0
TOTAL EXPENDITURES	**22,522**	**21,800**	**722**	**3.2**

Note: The above 2013 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 $76 is comprised of:

Capital Fund		
Amortization	107	
Fixed assets acquired	(106)	1
Operating Fund		
Accrued severance & vacation benefits	83	
Prepaid expenses	(8)	75
		$ 76

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 2013

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
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
Dee, Garth	June 17, 2009
Dempsey, Colleen L.	November 10, 2005
Dhaliwal, Paul	May 27, 2009
Doherty, Barbara	June 22, 2006
Falcone, Mena	October 17, 2012

Part-time	Initial appointment

Vice-Chairs (continued)

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
Josefo, Jay	January 13, 1999
Kelly, Kathleen	June 17, 2009
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
Morris, Anne	June 22, 2006
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
Suissa, Albert	October 3, 2012
Sutherland, Sara	September 6, 1991
Sutton, Wendy	May 27, 2009
Ungar, Susan	September 11, 2013
Welton, Ian	June 22, 2006

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 2013

	Effective
Diane Besner	January 13, 2013
John Blogg	November 14, 2013
Shirley Clement	September 1, 2013
Sherry Darvish	December 11, 2013 (full-time)[1]
Colleen L. Dempsey	November 10, 2013
Mary Ferrari	July 15, 2013
David Gillies	October 30, 2013
Jay Josefo	January 14, 2013
Bernard Kalvin	June 1, 2013
John B. Lang	July 15, 2013
Colin MacAdam	May 4, 2013
Sophie Martel	October 6, 2013
Rosemarie McCutcheon	October 6, 2013
Tom Mitchinson	November 10, 2013
Rob Nairn	29 April, 2013
Jasbir Parmar	November 10, 2013
Victor Phillips	November 15, 2013
Sean Ryan	October 6, 2013
Eleanor Smith	October 9, 2013 (part-time)[2]
Elaine Tracey	December 7, 2013
Marcel Trudeau	April 16, 2013

1 Sherry Darvish's Order in Council as a part-time Vice-Chair was revoked by this Order, which also reappointed her as a full-time Vice-Chair.

2 Eleanor Smith's Order in Council as a full-time Vice-Chair was revoked by this Order, which also reappointed her as a part-time Vice-Chair.

NEW APPOINTMENTS DURING 2013

	Effective
JoAnne Frenschkowski, part-time Vice-Chair	March 4, 2013
Michele Lawford, part-time Vice-Chair	May 29, 2013
Ian Mackenzie, part-time Vice-Chair	October 9, 2013
Joanna Smith, part-time Vice-Chair	August 28, 2013
Susan Ungar, part-time Vice-Chair	September 11, 2013

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, 2013, 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

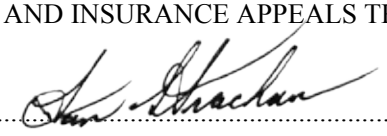
In our opinion, the financial statements present fairly, in all material respects, the financial position of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 2013, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Chartered Professional Accountants, Chartered Accountants
Licensed Public Accountants
March 4, 2014

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Balance Sheet
As at December 31, 2013

	2013	2012
ASSETS		
CURRENT		
Cash	**$ 892,924**	$ 913,433
Receivable from Workplace Safety and Insurance Board	**1,613,348**	1,502,669
Prepaid expenses and advances	**328,215**	320,138
Recoverable expenses (Note 3)	**158,273**	174,344
	2,992,760	2,910,584
CAPITAL ASSETS (Note 4)	**146,708**	147,683
	$ 3,139,468	$ 3,058,267
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,266,693**	$ 1,193,088
Accrued severance benefits and vacation credits	**3,224,758**	3,141,419
Operating advance from Workplace Safety and Insurance Board (Note 5)	**1,400,000**	1,400,000
	5,891,451	5,734,507
FUND BALANCES		
OPERATING FUND (Note 6)	**(2,898,691)**	(2,823,923)
CAPITAL FUND	**146,708**	147,683
	(2,751,983)	(2,676,240)
	$ 3,139,468	$ 3,058,267

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL



..... Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2013

	2013	2012
OPERATING EXPENSES		
Salaries and wages	**$ 11,074,654**	$ 11,109,408
Employee benefits (Note 7)	**2,518,089**	2,453,081
Transportation and communication	**856,972**	885,078
Services and supplies	**6,823,648**	6,847,737
Amortization	**107,396**	90,298
	21,380,759	21,385,602
Services - Workplace Safety and Insurance Board (Note 8)	**502,959**	549,527
TOTAL OPERATING EXPENSES	**21,883,718**	21,935,129
BANK INTEREST INCOME	**(8,436)**	(9,241)
NET OPERATING EXPENSES	**21,875,282**	21,925,888
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	**(21,799,539)**	(21,677,226)
NET UNFUNDED OPERATING EXPENSES	**$ 75,743**	$ 248,662
ALLOCATED TO		
CAPITAL FUND	**$ (975)**	$ (50,759)
OPERATING FUND	**(74,768)**	(197,903)
	$ (75,743)	$ (248,662)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Changes in Fund Balances
Year ended December 31, 2013

	Capital	Operating	Total
BALANCE - JANUARY 1, 2012	$ 198,442	$ (2,626,020)	$ (2,427,578)
Additions to capital assets	39,539	-	39,539
Amortization of capital assets	(90,298)	-	(90,298)
Severance benefits and vacation credits (Note a)	-	(195,607)	(195,607)
Prepaid expenses (Note b)	-	(2,296)	(2,296)
Net unfunded expenses - 2012	(50,759)	(197,903)	(248,662)
BALANCE - DECEMBER 31, 2012	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)**

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, 2013

	2013	2012
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 21,688,860**	$ 22,612,926
Cash receipts for recoverable expenses	**838,814**	811,853
Bank interest received	**8,436**	9,241
Expenses, recoverable expenses net of amortization of $107,396 (2012 - $90,298)	**(22,450,198)**	(23,747,581)
	85,912	(313,561)
CAPITAL		
Acquisition of capital assets	**(106,421)**	(39,539)
NET (DECREASE) IN CASH	**(20,509)**	(353,100)
CASH, BEGINNING OF YEAR	**913,433**	1,266,533
CASH, END OF YEAR	**$ 892,924**	$ 913,433

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2013

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 Canadian 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.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2013

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.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2013

3. RECOVERABLE EXPENSES

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

	2013	2012
Shared services		
Ontario Labour Relations Board	**$ 87,487**	$ 78,098
Pay Equity Hearings Tribunal	**4,504**	4,285
Human Rights Tribunal of Ontario	**-**	6,570
Secondments		
Ministry of Finance	**-**	3,509
Ministry of Attorney General	**6,064**	2,539
Others		
Canada Revenue Agency HST rebate receivable	**41,638**	54,133
Employee amounts receivable	**18,580**	25,210
Total	**$ 158,273**	$ 174,344

4. CAPITAL ASSETS

			2013	2012
	Cost	**Accumulated Amortization**	**Net Book Value**	Net Book Value
Leasehold improvements	**$3,071,986**	**$ 3,032,794**	**$ 39,192**	$ 23,402
Furniture and equipment	**684,960**	**661,335**	**23,625**	1,251
Computer equipment and software	**541,043**	**457,152**	**83,891**	123,030
	$4,297,989	**$ 4,151,281**	**$ 146,708**	$ 147,683

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 $2,898,691 as of December 31, 2013 (2012 - $2,823,923) 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.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2013

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $962,403 (2012 - $920,589) 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 2013 amounted to an increase of $55,370 (2012 - $159,280) 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 2013 amounted to an increase in the accrual of $27,969 (2012 - $36,327) 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. LEASE COMMITMENTS

The Tribunal has several operating lease contracts for computer and office equipment and software license fees, with terms from 1-5 years. The minimum payments under these leases are as follows:

2014	$ 353,054
2015	309,271
2016	199,951
2017	37,278
Minimum operating lease payments	$ 899,554

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2013

9. LEASE COMMITMENTS (continued)

The Tribunal is committed to lease payments for premises, including building operating costs. The lease expires on October 31, 2015. The minimum lease payments are as follows:

2014	$1,531,406
2015	1,276,172
Minimum operating lease payments	2,807,578

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, 2013 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.