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WSIAT ANNUAL REPORT 2015

Workplace Safety and Insurance
Appeals Tribunal

Tribunal d'appel de la sécurité professionnelle
et de l'assurance contre les accidents du travail

WSIAT 2015
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 2015 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

CHAIR'S REPORT
Highlights of the 2015 Cases

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2015.

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 incurring 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 since 1998. In addition, the Tribunal considers and applies policies adopted by the Workplace Safety and Insurance Board. The substantive provisions and terminology contained in Board policies vary over time. This section uses the policy terms and concepts considered in the Tribunal decisions discussed.

Appeals Under the WSIA

The WSIA provides for loss of earnings (LOE) benefits for workplace injury 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 worker and employer 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. Work transition (WT), previously labour market re-entry (LMR), services and LOE benefits may be available where a worker is unable to return to work with the 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.

2329/14

LOE appeals represent a large portion of the Tribunal's caseload. Previous Annual Reports have noted two lines of analysis with respect to entitlement to LOE benefits when an injured worker is terminated from suitable modified work. Both approaches examine the circumstances surrounding the termination to determine whether there is a causal link between the termination and the injury. One approach finds that, if the termination is unrelated to the injury, the worker is not entitled to LOE benefits. The other approach holds 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 subsequent loss of earnings. The two approaches continued in 2015. In some cases the Tribunal considered both approaches in reaching its decision. For a helpful discussion, see *Decision No. 2329/14*, 2015 ONWSIAT 429, which notes that termination for a non-compensable reason does not necessarily preclude an award of LOE benefits but may do so if the termination is an intervening cause which overwhelms entitlement. The question is whether the worker behaved in a way that caused the termination. In *Decision No. 2329/14*, the worker was fired for non-compensable reasons related to telephoning or visiting co-workers at their homes late at night while drunk. The termination was an intervening event that overwhelmed the significance of the compensable injury. It would be expected to take some time for the worker to find other work and to achieve

pre-injury earnings. The loss of earnings during that time would be due to the termination for non-compensable reasons and not the compensable injury.

2143/14

A number of decisions considered appeals from Board decisions to review LOE benefits before the 72-month final review date when the Board had previously awarded full LOE benefits. *Decision No. 2143/14*, 2014 ONWSIAT 2688, reasoned that LOE benefits should be reviewed if the original decision was flawed or new facts come to light. When there are no new facts and the prior Board decision has not been shown to be wrong, there is no factual basis or justification to find that a worker who was previously found to be unemployable is now employable.

584/15
494/15

The WSIA also authorizes the Board to defer the final LOE review in various circumstances; for example, pursuant to section 44(2.1)(b), if the worker was provided with an LMR plan and the plan was not completed when the 72-month review period expired. *Decision No. 584/15*, 2015 ONWSIAT 1041, found that the Board policy on WT clarifies that the WT plan does not need to have commenced at the 72-month review date. The Board is entitled to defer the review if a legitimate WT plan is in process. The Board may also defer the final LOE review where the worker is co-operating in health care measures pursuant to section 44(2.1)(g). In *Decision No. 494/15*, 2015 ONWSIAT 756, the worker challenged the Board's decision to defer the final LOE review and submitted that the Board postponed the review with the hope of finding him unco-operative. The Vice-Chair found that the deferral was not artificial but for legitimate purposes, given that the Board had found that the worker had entitlement for psychotraumatic disability shortly before the final LOE review date.

891/15

Review of final LOE benefits was another issue which was frequently appealed in 2015. When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72 months. Amendments to section 44 in 2002 provided for a review after 72 months when a worker suffers a "significant deterioration" in his or her condition which "results in a redetermination of the degree of the permanent impairment." Subsequent amendments in 2007 expanded the circumstances in which LOE benefits can be reviewed after the 72-month date. Earlier Annual Reports have discussed a number of decisions which considered review on "significant deterioration" in the 2002 amendments. *Decision No. 891/15*, 2015 ONWSIAT 1652, noted that the 2002 amendment regarding "significant deterioration" was revised in 2007. The 2007 wording clarifies that both the deterioration and the redetermination must take place after the 72-month date. *Decision No. 891/15* also reviewed prior case law and found that generally the referral of the worker for a NEL redetermination will reflect a determination that there has been a significant deterioration that is likely to result in a redetermination. A significant deterioration, however, must be something more than a minimal or minor deterioration, even when the deterioration is sufficient to result in a small increase in the NEL award. The 1% change in NEL rating based on a small change in range of motion findings, did not constitute a "significant deterioration" in *Decision No. 891/15*.

476/15

Review issues may also arise where the Tribunal allows an appeal and the Board must implement the decision. Tribunal jurisprudence has found that

an inadequate WT/LMR plan is effectively an incomplete plan, thus allowing for a renewed WT/LMR process more than 72 months after an injury, after which LOE benefits may be reviewed pursuant to section 44(2.1)(b). When the Tribunal retrospectively directs the Board to provide renewed LMR services, the corresponding ability for the Board to review LOE benefits upon their completion is essential to implement the Tribunal's direction. See *Decision No. 476/15*, 2015 ONWSIAT 1100, which recognized that there was a finding of unemployability in a prior Tribunal decision, but considered new information about employability created as a result of the further treatment and WT activity ordered by the prior decision. Based on this new information, the worker was employable and could have returned to suitable part-time work at minimum wage at the date of the review.

516/15
734/15
731/15

Another issue which has arisen frequently is the interaction of *Canada Pension Plan* (CPP) disability benefits with LOE benefits. Section 43(5) provides that LOE benefits "must reflect any disability payments paid to the worker under the *Canada Pension Plan*…in respect of the injury." *Decision No. 516/15*, 2015 ONWSIAT 651, distinguished between receipt of CPP disability benefits before and after the 72-month lock-in date. Where a worker receives CPP disability benefits during the 72-month period, the Board has the authority to apply the offset provision in section 43(5). The Board also has the authority to review LOE benefits more than 72 months after the injury if, before the expiry of the 72 months, the worker failed to notify the Board of a material change in circumstances. *Decisions No. 734/15*, 2015 ONWSIAT 372, and *731/15*, 2015 ONWSIAT 1486, found that entitlement to CPP disability benefits constituted a material change in circumstances and that the Board was entitled to review the worker's benefits and offset the CPP disability benefits when the worker had failed to notify the Board of receipt of CPP disability benefits during the 72-month period. *Decision No. 731/15* also rejected an argument that it was not appropriate to offset CPP disability benefits for high wage earners when the pre-accident earnings exceeded the statutory maximum and the total of LOE benefits and CPP disability benefits did not restore the worker's actual pre-accident income. There is no provision in the WSIA to allow high wage earners to receive full LOE benefits and CPP disability benefits with no offset.

2076/14

After the final LOE review, receipt of CPP disability benefits can only be considered under Board policy if review of LOE benefits is authorized under section 44. *Decision No. 2076/14*, 2014 ONWSIAT 2799, held that the Board may review LOE benefits and offset CPP disability benefits when the worker suffers a significant deterioration which results in an increased NEL award, even if the worker is receiving full LOE benefits. An LOE review is not limited to situations that result in increased LOE benefits. And see *Decision No. 891/15*, discussed above, which found that the Board was not entitled to review LOE benefits after the final LOE date because there was no significant deterioration; accordingly, there was no basis to offset CPP disability benefits received after the final review.

375/15

In 2015, a number of appeals considered the re-employment obligation. *Decision No. 375/15*, 2015 ONWSIAT 558, is of interest for its

discussion of payments to the worker for breach of the re-employment obligation. Section 41(13)(b) provides that the Board "may" make payments to the worker for a maximum of one year "as if" the worker was entitled to LOE payments where the employer has not fulfilled the re-employment obligation. Board policy on the responsibilities of the workplace parties and work reintegration, provides that re-employment payments are paid for up to one year if the worker has not returned to work with another employer. *Decision No. 375/15* found that the worker was entitled to re-employment benefits since his termination was primarily due to the employer's unwillingness to accommodate the compensable injury; however, benefits were only payable for four months as the worker had returned to work with another employer.

311/15
2129/14

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. See, for example, *Decision No. 311/15*, 2015 ONWSIAT 1143, with respect to a hip rating. *Decision No. 2129/14*, 2015 ONWSIAT 287, is one of the first Tribunal decisions to consider section 47(13) which provides that a worker is deemed not to have a permanent impairment if the degree of permanent impairment is determined to be zero. The worker had pleural plaques, a physical abnormality which met the statutory definition of "impairment," but the worker's pulmonary functions tests resulted in a rating of 0% under the AMA Guides. Section 46(1), which provides that a worker with a permanent impairment is entitled to compensation, cannot be read as a stand-alone provision. Section 47(13) makes clear that the WSIA contemplates the situation where a worker, who would otherwise be entitled to benefits for permanent impairment, is not entitled to a NEL award because a 0% rating is deemed not to be a permanent impairment.

The WSIA also introduced limits on entitlement for mental stress: section 13(4) provides that the worker is not entitled to benefits for mental stress except as provided in subsection (5). Section 13(5) provides entitlement for mental stress that is an "acute reaction" to a sudden and unexpected traumatic event; however, there is no entitlement for mental stress caused by an employer's decisions relating to employment. As noted in previous Annual Reports, section 13(4) and (5) and the Board's related traumatic mental stress policy have been the subject of several challenges under the *Canadian Charter of Rights and Freedoms*. In 2014, *Decision No. 2157/09*, 2014 ONWSIAT 938, found that section 13(4) and (5) creates a distinction based on the ground of mental disability which is substantively discriminatory and not justified under section 1 of the Charter. (Note: *Decision No. 2157/09* did not consider the section 13(5) provision that excludes entitlement for mental stress caused by an employer's decisions or actions.) Since the ruling in *Decision No. 2157/09* is limited to the facts of the case, parties in outstanding Charter challenges were given an opportunity to make submissions on its reasons.

1945/10

In 2015, the second substantive Charter ruling was issued. *Decision No. 1945/10*, 2015 ONWSIAT 223, noted that the Ontario Attorney General had withdrawn following the release of *Decision No. 2157/09* and the employer made no submissions on the Charter challenge but

only on the appropriate remedy. In the absence of contrary submissions, *Decision No. 1945/10* adopted the analysis in *Decision No. 2157/09*. Given this ruling, *Decision No. 1945/10* agreed with the employer's position that it was not necessary to address specific provisions of Board policy. As in *Decision No. 2157/09*, *Decision No. 1945/10* did not consider the portion of section 13(5) dealing with an employer's decisions or actions relating to a worker's employment.

698/14

A number of Tribunal decisions also interpreted the Board's policy on traumatic mental stress. *Decision No. 698/14*, 2015 ONWSIAT 1155, noted that there are two lines of Tribunal decisions interpreting the policy requirement that traumatic events be unusual or unexpected. Some decisions have found that the traumatic events must be unusual or unexpected in the worker's particular line of work, while others have found that the proper application of the average worker test should refer to an average worker in the general labour pool. *Decision No. 698/14* agreed with the latter approach and found it to be more consistent with the cumulative effect provision in Board policy which applies to workers who, due to the nature of their occupation, may be exposed to multiple sudden and unexpected traumatic events. Emergency responders, such as the worker in *Decision No. 698/14,* are more likely to be exposed to events that meet the diagnostic criteria for post-traumatic stress disorder (PTSD) by the very nature of their work.

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 in making its decision. Section 126(2) provides that the Board is to notify the Tribunal of the applicable policy. 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. Under section 126(8), the Board is to issue a written decision with reasons. While section 126(4) referrals are rare, policy issues may arise in other circumstances. For example, it may be necessary for the Tribunal to interpret Board policy, or to decide which version of a policy applies, or the Board may ask the Tribunal to reconsider a decision in light of Board policy.

2346/12I2

During 2015, there were no section 126(4) referrals to the Board; however, a challenge to the Board's fatal claim premium adjustments policy was raised in *Decision No. 2346/12I2*, 2015 ONWSIAT 646. The policy provides that, in the year of a traumatic fatality claim, a premium increase equivalent to the NEER or CAD-7 refund an employer is otherwise entitled to receive, is applied. The policy also provides that the decision-makers will consider the Board's merits and justice policy. It was argued that: the policy should not be applied on the merits and justice; the policy was not authorized by the WSIA; and the policy was a penalty and the manner in which it was imposed contravened the Charter. *Decision No. 2346/12I2* rejected the merits and justice argument. For the Board's merits and justice policy to apply, there must be exceptional circumstances that justify doing so in order to avoid an unfair result that the Board never intended. The merits and justice provision does not authorize a decision-maker to disregard relevant provisions of the Act or Board policy.

2346/12I3

Decision No. 2346/12I2 directed that a decision on whether the Board's policy is consistent with the Act will be issued after receiving submissions from the Board. The Charter issue will only be addressed, if necessary, following determination of the non-Charter issues. The Board was asked to provide submissions on: its authority under the WSIA, including sections 82 and 83; whether the charge should be characterized as a premium increase or penalty; and whether the charge is based on fault in a system that is, generally, a no-fault system. *Decision No. 2346/12I3*, 2015 ONWSIAT 1682, subsequently allowed three requests for intervenor status; two of the requests were from worker groups and one from an employer group. With the participation of the employer, there will be a balance of two participants from the perspective of employers and two participants from the perspective of workers.

512/14R

In 2015, the Board asked the Tribunal to reconsider *Decision No. 512/14*, 2014 ONWSIAT 1974, because, in its view, it did not apply statutory and policy provisions on earnings basis under the pre-1985 Act correctly. *Decision No. 512/14R*, 2015 ONWSIAT 331, agreed with the Board that the earnings basis for pre-1985 permanent disabilities should generally be based on the average earnings from the accident employer in the 12 months preceding the accident. If the particular facts of an individual case lead to a conclusion that a fair calculation requires inclusion of additional earnings, the decision must recognize the usual method of calculation and explain the rationale for concluding that a variation is warranted. *Decision No. 512/14R* found that the original decision satisfied both these requirements. The application to reconsider was denied since there was no fundamental error of law or process in the original decision.

1992/15 303/14 1742/15

In interpreting Board policy, the Tribunal considers the governing WSIA provisions as well as the Ontario *Human Rights Code*, the Charter of Rights, related statutory schemes, common law principles and the interaction between Board policies. *Decision No. 1992/15*, 2015 ONWSIAT 2478, found that Board policy on travel and related expenses should be interpreted with regard to the definition of "health care" in section 32 of the WSIA. The statutory section limits coverage to extraordinary transportation costs. Such a definition would not include transportation costs incurred to attend regular appointments located in the city where the worker lives. *Decision No. 303/14*, 2014 ONWSIAT 2766, agreed with *Decision No. 2407/11*, 2012 ONWSIAT 2364, that it is appropriate to read Board policy which provides for transfers of costs in third party motor vehicle accident claims in the context of the relevant motor vehicle legislation, the *Compulsory Automobile Insurance Act* and the *Highway Traffic Act*. In *Decision No. 1742/15*, 2015 ONWSIAT 2139, the worker appealed the Board's decision interpreting Board policy on hernias narrowly. The policy provides that workers are entitled to benefits if a specific work-related muscular effort or incident causes or aggravates a hernia. The Board had found that the policy precluded entitlement in the absence of a specific work-related incident. Interpreting the policy as providing for coverage for both specific work-related muscular efforts and specific work-related

incidents, was consistent with Tribunal decisions which have interpreted the policy as allowing entitlement on a disablement basis.

1417/15

When Board policy does not directly apply to a situation, the Tribunal has held that policy should be interpreted to allow flexibility. *Decision No. 1417/15*, 2015 ONWSIAT 1775, found that the worker's situation was covered by aspects of two provisions in the Board's policy on the wage level to use on the worker's final LOE review. *Decision No. 1417/15* applied a hybrid approach and awarded entitlement at a mid-point between entry level wages and mid-level wages.

2159/14
2157/14

While section 126 only requires the Tribunal to apply Board policy, the Tribunal may also consider informal Board practice and adjudicative advice documents if they provide useful guidance. The 2014 Annual Report noted that several decisions had considered the Board's Formulary Drug Listing Decisions which are based on recommendations by the Drug Advisory Committee (DAC). The Drug Formularies are used to assist in deciding entitlement under section 33(1) of the WSIA, to such health care as is "necessary, appropriate and sufficient as a result of the injury." In 2015, the Tribunal continued to hear appeals concerning the application of the Drug Formularies. The Tribunal found that the use of the expert DAC to review medical literature on the efficacy, safety and cost effectiveness of prescription medication is a reasonable method to determine the general necessity, appropriateness and sufficiency of medication; however, generally applicable conclusions do not apply in every case. See, for example, *Decisions No. 2159/14*, 2015 ONWSIAT 126, and *2157/14*, 2015 ONWSIAT 123.

Decision No. 2159/14 denied payment for a drug for use as a pain medication since evidence indicated that the only approved use is for nausea and vomiting associated with cancer chemotherapy. Use as a pain medication is unapproved, with common side effects and an absence of controlled clinical trials. A determination to accept an off-label use would require more than a simple prescription from the worker's doctor. There was no evidence that the doctor was aware of possible interaction with other medication being taken by the worker or that there had been an evaluation of other options. *Decision No. 2157/14*, however, approved payment for two drugs not on the Drug Formularies because there was evidence they had been effective for the worker with limited side effects and the worker had tried a number of other medications which had produced intolerable side effects.

249/12I2R

Decision No. 249/12I2R, 2015 ONWSIAT 426, provides an interesting discussion of Board policy in contrast to Board ARO and operating level decisions. It was argued that failure to consider the reasoning in three ARO decisions which had been referred to at the hearing, constituted an error of law or overlooked important evidence, warranting reconsideration. *Decision No. 249/12I2R* found that Board decisions are not evidence in Tribunal hearings nor do they constitute policy which the Tribunal must apply. Decisions of lower level adjudicators have force and effect until appealed; they do not bind the Tribunal and are not entitled to deference. *Decision No. 249/12I2R* also found that there was no basis to expect the Tribunal to address ARO decisions due to concerns about

consistency. Board decisions are generally not published and it is not possible to know whether particular decisions reflect the dominant view of Board adjudicators.

Right to Sue Applications

The WSIA and earlier Acts are based on the "historic trade-off" in which workers gave up their 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. Right to sue applications may raise complicated issues, such as the interaction between the WSIA and other statutory schemes in Ontario and other jurisdictions.

893/11

Decision No. 893/11, 2015 ONWSIAT 1396, considered the interaction between a claim for benefits and a right to sue application involving a motor vehicle accident between two transport trucks. A 2011 Tribunal right to sue hearing was adjourned to allow the plaintiff to appeal the Board's denial of benefits. The Board's denial was ultimately upheld in *Decision No. 782/12*, 2014 ONWSIAT 188, due to insufficient evidence that the plaintiff sustained injuries in the accident. At the reconvened right to sue hearing, the plaintiff argued that he was not a worker and also that he was not barred from suing because he was not entitled to benefits as required by section 27. *Decision No. 893/11* found that the plaintiff was a worker and that the word "entitles" in section 27 encompasses more than just receiving benefits. Section 27 must be read in the context of the purpose and intent of the right to sue provisions in the Act. Section 31(1)(c) provides for the determination of whether a plaintiff is entitled to claim benefits. When a person's right of action is taken away, that person has a right to be considered for entitlement based on the person's status as a worker. Section 31(1)(c) does not guarantee benefits but rather provides access to adjudication. Entitled to benefits in section 27 means having the right to claim benefits, even if the claim is not successful.

1086/15
2148/15
2297/14
2285/15I

Other interesting right to sue decisions included: *Decision No. 1086/15*, 2015 ONWSIAT 2107 (which considered whether the section 28(4) exception for employers who supply a motor vehicle, machinery or equipment without also supplying workers, applied to a finance company); *Decision No. 2148/15*, 2015 ONWSIAT 2347 (which considered whether section 31 applied to a job interviewee who was injured when he was taken to the workplace to observe the job); *Decision No. 2297/14*, 2015 ONWSIAT 62 (which considered the effect of an employer's policy manual on the use of company vehicles in deciding whether a worker was in the course of employment while driving a company vehicle); and *Decision No. 2285/15I*, 2015 ONWSIAT 2469 (which distinguished between jurisdiction to hear an application and determination of an application on its merits in the context of a third party claim which was argued to be based on a contractual obligation to indemnify in a lease).

Employer Issues

Appeals involving employer issues, such as classifications, transfers of cost, adjustments of experience rating accounts and applications for Second Injury and Enhancement Fund (SIEF)

relief, continued to form a significant part of the Tribunal's caseload in 2015.

312/15

The Tribunal frequently considers the interpretation and application of the Board's SIEF policy. The quantum of SIEF is generally determined in accordance with the policy matrix which is based on the severity of the accident and the medical significance of the pre-existing condition. *Decision No. 312/15*, 2015 ONWSIAT 505, is the first decision to consider whether SIEF relief is available for benefits paid to a worker as a result of breach of the re-employment obligation. It was found that re-employment payments are not part of the compensation or health care costs that can be transferred to SIEF. Granting SIEF relief would be contrary to the intention in section 41(13) of imposing a penalty on the employer. The employer was, however, entitled to SIEF relief on LOE benefits and to all health care costs paid at any time during the claim.

1999/13R

There are two lines of cases on whether degenerative changes that are not unexpected given the worker's age, are eligible for SIEF relief. *Decision No. 1999/13R*, 2015 ONWSIAT 286, considered a reconsideration request which argued that exclusion of age-related pre-existing conditions was inconsistent with the purpose of the SIEF policy. *Decision No. 1999/13R* denied the request, holding that SIEF was not intended to protect employers from the effects of every pre-existing condition, particularly those that reflect normal ageing. This could impose an unwarranted obligation on the insurance plan and unfairly burden employers in any class. The original decision cited both lines of cases and provided reasons for preferring the line which excluded normal age-related changes. This also appeared to be the predominant Tribunal view and *Decision No. 1999/13R* agreed with it. In any event, Tribunal decisions have concluded that a decision will not be re-opened simply on the basis of a contrary line of decisions.

517/15I
517/15

Decision No. 517/15I, 2015 ONWSIAT 702, asked for Board submissions on whether the cost transfer provisions in the SIEF policy should apply to a NEL award when the NEL benefit has already been reduced by 50% for a pre-existing disability. The Board stated that, in cases where the pre-existing condition is not measurable using the AMA Guides, the decision to grant an employer SIEF relief is not influenced by limitations or reductions placed on the worker's permanent impairment benefits. *Decision No. 517/15*, 2015 ONWSIAT 1435, noted that adjusting SIEF relief to reflect a reduction in the NEL award may not always be simple, as the percentage of SIEF relief and the percentage of the NEL reduction may not always correspond. The Board gave no indication that it applies SIEF relief differently in the context of an already-reduced NEL award. In the circumstances, it was appropriate to apply the cost transfer to all of the claim costs, including the NEL award.

576/15
895/15
934/15
902/15
969/15
962/15

A number of 2015 decisions considered which Board policy applies to an employer request for retroactive interest payments or "credit interest." See *Decisions No. 576/15*, 2015 ONWSIAT 1692,

895/15, 2015 ONWSIAT 1699, *934/15*, 2015 ONWSIAT 1700, *902/15*, 2015 ONWSIAT 1701, *969/15*, 2015 ONWSIAT 1710, and *962/15*, 2015 ONWSIAT 1797. The employers argued that Board policy on employer non-compliance interest applied and that there was no limit on retroactivity of credit interest other than that it was not payable before 1997. The Tribunal, however, found that the general retroactivity period in Board policy on employer premium adjustments applied. The decisions relied on prior Tribunal case law that "interest" is included in the concept of "premiums." In the absence of exceptional circumstances, credit interest is subject to the general retroactivity limit of two years from the date of notification.

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 rebuttable and irrebuttable presumptions for specified occupational diseases and exposures, and the Board has adopted policy on other diseases and exposures. There are also adjudicative advice documents which apply to other occupational diseases.

2293/14
336/14
1268/12

Ontario Regulation 253/07 provides a rebuttable presumption that certain cancers are the result of workplace exposure related to firefighting if certain conditions exist. The Regulation now also applies to volunteer firefighters. *Decision No. 2293/14*, 2015 ONWSIAT 254, considered a claim by a volunteer firefighter and self-employed contractor for colon cancer which was six months short of the minimum 10 years provided in the Regulation. The rebuttable presumption did not apply and the appeal was denied as there were no risk factors specific to the worker to suggest that his colon cancer was a result of excess risk. Entitlement may be granted, however, where there is evidence that the worker was exposed to excess risk. In *Decision No. 336/14*, 2015 ONWSIAT 1691, the claim was allowed although the worker had approximately nine years of employment as a full-time firefighter at the time of diagnosis. While *Decision No. 336/14* was governed by the pre-1985 Act rather than the WSIA, the Board has adopted a policy which reflects the presumptions contained in the WSIA and Regulation. Medical opinions from two Tribunal assessors indicated that it was likely that occupational exposure was a factor. The worker had a very rare form of brain cancer and one assessor opined that it could develop in less than 10 years of exposure. In *Decision No. 1268/12*, 2015 ONWSIAT 837, another appeal governed by Board policy on firefighters, the evidence on whether the worker had primary site kidney cancer which is covered by Board policy, was approximately equal in weight. Applying the statutory benefit of doubt, the primary site of the cancer was the kidney. Accordingly, the worker met the requirements of Board policy for entitlement.

2286/14

Decision No. 2286/14, 2015 ONWSIAT 634, is an example of an appeal governed by Board policy on exposure to asbestos, which provides that claims will be favourably considered when there is a "clear and adequate history" of at least 10 years of occupational exposure to asbestos.

The policy also provides that claims which do not meet the guidelines will be individually judged on their own merits, having regard to the intensity of exposure and other factors. In *Decision No. 2286/14*, the worker was a construction worker who worked as a pipe layer for six years. Although six years did not meet the exposure criteria, the exposure would have been very intense. The Tribunal found that the worker had a clear and adequate history of asbestos under the policy, and he also met the latency period for onset of lung cancer. *Decision No. 2286/14* noted that despite the significance of smoking as related to lung cancer, Board policy on asbestos does not refer to smoking as a factor to consider. The Board has the ability to look at scientific studies and estimated mortality rates in developing occupational disease policies, but the focus of the asbestos policy is on establishing a clear and adequate history of asbestos exposure.

1557/14

Decision No. 1557/14, 2014 ONWSIAT 2630, considered a claim for lung cancer from a worker who had been employed by a mining company from 1939 until his retirement in 1978. He died of lung cancer in 2003. The claim was denied as the preponderance of medical opinion indicated that sarcoma was the most probable diagnosis. Unlike carcinoma, medical evidence on sarcoma indicated that they are derived from deep-seated tissue which are not directly exposed to environmental carcinogens and, therefore, not likely related to occupational exposure.

Other Legal Issues

1932/04

Charter arguments were considered in a number of 2015 cases. In particular, *Decision No. 1945/10*, discussed above, allowed a Charter challenge to provisions on traumatic mental stress, and *Decision No. 1932/04*, 2014 ONWSIAT 2451, denied a Charter challenge to section 43(3) of the pre-1997 Act. It was argued that section 43(3) discriminated between temporarily and permanently disabled workers because it does not allow use of updated employment earnings for calculating FEL benefits if there is a recurrence. The worker had not, however, given notice of the Charter challenge to the Attorneys General, as required by the Practice Direction on *Procedure When Raising a Human Rights or Charter Question. Decision No. 1932/04* rejected the argument that notice was not required because the challenge involved a Charter values argument and applied *Decision No. 480/11I*, 2011 ONWSIAT 1032, which analyzed when notice was required in light of the level of ambiguity in the legislation. If there is genuine ambiguity and a need to resort to external interpretive aids, including Charter values, no notice is required. If the legislation is not genuinely ambiguous and the Charter submission questions the validity of the provision, notice to the Attorneys General must be provided. The pre-1997 Act is clear that FEL benefits for recurrences are based on pre-injury earnings. Accordingly, this was a challenge to the legislation itself. Since notice had not been given, the Charter argument could not be raised.

Decision No. 1932/04 went on to find that, in any event, there was no discriminatory treatment between temporarily and permanently disabled workers. Both received temporary benefits based on earnings at the time of the accident or most recent employment, whichever is greater. If a worker goes on to suffer permanent impairment or temporary disability for more than 12 months, entitlement changes to FEL benefits. Since the FEL benefit is more permanent and of longer duration, it is not necessarily unfair to calculate it based on pre-accident earnings. The alleged differential treatment

also dealt with the quantum of the benefit rather than access to the benefit. A permanently disabled worker would not be precluded from access to other benefits, such as a NEL award or health care benefits.

893/11I

Arguments of abuse of process and issue estoppel were raised in several cases. *Decision No. 893/11I* , 2015 ONWSIAT 469, found that issue estoppel did not apply to preclude a right to sue application from reconvening when it had been adjourned to allow the plaintiff to pursue an unsuccessful benefit claim. There are three pre-conditions for issue estoppel: the same question has been decided; the decision is a final decision; and the parties are the same. The first and third prerequisites were not met. The benefit proceedings had not decided the same issue and none of the defendants had had the right to participate. Even if the three conditions had been met, *Decision No. 893/11I* would have exercised the discretion not to apply issue estoppel. When the original hearing was adjourned, all the parties agreed that it was appropriate to allow the plaintiff to seek benefits. It was clear that, if the plaintiff failed to obtain benefits, the right to sue application would proceed. There was no abuse of process.

2566/11

The common law doctrines of abuse of process and collateral attack were considered in *Decision No. 2566/11*, 2015 ONWSIAT 2448, in the context of the settlement of a human rights complaint. *Decision No. 2566/11* found that the doctrine of abuse of process is applied to preclude re-litigation where the strict requirements of estoppel are not met but where allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality and integrity of the administration of justice. There are two pre-conditions: the proceedings are oppressive or vexatious; and they violate the fundamental principles of justice underlining the community's sense of fair play and decency. There was no abuse of process since section 16 of the WSIA provides that any agreement to waive benefits is void. To the extent that the settlement of the human rights claim purported to settle the workplace safety and insurance claim, it is void and of no effect. Abuse of process also does not apply because the substance of the human rights claim is clearly distinguishable from the remedies and benefits available under the WSIA. The human rights claim related to harassment on the basis of disability and wrongful dismissal. The WSIA does not compensate for wrongful dismissal nor does it focus on discrimination. Rather, the focus is on benefits for personal injury incurred in the course of employment.

Decision No. 2566/11 distinguished *British Columbia (Workers' Compensation Board) v. Figliola,* 2011 SCC 52, since the WSIA claim was distinct from the human rights claim. The Panel also relied on *Ontario* (*Ministry of Community Safety and Correctional Services) v. De Lottinville*, 2015 ONSC 3085 (Div. Ct.), which noted that in the administrative law context, common law finality doctrines must be applied flexibly to maintain the necessary balance between finality and fairness. The doctrine of collateral attack also did not apply since the object of the workplace insurance claim was not an attempt to invalidate the settlement of the human rights claim.

833/15
1992/15

Concerns about fully recognizing all aspects of a workplace injury without providing double

compensation may arise where a worker suffers organic and psychological injuries from the same accident. See *Decision No. 833/15*, 2015 ONWSIAT 1756 (organic brain injury and psychotraumatic disability resulting from an emotional reaction to the accident) and *Decision No. 1992/15*, 2015 ONWSIAT 2478 (low back injury and psychotraumatic disability), which discuss overcompensation and provide directions to the Board to ensure the worker is not compensated twice in respect of the same area of injury.

1748/13I

Finally, *Decision No. 1748/13I* , 2014 ONWSIAT 2593, contains an interesting discussion of the effect of disciplinary proceedings under the *Regulated Health Professions Act, 1991* (RHPA) on a doctor's qualifications as an expert witness. Court judgments indicate that it is important to be satisfied that a doctor is properly qualified as an expert and that the doctor's evidence will be reliable. Section 36(3) of the RHPA, however, provides that no record of a proceeding is admissible in a civil proceeding. Even if this provision applied, *Decision No. 1748/13I* held that the Tribunal could still seek information regarding the impact of the disciplinary proceedings on the reliability of the doctor's evidence. The doctor's *curriculum vitae* did not refer to the disciplinary proceedings, and the Panel requested an updated CV outlining the results of the proceedings. Since the doctor declined to provide an updated CV, *Decision No. 1748/13I* considered the Practice Direction on *Expert Evidence* which requires disclosure of an expert's CV. This included the requirement to note changes relevant to the expert's status or how his expertise should be weighed, if an updated CV is requested. *Decision No. 1748/13I* declined to qualify the doctor as an expert or consider his report. The parties were provided with an opportunity to obtain a report from a different expert.

JUDICIAL REVIEW

The Tribunal was successful on all challenges to its decisions on applications for judicial review in 2015.

The Tribunal has compiled an impressive record on judicial review over its 30-year history. The Tribunal has released over 69,000 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 2015 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. 512/06I*, 2007 ONWSIAT 164, *512/06*, 2011 ONWSIAT 2525, and *512/06R*, 2013 ONWSIAT 2621

This was the first case where a Tribunal decision on the *Canadian Charter of Rights and Freedoms* (Charter) was subject to judicial review.

The worker injured his back in 2001, when he was 63 years of age. The Board paid the worker loss of earning (LOE) benefits until May 31, 2002, when the worker turned 65, which was also the mandatory retirement date set by 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 Charter.

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(1) 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(1) 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. The majority also noted 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 the Canadian Pension Plan (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(1) 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 decision. Since the original Tribunal Vice-Chair had 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.

In January 2014, the worker filed a new application for judicial review, this time of *Decisions No. 512/06* and *512/06R*. Factums were filed by the worker, the employer, and the Attorney General, as well as by two intervenors: the Industrial Accident Victims Group of Ontario (IAVGO), and the Schedule 2 Employer's Group. The judicial review was heard on December 1, 2014, by Marrocco ACJ, Nordheimer and Horkins JJ.

The Divisional Court unanimously dismissed the judicial review. In the decision [2014 ONSC 7289] dated December 17, 2014, the Court agreed with the majority of the Tribunal that the WSIA is not a social benefits scheme. The Court also found the two-year limit on LOE benefits in section 43(1)(c) was not discriminatory and not contrary to section 15(1) of the Charter. Benefits were not denied to workers because of a stereotypical attitude, but because of the evidence before the Tribunal that 90% of workers retire by age 65, and 90% of injured workers over 61 recover within two years.

As the Court noted [at para. 31], if the WSIA provided that injured workers were to receive LOE benefits until they died, that would imply people would work until they die. "Both intuitively and statistically this seems incorrect."

The Court said that even if it was wrong about that, section 43(1)(c) was saved by section 1 of the Charter. This was because it accepted the majority's finding that any limitation on rights here was justified by a pressing and substantial objective of paying LOE benefits for wage loss resulting from injury in a financially responsible way. Not paying benefits past the age workers would likely have retired was in accordance with this objective.

Referring again to the evidence before the Tribunal that 90% of workers retire by age 65, and 90% of injured workers over 61 recover within two years, the Court agreed that section 43(1)(c) minimally impairs entitlement for injured workers over age 65.

The Court was not persuaded that it should follow more generous approaches in other provinces, because Ontario is entitled to deference on how it wants to compensate injured workers.

Although the standard of review for WSIAT decisions on constitutional questions is correctness, the Court affirmed that it will give deference to WSIAT Charter decisions on underlying matters, such as the nature of the workers' compensation scheme, the balancing of competing interests, and the purpose of its home statute.

The worker subsequently filed a motion for leave to appeal to the Ontario Court of Appeal in February 2015. In March 2015, the Tribunal filed a factum stating that the worker's motion for leave to appeal should be dismissed. Factums were also filed by the employer and the Attorney General of Ontario. In April 2015, the worker's motion for leave to appeal was dismissed by the Court of Appeal.

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

The worker's appeal for entitlement for NEL benefits 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.

The worker's application for reconsideration was denied. In the reconsideration decision, the same Vice-Chair clarified that there had been no ruling on the worker's potential psychological entitlement, so there was nothing that would preclude the worker from pursuing entitlement at the WSIB pursuant to the chronic pain or psychotraumatic disability policies.

In December 2013, the worker commenced an application for judicial review. Counsel for the worker and the Tribunal agreed the judicial review would not proceed until the worker had obtained a ruling on psychological/chronic pain entitlement. The WSIB denied the worker's appeal on these issues, so the worker has now appealed to the Tribunal.

3 *Decisions No. 1135/12*, 2013 ONWSIAT 1001, and *1135/12R*, 2013 ONWSIAT 2674

An apprentice who worked for an auto repair shop helped his employer deliver a derelict vehicle to a recycling/scrap dealer. This worker steered the vehicle down a public street while being pushed from behind by his employer's vehicle. Once they arrived at the scrap yard, the worker remained in the derelict vehicle while a bobcat pushed it on to a weigh scale. Due to a failure to communicate, when the bobcat pushed the vehicle off the scale it was immediately crushed by a crane while the worker was still inside. The worker suffered serious injuries.

The worker commenced an action against the scrap yard, and three employees of the scrap yard. These defendants then commenced a third party action against the worker's employer.

The worker received statutory accident benefits (SABs). The insurance company which provided these benefits, as well as the third parties, applied to the Tribunal under section 31 of the WSIA for a determination of whether the worker's rights of action was taken away. The only issue was whether the worker and the three workers of the scrap yard were in the course of their employment when the accident occurred.

The Vice-Chair found on the balance of probabilities that both the worker and the defendant's employees were in the course of their employment when the accident happened. The lawsuit brought by the worker was barred by section 28 of the WSIA, and the grounds for the third party action no longer existed. Consequently, the worker was entitled to benefits from the insurance plan.

The worker commenced an application for judicial review. Following the Tribunal's request for the worker to amend his proceedings to add the Tribunal as a party, the Tribunal filed its Record of Proceedings, as well as a responding factum. The judicial review was heard on April 15, 2015. The Tribunal is awaiting the release of the Court's decision.

4 *Decision No. 2214/13*, 2014 ONWSIAT 615

In 1967, the worker, then employed as a police officer, suffered injuries to his upper body when

he was attacked by a prisoner. He left the police force two years later. He then embarked on a career operating garages, working for a truck rental company, and as a millwright. He was involved in a motor vehicle accident in 1973, and suffered a number of work accidents including various low back injuries. The WSIB denied ongoing entitlement for the low back, and initial entitlement for the neck, shoulders and arms. The worker appealed to the Tribunal.

Due to the date of the 1967 accident, the pre-1985 Act applied to the worker's appeal.

The Panel held the worker did not have ongoing entitlement for the low back or shoulders as a result of the 1967 accident. However, the Panel found the 1967 accident caused a temporary aggravation of a pre-existing back and neck condition.

In May 2014, the worker, who is self-represented, commenced an application for judicial review. In June 2014, the worker asked the Tribunal to postpone its activities related to the judicial review application so that he could receive legal direction from the OWA regarding his application. In January 2015, the worker informed the Tribunal that he wished to move forward with his application. The Tribunal filed its Record of Proceedings in early March 2015, and is waiting to receive the worker's factum.

5 *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, to which the Tribunal objected. 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 returned to the WSIB for a decision on whether there was entitlement on the basis of disablement.

The WSIB denied entitlement for disablement. The worker appealed this issue to the Tribunal. It was heard on November 13, 2014. *Decision No. 2066/14*, 2015 ONWSIAT 12, released on January 6, 2015, allowed the worker's appeal in part granting initial entitlement for benefits for a bilateral knee condition. The worker's legal counsel has advised that his client is satisfied with the ruling of the Tribunal, and therefore the judicial review has been abandoned.

6 *Decision No. 2324/13*, 2014 ONWSIAT 1216

The worker appealed to the Tribunal for initial entitlement for benefits for mental stress. The worker worked as a correctional officer at a medium security prison and sought entitlement in relation to three specific incidents. The worker's claim for benefits for mental stress was allowed by

the Tribunal in relation to one of the three specific incidents. The issue of the quantum and duration of benefits was referred back to the WSIB.

In March 2015, the worker, who is self-represented, initiated an application for judicial review in the Federal Court. The worker also initiated a motion seeking an extension of time to issue and serve his application, as the application was late. The Tribunal wrote to the worker and advised that the judicial review application had been commenced in the wrong court and that the application had not been properly served. The Tribunal informed the worker that he was required to bring an application for judicial review in the Divisional Court if he wished to judicially review a Tribunal decision.

In a written order issued on April 2, 2015, the Federal Court dismissed the worker's request for a time extension as his application had been initiated in the wrong court.

7 *Decision No. 1357/13*, 2013 ONWSIAT 1948

A family services worker had an emotional reaction when she received a telephone call advising her of the death of a three-year-old client. She claimed that she was unable to return to work. The Board denied entitlement for traumatic mental stress. The worker appealed to the Tribunal.

The Panel found the worker was entitled to benefits for traumatic mental stress, as she had suffered an acute reaction to a sudden and unexpected traumatic event while she was in the course of employment. Further, the way the worker learned of the death, through a phone call, exacerbated the shock. The worker was also concerned about her potential personal liability. Eventually, she was unable to continue working in her job.

The Panel applied Board policy and found the triggering event was identifiable, objectively traumatic, and unexpected in the normal course of employment. The Panel also found the worker's acute reaction led to a psychological injury, causing the worker's loss of earnings. The Panel directed the Board to assess the worker's entitlement to benefits.

In March 2014, the employer commenced an application for judicial review. Responding factums were filed by the Tribunal and the worker. The judicial review was heard on March 10, 2015, by Marrocco ACJ, Lederer and Fitzpatrick JJ.

In an oral decision, the Divisional Court unanimously dismissed the judicial review. The Court noted that the Tribunal has consistently been recognized as a specialized and expert Tribunal and that the Tribunal's decisions are protected by a strong privative clause.

8 *Decisions Nos. 1769/11*, 2011 ONWSIAT 2656, and *1769/11R*, 2013 ONWSIAT 558

The worker was employed in two jobs, one in construction and one in a night club. He was injured on the construction job. He was initially granted WSIB benefits calculated on the short-term basis of his earnings from his concurrent employment with both employers.

The worker had an inconsistent employment history. When his long-term benefits were calculated, the benefits were based on a finding that the night club job was only short-term. The worker appealed, alleging that his long-term

average earnings should be the same as his short-term earnings.

The appeal was denied. The Panel examined the worker's employment history, as well as the two concurrent jobs. It found the worker's employment pattern demonstrated short-term, nonpermanent employment, which included both the worker's concurrent jobs. Board policy established that it was not fair to calculate long-term earnings on the basis of non-permanent jobs. The Panel agreed with the Board that the long-term earnings should be calculated on the basis of average earnings from all concurrent employment during the recalculation period.

The worker's application for reconsideration was dismissed by a different Vice-Chair.

In November 2014, the worker commenced an application for judicial review. It is not clear why there was a delay of almost three years in commencing the judicial review application. The Tribunal filed its Record of Proceedings in February 2015. In late November 2015, the Divisional Court dismissed the application for delay.

9 *Decision No. 398/14*, 2014 ONWSIAT 514

B was a passenger in a car driven by P, his co-worker. B was injured when P's car went off the road. B applied for, and received, statutory accident benefits. The insurer of the driver of the car applied to WSIAT for an order that B's right of action was taken away.

Both B and P had been hired to work on a construction project at a cottage in a rural area. They were staying at a nearby motel, which was booked and paid for by their employer. P was paid some monies for mileage by the employer for the use of his car. Both B and P were given a *per diem* for food and other expenses while working remotely. While working at the cottage, they drove to a restaurant, located in the town closest to their worksite, for their lunch break. The accident occurred after lunch, on the way back to the worksite. The main issue was whether B and P were in the course of employment at the time of accident.

The Vice-Chair characterized the issue as whether B was involved in an activity that was reasonably incidental to employment at the time of the accident. He reviewed Board policy and noted that, although the general rule was that a person is not in the course of employment after leaving the worksite, there was an exception for workers travelling on their employer's business and who must stay overnight at a motel paid for by their employer.

Further, although a worker is often not in the course of employment during a lunch break, Tribunal decisions have taken a broader approach to what is reasonably incidental when travelling workers are staying overnight at accommodations paid for by their employer. Lunch breaks in this situation have been viewed to be reasonably incidental to employment.

The Vice-Chair noted that workers can still take themselves out of the course of employment if they were engaged in a personal activity at the time of the accident that was not connected to their employment. The Vice-Chair found that in this case there was no personal activity other than going to lunch. The workers had eaten at the closest and only restaurant in the area. After lunch, the two workers proceeded directly back towards the worksite.

The Vice-Chair found that B's right of action was taken away.

In September 2014, B commenced an application for judicial review. Following a dispute about whether all the appropriate parties were named in the style of cause, the Notice of Application has been formally amended and the Tribunal has now filed an Amended Notice of Appearance, as well as its factum. Pursuant to an agreement between the parties, the Tribunal has not filed a Record of Proceedings.

10 *Decision No. 797/14*, 2014 ONWSIAT 1658

The worker sustained a compensable injury to his low back in September 1986. In October 1988, the worker was awarded a 10% permanent disability pension. In October 2005, the worker was re-assessed for his pension. In June 2006, the worker's pension award was increased from 10% to 15% between October 1988 and August 2001, and to 20% as of August 2001. The 20% pension award was upheld in a January 2013 decision of an Appeals Resolution Officer. The worker appealed this decision to the Tribunal. After a written hearing, the Vice-Chair denied the worker's appeal in a July 2014 decision.

In March 2015, the worker commenced an application for judicial review. The Tribunal has filed its Record of Proceedings and has received the worker's factum. The Tribunal is currently in discussions with the worker's legal representative, and with the agreement of the worker, the Tribunal has not yet filed its factum.

11 *Decisions No. 2185/13*, 2013 ONWSIAT 2518, and *2185/13R*, 2014 ONWSIAT 2421

Defendants in a civil action initiated a right to sue application relating to a motor vehicle accident. The defendants asked the Tribunal to determine that the plaintiff's right of action had been taken away. It was determined that the defendants were Schedule 1 employers at the time of the accident and the plaintiff was a worker of a Schedule 1 employer and in the course of her employment at the time of the accident. Therefore, it was determined that the plaintiff's right of action was taken away.

Neither the plaintiff nor the plaintiff's legal representative appeared at the Tribunal hearing. The plaintiff's legal representative had also not confirmed that he was planning on attending the right to sue hearing, nor had he filed any responding materials. A week after the hearing, the representative informed the Tribunal that he had arrived late to the hearing and that the hearing had already concluded. The representative filed a reconsideration request alleging that there had been a fundamental error of procedure by proceeding with the hearing in his absence.

The application to reconsider was denied. The hearing was scheduled to start at 9 am. The recording of the hearing indicated that it commenced at 9:15 am, 15 minutes after the scheduled time. At 9:20 am, the Vice-Chair noted that the plaintiff and her representative were still not present, and decided to proceed with the hearing. The hearing concluded at 9:46 am. On reconsideration, the Vice-Chair concluded that the use of the word "shall" in the Tribunal's Practice Direction regarding *Right to Sue Applications* unequivocally indicates that a respondent must file materials. As the respondent in this case had not filed materials, the Tribunal's Practice Direction on *Notice of Hearing and Failure to Attend* did not apply, and neither did the requirement to wait 30 minutes, as the plaintiff had not given any

indication that she wished to participate in the hearing. Accordingly, it was determined that there was no error of process.

The Tribunal received notice of a judicial review application in February 2015, and filed a Notice of Appearance. Following the exchange of materials, discussions took place between the plaintiff and the defendant to the civil claim. In June 2015, the application for judicial review was abandoned.

12 *Decisions No. 645/11*, 2012 ONWSIAT 1343, and *645/11R*, 2015 ONWSIAT 629

Decision No. 645/11 granted the worker LOE benefits after mid-July 2004, as well as entitlement to benefits for a psychotraumatic disability.

The WSIB paid the worker full LOE benefits until October 2006, and then partial LOE benefits until the worker reached age 65 in 2012. The worker initiated a judicial review application seeking a writ of *mandamus* to compel the WSIB to implement *Decision No. 645/11* fully by granting her full LOE benefits to age 65. The Tribunal was not named as a party in the original judicial review application.

The WSIB subsequently sought clarification from the Tribunal regarding *Decision No. 645/11* regarding the duration of the allowance of full LOE benefits.

In *Decision No. 645/11R*, the Vice-Chair considered whether the request for clarification should proceed or whether the clarification request should be put on hold until the worker's court application had resolved. The Vice-Chair determined that the request for clarification should proceed without waiting for the resolution of the court proceeding. The Vice-Chair noted that proceeding with the request was the quickest and most efficient way of resolving the apparent dispute as to the intent of *Decision No. 645/11* regarding ongoing LOE benefits. Further, the Tribunal was in the best position to understand the nature of the dispute and to provide clarification, which could help avoid unnecessary litigation.

The Vice-Chair clarified *Decision No. 645/11* by stating that the decision did not grant the worker full LOE benefits to age 65. Instead, the decision granted full LOE benefits to the worker after mid-July 2004, with the duration of those benefits being left to be determined by the WSIB and the worker having all usual rights of appeal.

In June 2015, the Tribunal was served with an amended application for judicial review that now named the Tribunal as an additional respondent. The Tribunal has filed its Record of Proceedings. Following discussions between the Tribunal and the worker's representative, the worker has agreed to put the judicial review on hold in order to explore appeal options at the WSIB pertaining to the implementation of *Decision No. 645/11*.

13 *Decisions No. 493/13*, 2013 ONWSIAT 912, and *493/13R*, 2014 ONWSIAT 2705

In *Decision No. 1309/01*, 2004 ONWSIAT 637, the worker had been granted entitlement to section 147(4) supplementary benefits under the pre-1997 Act. The worker then appealed a decision of the WSIB regarding the calculation of the supplement.

In *Decision No. 1387/07*, 2008 ONWSIAT 1384, the Tribunal upheld the decision of the WSIB

and determined that the amount of benefits owing under section 147(4) is subject to subsections (8), (9) and (10). Therefore, it was determined that the WSIB had correctly based the supplement on the maximum payable pursuant to section 147(8). The worker's subsequent request for reconsideration of *Decision No. 1387/07* was denied in *Decision No. 1387/07R*, 2008 ONWSIAT 3174. The worker then applied for judicial review of *Decisions No. 1387/07* and *1387/07R*. At the same time, judicial review of *Decision No. 1858/08*, 2009 ONWSIAT 25, was also initiated, which was a decision concerning an identical issue. The Divisional Court dismissed both applications [2010 ONSC 1033].

In *Decision No. 493/13*, the worker appealed a WSIB decision concerning whether supplementary benefits had been correctly calculated at the 24-month and 60-month reviews. In the decision, the Vice-Chair referred to the Divisional Court decision in *Rustum Estate v. Ontario (Workplace Safety and Insurance Appeals Tribunal)* (which was the judicial review decision of *Decision No. 1858/08*) as well as the Tribunal's *Decision No. 941/94* (1997), 41 W.C.A.T.R. 69. The Vice-Chair concluded that the intent of section 147(4) was not to provide income replacement, but instead to provide workers who were either unemployable or unable to benefit from vocational rehabilitation services with an additional amount. This additional amount would be calculated according to subsection (9) or (10), and would not exceed the Old Age Security cap pursuant to subsection (8).

The Vice-Chair noted that subsection (13) applies to a supplement given under subsection (4), and that on a plain reading of the section, subsection (4) is always subject to subsection (8). Therefore, the Vice-Chair determined that the Board had correctly determined the amount of the supplementary benefits at the 24-month and 60-month reviews, and the appeal was dismissed.

The worker then sought clarification of two issues arising out of *Decision No. 493/13*. First, the worker sought clarification that *Decision No. 941/94* dealt with a different issue than the issue before the Vice-Chair in *Decision No. 493/13*. The Vice-Chair noted that the review in *Decision No. 941/94* was thorough and had been relied upon in numerous other Tribunal decisions, and declined to grant this request for clarification. The Vice-Chair made a clarification regarding a reference to the *Rustum Estate* decision but generally found that the worker was essentially trying to re-argue issues raised and already addressed in *Decision No. 493/13*.

In June 2015, the worker commenced an application for judicial review of *Decisions No. 493/13* and *493/13R,* as well as *Decisions No. 827/13* and *827/13R,* which are discussed below. In this application, the worker is seeking an interlocutory order certifying the judicial review as a class proceeding on behalf of all persons whose benefits pursuant to section 147(13) of the *Workers' Compensation Act* have been subjected to a maximum cap pursuant to section 147(8) of the *Workers' Compensation Act*. The Tribunal has filed its Notice of Appearance.

14 *Decisions No. 827/13*, 2013 ONWSIAT 1018, and *827/13R*, 2014 ONWSIAT 2702

In *Decision No. 827/13*, the worker appealed a WSIB decision regarding whether supplementary benefits had been correctly calculated at the 24-month and 60-month reviews. The issue in this decision was the same as the issue raised in *Decision No. 493/13*.

The worker submitted that the calculation on the reviews should not be capped by the Old Age Security limit in section 147(8). The Vice-Chair disagreed with the worker's argument and noted

that this argument had been considered and rejected in several previous Tribunal decisions, including *Decision No. 621/12*, 2012 ONWSIAT 1720. The reasons for rejecting the argument were carefully reviewed in *Decision No. 621/12*, and it was determined that section 147(8) applies in calculating a worker's benefits on reviews as well as on the initial determination. The Vice-Chair agreed with the reasoning in *Decision No. 621/12* and the appeal was dismissed.

The worker then sought clarification of *Decision No. 827/13*. The worker's request for clarification was denied as it was determined that the original Vice-Chair had made a thorough and persuasive review of the issue raised in *Decision. No. 827/13*.

In June 2015, the worker initiated an application for judicial review of *Decisions No. 827/13* and *827/13R*, as well as *Decisions No. 493/13* and *493/13R*, which are discussed above. In this application, the worker is seeking an interlocutory order certifying the judicial review as a class proceeding on behalf of all persons whose benefits pursuant to section 147(13) of the *Workers' Compensation Act* have been subjected to a maximum cap pursuant to section 147(8) of the *Workers' Compensation Act*. The Tribunal has filed its Notice of Appearance.

Other Legal Matters

Action in Superior Court, *Decisions No. 691/05*, 2008 ONWSIAT 402, and *691/05R*, 2013 ONWSIAT 1292

Following four days of hearing, the Panel allowed this self-represented worker's appeal in part. The worker was granted initial entitlement to benefits for his neck, and for various periods of temporary partial disability benefits. He was denied initial entitlement for an injury to his upper and mid-back, for a permanent impairment for his upper, mid-back and neck, for labour market re-entry (LMR), and for reimbursement of travel expenses. The WSIB's determination of the worker's future economic loss (FEL) award and his supplemental employee benefits were found to be correct.

In July 2013, the Tribunal and the WSIB were served with a Notice of Application, issued out of the Superior Court of Justice, asking that *Decisions No. 691/05* and *691/05R* be set aside. The Tribunal wrote to the worker to advise that he had clearly commenced proceedings in the wrong court. The Tribunal informed the worker that if he wanted to challenge the Tribunal's decisions, he was required to bring an application for judicial review in the Divisional Court. The Tribunal further advised the worker that if he did not immediately file a Notice of Abandonment, the Tribunal would bring a motion to dismiss the application.

The worker abandoned his action in August 2013.

In February 2014, the worker commenced a new action against the WSIB and the Tribunal, this time claiming relief of over $6,000,000. Much of the claim contains allegations against the WSIB, but the claim also takes issue with the Tribunal's decisions, alleging errors and bad faith. It alleged the worker had been threatened by one of the Panel members. The worker also served the Tribunal with what appears to be a surreptitious recording.

The Tribunal and the WSIB each brought a motion to dismiss the worker's action. The motions were scheduled for October 22, 2014. The worker subsequently advised that he wanted to adjourn the motions. The motions were subsequently scheduled to be heard on February 23, 2015. These motions were adjourned and were scheduled to be heard in October 2015. The motions were again adjourned after a potential bias issue was raised and are now scheduled to be heard in May 2016.

CHAIR'S REPORT
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's Office 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 2015, however, the Tribunal did not receive any new intent to investigate notifications, nor did it receive any intent to investigate notifications in 2012, 2013 or 2014. There were no outstanding intent to investigate files in 2015.

TRIBUNAL REPORT

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 2015 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Executive Offices

The Chair, the Executive Director and a small group of dedicated staff comprise the Executive Offices of the Appeals 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 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 (adjudicators) to WSIAT, and in doing so, works with the Ministry of Labour. 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.

In 2015, the Chair's Office focused its work on OIC adjudicator recruitment and re-appointments. Competition postings for part-time and full-time Vice-Chairs and Member Representatives appeared on the Public Appointments Secretariat's website. During the year, 11 new Vice-Chair appointments were received and by year end the Vice-Chair complement reached 53; this is an increase from 46 at December 31, 2014. Recruitment of new Vice-Chairs is a key strategy to addressing the high appeals caseload.

The Executive Director is responsible for the effective administration of the Tribunal's operations; leading caseload reduction; managing the Tribunal's quality control processes; developing policies and procedures for effective administration and appeal processing in compliance with statutory obligations; supporting 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 leads Tribunal operations through a talented senior management team.

In 2015, the senior management team experienced significant change through the retirements of: Dan Revington, Tribunal General Counsel; Debra Dileo, Director, Appeal Services; and Noel Fernandes, Financial Management and Controllership. The Tribunal is pleased to welcome Michelle Alton, Nicole Bisson and Wesley Lee to these key roles.

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, and staff and adjudicator training. The Tribunal also provides shared services to the Ontario Labour Relations Board and the Pay Equity Hearings Tribunal pursuant to a Shared Services Agreement.

The Tribunal's Human Resources and Administration Department is led by the Director of Human Resources and Administration.

The Human Resources team delivers the full 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.

The Tribunal's Human Resources plan consists of three main priorities: leveraging organizational efficiencies, strengthening organizational capacity, and cultivating an inclusive, accessible and healthy work environment. These key priorities strategically align with the Tribunal's mission to provide exceptional quality public service.

In 2015, organizational capacity was enhanced through workflow process improvements and IT application developments resulting in streamlined processes. In support of the Tribunal's backlog reduction strategy, merit-based recruitment was dedicated to increasing personnel in appeal production areas. The promotion of an inclusive, accessible and healthy workplace was underscored by a review of HR policies, i.e., Workplace Discrimination and Harassment Prevention, Workplace Violence Prevention, and Occupational Health and Safety, and expanded corporate learning initiatives, including diversity training and creating accessible documents. Finally, an emphasis on employee recognition and engagement, including the dedication of long-service employees, marked the celebration of the Tribunal's 30 year anniversary in 2015.

The Tribunal's Administration unit is responsible for co-ordinating the Tribunal's emergency management and security (EMS) program, and for facilities management and leasing services, including accommodations and upgrade requirements, telecommunications, surplus assets, and building support issues.

In 2015, emergency management and security projects included a refresh of the Tribunal's business continuity and contingency plans in support of the 2015 Pan Am and Para Pan Am games, improvement of the alarm system and response protocols, enhanced EMS orientation and training, and expanded security inspections. Facility projects included the building of an additional hearing room and the repurposing of existing office and storage space to maximize available adjudication and appeal processing capacity.

The Tribunal's Finance Department is led by the Manager, Financial Management and Controllership. 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 2015, the committee developed and co-ordinated the presentation of three professional development sessions for all Tribunal adjudicators. Also, one

smaller session was prepared and presented to align with current issues on the hearing schedule.

Throughout 2015, the Executive Assistant to the Chair and the Executive Director directed the planning for multiple presentations of the new OIC adjudicator orientation program to ensure timely training following notification of new appointments. Orientation training is monitored and facilitated by the Orientation Vice-Chair, with legal training presented by the lawyers in the Office of Counsel to the Chair and introductory process or resource sessions with applicable departments. Support for adjudicator training is provided by the staff in the Executive Offices with the supervision of the Executive Assistant to the Chair.

The Executive Director leads the Caseload Reduction Committee. The Committee is comprised of the Appeals Administrator; the Director, Appeal Services; the Executive Assistant to the Chair; and the Director, Information and Technology Services. The group meets regularly to discuss the caseload, targets, and strategies to reduce the inventory and improve the timelines to hearing.

A large number of incoming appeals from the WSIB has caused a high active inventory at WSIAT. The high active inventory then results in waves of cases that move through the stages of the Tribunal's process; this resulted in longer than usual processing times at points in the pre-hearing areas.

At the end of 2015, the caseload trends had improved. The number of incoming appeals from the WSIB has decreased compared to the high rates experienced in late 2012, 2013 and early 2014. The number of dispositions increased. Increased dispositions were due to the influx of new adjudicators appointed and trained early in the year, which enabled an increase to the number of hearing assignments from July to December.

The pace of growth in the active inventory has slowed. At the end of September, the inventory was 9,405. At the end of December, the active inventory increased slightly to 9,435. The Caseload Reduction Committee is cautiously optimistic that the caseload will peak in 2016 and begin a gradual decline. As the active inventory reduces, there will be a lag period before a reduction in timelines is noticeable to the community and is represented in the statistics.

The Tribunal's appeal process is flexible, efficient and effective at coping with the high caseload. During 2015, the caseload wave had worked through the earliest (notice) stage of the process and moved to the area prior to scheduling. This area prepares appeals for hearing and the movement reflects a progression of the caseload through the process. This is a reasonable and natural stage at which to balance the flow of cases to scheduling, with consideration to the capacity of the OIC complement, while mitigating the risk of adjournment.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) has been in existence 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 at hearings. Publications Counsel is also a member 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, practice and procedure, complicated

reconsideration requests, post-decision inquiries, Ombudsman inquiries, conduct matters and other complaints.

A priority in 2015 was providing orientation training to new OIC appointees in order to support them in their role as expert decision-makers. OCC lawyers completed orientation training for 11 part-time Vice-Chairs appointed in 2015 and late 2014, and began orientation training for two part-time Vice-Chairs appointed in late 2015. This included updating the orientation materials for use by these Vice-Chairs and in anticipation of further Order-in-Council appointments. Professional development for OICs and staff also continued to be important, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. There was a continued focus in 2015 on issues of interest to mid-level OICs, and a professional development session was developed and presented to them. OCC lawyers also continued work on various knowledge management resources to facilitate OIC access to information on law, policy and procedure through electronic means.

OCC lawyers are also responsible for assisting the Tribunal in meeting its obligations under the *Freedom of Information and Protection of Privacy Act* (FIPPA). They handle FIPPA requests and appeals and provide advice on privacy matters. Assistance is also provided with respect to records management issues.

Publications Counsel

During 2015, the Tribunal released more than 3,000 decisions and Publications Counsel processed more than 2,900 decisions. These form part of the over 69,000 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 was reduced from approximately six weeks to approximately five weeks in 2014. That five-week interval was maintained in 2015.

All Tribunal decisions are published and available free of charge through the Tribunal's searchable databases 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 2015, Publications Counsel wrote summaries for 37% 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.

Office of the Vice-Chair Registrar

The staff of the Office of the Vice-Chair Registrar (OVCR) are 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. 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 utilize a variety of alternative dispute resolution 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 a 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.

The Alternative Dispute Resolution (ADR) Department

Staff in the ADR Department monitor appeals that are dormant or inactive and work with the Vice-Chair Registrar to close those appeals that have been abandoned. This work allows other pre-hearing staff to focus on active appeals proceeding to hearing.

ADR services may be offered to the parties of an active appeal in an attempt to: resolve the issues in dispute without a formal hearing; simplify multi-issue appeals prior to proceeding to a hearing; and/or discuss significant problems (e.g., the absence of evidence, alternative courses of action). For suitable appeals, the ADR services offered may include a formal mediation held by a Tribunal mediator. If an agreement consistent with law and Board policy is reached, a Tribunal Vice-Chair will review the matter and may issue a decision incorporating the terms of the executed agreement. If issues remain in dispute following the ADR services, the appeal is prepared for a 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.

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. In late 2015, the legal workers and Post-hearing Manager moved to the OVCR.

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 for 11 years at Toronto Western Hospital, Centenary Health Centre, and York Central Hospital. In addition, Jennifer has 11 years experience in critical care and Jennifer gained valuable experience while working as a Nurse Case Manager and a Nurse Consultant at the WSIB.

The MLO Manager is assisted by a full-time MLO Officer. Rachel Dwosh, RN, is the new MLO Officer. Rachel has a comprehensive clinical nursing background, having worked in surgical nursing at Vancouver General Hospital and in rural community health in Fort Smith. Rachel has three years experience in psychiatric nursing. Rachel gained valuable experience while working as a Nurse Consultant at the WSIB.

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 Assessors nor their business partners 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. New medical information is announced and available on the WSIAT website.

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 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 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.

Information and Technology Services

The Information and Technology Services Department (ITS) designs, develops and implements the following information and information technology services for the Tribunal:

- manages the operations of the Ontario Workplace Tribunals Library (OWTL);
- develops policies and strategies 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 and 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.

Library and Research 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, when licensing permits.

In 2015, Library staff answered over 850 reference questions concerning workplace safety, workers' compensation, labour relations, union certification, pay equity matters and general legal/legislative research. 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 Decision Databases, Labour Research, Legal and Legislative Research, and e-Laws. Library staff also administer the transfer of Tribunal decisions to legal vendors such as CanLII and Quicklaw. The Information Products line was further developed with a new monthly report format for OLRB certificates and OLRB weekly applications. The Certificates Database continues to be updated providing online access to collective bargaining certificates.

As well, in 2015, the following projects were undertaken:

- OLRB union certificates continue to be digitized and indexed for easier access;
- project plan for preserving Ontario Labour Relations Board Judgements: 1940 – 1965;
- preparing and presenting eleven training modules for WSIAT and OLRB and staff; and,
- developed new eLearning videos for searching WSIAT Decision Database.

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 2015, the *OIC Computer Support Policy* was modified to reflect new recommendations regarding computer equipment for OIC remote access.

Technology Procurements and Equipment Upgrades

In 2015, the Tribunal established a new contract for the supply of computer room equipment maintenance services. The Tribunal also established leases for eight new high-volume multifunction printing devices and for three new high-speed scanning systems.

Portal and Software Development

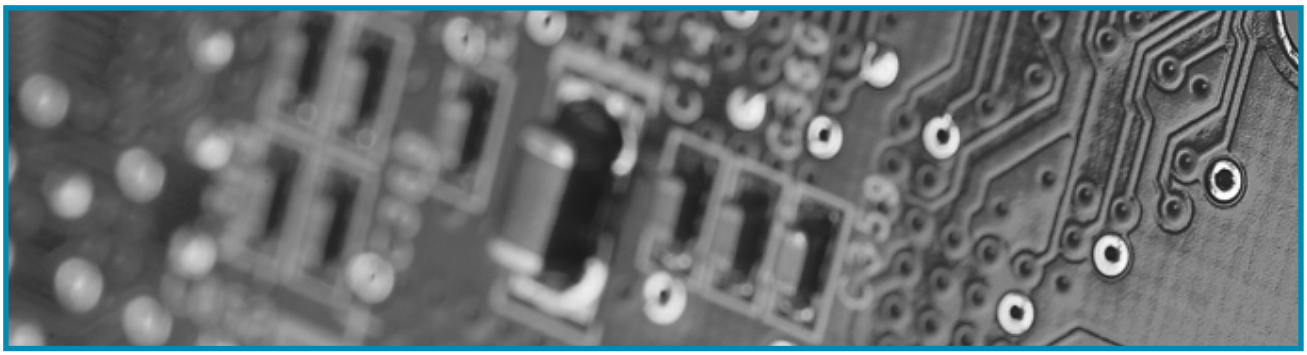
In 2015, the Department's software team developed new modules that streamline the processing and compilation of electronic documents. With these changes in place, staff members are able to receive and process WSIB claim file materials electronically and then sort and compile the sections in order to produce a fully electronic Case Record.

The software team also completed a major document re-formatting project. The team converted approximately 700,000 older format image files into PDF format.

The team also developed a new electronic system for tracking and managing privacy incidents, and a new electronic system for broadcasting emergency warnings to all desktops including ones connected remotely. The developers also added new features to the workflow tracking system so that administrative support requests made by adjudicators are now tracked in real time.

User Support and Technology Training

Throughout 2015, 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 2015, through this service, the Department handled on average 489 support service requests each month. The distribution of types of support services was similar to the distribution in previous years. Sixty-eight per cent of the support requests were for software application support. This was followed by network account management (11%), requests for connection assistance (9%), and equipment servicing (9%). Equipment booking and topical training requests accounted for the remainder (3%).

Information Management

The Department supported the Tribunal and facilitated the annual implementation of the Tribunal's electronic records schedules. This involved providing managers with 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.

French Language Translation Services

In accordance with the *French Language Services Act* of Ontario, the Tribunal offered services in French to its Francophone stakeholders. This included the translation of materials for Francophone parties to the appeals, as well as the translation of electronic and print materials published by the Tribunal and posted on the Tribunal's website.

Caseload and Production Reporting

In 2015, 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 participated in the development of caseload management planning for 2016. The Department developed models to forecast the production capacity dependent upon various assumptions regarding Vice-Chair, side Member and decision support resources.

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.

TRIBUNAL REPORT
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, 2015

Notice Process	
Cases active in Notice stage processing	2,492
	2,492
Resolution Process	
Early Review stage	119
Substantive Review	3,542
Hearing Ready	117
Scheduling and Post-hearing	2,684
WSIAT Decision Writing	481
	6,943
Total Active Cases	**9,435**

Caseload

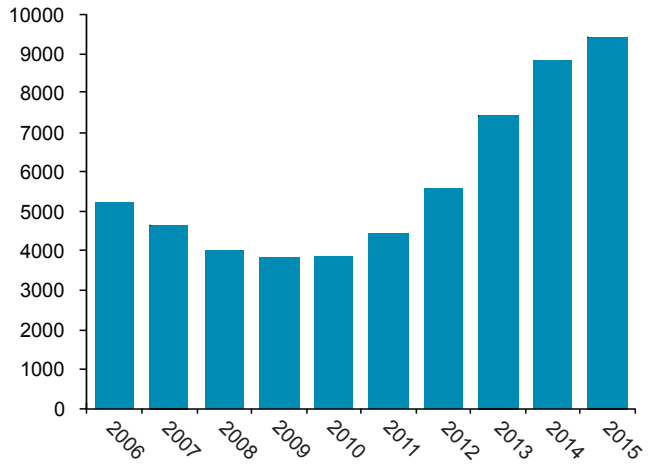
At the end of Year 2015, there were 9,435 active cases within these two process stages. Chart 1 shows the distribution in more detail.

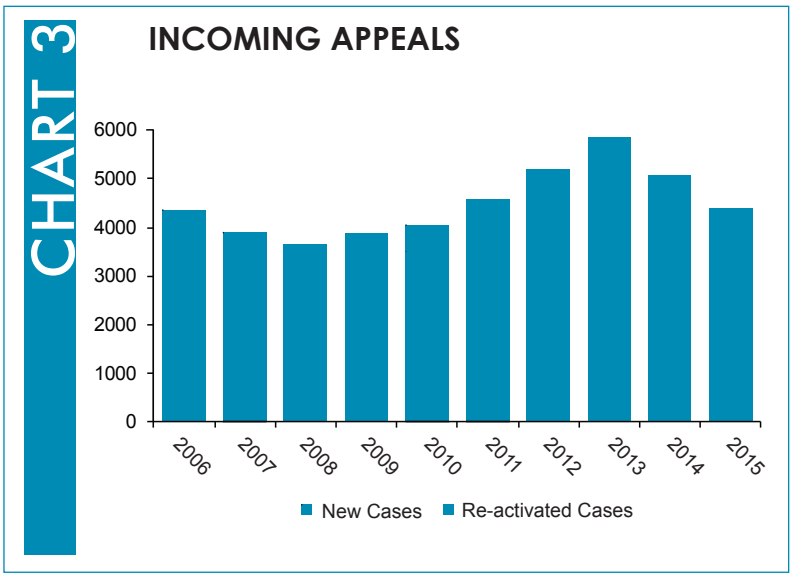
Active Inventory

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 2015, these factors combined to produce a 7% overall increase in the active inventory as compared to the 2014 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

CHART 2

ACTIVE CASELOAD





Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2015, the Tribunal's overall intake from new appeals and reactivations totaled 4,389 and this represented a total decrease of 14% as compared with the 2014 intake total. "Reactivations" are appeals in which the appellant has indicated a readiness to proceed with the 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.

CHART 4

CASES DISPOSED OF IN 2015

Pre-hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	376
Withdrawn	974
	1,350
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	53
Withdrawn	8
With Final Decisions	2,845
	2,906
Total (Pre-hearing and Hearing)	
Without Tribunal Final Decisions	1,411
With Tribunal Final Decisions	2,845
	4,256

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.

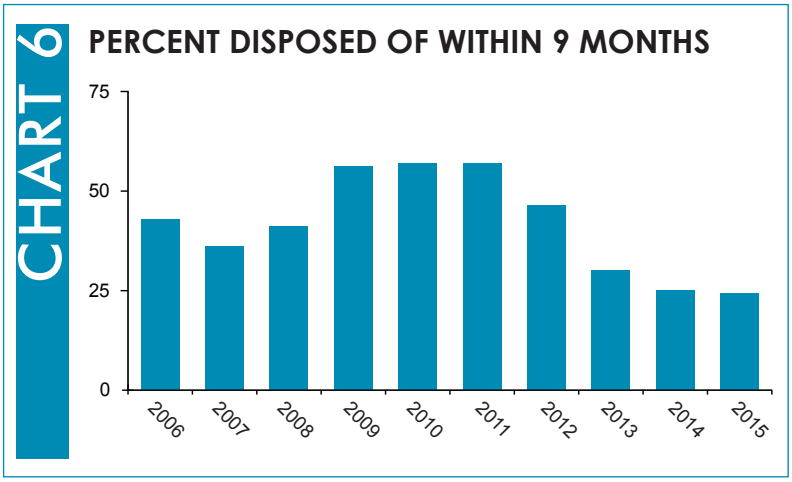
As shown in Chart 4, the Tribunal disposed of 4,256 cases in 2015. This included 1,350 "Pre-hearing" and 2,906 "Hearing" dispositions.

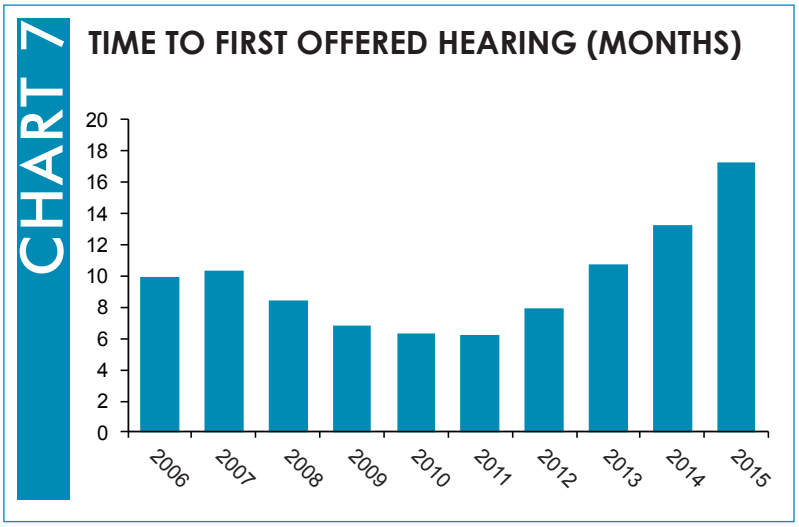
Issues in the Appeals

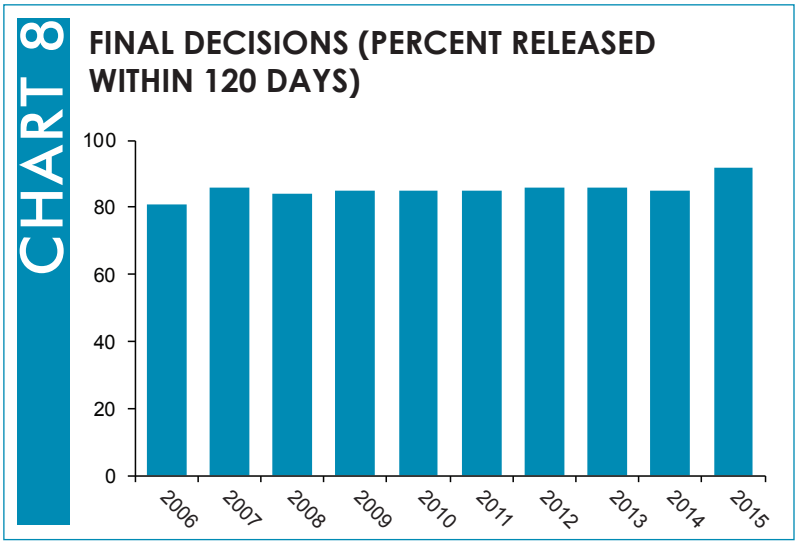
Chart 5 shows the percentage breakdown of issues among the cases disposed in year 2015.

ISSUES IN THE DISPOSITIONS

Percent	Issues
23%	Loss of earnings
15%	Non-economic Loss (NEL) and NEL Quantum
7%	New Area of Injury
7%	Initial Entitlement
6%	Work Transition
5%	Labour Market Re-entry and Safe Return to Work
5%	Psychotraumatic Disability
4%	Other
4%	Health Care Benefits
4%	Ongoing Entitlement
4%	Chronic Pain
4%	SIEF (Second Injury and Enhancement Fund)
3%	Recurrence
2%	Permanent Disability (PD) and PD Quantum
2%	Future economic Loss (FEL)
1%	Occupational Disease
<1%	Earning Basis
<1%	Temporary Total Disability
<1%	Supplementary Benefits
<1%	Mental Stress
<1%	WSIAT Objection
<1%	Hearing Loss







Timeliness of Appeal Processing

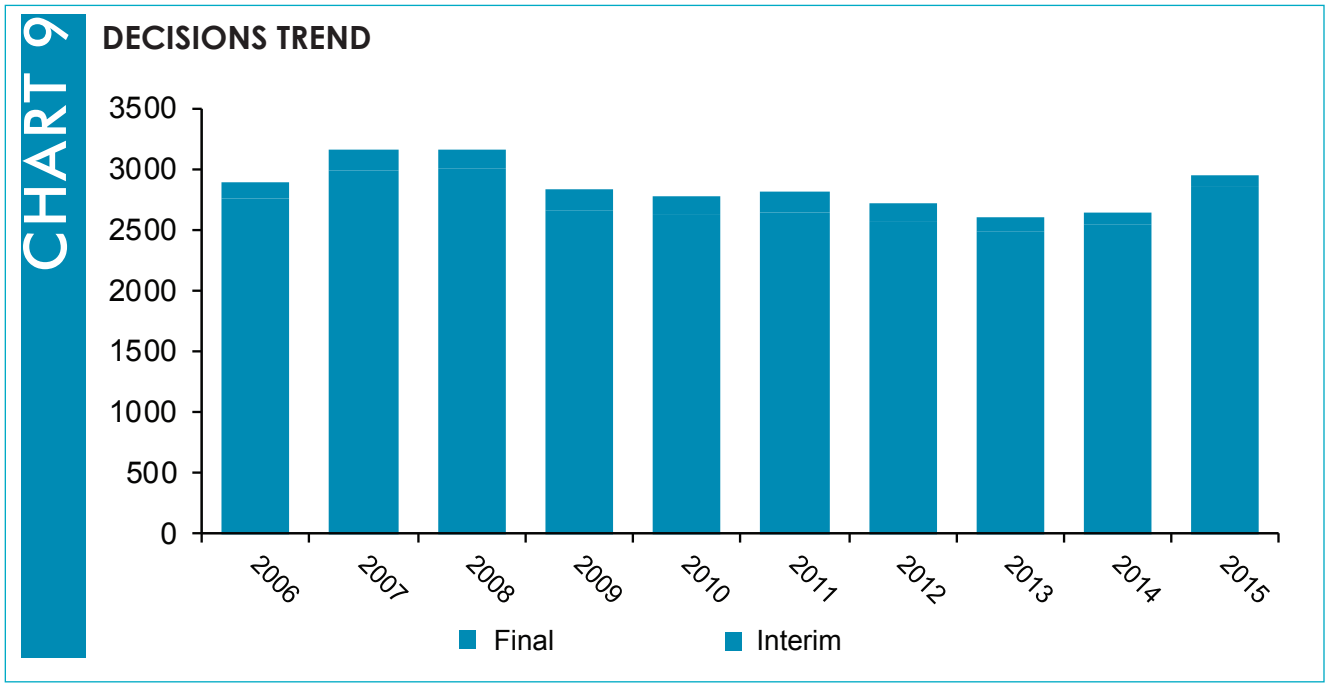
Chart 6 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2015, the percentage of cases resolved within nine months was slightly lower than it was in 2014. (In 2015, 24% of cases were resolved within nine months, compared to 25% in 2014.)

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 7 shows that the typical length of time for this stage in the appeals process was longer than it was in year 2014 (17.3 months in 2015, compared to 13.3 months in 2014).

An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 8, in 2015, this target was achieved 92% of the time.

Hearing and Decision Activity

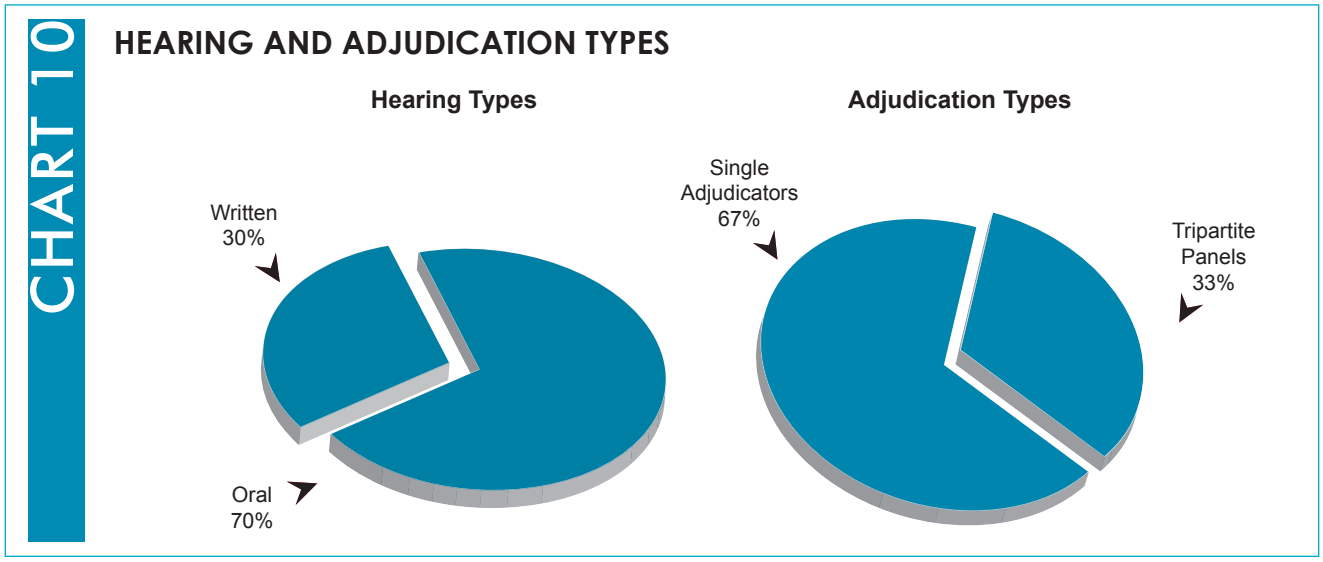
In 2015, the Tribunal conducted 3,052 hearings and issued 2,942 decisions. The Tribunal strives to



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 9 depicts the Tribunal's Hearing and Decision production.

Hearing Type

In 2015, the percentage breakdown of hearing types was as follows: oral hearings continued to be the most common hearing type at 70%, followed by written hearings at 30%. The percentage of single adjudicator hearings increased in 2015 to 67% (from 64% in 2014); tripartite panels decreased to 33% of cases heard. Chart 10 presents these hearing characteristics.

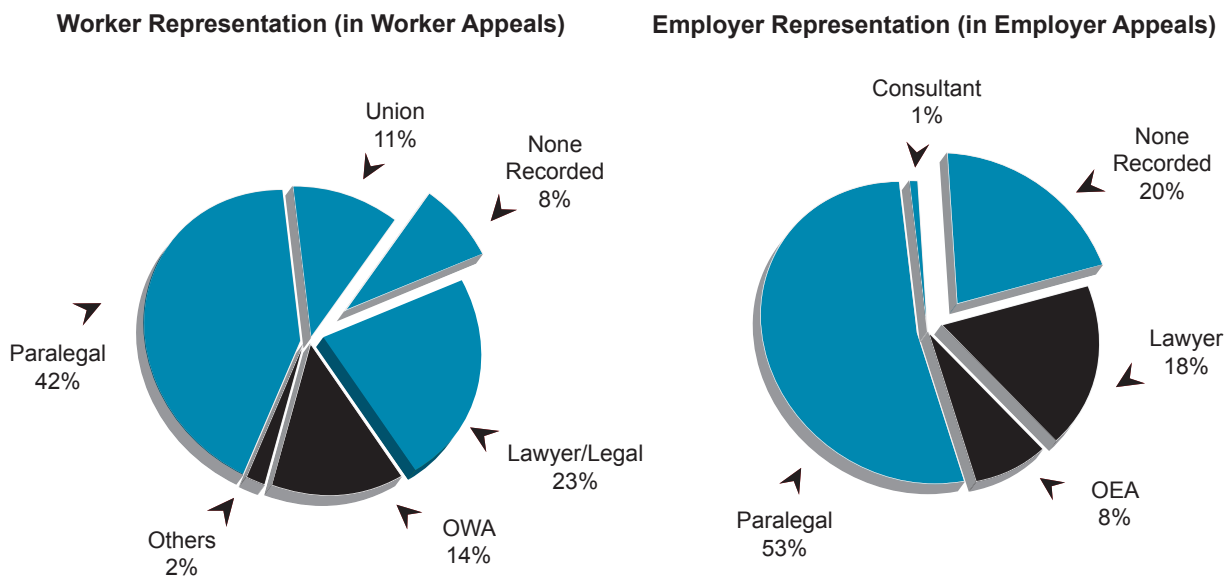


Representation at Hearing

Tribunal statistics show that for injured workers, 42% were represented by paralegals; 23% by lawyers and legal aid; 14% by the Office of the Worker Adviser; and, 11% by union representatives. The remaining 10% is allocated among various non-categorized representation, for instance, family friend, family member or MPP office. Employers were represented before the Tribunal as follows: 53% were represented by paralegals; 18% were represented by lawyers; 8% by the Office of the Employer Adviser; and, 1% by consultants. The remaining 20% are non-categorized. These characteristics are presented in Chart 11.

CHART 11

WORKER AND EMPLOYER REPRESENTATION



Caseload by General Appeal Issue Type

In 2015, Entitlement-related cases constituted the majority of cases (97%). Special Section cases (Right to Sue and Access) comprised typically small portions (3%). Charts 12 and 13 provide historical comparisons of incoming cases and cases disposed in 2015.

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 timeframe for the notice stage, the Tribunal will close the case.

CHART 12

INCOMING CASES BY APPEAL TYPE FOR THE YEARS 2011-2015

	2011		2012		2013		2014		2015	
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	63	1.4%	60	1.2%	65	1.1%	54	1.1%	75	1.7%
Medical Exam	0	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	108	2.4%	108	2.1%	78	1.3%	57	1.1%	56	1.3%
Total Special Section	**171**	**3.7%**	**169**	**3.3%**	**143**	**2.4%**	**111**	**2.2%**	**131**	**3.0%**
Preliminary (not yet specified)	1	0.0%	2	0.0%	1	0.0%	3	0.1%	1	0.0%
Pension	2	0.0%	0	0.0%	1	0.0%	0	0.0%	0	0.0%
N.E.L./F.E.L.*	5	0.1%	4	0.1%	4	0.1%	0	0.0%	2	0.0%
Commutation	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Employer Assessment	340	7.4%	401	7.7%	262	4.5%	290	5.7%	257	5.9%
Entitlement	3889	85.1%	4474	86.1%	5265	89.9%	4490	88.4%	3861	88.0%
Ext post WSIB dec deadline	154	3.4%	139	2.7%	171	2.9%	173	3.4%	126	2.9%
Jurisdiction Time Limit	0	0.0%	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Vocational Rehabilitation **	1	0.0%	0	0.0%	1	0.0%	1	0.0%	0	0.0%
Classification	2	0.0%	2	0.0%	0	0.0%	5	0.1%	0	0.0%
Interest NEER	0	0.0%	1	0.0%	1	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	**4394**	**96.1%**	**5023**	**96.7%**	**5706**	**97.5%**	**4963**	**97.7%**	**4249**	**96.8%**
Jurisdiction	6	0.1%	5	0.1%	5	0.1%	5	0.1%	9	0.2%
	4571		**5197**		**5854**		**5079**		**4389**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 14, 15 and 16. *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 13

BREAKDOWN OF CASE DISPOSITIONS BY APPEAL TYPE FOR THE YEARS 2011-2015

	2011		2012		2013		2014		2015	
	No.	%	No.	%	No.	%	No.	%	No.	%
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	62	1.6%	54	1.4%	47	1.3%	48	1.3%	58	1.4%
Medical Exam	0	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	117	3.1%	99	2.5%	86	2.3%	66	1.7%	63	1.5%
Total Special Section	**179**	**4.7%**	**154**	**3.9%**	**133**	**3.6%**	**114**	**3.0%**	**121**	**2.8%**
Preliminary (not yet specified)	0	0.0%	0	0.0%	1	0.0%	3	0.1%	1	0.0%
Pension	4	0.1%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
N.E.L./F.E.L.*	11	0.3%	5	0.1%	3	0.1%	2	0.1%	3	0.1%
Commutation	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	198	5.2%	285	7.3%	312	8.3%	290	7.6%	296	7.0%
Entitlement	3225	84.2%	3309	84.6%	3113	83.1%	3198	84.1%	3653	85.8%
Ext post WSIB dec deadline	186	4.9%	147	3.8%	177	4.7%	188	4.9%	169	4.0%
Jurisdiction Time Limit	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Vocational Rehabilitation**	3	0.1%	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Classification	18	0.5%	4	0.1%	2	0.1%	0	0.0%	1	0.0%
Interest NEER	0	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	**3645**	**95.2%**	**3752**	**95.9%**	**3608**	**96.3%**	**3681**	**96.8%**	**4126**	**96.9%**
Jurisdiction	6	0.2%	5	0.1%	4	0.1%	7	0.2%	9	0.2%
	3830		**3911**		**3745**		**3802**		**4256**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 14, 15 and 16. *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.

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 2015, the number of dormant cases decreased to 1,273 from 1,739 at the end of 2014 and the number of inactive cases decreased to 1,748 from 2,091. Taken as a whole, this meant that the number of not active cases decreased by 21% in 2015.

Post-decision Workload

The post-decision workload is derived from three sources: Ombudsman follow-ups (Chart 14), Reconsideration requests (Chart 15) and Judicial Reviews (Chart 16). The post-decision workload is predominantly driven by Reconsideration requests. In year 2015, 160 Reconsideration requests were received.

CHART 14

OMBUDSMAN COMPLAINTS, ACTIVITY AND INVENTORY SUMMARY

New Complaint Notifications Received	0
Complaints Resolved	0
Complaints Remaining	0

CHART 15

RECONSIDERATION REQUESTS, ACTIVITY AND INVENTORY SUMMARY

Inquiries (Pre-reconsideration) Remaining	47
Reconsideration Requests Received	160
Reconsideration Requests Resolved	93
Reconsiderations Remaining	138

CHART 16

JUDICIAL REVIEWS, ACTIVITY AND INVENTORY SUMMARY

Judicial Reviews at January 1st	18
Judicial Reviews Received	5
Judicial Reviews Resolved	11
Judicial Reviews Remaining	12

A Statement of Expenditures and Variances for the year ended December 31, 2015 (Chart 17) is shown below.

CHART 17

STATEMENT OF EXPENDITURES AND VARIANCES
YEAR ENDED DECEMBER 31, 2015 (IN $000s)

	2015 BUDGET	2015 ACTUAL	2015 VARIANCE $	2015 VARIANCE %
OPERATING EXPENSES				
Salaries & Wages	11,272	11,297	(25)	(0.2)
Employee Benefits	2,427	2,336	91	3.7
Other Direct Operating Expenses				
Transportation & Communication		810		
Services	8,003	6,743	(25)	(0.3)
Supplies & Equipment		475		
Total Other Direct Operating Expenses	8,003	8,028	(25)	(0.3)
TOTAL - W.S.I.A.T.	21,702	21,661	41	0.2
Services - W.S.I.B.	530	505	25	4.7
Interest Revenue	(10)	(7)	(3)	30.0
TOTAL OPERATING EXPENSES	**22,222**	**22,159**	**63**	**0.3**
ONE TIME EXPENSES				
Severance Payments	100	210	(110)	(110.0)
CRA 2007, 2008, 2009 CPP Assessment	-	453	(453)	n/a
Active Caseload Reduction Strategy	200	279	(79)	(39.5)
TOTAL EXPENDITURES	**22,522**	**23,101**	**(579)**	**(2.6)**

Note: The above 2015 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 $25 is comprised of:

Capital Fund		
Amortization	63	
Fixed assets acquired	(92)	(29)
Operating Fund		
Accrued severance, vacation benefits & HCSA	87	
Prepaid expenses	(33)	54
		$ 25

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2015. The Independent Auditor's Report is included as Appendix B.

TRIBUNAL REPORT
Appendix A

VICE-CHAIRS AND MEMBERS IN 2015

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
Dee, Garth	June 17, 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
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
Bradbury, Laura	January 6, 2015
Cooper, Keith	December 16, 2009
Dempsey, Colleen L.	November 10, 2005

Part-time	Initial appointment

Vice-Chairs (continued)

Dimovski, Jim	November 19, 2014
Doherty, Barbara	June 22, 2006
Frenschkowski, JoAnne	March 4, 2013
Gale, Robert	October 20, 2004
Gehrke, Linda	November 4, 2015
Goldberg, Bonnie	May 27, 2009
Goldman, Jeanette	June 22, 2006
Hodis, Sonja	July 15, 2009
Iima, Katherine	January 5, 2015
Jepson, Kenneth	December 10, 2014
Josefo, Jay	January 13, 1999
Kosmidis, Elizabeth	June 17, 2015
Lampert, Leigh	September 8, 2015
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
McCaffrey, Grant	July 22, 2015
McGarvey, Matthew	July 22, 2015
McKenzie, Mary E.	June 22, 2006
Mitchinson, Tom	November 10, 2005
Moore, John	July 16, 1986
Nairn, Rob	April 29, 1999
Netten, Shirley	June 13, 2007
Onen, Zeynep	November 4, 2015
Peckover, Susan	October 20, 2004
Perryman, Natalie	January 5, 2015
Petrykowski, Luke	October 3, 2012
Sand, Caroline	March 11, 2015
Shime, Sandra	July 15, 2009
Smith, Eleanor	February 1, 2000
Smith, Joanna	August 28, 2013
Smith, Marilyn	February 18, 2004
Sutherland, Sara	September 6, 1991
Sutton, Wendy	May 27, 2009
Ungar, Susan	September 11, 2013
Wood, Robert	September 30, 2015

Part-time	Initial appointment
Members representative of employers	
Blogg, John	November 14, 2012
Davis, Bill	May 27, 2009
Falcone, Mena	October 21, 2015
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
Wheeler, Brian	April 19, 2000
Young, Barbara	February 17, 1995
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 2015

	Effective
Andrew Baker	May 17, 2015
Dave Broadbent	April 18, 2015
Sherry Darvish	December 11, 2015
Robert Gale	October 20, 2015
Angela Grande	February 18, 2015
Kelly Hoskin	October 1, 2015
Michele Lawford	May 29, 2015
Ian Mackenzie	October 9, 2015
Victor Marafioti	February 18, 2015

Reappointments (continued)	Effective
Mary E. McKenzie	June 22, 2015
Julia Noble	October 20, 2015
Susan Peckover	October 20, 2015
Antonio Signoroni	January 7, 2015
Joanna Smith	August 28, 2015
Marilyn Smith	February 18, 2015
Sara Sutherland	September 6, 2015
Susan Ungar	September 11, 2015
Brian Wheeler	May 14, 2015 (as part-time)[1]
Barbara Young	February 17, 2015

NEW APPOINTMENTS DURING 2015

	Effective
Laura Bradbury, part-time Vice-Chair	January 5, 2015
Mena Falcone, part-time Member representative of employers	October 21, 2015
Linda Gehrke, part-time Vice-Chair	November 4, 2015
Katherine Iima, part-time Vice-Chair	January 5, 2015
Elizabeth Kosmidis, part-time Vice-Chair	June 17, 2015
Leigh Lampert, part-time Vice-Chair	September 8, 2015
Grant McCaffrey, part-time Vice-Chair	July 22, 2015
Matthew McGarvey, part-time Vice-Chair	July 22, 2015
Zeynep Onen, part-time Vice-Chair	November 4, 2015
Natalie Perryman, part-time Vice-Chair	January 5, 2015
Caroline Sand, part-time Vice-Chair	March 11, 2015
Robert Wood, part-time Vice-Chair	September 30, 2015

The total annual remuneration for all OIC appointees was $5,766,860.

1 Brian Wheeler's Order in Council as a full-time Member representative of employers was revoked by this Order, which also reappointed him as a part-time Member representative of employers.

SENIOR STAFF

Susan Adams..... Tribunal Executive Director
Michelle Alton ..... Tribunal Counsel
David Bestvater ..... Director, Information and Technology Services
Nicole Bisson..... Director, Appeal Services
Martha Keil..... Vice-Chair Registrar
Wesley Lee..... Manager, Financial Administration and Controllership
Janet Oulton..... Appeals Administrator
Carole Prest..... Counsel to the Chair
Dan Revington..... Tribunal General Counsel
Lynn Telalidis ..... Associate Director, Human Resources and Administration

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 statement of financial position as at December 31, 2015, the 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, 2015, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Deloitte LLP

Chartered Professional Accountants
Licensed Public Accountants
March 2, 2016

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2015

	2015	2014
ASSETS		
CURRENT		
Cash	**$ 2,853,607**	$ 1,591,793
Receivable from Workplace Safety and Insurance Board	**1,109,467**	1,126,133
Prepaid expenses and advances	**404,734**	372,470
Recoverable expenses (Note 3)	**160,508**	175,573
	4,528,316	3,265,969
CAPITAL ASSETS (Note 4)	**101,867**	72,109
	$ 4,630,183	$ 3,338,078
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 2,724,848**	$ 1,495,112
Accrued severance benefits and vacation credits	**3,389,797**	3,302,704
Operating advance from Workplace Safety and Insurance Board (Note 5)	**1,400,000**	1,400,000
	7,514,645	6,197,816
FUND BALANCES		
OPERATING FUND (Note 6)	**(2,986,329)**	(2,931,847)
CAPITAL FUND	**101,867**	72,109
	(2,884,462)	(2,859,738)
	$ 4,630,183	$ 3,338,078

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

..... Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Operations

Year ended December 31, 2015

	2015	2014
OPERATING EXPENSES		
Salaries and wages	**$ 11,297,079**	$ 11,110,585
Employee benefits (Note 7)	**3,086,059**	2,442,701
Transportation and communication	**810,275**	837,166
Services and supplies	**7,371,508**	6,531,233
Amortization	**62,578**	86,617
	22,627,499	21,008,302
Services - Workplace Safety and Insurance Board (WSIB) (Note 8)	**505,203**	523,425
TOTAL OPERATING EXPENSES	**23,132,702**	21,531,727
BANK INTEREST INCOME	**(6,611)**	(8,776)
NET OPERATING EXPENSES	**23,126,091**	21,522,951
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	**(23,101,367)**	(21,415,196)
ANNUAL DEFICIT	**$ 24,724**	$ 107,755

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Changes in Fund Balances
Year ended December 31, 2015

	Capital	Operating	Total
BALANCE - JANUARY 1, 2014	$ 146,708	$ (2,898,691)	$ (2,751,983)
Additions to capital assets	12,018	-	12,018
Amortization of capital assets	(86,617)	-	(86,617)
Severance benefits and vacation credits (Note a)	-	(77,946)	(77,946)
Prepaid expenses (Note b)	-	44,790	44,790
Annual deficit	(74,599)	(33,156)	(107,755)
BALANCE - DECEMBER 31, 2014	72,109	(2,931,847)	(2,859,738)
Additions to capital assets	92,336	-	92,336
Amortization of capital assets	(62,578)	-	(62,578)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(87,093)	(87,093)
Prepaid expenses (Note b)	-	32,611	32,611
Annual deficit	29,758	(54,482)	(24,724)
BALANCE - DECEMBER 31, 2015	101,867	(2,986,329)	(2,884,462)

Note a) Severance benefits, vacation credits, and Health Care Spending 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, 2015

	2015	2014
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 23,118,032**	$ 21,902,411
Cash receipts for recoverable expenses	**869,542**	775,090
Bank interest received	**6,611**	8,776
Expenses, recoverable expenses net of amortization of $62,578 (2014 - $86,617)	**(22,640,035)**	(21,975,390)
	1,354,150	710,887
CAPITAL		
Acquisition of capital assets	**(92,336)**	(12,018)
NET INCREASE IN CASH	**1,261,814**	698,869
CASH, BEGINNING OF YEAR	**1,591,793**	892,924
CASH, END OF YEAR	**$ 2,853,607**	$ 1,591,793

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2015

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 (the "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 "PSAS-NPO" of the CPA Canada 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.

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.

(e) Health Care Spending Account ("HCSA")

Consistent with the Province of Ontario's employee benefit plan, the Tribunal also introduced an annual health care spending component for every eligible employee. This eliminated the Paramedical benefit that existed in the previous plan. Any unused amounts in the current year can be carried forward for up to one year.

3. RECOVERABLE EXPENSES

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

	2015	2014
Shared services		
Ontario Labour Relations Board	**$83,624**	$ 79,067
Pay Equity Hearings Tribunal	**5,609**	5,464
Secondments		
Office of the Employer Adviser	**9,486**	9,558
Service Ontario	**-**	25,795
Others		
Canada Revenue Agency HST rebate receivable	**56,648**	43,993
Employee amounts receivable	**5,065**	11,695
Miscellaneous	**76**	-
Total	**$160,508**	$ 175,573

4. CAPITAL ASSETS

			2015	2014
	Cost	**Accumulated Amortization**	**Net Book Value**	Net Book Value
Leasehold improvements	**$ 3,084,251**	**$ 3,067,076**	**$ 17,175**	$ 23,073
Furniture and equipment	**729,690**	**661,987**	**$ 67,703**	20,882
Computer equipment and software	**402,360**	**385,371**	**$ 16,989**	28,154
	$ 4,216,301	**$ 4,114,434**	**$ 101,867**	$ 72,109

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 $2,986,329 as of December 31, 2015 (2014 - $2,931,847) represents future obligations to employees for severance, vacation credits and health care spending account credits, less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $897,917 (2014 - $921,263) 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 2015 amounted to a decrease of $24,298 (2014 – increase of $46,349) 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 2015 amounted to an increase in the accrual of $39,744 (2014 - $31,597) 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.

e) Health Care Spending Account (HCSA)

Eligible employees are entitled to an annual health care spending account as part of the changes in 2015 to the health benefits that eliminated the paramedical benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2015 amounted to an increase of $71,647 (2014 - $0) over the prior year and is included in employee benefits in the Statement of Operations.

f) Prior year CPP Contribution

In 2015, the Tribunal paid to Canada Revenue Agency ("CRA") an amount of $453,182 for CPP contributions (employer and employee shares) for the years 2007, 2008, and 2009. This resulted from an assessment by CRA that determined remuneration paid to OICs is considered pensionable employment income for these years. This amount is included in employee benefits in the Statement of Operations.

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. COMMITMENTS

The Tribunal has commitments under several leases and maintenance contracts relating to computer and office equipment, software license fees and workplace learning solutions service contracts with terms from 1-5 years. The minimum payments under these commitments are as follows:

2016	$ 268,058
2017	83,725
2018	25,103
2019	2,559
Minimum payments	$ 379,444

The Tribunal is also committed to minimum lease payments for premises, including building operating costs. The minimum lease payments for the next five years are as follows:

2016	$ 1,670,625
2017	1,670,625
2018	1,670,625
2019	1,670,625
2020 and thereafter	1,670,625
Minimum operating lease payments	$ 8,353,125

The current lease which expired on October 31, 2015 was renewed for ten years commencing November 1, 2015 with two further options to extend the lease for 5 years each.

10. CONTINGENT LIABILITIES

The CRA completed a review of remuneration paid by the Tribunal to a select number of Part-time Order-in-Council appointees ("OICs") for the year 2014 and determined that the remuneration paid is considered insurable employment income and issued an assessment to the Tribunal for EI contributions (employer and employee shares) for this year. The ruling was received after the close of the fiscal year, and the Tribunal has an opportunity to appeal.

The impact to other OICs is unknown. As at December 31, 2015, 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.