

# WSIAT

## ANNUAL REPORT

a year of:

- collaboration
- innovation
- transformation



# 2017



**Workplace Safety and Insurance  
Appeals Tribunal**

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

Ontario

# **WSIAT 2017** **ANNUAL REPORT**

**Workplace Safety and Insurance Appeals Tribunal**  
505 University Avenue, 7th floor, Toronto ON M5G 2P2  
[www.wsiat.on.ca](http://www.wsiat.on.ca), ISSN: 1480-5707 © 2018

# 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 2017 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.

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The Tribunal has made significant progress in reducing both the active case inventory and the time to hearing. This has been accomplished without compromising the quality of the work the Tribunal does.



## MESSAGE FROM THE CHAIR

It is my pleasure to provide the Workplace Safety Insurance and Appeals Tribunal's 2017 Annual Report. The Tribunal has made significant progress in reducing both the active case inventory and the time to hearing. This has been accomplished without compromising the quality of the work the Tribunal does.

In my message last year I noted the challenge the Tribunal faced – a large active case inventory and unacceptably long wait times.

We set a goal of reducing the active case inventory in 2017 from 8,156 cases to 7,400 cases. Our ultimate goal was a steady reduction over a three-year period to 4,750 cases by December 31, 2019. Upon achieving that goal we would also be able to provide hearings in 12 months.

I am pleased to report that we are well ahead of schedule.

At December 31, 2017, the active case inventory was 6,035, a reduction of 26% in 2017. As well, over the course of the year the median time to first hearing dropped from 18.9 months to 14.3 months.

We have revised our goal. We now expect to achieve our December 2019 target of 4,750 cases by December 2018, one year ahead of schedule. We should be able to provide hearings within 12 months across the Province by the end of 2018.

There are a number of reasons for the rapid reduction of the active case inventory. The focus and dedication of the Tribunal staff, Vice-Chairs and Members continues to amaze and inspire me.

Those that appear before the Tribunal have worked very hard to move their cases forward. This has allowed us to schedule an increasing number of cases each month. Representatives have participated in two new voluntary initiatives – the Tribunal's Early Intervention Adjudication Project and the holding of hearings by way of video-conference. I thank the representatives for their co-operation and their willingness to participate in new initiatives.

We would not have been able to achieve the rapid reduction in the active case inventory without the proper resources. We were able to add additional staff, Vice-Chairs and Members. The Ministry of Labour and the Minister of Labour supported the Tribunal in our requests for these additional resources. As well, the Ministry and the Minister gave us constant encouragement to do everything that needed to



be done. An example of this encouragement and willingness to devote time to the Tribunal was the Minister's two visits to the Tribunal in 2017. The Minister in his first visit met with all of our staff and in the second visit met with our Vice-Chairs and Members. We are very grateful to the Minister and the Ministry for their support and encouragement which has motivated all of us at the Tribunal.

I am pleased to say we continue to develop our good working relationship with the Board. While maintaining our adjudicative independence, constant dialogue with the Board and working co-operatively allows for the efficient processing of cases and shorter wait times.

Finally, the number of incoming cases was less than expected in 2017. This welcome development has certainly helped us reduce the active case inventory.

The most important consequence of the reduction of the active case inventory is a shorter wait time to hearing. We are not interested in numbers simply to meet abstract service standards. Everyone at the Tribunal knows that people's lives are deeply impacted by delays. We are driven by this reality.

Our commitment is to continue to reduce the wait times. By the end of 2019, we hope to have wait times down to between eight and 10 months. Given that hearings before the Tribunal are *de novo* hearings, we believe this is an ideal range for us to achieve.

“ The most important consequence of the reduction of the active case inventory is a shorter wait time to hearing. We are not interested in numbers simply to meet abstract service standards. Everyone at the Tribunal knows that people's lives are deeply impacted by delays. We are driven by this reality. ”

There are opportunities that come from having a reduced active case inventory. We are now able to channel resources to other important projects. An example is reconsideration requests. In the past few years, the high active case inventory resulted in the Tribunal devoting its resources to new appeals. This limited the number of reconsideration requests that could be assigned to Vice-Chairs or Panels. In 2016, the wait time for assignment of a reconsideration request reached three years. Over the course of 2017, we reduced the wait times substantially. By the summer of 2018 we will be down to under six months.



## Message from the Chair

### CHAIR'S REPORT

Achieving our target numbers is important for the reasons mentioned. However, achieving our targets at the expense of the quality the Tribunal is known for would not be acceptable. Our job is to get the decisions right and provide justice to those that appear before us. We will never lose sight of this obligation. It is ingrained in the Tribunal's culture.

What can you expect in 2018? We have ambitious plans.

In the early fall of 2018 we will open a regional hearing centre in Hamilton. After Toronto, Hamilton is our next busiest centre. We believe we will be able to improve the service we provide and at a cost no greater than our current cost.

In 2018, we will begin planning for electronic filing of appeals. The effective implementation date will be late 2019. You will hear more about this project over the coming months.

We began an end-to-end process review in 2017. In the spring of 2018 we will commence internal consultations and in the fall we will begin broader stakeholder consultation. While we are looking for further efficiencies, our focus will remain providing excellent service and quality decisions.

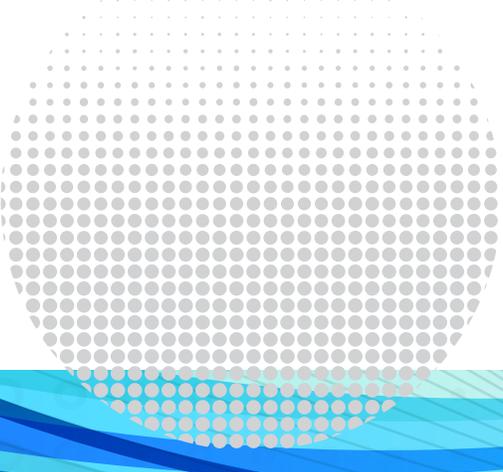
In 2018, we will put in place a performance management plan for Vice-Chairs and Members as well as 360 reviews for the senior management team and the Chair. This will assist the Tribunal in providing constructive feedback and tailored training programs.

2018 will be a year of renewed outreach for us. There will be formal and informal opportunities to get your thoughts and feedback. As well, if you have something on your mind you can always reach out to me directly.

The Annual Report contains a detailed summary of the Tribunal's operations as well as the cases the Tribunal dealt with in 2017. I hope you have the opportunity to review the Annual Report in depth.

I look forward to working with you in 2018. It will be an exciting year for the Tribunal.

David N. Corbett  
Chair, Workplace Safety and Insurance Appeals Tribunal



# HIGHLIGHTS OF THE 2017 CASES

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2017.

The Tribunal decides cases under four Acts. The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes a system of workplace insurance for accidents occurring after 1997, and continues the pre-1985, pre-1989 and pre-1997 *Workers' Compensation Acts* for prior injuries. The WSIA and the pre-1997 Acts have been amended a number of 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 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 (PI). The amount of LOE benefits depends on the extent to which the worker can return to the workplace and approximate pre-injury earnings. There are statutory provisions setting out worker and employer obligations to co-operate in early and safe return to work (ESRTW) and worker obligations to co-operate with labour market re-entry (LMR) services (now work transition (WT) services). The WSIA also creates a re-employment obligation where workers have been continuously employed for one year. LOE benefits are reviewable on "material change in circumstance," or annually at the Board's

discretion, for 72 months following the accident. When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72 months; however, subsequent amendments to section 44 in 2002 and 2007 allow for review in a number of circumstances.

### DECISION NO. 2335/17

While the 2002 and 2007 amendments provide for greater flexibility in review, the question of whether a post-72-month review was permitted arose frequently in 2017. One of the circumstances in which a post-72-month review is permitted is when there is deterioration in the worker's compensable condition. *Decision No. 2335/17*, 2017 ONWSIAT 2587, clarified that the deterioration must relate to the compensable injury in dispute under the WSIA. The appeal was allowed and full LOE benefits were restored where the Board had reviewed LOE benefits based on deterioration in a condition which was compensable under the earlier legislation.

### DECISIONS NO. 2341/17 3126/16

*Decision No. 2341/17*, 2017 ONWSIAT 2600, agreed with *Decision No. 891/15*, 2015 ONWSIAT 1652 (discussed in the 2015 Annual Report), that the 2007 amendments clarified that both the deterioration of the worker's condition and the redetermination

## Highlights of the 2017 Cases

### CHAIR'S REPORT

of the degree of permanent impairment must take place after the 72-month date. The Board could not reduce the worker's LOE benefits by the amount of his CPP disability benefits since the significant deterioration occurred prior to the final LOE review date, although the redetermination took place afterwards. *Decision No. 3126/16*, 2016 ONWSIAT 3450, further considered when LOE awards may be reviewed and reduced for CPP disability benefits.

#### DECISION NO. 2946/16

Another issue which often arises pursuant to the review provisions is whether the Board is entitled to defer a review. For example, in *Decision No. 2946/16*, 2017 ONWSIAT 264, the final review of LOE benefits was deferred by the Board based on its view that there was an incomplete work transition plan under section 44(2.1)(b). LOE benefits were reduced due to an increase to the minimum wage which occurred during the period that the review had been deferred. *Decision No. 2946/16* found that the review should not have been deferred, and distinguished between situations where the WT process was underway at the expiry of the 72 months, although the plan itself had not been approved or started, and situations where the file had simply been referred for review. This did not constitute the provision or arranging of a WT plan or assessment pursuant to section 44(2.1)(b) or Board policy. *Decision No. 2946/16* also considered whether LOE benefits could have been reviewed due to a temporary deterioration in the worker's condition. Board policy provides for a post-72-month review where there is a significant change in post-injury earnings, usually 10% or greater. Since the increase in minimum wage was only from \$10.25 to \$11 per hour, it did not meet the test for review.

#### DECISIONS NO. 2782/16 2298/17

While reviews of LOE benefits cannot be undertaken outside the scope of the Act, decisions affecting the quantum of LOE benefits may be reconsidered in appropriate circumstances. For example, *Decision No. 2782/16*, 2016 ONWSIAT 3146, found that the Board was entitled to recalculate the worker's long-term earnings basis after the final review date when the decision was in the nature of a reconsideration of the previous decision regarding the amount of LOE benefits. The fact that the Board had not made a timely decision was not determinative. The Board decision had made adjustments to earlier benefit calculations which were effective prior to the date of the final LOE review when it recalculated the worker's long-term earnings basis to more accurately reflect overtime. Recalculation of earnings basis for workers in permanent employment may be undertaken if it is not fair to continue paying benefits at the short-term rate. Fairness requires an even-handed and just result that avoids both under-compensation and over-compensation. In this case, significant overtime was reflected in the short-term earnings basis rate but was not representative of overtime which was generally available. For a similar analysis, see *Decision No. 2298/17*, 2017 ONWSIAT 2701, which held that the Board could reconsider a decision to correct an administrative error that occurred prior to the 72-month lock-in date.

Tribunal decisions have distinguished between a review of LOE benefits pursuant to section 44 of the WSIA and the Board's general discretion to reconsider.

#### DECISION NO. 1005/17

Complicated issues may arise where an injured worker, who has been provided with modified

work by his employer, is terminated by the employer. In *Decision No. 1005/17*, 2017 ONWSIAT 1059, the worker filed a grievance and did not look for other employment during the six months it took for the grievance to be settled. Based on a review of Tribunal decisions, *Decision No. 1005/17* found that, where there is a reasonable basis for expecting a favourable outcome in a grievance proceeding, it is reasonable to await the outcome of the grievance proceeding rather than seek alternative employment. In this case, the worker had significant seniority in a unionized environment and had been provided with modified work. The wait period was also relatively brief. The worker was realistically pursuing re-employment with the accident employer and was entitled to full LOE benefits during that period.

DECISION NO.  
**3331/16**

As noted in prior Annual Reports, NEL appeals often require the Tribunal to interpret the complicated *American Medical Association*

*Guides to the Evaluation of Permanent Impairment* (3rd edition revised) (AMA Guides), which is prescribed as the NEL rating schedule by Ontario Regulation 175/98. See, for example, *Decision No. 3331/16*, 2016 ONWSIAT 3569, which provides a detailed discussion of a rating for a wrist impairment involving sensory deficits of the fingers.

DECISIONS NO.  
**1579/17**  
**3061/16**

An issue which further complicates NEL appeals is the need to consider pre-existing impairments and conditions. In 2017, a number of Tribunal

decisions considered the Board's new policy on pre-existing conditions. These are discussed later

under the subtitle Board Policy Under the WSIA. An ongoing issue in NEL appeals has been how to combine pre-existing conditions arising from compensable accidents under the pre-1985 and pre-1989 Acts, which provide for pensions, rather than NEL awards. This may affect not only the quantum of the worker's NEL award but also entitlement to other benefits under the serious injury program, which has a 60% NEL threshold or a 100% pension threshold. In *Decision No. 1579/17*, 2017 ONWSIAT 1707, the worker had three NEL awards and two pensions. In order to obtain a composite rating, the Board transposed the pension awards into NEL awards and then combined them. Board policy requires that the Board subtract the permanent disability rating from the total area rating when calculating a NEL award for the same area of the body. The worker did not challenge the use of the NEL scheme, but argued that the awards should have been added, rather than combined. *Decision No. 1579/17* noted that the text of the AMA Guides explains that impairment ratings for different body units are combined using its Combined Values chart rather than added, based on the principle that each impairment acts not on the original whole but only on the remaining portion. The AMA Guides are structured to ensure that the final overall rating is never more than 100%. Given that the composite rating should be performed under the NEL scheme, the clear direction given in the AMA Guides was that the NEL impairment ratings must be combined using the Combined Values chart. See also *Decision No. 3061/16*, 2017 ONWSIAT 1778.

DECISIONS NO.  
**1129/17**  
**644/14**

In 2017, section 13(4) and (5) of the WSIA limited entitlement to mental stress to stress that is "an acute" reaction to a sudden and unexpected traumatic event. Entitlement for

mental stress caused by an employer's decisions related to employment is expressly excluded. While section 13(4) and (5) has been amended effective January 1, 2018, the Tribunal continued to decide appeals under the original version of these provisions in 2017. *Decision No. 1129/17*, 2017 ONWSIAT 1807, granted entitlement for traumatic mental stress where the worker was employed as a clerical worker for the police force. She was responsible for transcribing audio interviews with victims, suspects and witnesses and for cataloguing crime scene photographs. The worker was a civilian, not a police officer. She had to listen and re-listen to tapes and interviews and view photographs. It was found that repeated exposure to the same death and same violence from various perspectives, even second-hand, could be seen as traumatic. *Decision No. 644/14*, 2017 ONWSIAT 2601, is an example of a situation which is covered by the exemption for employer decisions. At issue was the employer's handling of allegations that a worker had threatened suicide. A union representative had honestly but mistakenly believed that the worker had threatened suicide. This led to an investigation, including calling the police. It was found that calling the police was part of the employer's investigation of the allegations and that it fell within the scope of the employment function. The employer had an obligation to investigate and call the police in response to what was perceived as a credible threat.

#### DECISION NO. 57/17

Amendments effective April 6, 2016, create an exception to the mental stress provisions for post-traumatic stress disorder (PTSD) in first responders. Section 14 provides that workers in specified positions, e.g.,

firefighters, police officers and paramedics diagnosed with PTSD, are entitled to benefits as if the PTSD were a personal injury and the PTSD is presumed to have arisen out of and in the course of employment unless the contrary is shown. Section 14 contains various transitional provisions including section 14(14), which states that claims pending before the Tribunal on April 6, 2016, shall be referred back to the Board for a decision in accordance with section 14. *Decision No. 57/17*, 2017 ONWSIAT 803, considered when section 14(14) required that the appeal be referred back to the Board. While the worker had filed a claim for traumatic mental stress as opposed to PTSD, it was found to be reasonable to file the claim using the words in the then-applicable Act and policy. A claim for traumatic mental stress should be treated as if it were a claim for PTSD provided that there is a diagnosis of PTSD from a psychologist or a psychiatrist on file. *Decision No. 57/17* also rejected arguments that section 14(14) did not apply because the worker did not meet the timing requirements in section 14(3)(a) and (c) when the worker was on unpaid discretionary leave of absence. *Decision No. 57/17* found that section 14(14) requires that a worker be listed in section 14(2) and that the appeal be pending on the day the amending section came into force. If these two criteria are met, the matter is referred back as though the requirements in section 14(3)(a) and (c) have been met.

### 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 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 then 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 a Board policy or decide which version of a policy applies, or the Board might ask the Tribunal to reconsider a decision in light of Board policy.

DECISION NO.  
**2346/1215**

*Decision No. 2346/1215*, 2017 ONWSIAT 1899, is one of only a few decisions to consider a Board direction on a section 126(4) referral. Previous Annual Reports have noted that a section 126 argument respecting the Board's fatal claim premium adjustment policy was raised in *Decision No. 2346/1212*, 2015 ONWSIAT 646. In 2016, the majority of the Panel in *Decision No. 2346/1214*, 2016 ONWSIAT 1427, concluded that the fatal claim premium adjustment policy was not authorized by WSIA, section 82, which provides that the Board may increase or decrease premiums in such circumstances as the Board considers appropriate, including when the frequency of injuries and accident costs are consistently higher than average for the industry. References to the merits and justice did not save the policy since the merits and justice could not be used to vary the stated intention of the policy. The dissent would have upheld the policy and the use of the merits and justice in administering the policy. *Decision No. 2346/1214* referred the policy to the Board for review under section 126(4). The Board responded with a written decision with

reasons, in which it concluded that the fatal claim premium adjustment policy was consistent with and authorized by the WSIA and that it applied to the appeal. In 2017, *Decision No. 2346/1215* held that, while the Panel members had not changed their views regarding whether the policy was authorized by section 82 of the WSIA, the Tribunal does not have the authority to choose whether to accept the Board's direction. The Tribunal is required to proceed with the determination of the employer's appeal in light of the Board's direction that the fatal claim premium adjustment policy is authorized by the WSIA and is to be applied. Applying the policy, the employer would lose its experience rating rebate due to the fatal accident. The Panel will now consider the employer's argument that the Board's policy violates the *Canadian Charter of Rights and Freedoms*. Submissions on this issue from the employer and the intervenors were pending at the close of 2017.

DECISION NO.  
**3182/16**

Effective November 1, 2014, the Board adopted a new policy on pre-existing conditions and amended a number of related policies, including its policies on aggravation basis and determining the degree of permanent impairment. In 2017, the Tribunal issued its first decisions interpreting the new and revised policies. Tribunal decisions continued to take the approach that the relevant decision for determining the applicability of Board policy is the initial operating level decision. Accordingly, appeals from operating level decisions prior to November 1, 2014, continue to be governed by the older policies, while appeals from operating level decisions on or after November 1, 2014, are governed by the new and amended policies. See *Decision No. 3182/16*, 2017 ONWSIAT 935, which considers the

## Highlights of the 2017 Cases

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retroactive application of Board policy changes and provides a helpful overview of the Tribunal's decisions under the earlier policies. Generally, Tribunal decisions have interpreted the earlier policies to mean that a permanent impairment rating may be reduced if a work injury occurs in the presence of a pre-accident disability, i.e., a symptomatic disability, but not a pre-existing condition i.e., an asymptomatic condition. *Decision No. 3182/16* found that a NEL award should not be reduced for a pre-existing condition under the old policy where there was no pre-existing condition that was capable of being rated pursuant to the AMA Guides. Even if the worker had a non-measurable pre-existing condition, it was minor, given that it was asymptomatic for close to three years prior to the accident, and Board policy does not reduce for minor pre-existing conditions.

DECISIONS NO.  
**322/171**  
**143/17**  
**2701/16**

While the new and amended policies did not apply in *Decision No. 322/171*, 2017 ONWSIAT 720, the Vice-Chair considered them as a letter from the Board indicated a similar approach had been taken in the case. The new and amended Board policies indicate that the thin skull and crumbling skull doctrines are well-established principles that are components of Board decision-making. *Decision No. 322/171* reasoned that, although the new policies were not directly applicable, the Board recognized these doctrines generally. The essence of the thin skull doctrine is that entitlement to benefits is not reduced for a pre-existing condition which made the worker more vulnerable to injury, where the work accident has made a significant contribution to the resulting injury. *Decision No. 322/171* found that a pre-existing impairment

was not measureable for the purposes of the AMA Guides where it was not symptomatic. An asymptomatic lesion would be rated as zero under the AMA Guides. *Decisions No. 143/17*, 2017 ONWSIAT 448, and *2701/16*, 2017 ONWSIAT 514, were governed by the new and amended policies and took a similar approach to *Decision No. 322/171*, finding that a NEL award should not be reduced for a pre-existing condition which would not have resulted in a rating under the AMA Guides.

DECISION NO.  
**293/13**

*Decision No. 293/13*, 2017 ONWSIAT 2478, was also governed by the new and revised policies and also referred to the *Decision No. 322/171* analysis. The worker had an asymptomatic degenerative change prior to the accident and the accident permanently triggered the symptoms associated with the pre-existing degenerative disc disease (DDD). It was inappropriate to attempt to parse out the worker's low back symptoms between the DDD and the workplace injury. The asymptomatic pre-existing condition would have been rated as zero under the AMA Guides. Alternatively, if the pre-existing condition was not rateable, it would be minor because it was asymptomatic. Again, there would be no reduction for a minor pre-existing condition.

DECISIONS NO.  
**468/17**  
**2772/17**

*Decision No. 468/17*, 2017 ONWSIAT 1343, considered the revised Board policy on determining the degree of permanent impairment, which provides that a pre-existing condition will be factored out of the impairment rating where it is established that it

is contributing to the degree of impairment to the same area of the body as the work-related impairment. To establish this, the evidence must show the pre-existing condition, on its own, would result in an impairment rating. The pre-existing condition does not need to have produced periods of impairment requiring health care or have caused a disruption in the employment in order to be factored out. Health care and lost time are both evidence of a symptomatic condition but there may be other evidence of a symptomatic condition. Similarly, *Decision No. 2772/17*, 2017 ONWSIAT 2920, found that a pre-existing asymptomatic condition should not be factored out of the overall permanent impairment rating because it is not apparent that an asymptomatic condition meets the definition of impairment under the WSIA and also because it would be rated at zero under the AMA Guides.

DECISION NO.  
**2455/16**

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. *Decision No. 2455/16*, 2016 ONWSIAT 3488, is an example of a case where the Tribunal applied an Adjudicative Advice document to determine the earnings basis for dependent contractors.

## Right to Sue Applications

The WSIA and earlier Acts are based on the “historic trade-off” in which workers gave up the right to sue in exchange for statutory no-fault benefits. The Tribunal has 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.

DECISIONS NO.  
**1241/16**  
**2678/17**

While right to sue applications often involve sudden or traumatic accidents, such as motor vehicle accidents, *Decisions No. 1241/16*, 2016 ONWSIAT 3520, and *2678/17*, 2017 ONWSIAT 2826, illustrate

that the right to sue provisions apply to other types of accidents as well. In *Decision No. 2678/17*, the worker’s estate brought an action against the worker’s employer claiming that the worker developed ALS as a result of the employer’s negligence regarding workplace exposure to chemicals. The estate had claimed benefits from the Board but the claim was denied on the grounds that it had not been established that the worker’s condition was related to her workplace exposure. *Decision No. 2678/17* reasoned that the core of the civil action was that the worker died as a result of a work-related disease. This is precisely the type of circumstance in which employers have a right to be protected from civil suit by the historic bargain that created the workers’ compensation system. The estate’s right of action was taken away. *Decision No. 2678/17* noted that no finding was being made about appeal rights at the Board or Tribunal regarding the denied claim. That issue had not been argued on the application.

In *Decision No. 1241/16*, the worker sought damages for intentional infliction of mental suffering and breach of contract due to failure to provide a safe workplace, including punitive damages, as well as damages for breach of human rights and discrimination. The worker argued that the defendants removed themselves from the employment relationship by their intentional actions and that abusive behaviour by a manager resulted in chronic mental stress.

## Highlights of the 2017 Cases

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The worker also argued that the WSIA does not provide entitlement for chronic mental stress and that she was entitled to sue. *Decision No. 1241/16* concluded that the worker was not entitled to maintain the action in tort and contract since the allegations, if proven, would lead to the conclusion that the plaintiff was entitled to claim benefits. It was possible that the interactions with the worker's manager would be seen as a series of sudden and unexpected traumatic events, coming within the mental stress provisions in the WSIA and Board policy. It has also been established that the WSIA provisions barring entitlement for chronic mental stress are of no force and effect under the Charter of Rights. While the worker could not maintain an action for breach of contract since it was based on the same harm as her claim for personal injury, she could sue for those elements of the action claiming damages for breach of human rights and damages relating to video surveillance alleged to have occurred a year after the workplace events.

### DECISION NO. 2285/15

Jurisdictional issues often arise on right to sue applications. In *Decision No. 2285/15*, 2016 ONWSIAT 3172, the Board had paid benefits

to the worker and then brought a subrogated action in the worker's name against the employer, a school board. The school board brought a third party claim against the municipality, arguing that the municipality was required to defend and indemnify the school board based on the terms of the lease. The third party brought a section 31 application. The third party was entitled to an order under section 29 of the WSIA limiting its liability to the portion of the loss that was caused by its own fault or negligence. The more

contentious issues were whether the third party claim was barred by the WSIA. *Decision No. 2285/15* reasoned that the determination of a party's right to sue turns on the substance of the cause of action, rather than the form. Tribunal decisions have recognized that there may be causes of action that are inter-related to the facts of a workplace insurance claim but which are not actions arising from the party's fault or negligence with respect to the action. For example, Tribunal decisions have found that actions for wrongful dismissal or negligent misrepresentation may proceed. In this case, the lease was a contractual agreement between the municipality and the school board which was entered into prior to, and independent of, the workplace accident. The third party claim for a declaration to defend and indemnify was found to be a cause of action independent of the workplace accident. It was not integral to the consequences of the accident nor was it inextricably linked to the alleged injury suffered by the worker. Rather, it arises from the terms of the lease and was not barred by the WSIA.

### DECISION NO. 1970/161

*Decision No. 1970/161*, 2016 ONWSIAT 3339, is interesting for its consideration of two preliminary issues. The worker objected to an insurer's standing to bring an application because the insurer may not have an obligation to pay statutory accident benefits (SABs), as there was a dispute about whether that insurer or a different insurer was obliged to pay SABs. Under section 31(1) of the WSIA, a party to an action or an insurer from whom SABs are claimed, may apply to the Tribunal. Since the applicant was an insurer from whom SABs had been claimed, this was sufficient to create

standing. *Decision No. 1970/16I* rejected an argument that the section 31 application should be barred for delay. There was no authority to refuse to accept jurisdiction on a section 31 application based on delay in initiating the proceedings.

## Employer Issues

Appeals involving employer issues, such as classifications, transfers of cost, adjustments of experienced rating accounts and applications for Second Injury and Enhancement Fund (SIEF) relief, continued to form a significant part of the Tribunal's caseload in 2017.

### DECISION NO. 1554/16

The Tribunal must frequently consider complicated working arrangements in determining how an employer should be classified. In *Decision No. 1554/16*, 2016 ONWSIAT 3210, the Board focused on four contracts and changed the employer's classification by adding the rate group for maintenance and repair contracting and deleting the rate group for electrical work. A review of the contracts indicated that they were not limited to electrical work. The Tribunal rejected the employer's argument that non-electrical work was subcontracted to another arm's length employer and should not be considered to be a business activity of the employer. This was inconsistent with section 10 of Ontario Regulation 175/98, which provides that, if an employer contracts with another person to have that person carry out an operation that would be a business activity if the employer carried it out, the employer is deemed for the purpose of determining rates to be directly carrying out the activity. The Tribunal accepted

the employer's submission that the majority of the work performed by the employer's own employees was electrical work and that it did enter some contracts exclusively for electrical work. The appeal was allowed in part as the rate group for electrical work should continue to apply. When the employer performs work on a contract that extends beyond the scope of electrical work, the payroll, including electrical work performed on the contract, should be attributed to the rate group for maintenance and repair contracting, subject to the employer's ability to maintain segregated payroll for the electrical work.

### DECISION NO. 2884/16

*Decision No. 2884/16*, 2016 ONWSIAT 3409, considered the transfer of a portion of an employer's operations to a different company. The original employer and the worker entered into an agreement that the worker would continue to perform work during the transition period for the new company; the worker would not be able to return to the original employer after a certain time period, but would have to retire or join the new company. The worker suffered a compensable injury during the transition period. The Tribunal upheld the Board's finding that the original employer continued to be the employer pursuant to the agreement. The worker was subject to the supervision of the new company but remained an employee of the original company for the duration of the agreement. There was no reason why the expressed agreement should not be given effect. This was consistent with section 72 of the WSIA which provides that, if an employer temporarily lends or hires out the services of a worker to another employer, the first employer is deemed to be the employer of the worker while the worker is

working for the other employer. Section 72 was directly applicable to this case.

### DECISION NO.

**834/17**  
**1939/17**

*Decisions No. 834/17, 2017 ONWSIAT 934, and 1939/17, 2017 ONWSIAT 2357, are good examples of the types of issues which may arise on transfer of cost appeals. In Decision No. 834/17,*

the employer supplied light industrial labourers to other businesses. After working for a client for 10 months, the worker was injured when he fell from a ladder. The employer was not entitled to a cost transfer as there was no negligence or breach of the duty of care by the client. The ladder was only three feet high, the worker was standing on the top and was hurrying to remove an item from a shelf. In contrast, a temporary help agency's request to transfer costs to the client was allowed in *Decision No. 1939/17*. The worker was employed as a welder and was injured when his clothes caught on fire. The client had provided him with a protective jacket but he was not wearing it because the jacket was too big and because it was not mandatory to do so under the company policy. Following an investigation, the Ministry of Labour issued an order requiring the client to change its policy. The temporary help agency was entitled to a 100% transfer of costs since the client had negligently failed to do something that a reasonable and prudent person would do, by not requiring that adequate protective clothing be worn.

### DECISIONS NO.

**1410/13**  
**2449/16**  
**2993/17**

Other interesting issues considered in 2017 include whether the Board's policy on voluntary registration applies where an employer provides

inaccurate or incomplete information on registration (*Decision No. 1410/13, 2017 ONWSIAT 478*), whether LMR costs should be excluded from an employer's NEER experience rating account (*Decision No. 2449/16, 2016 ONWSIAT 3298*), and whether a claim should be considered active for NEER purposes based on the date of entitlement or the date of determination of that entitlement (*Decision No. 2993/17, 2017 ONWSIAT 3235*).

## Occupational Disease

Occupational disease cases, which involve workplace exposures 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.

### DECISION NO.

**2941/16**

The Board's policy on gastro-intestinal cancer and asbestos workers was considered in a number of cases. The policy provides that

claims are favourably considered if there is a clear and adequate history of exposure to asbestos dust that is of a continuous and repetitive nature and represents, or is a manifestation of, a major component of the occupational activity, and there is a 20-year latency period between first exposure and diagnosis. Adequacy of the workplace exposure is often in issue. *Decision No. 2941/16, 2017 ONWSIAT 217*, commented that, in considering whether the worker had continuous

exposure, the association between colorectal cancer and asbestos is not as well established in epidemiology as the association between lung cancer and asbestos. Thus, the reference to continuous exposure would imply a requirement of at least 10 years of exposure, and possibly more, based on the minimum 10-year exposure requirement in the lung cancer policy.

DECISIONS NO.  
**1290/17**  
**2806/16**

*Decision No. 1290/17, 2017 ONWSIAT 2910, found the worker had adequate exposure for the purpose of the policy when he had two years of excessive asbestos exposure while employed as an insulator, and approximately seven years of his 28 years employment as a pipe welder involved excessive exposure. The remainder of his time as a pipe welder had the potential for exposure at a lower level of intensity. Decision No. 2806/16, 2016 ONWSIAT 3100, found that the Board policy requirements were met where there was evidence from an occupational hygienist that from 1974 to 1976 the worker was routinely exposed to high levels of fibrous particles that more likely than not contained asbestos and was occasionally exposed to moderate to high levels of asbestos between 1976 and 1980. Decision No. 1290/17, 2017 ONWSIAT 2910, denied the worker's claim for multiple myeloma arising from exposure to benzene. There is no specific Board policy on multiple myeloma; therefore, entitlement is determined based on the evidence in the individual case and the principles of causation. While there is some evidence of an association between benzene and multiple myeloma, the relationship is unproven. Furthermore, the occupational exposure to benzene was limited and sporadic and the worker was 75 years old at the time of diagnosis, so that age was an independent risk factor.*

DECISIONS NO.  
**3207/16**  
**831/17**

A question which has arisen in a number of cases is whether a worker's entitlement for chronic obstructive pulmonary disease (COPD) (also known as chronic obstructive lung disease or COLD) should be reduced where it is established that the worker has both occupational dust exposure and a smoking history. This raises basic legal principles of causation since an indivisible injury with multi-factorial causes cannot be apportioned. The question is whether there is a sufficient evidentiary basis to determine what component of the respiratory impairment is due to the compensable dust exposure and whether the respiratory impairment constitutes a divisible or indivisible injury. While in the past, Tribunal decisions have taken different approaches, recent decisions indicate that causation of COPD should not be apportioned. *Decision No. 3207/16, 2017 ONWSIAT 1505, noted that Board policy on COPD in smelter workers contains a chart regarding the percentage of assessed permanent disability award accepted by the Board. It indicates 40% for non-smokers, 30% for ex-smokers and 20% for smokers. Decision No. 3207/16 found this chart confusing and difficult to understand. It also does not appear to be relied on by the Board or the Tribunal. Rather, the chart in the Board's Adjudicative Advice binder on COPD is used, although the binder is not Board policy. After reviewing Tribunal cases, Decision No. 3207/16 concluded that, as general principle, apportionment of a pension or a NEL award for smoking is not appropriate, although the individual facts of the case must be considered. And see Decision No. 831/17, 2017 ONWSIAT 1970, which found that COPD should not be apportioned in light of new medical evidence indicating that COPD is a relentlessly progressive*

disease comparable to cancer and does not reverse when occupational exposure is discontinued.

DECISIONS NO.  
**2313/15**  
**1861/10**

Occupational disease cases must often consider complicated epidemiological evidence. *Decision No. 2313/15*, 2016 ONWSIAT 3447, considered a claim

for Parkinson's disease arising from workplace exposure to pesticides. A report from a Tribunal medical assessor reviewed studies on pesticide exposure and Parkinson's disease, many of which indicated an odds ratio above or near 2. The assessor's overall conclusion was that the results could be interpreted as confirming an association, but they failed to demonstrate clearly the nature of the association, and data on specific agents was largely missing. For workplace insurance purposes, however, it is not necessary to determine the nature of the association, or to ascertain which agents are most associated with the development of the disease. *Decision No. 2313/15* cited *Decision No. 600/97*, 2003 ONWSIAT 2153, which reviewed the Bradford Hill criteria including strength of the association, consistency of the observed association, specificity of the association, temporal relationship, biological gradient, plausibility, coherence, experiment and analogy. Considering the Bradford Hill criteria, the strength of the association is fairly strong. Given that the worker had a high exposure for six months of every year for 16 years, the appeal was allowed on the benefit of the doubt. And see *Decision No. 1861/10*, 2017 ONWSIAT 3005, which discussed the difference between the use of a hazard ratio and the use of a relative risk analysis in the context of an appeal for lung cancer based on exposure to silica.

## Other Legal Issues

DECISION NO.  
**1753/17**

Since the 2007 amendments to the *Law Society Act*, which introduced paralegal regulation, the Tribunal has taken steps to

ensure that paralegals who represent parties at the Tribunal meet the Law Society's requirements. *Decision No. 1753/17*, 2017 ONWSIAT 2302, is one of the first Tribunal decisions to consider section 32(2) of By-Law 4 under the *Law Society Act*, which provides an exemption from licensing for employees of a trade union or volunteer representatives of a trade union when acting on behalf of a person in connection with a workplace issue or dispute before an adjudicative body other than a federal or provincial court. The representative fell within this exemption as he had previously been responsible for workplace insurance claims until his retirement and subsequently continued to handle a few long-standing cases at the union's request and without receiving any remuneration. This finding was limited to the facts of the case and did not determine the representative's status generally to appear at the Tribunal.

DECISIONS NO.  
**947/171**  
**2810/16**

Tribunal proceedings may become complicated when a worker passes away. *Decision No. 947/171*, 2017 ONWSIAT 1084, considered the situation

where a worker's will named two estate trustees but only one wanted to proceed with the appeal. While the other trustee had indicated she would consent to allowing the first trustee to proceed, the consent was not provided and she was not in further communication with the Tribunal. *Decision*

No. 947/171 found that the lack of interest or communication from the second trustee should not be an impediment to the appeal being moved forward by the first trustee. *Decision No. 2810/16*, 2016 ONWSIAT 3025, considered a request for reimbursement of executor's fees when a worker died in a workplace accident. The Tribunal found that there is no provision in the WSIA or Board policy to pay for an executor's expenses, other than those reasonably connected to burial or cremation.

DECISION NO.  
**200/171**

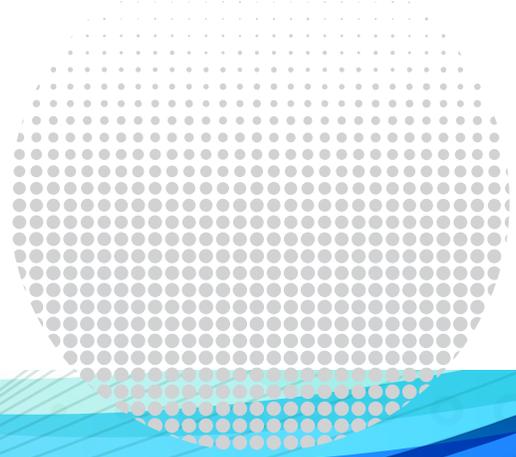
*Decision No. 200/171*, 2017 ONWSIAT 282, considered whether a receivership order against the employer precluded the Tribunal from hearing the worker's appeal. The receiver submitted that no proceeding or enforcement process in any court or tribunal may be commenced or continued without written consent of the receiver or leave of the court. *Decision No. 200/171* agreed with *Decision No. 1729/99* (December 6, 1999) that a worker's appeal is not a proceeding against the employer but an appeal from the decision of the Board. The worker's appeal does not involve payment of money by the employer but, rather, from the insurance fund.

DECISION NO.  
**2590/171**

Finally, the Tribunal is often required to resolve evidentiary disputes. An interesting example in 2017 is *Decision No. 2590/171*, 2017 ONWSIAT 2815, which considered a worker's request for release of a psychologist's raw test data. The

Board decision had placed significant weight on a psychologist's report that the worker's test performance indicated he was either not putting forth the effort or was purposely performing poorly, and met the diagnostic criteria for probable malingered neurocognitive dysfunction. Practice guidelines of the Canadian Psychological Association state that psychologists avoid releasing information that requires professional training for interpretation or analysis to persons who lack that training. When reasonable and appropriate, raw data is released with proper authorization but test materials, such as questions and stimuli, manuals and protocols, will not be released. The Tribunal denied the request for the raw data since interpretation of the results of psychological testing generally requires the assistance of an expert in neuropsychology. The raw data would be of little assistance in the absence of appropriate expert evidence; however, nothing prevented the worker from finding a psychologist trained to interpret the raw test data and asking the psychologist to obtain and interpret the data.

# APPLICATIONS FOR JUDICIAL REVIEW AND OTHER LITIGATION MATTERS



Since its creation in 1985, the Tribunal has released over 76,000 decisions and has compiled an impressive judicial review record over its 32 year history.

Both the Divisional Court and the Ontario Court of Appeal have recognized the specialized expertise of the Tribunal and the deference that Tribunal decisions deserve. The Tribunal's judicial review record is a demonstration of the Tribunal's excellence in adjudication and the outstanding work of the Tribunal's staff and adjudicators.

This Annual Report summarizes judicial review applications and other litigation matters where there has been some significant activity during 2017.

General Counsel and lawyers from the Tribunal Counsel Office represent the Tribunal in judicial review applications and other Tribunal litigation, and also co-ordinate all representation when external counsel is utilized.

## Judicial Review Applications



### **Decisions No. 1959/14, 2015 ONWSIAT 1106, and 1959/14R, 2015 ONWSIAT 2492**

A County in Ontario decided to build an overpass bridge on a highway. MI was injured when the bridge collapsed while he was operating a cement smoothing machine on it.

The County had hired BM as consulting engineers and AH as the general contractor. AH hired IB to do the concrete finishing. At the time of the accident,

MI was the vice-president of IB and his brother was the president. GBL was a subcontractor. GBL hired EF to supply falsework and formwork. EF hired McG as its own engineer.

Following the accident, MI sued AH, BM, GBL, the County and McG. MI's wife made a claim under the Family Law Act.

EF and McG brought a section 31 application on the grounds that MI could not sue because he was a worker.

At the hearing, MI argued he was not a worker, because he was either an independent operator or an executive officer.

MI and his brother LI testified. At the end of the hearing, after the witnesses had testified, MI's lawyer attempted to submit additional material. The new material was excluded.

After the hearing, MI discharged his lawyer and hired a new lawyer. MI's new lawyer and the lawyer for the section 31 applicants each made post-hearing written submissions.

After the hearing, the Vice-Chair understood that MI had conceded that he was not an independent operator, so the only issue was whether MI was a worker or an executive officer of IB. The Vice-Chair determined that, although MI was nominally an officer of the company, the substance of his role showed he was not a directing mind of IB. The Vice-



Chair concluded that MI was a worker. As a result, the action of MI and his wife was deemed to be barred.

MI made a request for reconsideration which was denied. MI argued he had not conceded he was not an independent operator, only that he was not an independent contractor. The Vice-Chair found this was a distinction without a difference. MI also submitted a number of records that had not been produced for the original hearing. The Vice-Chair reviewed the new material in the context of the reconsideration test and found MI had failed to provide substantial new evidence that had not been available at the time of the original hearing that would have likely resulted in a different decision.

MI commenced an application for judicial review which was heard on October 19, 2016, by the Divisional Court Panel of Justices Dambrot, Hambly and Mew.

In a unanimous decision dated January 10, 2017 [2017 ONSC 188], Justice Mew dismissed the application for judicial review. The Court considered whether the Tribunal's decision was reasonable and, in particular, whether the applicant had conceded the independent operator/contractor issue, whether the Tribunal was correct with respect to the onus of establishing the status of MI, and whether the Tribunal failed to consider material evidence in reaching its decision. The Court quoted large sections of the Tribunal decisions and concluded that none of the errors alleged by the applicants had been made out. The Court stated [at paras. 71, 72]:

The Tribunal's decision was grounded in and supported by the evidence adduced not only at the original hearing, but, also, upon reconsideration at the applicants' request.

Its conclusions were consistent with the WSIB's policies and with the applicable jurisprudence.

In short, the Vice-Chair's reasons disclose no legal error or misapprehension of the evidence.

At the hearing, MI also brought a motion seeking to limit the Tribunal's role at the hearing, and to strike sections of the Tribunal's factum. At the beginning of the hearing, the Court asked if the Tribunal would limit its oral submissions to matters other than the merits of the application. The Tribunal said that it would not limit its arguments, and the Court deferred the motion. When the Tribunal made its oral submissions, the applicant was given an opportunity to object to the scope of the submissions provided by the Tribunal but did not do so. The Tribunal made submissions on the merits of the application and the Court did not limit the scope of the Tribunal's standing.



**Decisions No. 1791/07, 2007  
ONWSIAT 2212, 1791/07R, 2008  
ONWSIAT 634, 1791/07R2, 2009  
ONWSIAT 2214, and a decision  
letter dated December 5, 2016**

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

The worker appealed the denial of entitlement for carpal tunnel syndrome, entitlement for a psychotraumatic disability, and the amount of the NEL award for chronic pain. The Tribunal held that the worker had no entitlement for carpal

tunnel syndrome, that he was not entitled to a psychotraumatic award, and that he was not entitled to an increase in his NEL award. The worker made a request for reconsideration which was denied in *Decision No. 1791/07R*.

The worker commenced an application for judicial review. His judicial review was adjourned while he pursued a further reconsideration. The worker's second reconsideration request was denied in *Decision No. 1791/07R2*.

The worker then proceeded with his application for judicial review. The Divisional Court unanimously dismissed the application for judicial review of *Decisions No. 1791/07, 1791/07R and 1791/07R2*, in June 2010 [2010 ONSC 3580].

Almost nine months after the Divisional Court released its decision, the worker sought leave to appeal to the Ontario Court of Appeal. The worker was out of time to seek leave and was therefore required to bring a motion for an extension of time. The worker's motions for time extension were considered by both the Ontario Court of Appeal and the Supreme Court of Canada. Ultimately, the worker's motion for leave was dismissed by Supreme Court of Canada on February 28, 2013. The worker's motion for reconsideration of this decision at the Supreme Court of Canada was not accepted for filing.

On April 27, 2016, the worker made a new request for reconsideration to the Tribunal on the basis of new medical evidence. In a letter dated December 5, 2016, the Tribunal Chair dismissed the request for reconsideration, determining that the worker had not provided significant new medical evidence. On December 20, 2016, the worker commenced an application for judicial review.

The worker's second application for judicial review was heard on April 13, 2017, by a Divisional Court Panel of Justices Nordheimer, Corbett and DiTomaso. The worker's application was dismissed [2017 ONSC 2345]. The Court recognized that the worker was attempting to re-argue the same issues which had been dealt with in earlier proceedings.

In late April 2017, the worker commenced a motion to seek leave to appeal the Divisional Court's decision to the Ontario Court of Appeal. The worker's motion was dismissed in a brief endorsement dated August 25, 2017.

The worker is now seeking leave to appeal to the Supreme Court of Canada. The worker has served and filed his leave materials and the Tribunal is in the process of preparing its response.



### **Decisions No. 2329/10, 2012 ONWSIAT 1287, 2329/10R, 2013 ONWSIAT 2690, 2329/10R2, 2015 ONWSIAT 2695, and 2329/10R3, 2016 ONWSIAT 1875**

The worker, an off-duty paramedic, was injured while assisting a person who had collapsed. The WSIB denied the worker entitlement for a right arm injury on the grounds that the worker was not in the course of employment at the time of the accident.

In *Decision No. 2329/10*, the majority of the Panel allowed the worker's appeal. The worker, while off-duty, assisted on-duty paramedics who requested his assistance. The majority of the Panel found that when the on-duty paramedics requested the worker's help, the worker became in the course of employment. The Employer Member stated in his dissent that he would have held the worker was not involved in employment at the time of the accident.



The employer's request for reconsideration was granted by a different Vice-Chair in *Decision No. 2329/10R*, on the grounds there had been a breach of procedural fairness. The Vice-Chair found the employer had not been provided with the opportunity to make submissions on the novel theory of work-relatedness that had been adopted by the majority in granting the appeal, and which had not been argued by the worker.

The same Vice-Chair re-heard the appeal. In *Decision No. 2329/10R2*, the Vice-Chair applied the relevant WSIB policy and found that the worker was in the course of employment. The Vice-Chair found the policy criterion of activity was satisfied because the worker was providing assistance in a medical emergency, which was what his job required, at the time of the injury and was not engaged in a personal activity. The place criterion was also satisfied because, like the paramedics he assisted, the location for a paramedic is never fixed.

The Vice-Chair identified that the time criterion was the most challenging aspect of the case because, although the prevailing culture was for paramedics to render assistance when off-duty, the worker was not legally required to do so. The Vice-Chair found it was significant that the worker followed the employer's policy about not using the defibrillator while off-duty, which demonstrated he was acting pursuant to the employer's direction at the time of the accident. Here, the worker's assistance to the other paramedics in the emergency medical situation provided a benefit to the employer.

The employer commenced an application for judicial review. A simultaneous WSIB request that the Tribunal clarify *Decision No. 2329/10R2* because of an alleged typographical error was denied.

The judicial review application was heard on November 22, 2017, and the Tribunal is awaiting the Divisional Court's decision.



**Decision No. 88/16, 2016  
ONWSIAT 1188**

The worker had a compensable shoulder injury in 2008. He returned to work in a modified job for five months. In May 2009, the worker was laid off for noncompensable reasons.

The WSIB determined the worker's employability had been affected by the accident, and granted the worker LOE benefits and an LMR assessment. However, the worker contacted the WSIB in June 2009 to advise that he was absent for non-compensable reasons and did not want these benefits. Accordingly, the WSIB rescinded the worker's benefits at that time.

In November 2009, the worker had surgery on his shoulder. The WSIB granted LOE benefits in September 2010, as well as LMR services. He was granted a 10% NEL award in 2011.

The employer objected to these LOE benefits and LMR services on the grounds that the worker had voluntarily resigned and therefore should not be entitled to further benefits.

The worker decided not to participate in the employer's appeal at the Tribunal. At the Tribunal hearing, the employer asked that a negative inference be drawn from the worker's non-participation. The Panel did not agree to draw such an inference as the employer did not ask to summons the worker or ask for the hearing to be adjourned.

The Panel noted that, where a worker voluntarily ceases suitable employment, the worker loses entitlement to benefits because his loss of earnings is no longer a result of the injury. However, in this case, the Panel determined that the worker had been involuntarily laid off. The Panel also found there was no suitable modified work available at the time the worker was laid

off. Accordingly, the Panel found the worker was entitled to LMR services and LOE benefits after he was laid off and after his surgery.

In August 2016, the employer commenced an application for judicial review. The employer's application was heard on June 23, 2017. In a decision released on July 26, 2017 [2017 ONSC 4537], the Divisional Court granted the application and ordered that the Tribunal's decision be quashed. The Court also provided the employer with declaratory relief, declaring that except for a short time between the worker's surgery and his recovery period, the worker was not entitled to LOE benefits or LMR services.

The Tribunal is currently seeking leave to appeal this decision at the Ontario Court of Appeal.



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

The worker had worked as a foreman with a paving company. He injured his back at work in April 2009. The worker's appeals for entitlement to NEL benefits for his low back and to LOE benefits from August 17, 2010, were denied in *Decision No. 959/13*.

The Panel found that the worker's compensable condition resolved by the time the WSIB terminated LOE benefits in 2010, as non-compensable factors were responsible for the worker's 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 WSIB's chronic pain disability or psychotraumatic disability policies.

In December 2013, the worker commenced an application for judicial review. Following discussions with worker's counsel, it was agreed that the judicial review application would not proceed until the worker had obtained a ruling from the WSIB with respect to entitlement for chronic pain disability or psychotraumatic disability.

The WSIB denied the worker's appeal on these issues, so the worker appealed to the Tribunal. A different Panel heard the appeal. In *Decision No. 2252/15*, 2016 ONWSIAT 2646, the Tribunal granted the worker entitlement for chronic pain disability benefits, the nature and duration of which are to be determined by the WSIB. Following the release of this decision, the worker abandoned the judicial review application.



#### **Decisions No. 841/16, 2016 ONWSIAT 1432, and 841/16R, 2017 ONWSIAT 3427**

The worker was a bus driver who stopped working in November 2011, due to claimed stress and depression. The worker received sick benefits until he retired in January 2012. In September 2012, the worker made a claim to the WSIB for initial entitlement for traumatic mental stress, which he related to stressful incidents which had occurred on the job.

The Panel did not accept that the worker was entitled to benefits for traumatic mental stress on the basis of occurrences of stress on a cumulative basis. The Panel found the worker's psychological condition was caused by personal life stressors, rather than workplace stress. The Panel also found that the worker did not have an acute reaction to the workplace incidents, and that the culminating event in his stress was a disciplinary action by the employer, for which the worker was not entitled to benefits for stress under the WSIA.

The worker commenced an application for judicial review in August 2016, and the Tribunal filed its



Record of Proceedings. The Tribunal and the worker were engaged in discussions about the worker's pleadings when the worker decided to request a reconsideration of *Decision No. 841/16* instead. The worker, employer and Tribunal agreed that the judicial review application would be put on hold and that the time for the worker to perfect his application would be extended until February 6, 2018.

*Decision No. 841/16R* was released on November 9, 2017. The Vice-Chair determined that the Tribunal's threshold test for granting a reconsideration request was not met.

Following the release of the reconsideration decision, the worker has advised that he intends to proceed with his application for judicial review. The Tribunal has filed a Supplementary Record of Proceedings and is now waiting for the worker to perfect his application.



**Decisions No. 224/16, 2016  
ONWSIAT 1423, and 224/16R,  
2017 ONWSIAT 1595**

In May 1991, the worker, who was 61 years old at that time, injured her back when she slipped going down some stairs. The worker's back injury was recognized as compensable and she received entitlement to benefits. Eventually, the worker was granted benefits for chronic pain disability.

In June 1993, the worker was granted a 20% NEL award with respect to her chronic pain disability, which was then increased to 25% in July 1993. The worker objected to the quantum of the NEL award and the matter was appealed to the Tribunal.

In *Decision No. 264/95* (April 27, 1995), the Panel provided the worker with two options. She could have her NEL assessment reviewed by the WSIB or the Panel could proceed with the hearing. The worker decided to return to the WSIB. After another assessment, the worker's NEL award was

increased to 35% by the WSIB in December 1995.

In 2015, the worker contacted the WSIB to ask that her NEL award that had been paid as a lump sum benefit be converted to a monthly payment retroactive to 1993 and ongoing. In 2014, the worker also asked the WSIB for a retroactive adjustment of her clothing allowance for the period from 1996 to 2006. Both of the worker's requests were denied by the WSIB and the decisions were appealed to the Tribunal.

In *Decision No. 224/16*, the worker's appeal for a retroactive adjustment of her clothing allowance between 1996 and 2006 was granted. However, her appeal for her NEL benefits to be converted to monthly payments was denied.

The worker requested reconsideration of part of *Decision No. 224/16* in June 2016. Specifically, the worker requested that the decision to deny her request to convert her NEL benefits to monthly payments be reconsidered.

In April 2017, the worker commenced an application for judicial review, seeking review of the same issue for which she was seeking reconsideration. The worker's reconsideration request was denied in *Decision No. 224/16R*.

The worker's judicial review application was heard on October 25, 2017. Prior to the hearing date, the worker initiated a second judicial review application concerning *Decision No. 224/16R*. The Tribunal filed a motion seeking that the two applications be heard together. Prior to this motion being heard, the worker withdrew the second judicial review application.

In a decision dated November 16, 2017 [2017 ONSC 6657], the Divisional Court dismissed the worker's application for judicial review. Following the release of this decision, the worker initiated a new judicial review application of *Decision No. 224/16R*. The Tribunal plans to initiate a motion to strike this judicial review application as an abuse of process in early 2018. The worker missed

the deadline to appeal the first Divisional Court decision to the Ontario Court of Appeal and filed a motion seeking a time extension in December 2017. The worker's motion was allowed and the worker now has until January 26, 2018, to file a Notice of Application for Leave to Appeal.

### Other Litigation 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, and for reimbursement of travel expenses. The WSIB's determination of the worker's future economic loss and his suitable employment or business was found to be correct.

Three days prior to the release of *Decision No. 691/05*, the worker wrote to the Tribunal alleging he had been threatened by one of the Panel members. Although the Tribunal informed the worker about the appropriate complaint procedures, no response was received from the worker for two and a half years. In September 2010, the worker made further allegations of Panel misconduct, and requested a reconsideration. The reconsideration was denied by a different Vice-Chair in *Decision No. 691/05R*, which was released in June 2013.

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 advised the worker that he had

commenced proceedings in the wrong court. 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 worker's claim contained allegations against the WSIB, but his claim also took issue with the Tribunal's decisions, alleging errors and bad faith. The worker again made allegations against one of the Panel members.

The Tribunal and the WSIB each brought a motion to dismiss the worker's action. The motion was heard on August 15, 2016. In a decision dated February 22, 2017 [2017 ONSC 1223], the worker's statement of claim was struck and leave to amend the statement of claim was denied. In reaching this conclusion, Justice Price determined that the Court did not have the jurisdiction to order some of the categories of relief sought by the worker and that further litigation of the worker's entitlements to WSIA benefits would constitute an abuse of process. Justice Price also concluded that the worker's claim disclosed no reasonable cause of action and therefore had to be struck in its entirety.

The worker initiated an appeal to the Ontario Court of Appeal of Justice Price's decision, which was heard on December 18, 2017. The Tribunal is currently awaiting the Court's decision.



#### **Action in Superior Court – Decisions No. 531/12, 2015 ONWSIAT 553, and 531/12R, 2016 ONWSIAT 3426**

In *Decision No. 531/12*, released in March 2015, the Tribunal granted most, but not all of the items for which the self-represented worker had appealed. Following the release of the decision, the worker requested reconsideration.

In December 2015, the worker commenced actions in Toronto Superior Court against the



WSIB, the Tribunal and her former employer, seeking damages of \$20,000,000, which she stated arose because of her compensable injury.

Counsel for the Tribunal and the WSIB submitted a written request to the court, asking that the Statement of Claim be dismissed pursuant to Rule 2.1 of the *Rules of Civil Procedure*. On March 10, 2016 [2016 ONSC 1752], Justice Myers ordered the actions be dismissed on the ground they could not succeed and were frivolous.

On July 28, 2016, the worker commenced a new action for damages against the Tribunal, the WSIB and her former employer, this time in Hamilton Superior Court. The Tribunal again made a written request for dismissal under Rule 2.1. On September 9, 2016 [2016 ONSC 5636], the worker's action against the WSIB, the Tribunal and the worker's former employer were dismissed by Justice Braid.

The worker has made complaints to the Ombudsman, the Canadian Judicial Council and other organizations with respect to the decisions made regarding her claims and the conduct of the numerous adjudicators that have considered her claims.

On December 14, 2016, the worker's request to reconsider *Decision No. 531/12* was denied in *Decision No. 531/12R*.

In January 2017, the worker initiated another civil action claim against the Tribunal in Hamilton Superior Court seeking damages of \$10,000,000. In January 2017, the worker also initiated an appeal in Hamilton Superior Court of the judgements of Justice Braid but did not name the Tribunal as a party. In response to the new civil claim, the Tribunal made another request pursuant to Rule 2.1. On March 27, 2017 [2017 ONSC 1888], Justice Sweeny dismissed the worker's claim pursuant to Rule 2.1 deeming it frivolous, vexatious and an abuse of process.

Following Justice Sweeny's order, the worker filed various motions with the Hamilton Superior

Court of Justice. The worker's motions were all dismissed by Justice Whitten in an order dated June 6, 2017.

The worker sought leave to appeal the decision of Justice Sweeny to the Ontario Court of Appeal. The worker's motion was dismissed on September 21, 2017, by Justices Sharpe, Rouleau and van Rensburg.

### **3 Application in Superior Court – Ontario Network of Injured Workers' Groups, Injured Workers' Consultants and Margery Wardle v. The Crown in Right of Ontario as represented by the Ministry of Labour and Ministry of the Attorney General of Ontario, Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal**

In late June 2017, the Ontario Network of Injured Workers' Groups, Injured Workers' Consultants and an individual worker initiated an application in Superior Court pursuant to Rule 14 of the *Rules of Civil Procedure*. The Crown in Right of Ontario, as well as the WSIB and the Tribunal, were named as respondents.

In the Notice of Application, the applicants seek the following:

- a) an order declaring section 13(4) and (5) (first sentence only) of the WSIA invalid and of no force and effect and, in particular, with respect to claims made to the WSIB for accidents pre-dating January 1, 2018;
- b) an order in the nature of *mandamus* against the WSIB and the Tribunal directing that any claims, requests for reconsideration or appeals must be determined on the basis that the impugned sections are of no force and effect.

The Tribunal has filed a Notice of Appearance and, at the end of 2017, was awaiting further developments with respect to the application.



#### **Application in Superior Court – Toronto Star Newspapers Ltd. v. Attorney General of Ontario and the Workplace Safety and Insurance Appeals Tribunal**

In February 2017, the Toronto Star Newspapers Ltd. initiated an application in the Ontario Superior Court seeking a declaration that the application of the *Freedom of Information and Protection of Privacy Act* to *quasi-judicial* tribunals is unconstitutional as an unjustifiable infringement on section 2(b) of the *Canadian Charter of Rights and Freedoms* and therefore of no force and effect. A list of *quasi-judicial* tribunals, including the Tribunal, was attached in a Schedule A.

The Star also sought a declaration that the “open court principle” applies to *quasi-judicial* tribunals and that proceedings are presumptively

open to the public and that, in particular, tribunal records are public in the same way as court records. Finally, the Star sought a declaration that restrictions on access to a tribunal’s adjudicative documents should only be permitted in accordance with the Dagenais/Mentuck test originating from the decisions of the Supreme Court of Canada in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and *R. v. Mentuck*, 2001 SCC 76.

In October 2017, the Tribunal was granted leave to intervene in the application as an added party. In a decision of Justice Morgan dated December 18, 2017, the Ontario Judicial Council and Justice for Children and Youth organization were granted leave to intervene as friends of the court. The Advocacy Centre for Tenants Ontario, the Workers’ Health and Safety Legal Clinic and Ontario Network of Injured Workers’ Groups were denied leave to intervene. The parties consented to several other organizations intervening as friends of the Court. The application is scheduled to be heard in the spring of 2018.



# OMBUDSMAN REVIEWS

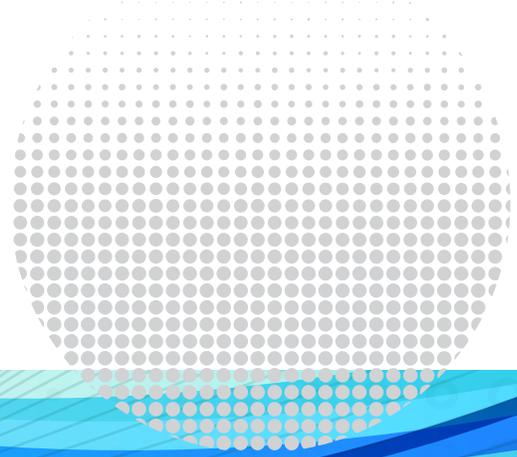
The Ombudsman's Office has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal.

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.

While the Tribunal has received a few notifications of the Ombudsman's intent to investigate in the past, it has not received any intent to investigate notifications since 2012. There were no outstanding intent to investigate files in 2017.

# 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 2017 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

### Executive Offices

The Chair, the Executive Director, the Manager, Executive Offices, and a small group of dedicated staff comprise the Executive Offices of the Appeals Tribunal.

The Chair is the Chief Executive Officer of the Tribunal and leads the organization to attain its mandate and mission in a manner consistent with its guiding principles. The Chair is responsible for the overall strategic direction and performance of the Tribunal.

The Executive Director leads, directs and manages the programs, services and day-to-day operations of the Tribunal through the development, execution and continuous improvement of program delivery strategies in support of the Tribunal's mission and within the framework of its mandate.

The Manager, Executive Offices, manages the staff in the department and co-ordinates all Department activities with a focus on supporting the OICs and ensuring that there are systems in place to facilitate an effective OIC appointment process.

The Office also responds to correspondence from parties and stakeholders, and co-ordinates all

adjudicator training activities. The Adjudication Support Group reports into the group through the Manager, Executive Offices. This group processes and releases all decisions prepared by Panels and Vice-Chairs.

2017 was a rewarding and change-oriented year at the Tribunal.

The primary focus of the Executive group was the recruitment of Order in Council (OIC) adjudicators through the mandatory process administered by the Public Appointments Secretariat. The WSIAT's merit-based recruitment process is comprised of a written test and an interview. During the year, the adjudicator complement increased to 71 Vice-Chairs (from 67) and 28 Members (from 23).

Through increasing the OIC adjudicator roster, the agency was able to increase the number of hearings heard and decisions released, which contributed to a substantial reduction in the active caseload from 8,164 to 6,035. During the year, our hearing work was focused on the oral hearing schedule, which can be seen in the case management section of this annual report in the proportion of oral (80%) and written hearings (20%) in comparison to earlier years. Reducing the caseload is the key initial step to improving

the timelines to hearing and case resolution. The median time to hearing reflects improvement in the reduction from 18.9 months recorded at the end of the first quarter to 14.3 months during the last quarter, October to December.

The WSIAT appreciates the community's commitment to accept more hearings dates during 2017 and into 2018 as work to resolve worker and employer appeals continues towards steady state.

A complementary feature of adjudicator recruitment is orientation training. Orientation training for new adjudicators is a team effort and includes both substantive and administrative components. The program is co-ordinated by staff in the Executive Offices, is primarily taught by lawyers in the office of Counsel to the Chair and is monitored and overseen by the Orientation Vice-Chair.

In addition to the work on OIC recruitment and training, substantive projects contributed to caseload reduction, notably the Early Intervention Adjudication project, which focused on reviewing cases that were waiting for substantive review by legal workers. The project focused on identifying cases that could be resolved without a full hearing process.

During 2017, the agency also considered the approach to reduce the number of reconsideration applications. Ultimately, a project was commenced in 2017 to reduce the number of cases at this stage and thereby improve the timelines. The Chair's work on this project

continues in 2018, with Counsel to the Chair and two full-time Vice-Chairs also focused on this work. It is anticipated that the reconsideration inventory will reach a steady state in late spring. This work is a precursor to considering changes to the process and the relevant practice direction.

Complementing the priority to reduce the caseload were several other initiatives.

The agency will open a satellite hearing centre in Hamilton in 2018, and much of the ground work with the Ministry of Labour was accomplished in 2017. Hamilton is the Appeals Tribunal's busiest

Two key technology projects in 2017 were video-conferencing and an electronic transfer with the WSIB.

hearing centre after Toronto. The hearing centre will be comprised of two hearing rooms, a caucus room and a waiting area. There will also be a work area for the adjudicators.

Two key technology projects in 2017 were video-conferencing and an electronic transfer with the WSIB. The agency successfully ran a pilot project on video-conferencing to explore the interest and uses of this technology. Participation in the project is voluntary. During 2018, the agency will consider next steps for this initiative. Over the course of the year, the Office of the Vice-Chair Registrar and the Information and Technology Services Department also worked with the WSIB to develop and implement an electronic transfer

of claim files and updates from the WSIB to the WSIAT. The agency looks forward to working with the WSIB to explore further avenues for this tool.

From a governance perspective, in 2017, it was notable that the *Workplace Safety and Insurance Act, 1997*, was amended to indicate that the agency can enter into contracts (section 173.1). The agency has also started work with the Ministry to renew the Memorandum of Understanding. Further, where other adjudicative agencies in the province are commission public bodies with a close operational tie to their host ministry, the WSIAT is classified as a public body pursuant to the *Public Service of Ontario Act, 2006*. As a result of this distinction, the WSIAT was required to develop an executive compensation program pursuant to the *Broader Public Sector Executive Compensation Act, 2014*.

Looking forward, the agency will be working to develop and implement a performance review program for the agency's adjudicators which will provide feedback, recognize contribution, link to training initiatives, and support the re-appointment process. There will also be a focus in 2018 on outreach across the province: we look forward to hearing from and working with the community.

### Human Resources and Administration

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 guiding principles to provide exceptional quality public service.

In 2017, key Human Resources initiatives were directed in support of reducing the active caseload, time to hearing and time to appeal resolution. The Tribunal's caseload reduction strategy called for a continued investment in adjudication and production resources. Building organizational capacity through merit-based recruitment and learning and development programs was top priority. Further, organizational efficiency has been enhanced through strategic initiatives, including the review of workflow processes, practices and procedures.

The commitment to an inclusive, accessible and healthy workplace was underscored by enhancements to the employee assistance program, accessible on-line learning and development tools, and corporate training initiatives related to Diversity, Accessibility, Workplace Discrimination and Harassment Prevention, Workplace Violence Prevention, Workplace Hazardous Materials Information System, and Occupational Health and Safety.

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 2017, the Tribunal's commitment to the protection of physical health, well-being and

security included investments in ergonomic equipment, a review and refresh of the Tribunal's EMS program, as well as facility enhancements. In addition, the Administration unit is responsible for capital projects including the construction and opening in 2018 of the Tribunal's first regional hearing centre in Hamilton, Ontario, with dedicated video-conferencing resources, to serve the second largest appeals region in the province.

### **Finance Department**

The Tribunal's Finance Department is responsible for the agency's finances and is led by the Manager, Financial Management and Controllershship. The Department provides financial, budgetary, and purchasing and procurement advice, support, and assistance to the Tribunal's senior management group, staff, and OICs. The Finance group performs all the transactional based activities to ensure that payments to vendors and OIC appointees are properly verified and paid on a timely basis. They maintain the bank accounts and request monthly reimbursement and settlements of expenditures from the WSIB. All purchasing and procurement activity for the Tribunal is managed and performed through the Finance Department. Other activities include the maintenance of the Tribunal's financial systems; the planning and development of the annual budget; the production and distribution of monthly, quarterly, and annual financial reports to senior management and the Ministry of Labour; and the planning and directing of the financial audit for the preparation and completion of the annual audited financial statements. The Department is also responsible for the design, implementation, and maintenance of appropriate internal financial controls.

### **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. Under the direction of Counsel to the Tribunal Chair, 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, Executive Director and the Executive Offices 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. The reconsideration process was a particular priority in 2017.

Another priority in 2017 was orientation training for new OIC appointees in order to support them in their role as expert decision-makers. This included updating the orientation materials for use by these OICs and in anticipation of further Order-in-Council appointments. OCC lawyers provided orientation training to 15 Vice-Chairs and seven Members appointed in 2017. In addition, follow-up orientation sessions were provided to a number of OICs appointed over the last few years. Professional development for OICs and staff continued to be important, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. 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 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 2017, the Tribunal released 4,029 decisions (final, interim and special section). This represents an increase of more than 400 decisions over 2016. Publications Counsel processed 4,089 decisions. These decisions form part of the 76,669 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 is now about seven weeks.

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](http://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 2017, Publications Counsel wrote summaries for 1,284 decisions, approximately one-third of the 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 and applications, ensure that cases are ready for hearing, monitor cases up until the hearing date and perform any post-hearing work that may be required.

The Office of the Vice-Chair Registrar operates under the guidance of the Vice-Chair Registrar and is led by the Director of Appeal Services.

### The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. In this role, the Vice-Chair Registrar provides adjudicative advice to OVCR staff and may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and the issue agenda. Requests to have a matter put to the Vice-Chair Registrar are raised with OVCR staff. The process may be oral or written and results in a written decision with reasons. The Vice-Chair Registrar also determines whether a file has been abandoned during the early stages of an appeal.

In 2017, in addition to her OVCR duties, the Vice-Chair Registrar led the Early Intervention Adjudication project. The project was a caseload reduction strategy with the goal of reviewing appeals in the legal worker wait queue to determine if they could be resolved without the need of a formal hearing. Over the course of the year, two Alternative Dispute Resolution (ADR) Assessors, with the assistance of two ADR staff, reviewed over 600 appeals. Approximately 40% of those cases were resolved without the need of an oral hearing and the project work significantly contributed to the reduction in wait times for appeals at this processing stage.

The Registrar's Office is divided into a number of areas.

## **The Alternative Dispute Resolution (ADR) Department**

ADR staff, trained in communication and conflict resolution, review all incoming Notices of Appeal to determine if they are complete and 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. After initial review, ADR staff refer appeals to the appropriate department for further processing.

Staff in the ADR Department also 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 Vice-Chair/mediator. If an agreement consistent with law and Board policy is reached, the Vice-Chair/mediator will issue a decision incorporating the terms of the executed agreement. If issues remain in dispute following ADR services, the appeal will be resolved via a hearing.

Applications for reconsideration of Tribunal decisions are also processed by ADR staff.

## **The Early Review Department**

The Early Review Department is responsible for the initial processing of all Tribunal appeals and

time extension applications. Staff review all Notices and Confirmations of Appeal to ensure that they are complete and meet legislative requirements, provide notice of appeals to respondents, obtain relevant policy and claim file material from the Board, and prepare Case Records for all appeals.

In 2017, the Early Review Department processed over 2,700 new appeals and by year-end the Department was working at steady state.

## **Vice-Chair Registrar Teams**

### *Pre-hearing Work*

All files are assigned to an OVCR senior legal worker or legal worker for substantive review to confirm the hearing format and 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. The legal workers respond to party correspondence and queries and to Vice-Chair or Panel instructions up to the hearing date. Complex files and appeals with self-represented workers are assigned to the senior legal workers.

In 2017, the legal workers reviewed and released over 5,000 cases to the Tribunal's Scheduling Department. By year end, this focused work led to a significant reduction in the wait times for appeals at this processing stage.

In an effort to further reduce wait times in the regions and the costs associated with the travel to these regions, the Tribunal also initiated a video-conferencing pilot project with the Office of the Worker Adviser in 2017. OVCR staff identified suitable cases and on consent of the parties, the hearings for those cases were conducted via video-conference. As with any technological advancement, there were some initial challenges

but, in general, video-conferencing, as an alternative to an in-person oral hearing, was well received. By year end, the legal workers were offering video-conferencing as a hearing format to any representative that had suitable cases and met the technological requirements to support it.

#### ***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 a manager in the OVCR. The manager then assigns the request to a legal worker in the OVCR or a lawyer in the Tribunal Counsel Office. The majority of requests are processed in the OVCR but those involving more complex matters are assigned to the Tribunal Counsel Office. 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

a Tribunal medical assessor or to arrange for written submissions from the parties and Tribunal lawyers.

#### **Appeal Services Department**

This Department includes staff in the Tribunal's Call Centre and Registrar Information Centre (RIC) staff. The Tribunal's call centre staff responded to almost 16,000 calls in 2017. RIC staff monitor the activity on files from the time the legal workers have reviewed them up to the hearing date. They respond to incoming correspondence, refer more complex matters to appropriate staff and finalize case materials.

#### **Support Services Department**

Support Services is comprised of the Records area, Mail Room and the Print Shop. Together, they provide operational support services, including records services and mail, courier, scanning and print services to the Tribunal and other Agencies under the Shared Services Agreement (SSA).

Records staff implement and monitor aspects of Records and Information Management (RIM) for the Tribunal and liaise with the Board to resolve issues relating to records.

A major advancement achieved in this area in 2017 was the shift to a paperless process for ordering and receiving certified claim files from the Board. The Tribunal typically orders and receives over 2,500 certified claim files from the Board annually and

has, since its inception, received these files in paper format. At the beginning of 2017, the

...by year-end all certified files were ordered and received electronically, reducing the Tribunal's environmental footprint and saving valuable staff time...

(usually medical that was not identified or made available pre-hearing), to request a report from

Tribunal continued to receive all certified files in paper format; however, in a collaborative effort with the Board, the Tribunal developed a new electronic file transfer process. The new process was rolled out in the summer and by year-end all certified files were ordered and received electronically, reducing the Tribunal's environmental footprint and saving valuable staff time, which was reallocated to address other departmental demands.

## **Tribunal Counsel Office**

The Tribunal Counsel Office (TCO) is a center of legal and medical expertise at the Tribunal. Under the direction of the General Counsel, the TCO group provides assistance with the most complex legal and/or medical appeals. The TCO group consists of TCO lawyers and the Medical Liaison Office. These two groups work closely together and are supported by administrative staff.

### **TCO Lawyers**

TCO has a small group of lawyers with significant expertise in workplace safety and insurance law and administrative law. TCO lawyers provide legal assistance for the most complex appeals at the Tribunal. These appeals are streamed to TCO from the Early Review Department and can also be assigned to TCO at the direction of a Vice-Chair or Panel.

### **Hearing Work**

When a complex appeal is received by TCO prior to a hearing, the case is assigned to a lawyer. A TCO lawyer will have carriage of the appeal throughout the entire hearing process until a final decision is released. The TCO lawyer will help resolve legal, policy and evidentiary issues that arise prior to the hearing, including providing assistance to parties with respect to procedural matters. TCO lawyers also attend hearings and

provide assistance by questioning witnesses as well as making legal and procedural submissions.

### **Post-hearing Work**

After a hearing a Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. For complex cases, a lawyer in the TCO is assigned to carry out the directions of the Vice-Chair or Panel and co-ordinates any necessary input from the parties to the appeal.

Typical post-hearing directions include obtaining important evidence found to be missing at the appeal, requesting a report from a Tribunal medical assessor, or arranging written submissions from the parties. TCO lawyers also make post-hearing written submissions with respect to legal and procedural issues that have arisen.

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 issues. Bilingual TCO lawyers are also available to assist with French language appeals.

### **Additional Appeal-related Support**

In addition to providing assistance with appeals directly, TCO lawyers also provide technical case-related advice to legal workers in the Office of the Vice-Chair Registrar.

### **Other Legal Work**

A large component of TCO lawyer work involves providing non-appeal-related advice to other departments of the Tribunal. TCO lawyers routinely assist with Tribunal contracts, security and human resources issues, training and acting as a liaison with external organizations.

#### Tribunal Litigation

The General Counsel and TCO lawyers also represent the Tribunal on applications for judicial review of Tribunal decisions and on other Tribunal-related litigation matters.

#### 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 is overseen by the Manager of MLO, Jennifer Iaboni. The MLO Manager is assisted by MLO Officers.

#### Medical Counsellors

The Medical Counsellors are a group of eminent medical specialists who serve as consultants to

the 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 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 rare occasions, a Panel or Vice-Chair may wish 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 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 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 makes the Tribunal's Medical Discussion Papers and anonymized medical reports on generic medical or scientific issues available 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's 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 the Medical Liaison Office work with 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 litigation documents, and general support duties.

### Scheduling Department

The Tribunal's Scheduling Department is led by the Manager, Scheduling Administration. 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 coordinates the hearing schedule for all appeals, oral and written, heard by the Tribunal. As well, the Department schedules video-conference hearings. The Tribunal conducts hearings in both English and French. The Tribunal schedules hearings in Hamilton, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto and Windsor. The Department uses a long-standing scheduling model that allows for consultation with parties in the setting of hearing dates. As well, the Department arranges for interpreters, regional boardrooms, service of summonses, the scheduling of pre-hearing conferences and determines the amount of time designated for a hearing and the hearing location. Pre-hearing adjournment requests are decided by the Manager, Scheduling Administration.

### 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 eLearning videos for WSIAT Adjudicators orientation and training;
- 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

procedures to ensure that information is managed in accordance with rules governing collection, use, disclosure and retention;

- 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.

### Library and Research Services

The Ontario Workplace Tribunals Library 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 collections and expertise of the staff are available to members of the public to use, when licensing permits.

In 2017, Library staff answered over 750 reference questions concerning workplace safety, workers' compensation, labour relations, union certification, pay equity matters and general legal/

legislative research. 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 WSIAT Medical Resources. Library staff also administered the transfer of Tribunal decisions to legal vendors such as CanLII and Quicklaw. In 2017, the Library expanded its information product line by digitizing over 520 new, and by adding metadata to 1,000 archived, OLRB union certificates. The full collection of 35,000 OLRB union certificates from 1962 to present is now searchable and available in the Library.

### Policy Development and Implementation

In 2017, IT security was the focus of policy work within the department. The technical team reviewed its practice requirements pertaining to IT security and created a formal IT Security Framework policy document. The Tribunal's other main information and IT policy documents (including the *Recorded Information Management Policy*, *Privacy Guidelines Policy*, *Policy Regarding Use of Information Technology* and the *OIC Computer Support Policy*) remained unaltered in 2017.

### Technology Procurements and Equipment Upgrades

In 2017, the Department completed a number of technology and infrastructure projects.

Videoconferencing was introduced early in the year and, by the end of the year, the Tribunal was conducting on average four to five hearings per month using this new method. This implementation was preceded by the acquisition of increased Internet bandwidth and web conferencing software. Also in 2017, the Tribunal updated its server and SAN (storage

area network) equipment, introduced new and improved firewalls, introduced a new network attached storage (NAS) device, introduced a new disk-based back-up and replication system, upgraded four large-scale production printers, replaced all of the workstations with upgraded units, and introduced the RSA token system as an enhanced layer of protection for remote access users.

### **Portal and Software Development**

As in prior years, the Department's software team made numerous upgrades and improvements to the Tribunal's case management software systems. Noteworthy in this regard were changes made to the systems that are used to implement the electronic transfer of the claim files between WSIB and WSIAT.

### **User Support and Technology Training**

Throughout 2017, 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 back-up 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 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 2017, through this service, the Department handled on average 610 support service requests each month. This total represented an increase of 10% as compared with the previous year. The distribution of types of support services was similar to the distribution in previous years. Sixty per cent of the support requests were for software application support. This was followed by network account management (14%), requests for equipment servicing (10%) and connection assistance (7%). Equipment bookings (5%) and topical training requests (4%) accounted for the remainder.

### **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 2017, 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.

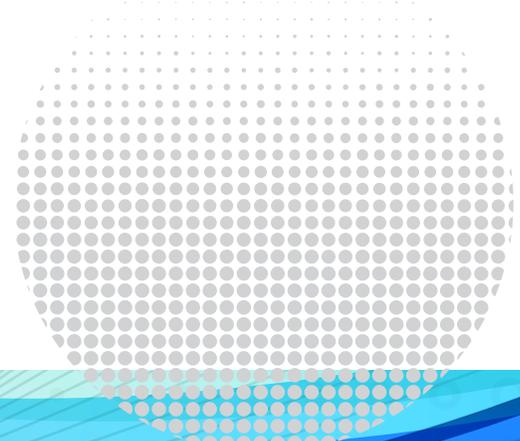
### **Production and Systems Infrastructure Planning**

In the fourth quarter, the Department participated in the development of caseload management planning for 2018. The Department developed models to forecast the production capacity dependent upon various assumptions regarding Vice-Chair, Member and decision support resources.

Also in the fourth quarter, the Department prepared its multi-year IT infrastructure plan. This plan includes budgeting and cost estimates for IT equipment and services.



# CASELOAD PROCESSING



## INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal is the final level of appeal to which workers and employers may bring disputes concerning workplace safety and insurance matters in Ontario.

At the Tribunal, appeals proceed through a two-part application process. To start an appeal and meet the time limits in the legislation, an appellant files a Notice of Appeal form (NOA). Appeals remain at this “notice” stage while preliminary information is gathered and until the appellant indicates readiness to proceed toward an appeal hearing. The appellant indicates readiness by filing the Confirmation of Appeal form (COA). Once the COA is received at the Tribunal, the appeal enters the second, or “resolution” processing stage.

### Caseload

At the end of Year 2017, there were 6,035 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 2017, these factors combined to produce a 26% overall decrease in the active inventory as compared to the 2016 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

**CHART 1: Active Cases on December 31, 2017**

**Notice Process**

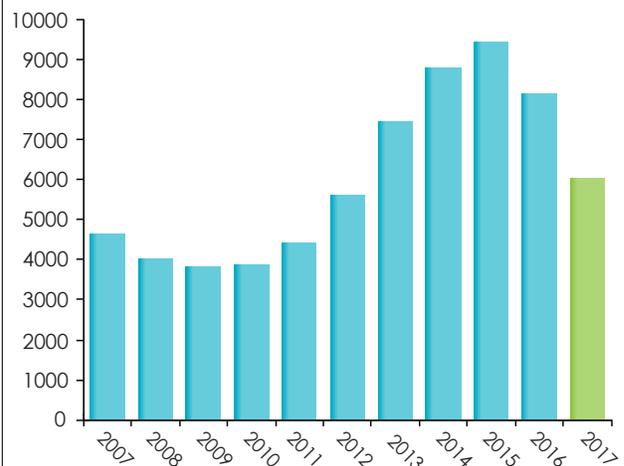
Cases active in Notice stage processing	<u>1,051</u>
	<b>1,051</b>

**Resolution Process**

Early Review stage	36
Substantive Review	875
Hearing Ready	116
Scheduling and Post-hearing	3,323
WSIAT Decision Writing	<u>634</u>

<b>Total Active Cases</b>	<b>6,035</b>
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**CHART 2: Active Caseload**





### Incoming Appeals

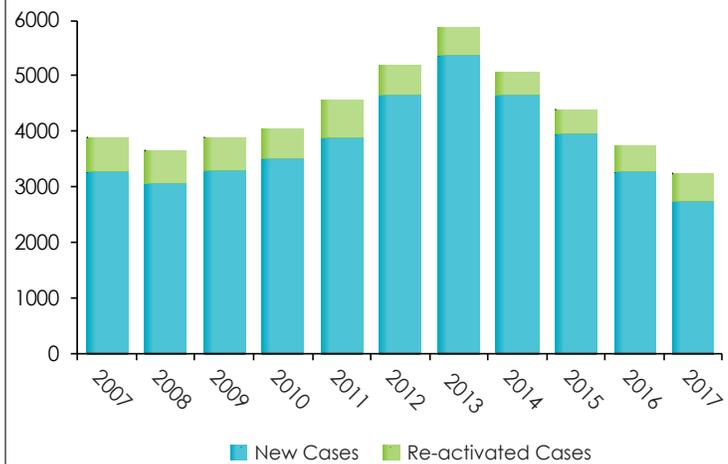
The incoming caseload trend is shown in Chart 3. In 2017, the Tribunal’s overall intake from new appeals and reactivations totaled 3,242 and this represented a total decrease of 14% as compared with the 2016 intake total.

“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 Services Division.

### 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.

**CHART 3: Incoming Appeals**



**CHART 4: Cases Disposed of in 2017**

#### Pre-hearing Dispositions

Without Tribunal Final Decisions	
Made Inactive	650
Withdrawn	959
	<b>1,609</b>

#### Hearing Dispositions

Without Tribunal Final Decisions	
Made Inactive	83
Withdrawn	10
With Final Decisions	<u>3,762</u>
	<b>3,855</b>

#### Total (Pre-hearing and Hearing)

Without Tribunal Final Decisions	1,702
With Tribunal Final Decisions	<u>3,762</u>
	<b>5,464</b>

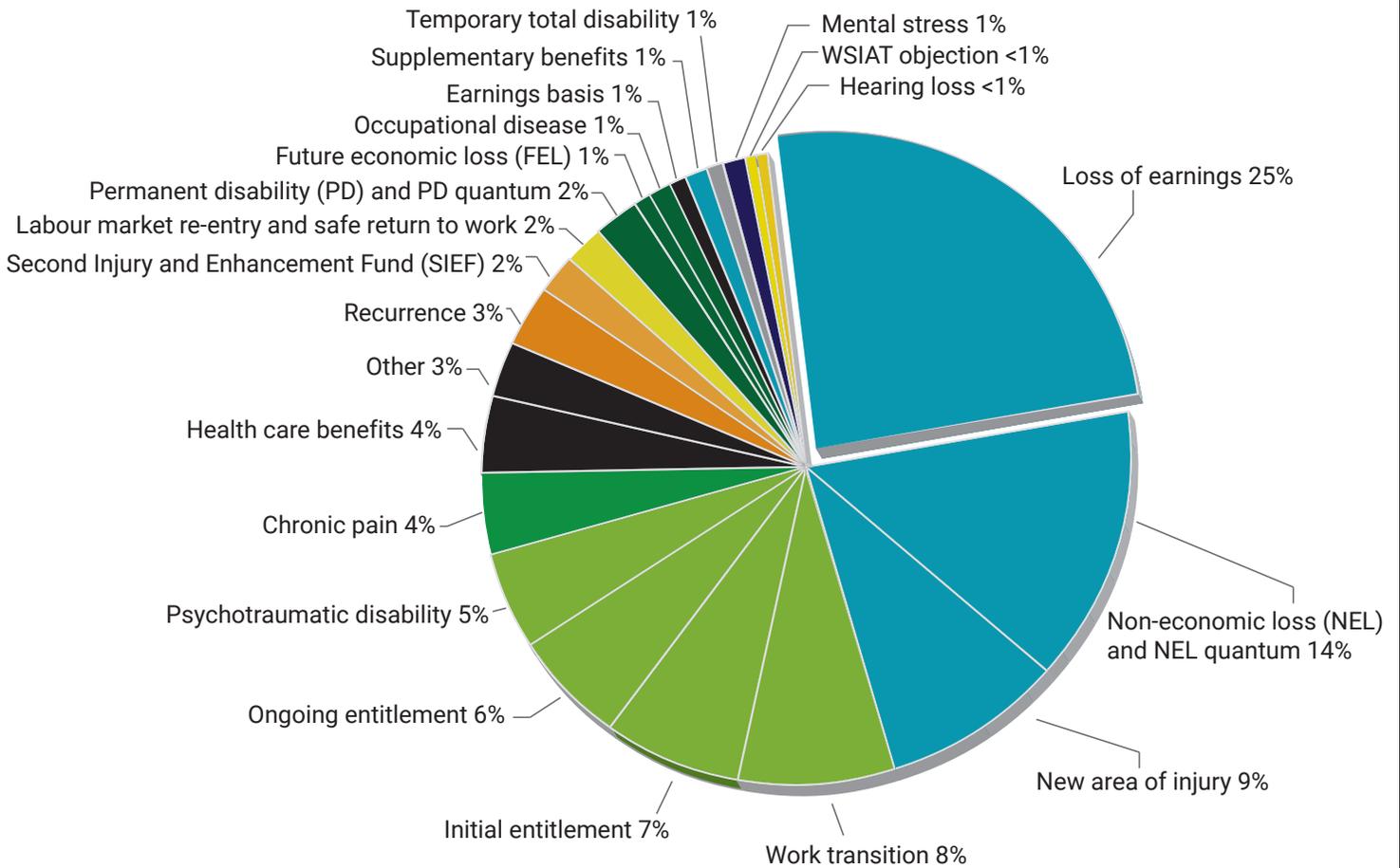
As shown in Chart 4, the Tribunal disposed of 5,464 cases in 2017. This included 1,609 “Pre-hearing” and 3,855 “Hearing” dispositions.



**Issues in the Appeals**

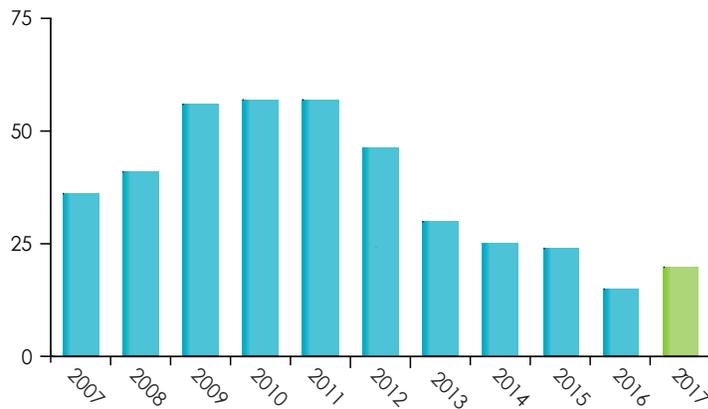
Chart 5 shows the percentage breakdown of issues among the cases disposed in 2017.

**CHART 5: Issues in the Dispositions**





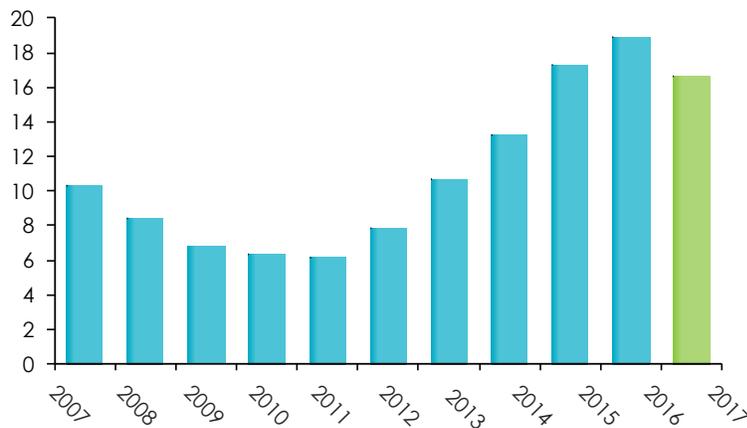
**CHART 6: Percent Disposed of Within 9 Months**



**Timeliness of Appeal Processing**

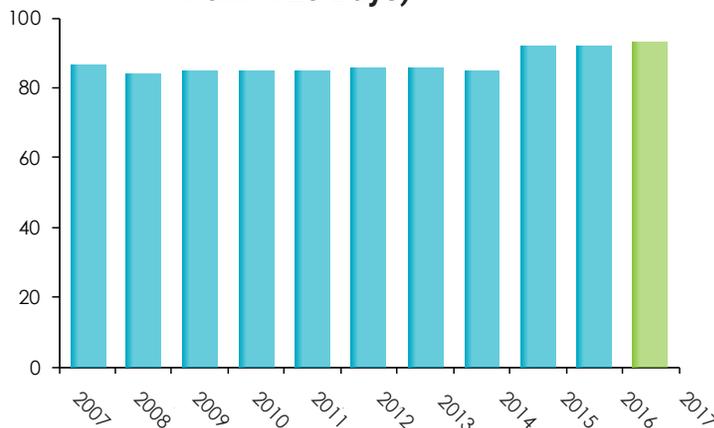
Chart 6 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2017, the percentage of cases resolved within nine months was higher than it was in 2016. (In 2017, 20% of cases were resolved within nine months, compared to 15% in 2016.)

**CHART 7: Time to First Offered Hearing (Months)**



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 shorter than it was in year 2016 (16.6 months in 2017, compared to 18.9 months in 2016).

**CHART 8: Final Decisions (Percent Released Within 120 Days)**



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 2017, this target was achieved 93% of the time.

**Hearing and Decision Activity**

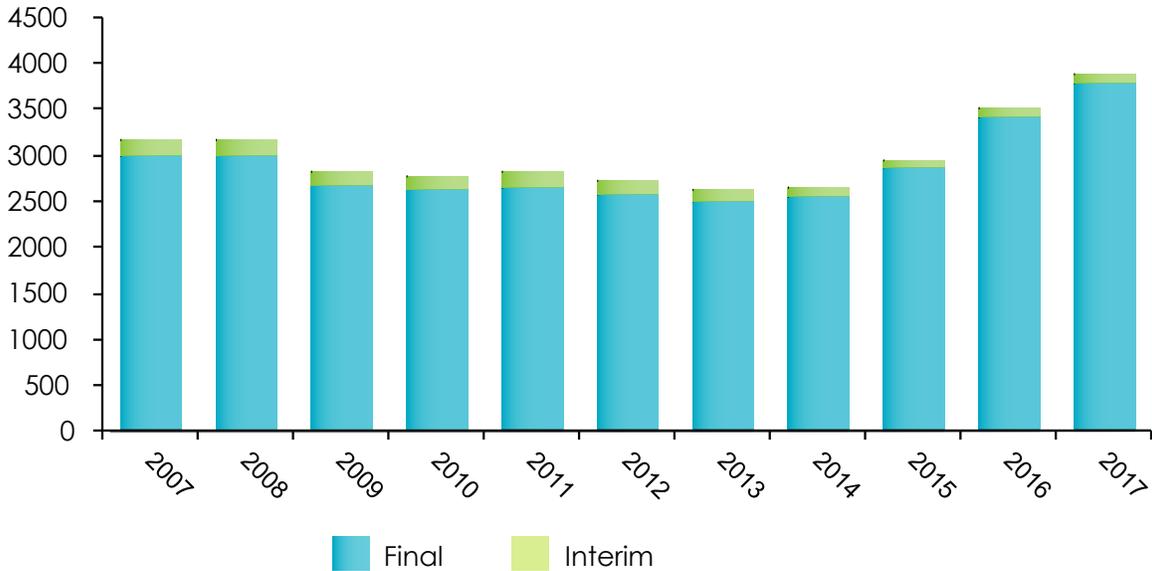
In 2017, the Tribunal conducted 4,241 hearings and issued 3,884 decisions. The Tribunal strives to achieve decision- readiness following completion of the first hearing. Some cases require post-hearing work following the first hearing, and some hearings are adjourned requiring a subsequent hearing before the same or a different Vice-Chair or Panel. Most cases require only a single



# Caseload Processing

## TRIBUNAL REPORT

### CHART 9: Decisions Trend



hearing. Chart 9 depicts the Tribunal’s hearing and decision production.

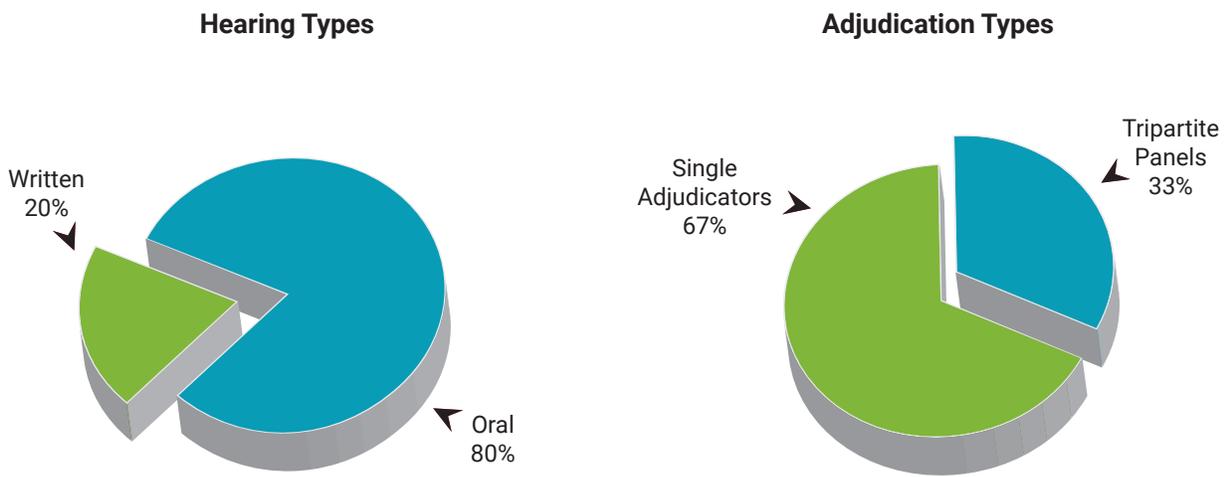
to be the most common hearing type at 80%, followed by written hearings at 20%.

### Hearing Type

In 2017, the percentage breakdown of hearing types was as follows: oral hearings continued

The breakdown between single adjudicator hearings (67%) and tripartite panel hearings (33%) was also nearly the same as it had been in 2016. Chart 10 presents these hearing characteristics.

### CHART 10: Hearing and Adjudication Types



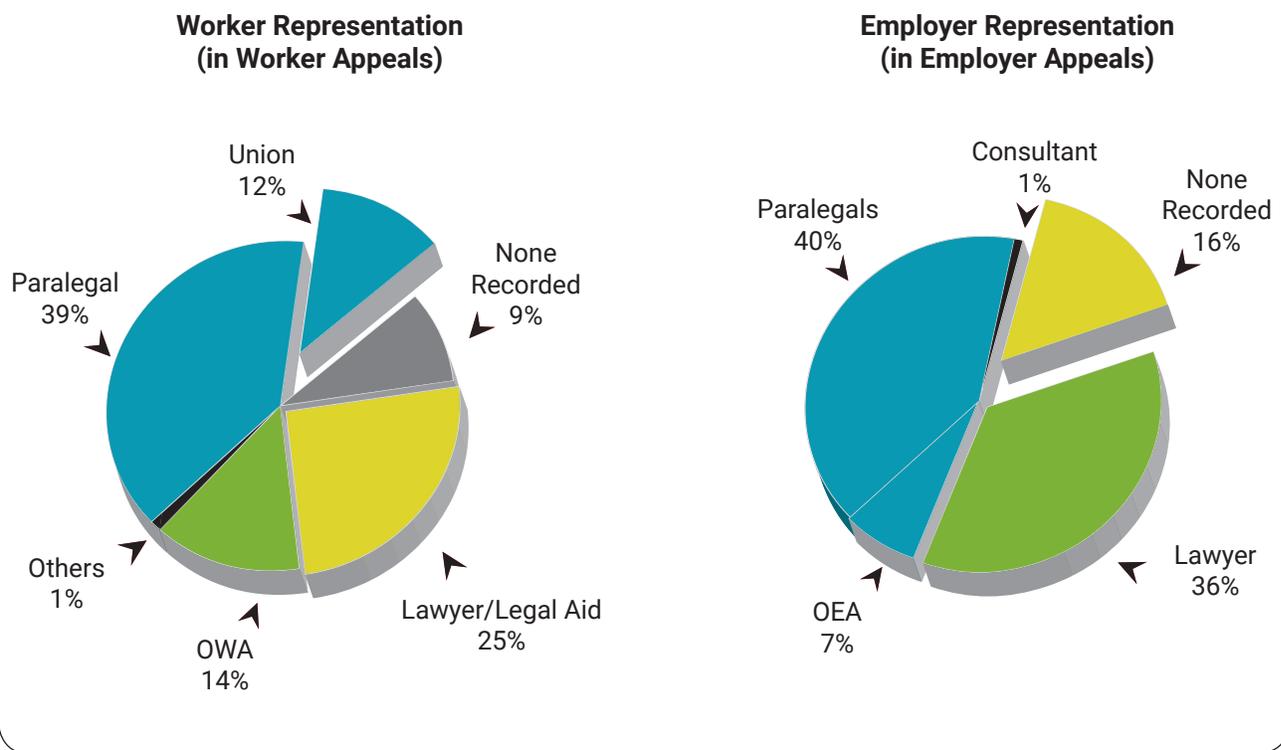


### Representation at Hearing

Tribunal statistics show that for injured workers, 39% were represented by paralegals; 25% by lawyers and legal aid; 14% by the Office of the Worker Adviser; and 12% by union representatives. The remaining percentage is allocated among various non-categorized representation, for instance, family friend,

family member or MPP office. Employers were represented before the Tribunal as follows: 40% were represented by paralegals; 36% were represented by lawyers; 7% by the Office of the Employer Adviser; 1% by consultants; and less than 1% by firm personnel. The remaining 16% are non-categorized. Chart 11 presents these characteristics.

**CHART 11: Worker and Employer Representation**



## Caseload Processing

### TRIBUNAL REPORT

#### Caseload by General Appeal Issue Type

In 2017, Entitlement-related cases constituted the majority of cases (95% to 97%). Special Section cases (Right to Sue and Access) comprised

typically small portions (3% to 5%). Charts 12 and 13 provide historical comparisons of incoming cases and cases disposed in 2017.

#### CHART 12: Incoming Cases by Appeal Type

TYPE	2014		2015		2016		2017	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	54	1.1%	75	1.7%	66	1.8%	62	1.9%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	57	1.1%	56	1.3%	55	1.5%	101	3.1%
<b>Total Special Section</b>	<b>111</b>	<b>2.2%</b>	<b>131</b>	<b>3.0%</b>	<b>121</b>	<b>3.2%</b>	<b>163</b>	<b>5.0%</b>
Preliminary (not yet specified)	3	0.1%	1	0.0%	63	1.7%	56	1.7%
Pension	0	0.0%	0	0.0%	1	0.0%	20	0.6%
N.E.L./F.E.L. *	0	0.0%	2	0.0%	34	0.9%	208	6.4%
Commutation	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Employer Assessment	290	5.7%	257	5.9%	88	2.3%	239	7.4%
Entitlement	4487	88.4%	3860	88.0%	3292	87.8%	2435	75.1%
Ext post WSIB dec deadline	173	3.4%	126	2.9%	125	3.3%	106	3.3%
Jurisdiction Time Limit	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Reinstatement	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation **	1	0.0%	0	0.0%	2	0.1%	4	0.1%
Classification	5	0.1%	0	0.0%	10	0.3%	10	0.3%
Interest NEER	0	0.0%	0	0.0%	0	0.0%	1	0.0%
<b>Total Entitlement-related</b>	<b>4960</b>	<b>97.7%</b>	<b>4248</b>	<b>96.8%</b>	<b>3615</b>	<b>96.4%</b>	<b>3079</b>	<b>95.0%</b>
<b>Jurisdiction</b>	<b>5</b>	<b>0.1%</b>	<b>9</b>	<b>0.2%</b>	<b>14</b>	<b>0.4%</b>	<b>0</b>	<b>0.0%</b>
	<b><u>5076</u></b>		<b><u>4388</u></b>		<b><u>3750</u></b>		<b><u>3242</u></b>	

**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: Dispositions By Appeal Type**

	2014		2015		2016		2017	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	48	1.3%	58	1.4%	72	1.4%	76	1.4%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	66	1.7%	63	1.5%	45	0.9%	79	1.4%
<b>Total Special Section</b>	<b>114</b>	<b>3.0%</b>	<b>121</b>	<b>2.8%</b>	<b>117</b>	<b>2.3%</b>	<b>155</b>	<b>2.8%</b>
Preliminary (not yet specified)	3	0.1%	1	0.0%	23	0.5%	16	0.3%
Pension	0	0.0%	0	0.0%	0	0.0%	0	0.0%
N.E.L./F.E.L. *	2	0.1%	3	0.1%	5	0.1%	43	0.8%
Commutation	0	0.0%	0	0.0%	2	0.0%	0	0.0%
Employer Assessment	290	7.6%	296	7.0%	298	5.9%	146	2.7%
Entitlement	3197	84.1%	3652	85.8%	4444	87.7%	4977	91.1%
Ext post WSIB dec deadline	188	4.9%	169	4.0%	162	3.2%	121	2.2%
Jurisdiction Time Limit	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Reinstatement	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation **	0	0.0%	1	0.0%	1	0.0%	1	0.0%
Classification	0	0.0%	1	0.0%	0	0.0%	4	0.1%
Interest NEER	0	0.0%	0	0.0%	0	0.0%	1	0.0%
<b>Total Entitlement-related</b>	<b>3680</b>	<b>96.8%</b>	<b>4125</b>	<b>96.9%</b>	<b>4935</b>	<b>97.4%</b>	<b>5309</b>	<b>97.2%</b>
<b>Jurisdiction</b>	<b>7</b>	<b>0.2%</b>	<b>9</b>	<b>0.2%</b>	<b>16</b>	<b>0.3%</b>	<b>0</b>	<b>0.0%</b>
	<b><u>3801</u></b>		<b><u>4255</u></b>		<b><u>5068</u></b>		<b><u>5464</u></b>	

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.

### 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.



## Caseload Processing

### TRIBUNAL REPORT

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 2017, the number of dormant cases decreased to 1,133 from 1,226 at the end of 2016 and the number of inactive cases decreased to 1,483 from 1,683. Taken as a whole, this meant that the number of not active cases decreased by 10% in 2017.

### 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 2017, 162 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	24
Reconsideration Requests Received	162
Reconsideration Requests Resolved	150
Reconsiderations Remaining	202

#### CHART 16: Judicial Reviews, Activity and Inventory Summary

Judicial Reviews at January 1st	13
Judicial Reviews Received	1
Judicial Reviews Resolved	3
Judicial Reviews Remaining	11

# FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ending December 31, 2017 (Chart 17) is shown below.

**CHART 17: Statement of Expenditures and Variances for the Year Ending December 31, 2017 (in \$000s)**

	2017	2017	VARIANCE	
	Budget	Actuals	\$	%
<b>OPERATING EXPENSES</b>				
Salaries and Wages	11,272	12,358	(1,086)	(9.6)
Employee Benefits	2,427	2,775	(348)	(14.3)
<b>OTHER DIRECT OPERATING EXPENSES</b>				
Transportation and Communication	909	943	(34)	(3.7)
Services	6,666	7,395	(729)	(10.9)
Supplies and Equipment	418	832	(414)	(99.0)
<b>Total Other Direct Operating Expenditures</b>	<b>7,993</b>	<b>9,170</b>	<b>(1,177)</b>	<b>(14.7)</b>
<b>Total – WSIAT</b>	<b>21,692</b>	<b>24,304</b>	<b>(2,611)</b>	<b>(12.0)</b>
Services – WSIB	530	532	(2)	(0.4)
Interest Revenue	(5)	(10)	5	100.0
<b>TOTAL OPERATING EXPENSES</b>	<b>22,217</b>	<b>24,825</b>	<b>(2,608)</b>	<b>(11.7)</b>
<b>ONE-TIME EXPENSES</b>				
Severance Payment	100	26	74	74.0
CRA 2010-2014 CPP & EI Re-Assessment	0	131	(131)	n/a
Active Caseload Reduction	6,370	4,646	1,724	27.1
<b>TOTAL EXPENDITURES</b>	<b>28,687</b>	<b>29,628</b>	<b>(941)</b>	<b>(3.3)</b>

The total annual remuneration for all OIC appointees included above: 9,243

**Note:**

The above 2017 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 (\$285) is comprised of the following:

**CAPITAL FUND**

Amortization	230	
Fixed Assets acquired	(615)	(385)

**OPERATING FUND**

Accrued Severance, Vacation Benefits, & HCSA	6	
Prepaid Expenses	94	101
		<u>(285)</u>

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2017. The Independent Auditor's Report is included as Appendix B.

# APPENDIX A

## VICE-CHAIRS AND MEMBERS IN 2017

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**

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#### **Chair**

Corbett, David ..... September 6, 2016

#### **Vice-Chairs**

Baker, Andrew ..... June 28, 2006  
Crystal, Melvin ..... May 3, 2000  
Dee, Garth ..... June 17, 2009  
Dimovski, Jim ..... November 19, 2014  
Kalvin, Bernard ..... October 20, 2004  
Keil, Martha ..... February 16, 1994  
McCutcheon, Rosemarie ..... October 6, 1999  
Netten, Shirley ..... June 13, 2007  
Noble, Julia ..... October 20, 2004  
Patterson, Angus ..... June 13, 2007  
Petrykowski, Luke ..... October 3, 2012  
Ryan, Sean ..... October 6, 1999  
Shime, Sandra ..... July 15, 2009  
Smith, Joanna ..... August 28, 2013

#### **Members representative of employers**

Christie, Mary ..... May 2, 2001  
Sahay, Sonya ..... November 29, 2008  
Thomson, David ..... May 18, 2017

#### **Members representative of workers**

Ferrari, Mary ..... July 15, 2005  
Hoskin, Kelly ..... June 13, 2007



**Part-time**

**Initial appointment**

**Vice-Chairs**

Allen, Paul .....	February 24, 2016
Basa, Rosemary .....	May 18, 2016
Bell, Robert .....	March 15, 2017
Bradbury, Laura .....	January 5, 2015
Burns, Beverley .....	November 28, 2016
Cappell, Barbara .....	February 24, 2016
Carlan, Nicolette .....	August 17, 2017
Cooper, Keith .....	December 16, 2009
Daniel, Helen .....	November 2, 2016
Dempsey, Colleen L. ....	November 10, 2005
Doherty, Barbara .....	June 22, 2006
Evans, Katharine .....	October 4, 2017
Frenschkowski, JoAnne ..	March 4, 2013
Gehrke, Linda .....	November 4, 2015
Goldman, Jeanette .....	June 22, 2006
Hale, Donald .....	January 15, 2016
Hoare, Rhea .....	October 26, 2016
Hodis, Sonja .....	July 15, 2009
Horne, Ronald .....	May 10, 2017
Huras, Christina .....	February 10, 2016
Iima, Katherine .....	January 5, 2015
Illion, Brian .....	July 11, 2017
Jacques, Karen .....	February 15, 2017
Jepson, Kenneth .....	December 10, 2014
Josefo, Jay .....	January 13, 1999
Kosmidis, Elizabeth .....	June 17, 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
McBey, Donald .....	June 22, 2016
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
Nemetz, Theodore .....	June 30, 2016
Noorloos, Sue .....	June 14, 2017
Onen, Zeynep .....	November 4, 2015
Peckover, Susan .....	October 20, 2004
Perryman, Natalie .....	January 5, 2015
Pollock, Bruce .....	February 15, 2017



**Part-time**

**Initial appointment**

**Vice-Chairs (continued)**

Ramsay, Christopher .....	May 18, 2016
Roberts, Catherine .....	November 28, 2016
Salisbury, Robert .....	February 2, 2017
Samaras, Constantine .....	November 1, 2017
Sand, Caroline .....	March 11, 2015
Smith, Eleanor .....	February 1, 2000
Somerville, Ann .....	October 4, 2017
Sutton, Wendy .....	May 27, 2009
Tanzola, Carissa .....	August 4, 2016
Wales, Shirley .....	February 15, 2017
Wood, Robert .....	September 30, 2015
Woodrow, Rebecca .....	June 22, 2016
Zehr, Chantelle .....	October 4, 2017

**Members representative of employers**

Blogg, John .....	November 14, 2012
Burkett, Gary .....	February 2, 2017
Davis, Bill .....	May 27, 2009
Falcone, Mena .....	October 21, 2015
Lipton, Mary .....	February 24, 2016
Ouellette, Richard .....	April 26, 2017
Phillips, Victor .....	November 15, 2006
Soden, Kristen .....	October 18, 2017
Tracey, Elaine .....	December 7, 2005
Trudeau, Marcel .....	April 16, 2008
Wheeler, Brian .....	April 19, 2000
Young, Barbara .....	February 17, 1995

**Members representative of workers**

Briggs, Richard .....	August 21, 2001
Broadbent, Dave .....	April 18, 2001
Carlino, Gerry .....	October 3, 2012
Crocker, James .....	August 1, 1991
Jackson, Faith .....	December 11, 1985
Mannella, Cosmo .....	April 5, 2017
Roth, Stephen .....	February 24, 2016
Salama, Claudine .....	October 3, 2012
Signoroni, Antonio .....	September 29, 2010
Thompson, James .....	April 5, 2017
Tzaferis, Mary .....	December 7, 2016



## VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS EFFECTIVE 2017

### Effective

Diane Besner.....	January 13, 2017
Laura Bradbury .....	January 5, 2017
Richard Briggs .....	August 22, 2017
David Broadbent.....	April 18, 2017
Gerry Carlino .....	October 3, 2017
Mary Christie.....	May 17, 2017
James Crocker .....	November 1, 2017
Melvin Crystal .....	May 3, 2017
Garth Dee .....	February 19, 2017
Colleen Dempsey.....	November 10, 2017
Mena Falcone .....	October 21, 2017
JoAnne Frenschkowski.....	March 4, 2017
Linda Gehrke.....	November 4, 2017
Jeanette Goldman.....	September 17, 2017
Katherine lima .....	January 5, 2017
Faith Jackson .....	November 1, 2017
Martha Keil.....	February 18, 2017
Elizabeth Kosmidis.....	June 17, 2017
John B. Lang.....	July 15, 2017
Victor Marafioti.....	February 18, 2017
Grant McCaffrey .....	July 22, 2017
Matthew McGarvey .....	July 22, 2017
Mary E. McKenzie.....	June 22, 2017
Shirley Netten .....	September 17, 2017 <sup>1</sup> & December 14, 2017 <sup>2</sup>
Zeynep Onen.....	November 4, 2017
Angus Patterson.....	April 1, 2017
Susan Peckover.....	October 20, 2017
Natalie Perryman.....	January 5, 2017
Victor Phillips.....	September 20, 2017
Sonya Sahay .....	April 12, 2017 <sup>3</sup>

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- 1 This 2017 reappointment was revoked by the subsequent 2017 Order In Council appointing Shirley Netten as a full-time Vice-Chair.
  - 2 The part-time Order In Council of this Vice-Chair was revoked by the same Order In Council that appointed her as a full-time Vice-Chair.
  - 3 The part-time Order In Council of this Member representative of employers was revoked by the same Order In Council that appointed her as a full-time Member.



**Vice-Chairs and Members – Reappointments (continued)**

**Effective**

Claudine Salama .....	October 3, 2017
Caroline Sand .....	March 11, 2017
Sandra Shime .....	December 14, 2017 <sup>4</sup>
Antonio Signoroni.....	January 7, 2017
Elaine Tracey.....	October 25, 2017
Robert Wood.....	September 30, 2017
Barbara Young.....	February 17, 2017

**NEW APPOINTMENTS DURING 2017**

**Effective**

Robert Bell, part-time Vice-Chair .....	March 15, 2017
Gary Burkett, part-time Member representative of employers .....	February 2, 2017
Nicolette Carlan, part-time Vice-Chair.....	August 17, 2017
Katharine Evans, part-time Vice-Chair .....	October 4, 2017
Ronald Horne, part-time Vice-Chair.....	May 10, 2017
Brian Illion, part-time Vice-Chair .....	July 11, 2017
Karen Jacques, part-time Vice-Chair .....	February 15, 2017
Cosmo Mannella, part-time Member representative of workers .....	April 5, 2017
Sue Noorloos, part-time Vice-Chair.....	June 14, 2017
Richard Ouellette, part-time Member representative of employers .....	April 26, 2017
Bruce Pollock, part-time Vice-Chair .....	February 15, 2017
Robert Salisbury, part-time Vice-Chair .....	February 2, 2017
Constantine Samaras, part-time Vice-Chair .....	November 1, 2017
Kristen Soden, part-time Member representative of employers .....	October 18, 2017
Ann Somerville, part-time Vice-Chair .....	October 4, 2017
James Thompson, part-time Member representative of workers .....	April 5, 2017
David Thomson, part-time Member representative of employers .....	May 18, 2017
Shirley Wales, part-time Vice-Chair .....	February 15, 2017
Chantelle Zehr, part-time Vice-Chair .....	October 4, 2017

The Tribunal grieves the passing of David Purdy, Member representative of employers.

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4 The part-time Order In Council of this Vice-Chair was revoked by the same Order In Council that appointed her as a full-time Vice-Chair.



## SENIOR STAFF

Susan Adams .....	Tribunal Executive Director
Michelle Alton.....	Tribunal General Counsel
David Bestvater .....	Director, Information and Technology Services
Nicole Bisson.....	Director, Appeal Services
Wesley Lee.....	Manager, Financial Planning & Controllershship
Janet Oulton .....	Manager, Scheduling Administration
Carole Prest .....	Counsel to the Chair
Lynn Telalidis .....	Director, Human Resources and Administration

## MEDICAL COUNSELLORS

Dr. Paul Cooper.....	Neurology
Dr. John Duff, Chair of Medical Counsellors .....	General Surgery
Dr. Emmanuel Persad.....	Psychiatry
Dr. Marvin Tile.....	Orthopaedic Surgery
Dr. Anthony Weinberg.....	Internal Medicine

# APPENDIX B



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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, 2017, 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, 2017, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Original signed by Deloitte

Chartered Professional Accountants  
Licensed Public Accountants  
March 1, 2018

**WORKPLACE SAFETY AND INSURANCE  
 APPEALS TRIBUNAL  
 Statement of Financial Position  
 As at December 31, 2017**

	<u>2017</u>	<u>2016</u>
<b>ASSETS</b>		
<b>CURRENT</b>		
Cash	\$ 3,220,636	\$ 2,784,444
Receivable from Workplace Safety and Insurance Board	941,116	762,639
Prepaid expenses and advances	316,226	442,353
Recoverable expenses (Note 3)	247,475	180,541
	<b>4,725,453</b>	<b>4,169,977</b>
<b>CAPITAL ASSETS (Note 4)</b>	<b>584,936</b>	<b>199,680</b>
	<b>\$ 5,310,389</b>	<b>\$ 4,369,657</b>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable and accrued liabilities	\$ 2,610,484	\$ 1,960,620
Accrued severance benefits and vacation credits	2,746,018	2,739,717
Operating advance from Workplace Safety and Insurance Board (Note 5)	1,800,000	1,800,000
	<b>7,156,502</b>	<b>6,500,337</b>
<b>FUND BALANCES</b>		
<b>OPERATING FUND (Note 6)</b>	<b>(2,431,049)</b>	<b>(2,330,360)</b>
<b>CAPITAL FUND</b>	<b>584,936</b>	<b>199,680</b>
	<b>(1,846,113)</b>	<b>(2,130,680)</b>
	<b>\$ 5,310,389</b>	<b>\$ 4,369,657</b>

APPROVED ON BEHALF OF WORKPLACE  
 SAFETY AND INSURANCE APPEALS TRIBUNAL



..... Chair

**WORKPLACE SAFETY AND INSURANCE  
 APPEALS TRIBUNAL  
 Statement of Operations  
 Year ended December 31, 2017**

	<u>2017</u>	<u>2016</u>
<b>OPERATING EXPENSES</b>		
Salaries and wages	\$ 13,527,432	\$ 12,172,593
Employee benefits (Note 7)	3,037,894	2,717,370
Transportation and communication	1,161,074	929,775
Services and supplies	10,865,183	8,339,609
Amortization	230,094	102,862
	<b>28,821,677</b>	<b>24,262,209</b>
Services - Workplace Safety and Insurance Board ("WSIB") (Note 8)	532,033	539,884
<b>TOTAL OPERATING EXPENSES</b>	<b>29,353,710</b>	<b>24,802,093</b>
<b>BANK INTEREST INCOME</b>	<b>(10,072)</b>	<b>(4,203)</b>
<b>NET OPERATING EXPENSES</b>	<b>29,343,638</b>	<b>24,797,890</b>
<b>FUNDS RECEIVED AND RECEIVABLE</b>		
FROM WSIB	(29,628,205)	(25,551,672)
<b>ANNUAL SURPLUS</b>	<b>\$ (284,567)</b>	<b>\$ (753,782)</b>

**WORKPLACE SAFETY AND INSURANCE  
 APPEALS TRIBUNAL  
 Statement of Changes in Fund Balances  
 Year ended December 31, 2017**

	<u>Capital</u>	<u>Operating</u>	<u>Total</u>
<b>BALANCE - January 1, 2016</b>	\$ 101,867	\$ (2,986,329)	\$ (2,884,462)
Additions to capital assets	200,675	-	200,675
Amortization of capital assets	(102,862)	-	(102,862)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	650,080	650,080
Prepaid expenses (Note b)	-	5,889	5,889
<b>Annual deficit</b>	<b>97,813</b>	<b>655,969</b>	<b>753,782</b>
<b>BALANCE - DECEMBER 31, 2016</b>	<b>\$ 199,680</b>	<b>\$ (2,330,360)</b>	<b>\$ (2,130,680)</b>
Additions to capital assets	615,350	-	615,350
Amortization of capital assets	(230,094)	-	(230,094)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(6,301)	(6,301)
Prepaid expenses (Note b)	-	(94,388)	(94,388)
<b>Annual Surplus</b>	<b>385,256</b>	<b>(100,689)</b>	<b>284,567</b>
<b>BALANCE - DECEMBER 31, 2017</b>	<b>\$ 584,936</b>	<b>\$ (2,431,049)</b>	<b>\$ (1,846,113)</b>

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, 2017**

	<u>2017</u>	<u>2016</u>
<b>NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES</b>		
<b>OPERATING</b>		
Funding revenue received from Workplace Safety and Insurance Board	\$ 29,449,727	\$ 25,898,501
Cash receipts for recoverable expenses	911,020	1,245,262
Bank interest received	10,072	4,203
Expenses, recoverable expenses net of amortization of \$230,094 (2016 - \$102,862)	(29,319,277)	(27,016,454)
	<b>1,051,542</b>	<b>131,512</b>
<b>CAPITAL</b>		
Acquisition of capital assets	(615,350)	(200,675)
<b>NET INCREASE (DECREASE) IN CASH</b>	<b>436,192</b>	<b>(69,163)</b>
<b>CASH, BEGINNING OF YEAR</b>	<b>2,784,444</b>	<b>2,853,607</b>
<b>CASH, END OF YEAR</b>	<b>\$ 3,220,636</b>	<b>\$ 2,784,444</b>

## **WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL**

### **Notes to the Financial Statements**

**December 31, 2017**

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#### **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.

## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL Notes to the Financial Statements December 31, 2017

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### 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 Plan (“PSPP”) and the Ontario Public Service Employees’ Union Pension Fund (“OPSEU Pension Trust”) 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 retires or voluntarily resigns is entitled to severance benefits for service accrued up to June 30, 2010. A non-union employee who retires, and is eligible for a PSPP is entitled to severance benefits for service accrued up to December 31, 2015. A non-union employee who voluntarily resigns is 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 provides an annual health care spending component for every eligible employee. Any unused amounts in the current year can be carried forward for up to one year.

**WORKPLACE SAFETY AND INSURANCE  
 APPEALS TRIBUNAL**

**Notes to the Financial Statements**

December 31, 2017

**3. RECOVERABLE EXPENSES**

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

	<u>2017</u>	<u>2016</u>
<b>Shared services</b>		
Ontario Labour Relations Board	\$ 83,156	\$ 91,080
Pay Equity Hearings Tribunal	5,620	6,117
<b>Secondments</b>		
Office of the Worker/Employer Adviser	-	11,876
<b>Others</b>		
Canada Revenue Agency HST rebate receivable	141,738	70,226
Employee amounts receivable	17,061	-
Miscellaneous	-	1,242
<b>Total</b>	<b>\$ 247,575</b>	<b>\$ 180,541</b>

**4. CAPITAL ASSETS**

			<u>2017</u>	<u>2016</u>
	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>	<u>Net Book Value</u>
Leasehold Improvements	\$ 3,414,392	\$ 3,209,532	\$ 204,860	\$ 143,568
Furniture and Equipment	725,776	579,183	146,593	42,333
Computer Equipment and Software	679,839	446,356	233,483	13,779
	<b>\$ 4,820,007</b>	<b>\$ 4,235,071</b>	<b>\$ 584,936</b>	<b>\$ 199,680</b>

**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 \$2,431,049 as of December 31, 2017 (2016 - \$2,330,360) 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.

## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL Notes to the Financial Statements December 31, 2017

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### 7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$1,119,162 (2016 - \$967,286) 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 2017 amounted to a decrease of \$57,890 (2016 – \$753,947) 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 2017 amounted to an increase in the accrual of \$52,173 (2016 - \$46,205) 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 their health benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2017 amounted to an increase of \$12,018 (2016 - \$57,662) over the prior year and is included in employee benefits in the Statement of Operations.

f) Prior year CPP & EI Contribution

In 2017, the Tribunal recovered from Canada Revenue Agency (“CRA”), an amount of \$12,524 (2016 – paid \$40,825) for CPP & EI contributions (employer and employee shares) for the years 2007-2014 for a small group of part-time Order-in-Council (“OIC”) appointees. The recovery resulted from interest rate relief on prior year payments and a refund of prior year EI premiums. The 2016 payment resulted from an assessment by CRA that determined remuneration paid to OIC is considered pensionable or insurable employment income for these years. These amounts have been 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.

## **WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL**

### **Notes to the Financial Statements**

**December 31, 2017**

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#### **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:

2018	410,620
2019	244,748
2020	204,428
2021	188,578
2022	121,213
<b>Minimum payments</b>	<b>\$ 1,169,587</b>

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:

2018	\$ 1,662,476
2019	1,705,680
2020	1,705,680
2021	1,705,680
2022 and thereafter	1,705,680
<b>Minimum operating lease payments</b>	<b>\$ 8,485,196</b>

The current lease 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 OICs for the years 2007-2014 and determined that the remuneration paid is considered pensionable or insurable employment income and issued assessments to the Tribunal for CPP & EI contributions (employer and employee shares) for these years. The Tribunal had appealed the EI ruling and the assessments were paid in 2016 (see Note 7f) to prevent further accumulation of interest. In 2017, the original CRA findings were upheld, however, the CRA did refund the employee portion of the EI contributions. The Tribunal has until April 2018 to appeal this decision to the Tax Court of Canada.

The impact to other OICs is unknown. As at December 31, 2017, 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.