

Modernizing the Workplace Safety and Insurance Board's Appeals Program



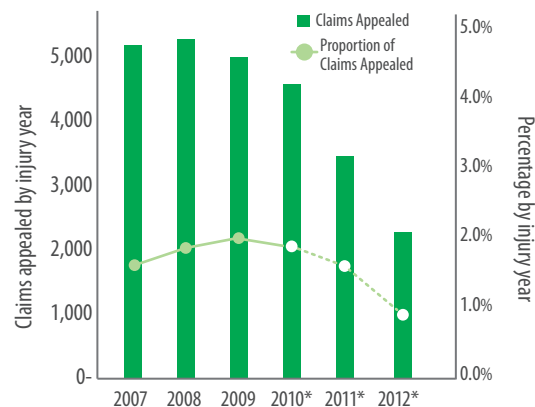
The WSIB's vision — to be the leading workplace compensation board — acknowledges the need to transform into a modern organization while continuing to build trust through fairness and integrity. We place high importance on the quality and accuracy of the over one million decisions made by our front line decision-makers each year. While only a small fraction of claims decisions are appealed, this right to appeal is an essential part of the fairness of the system.

Our recent modernization efforts demonstrated that we can improve efficiency and outcomes without sacrificing quality and integrity.

Approximately 2% of registered claims are appealed each year. The workers and employers of Ontario deserve a timely and responsive appeals program that produces quality decisions. However, over the past several years, the ability of our Appeals Services Division (ASD) to meet that standard was eroding. Systemic issues were resulting in program inefficiencies, creating a large backlog and slowing down appeal decisions. These delays were lessening confidence in the system, affecting our ability to help workers recover and return to work, and prompting concern among stakeholders. We saw that change was needed.

Our recent modernization efforts demonstrated that we can improve efficiency and outcomes without sacrificing quality and integrity. So, with these same goals in mind, we undertook a significant review of our appeals program and welcomed stakeholder engagement. We held stakeholder consultations for four months between June and October of 2012 and, based on the consultation, introduced changes designed to respond to systemic issues and ensure service excellence.

The percentage of claims appealed is holding steady



* data still maturing

While the new process has only been in effect since February 1, 2013, early indications show that we have greatly improved timeliness of service without compromising decision quality.

Purpose of an internal appeals program

The WSIB's Appeals Services Division (ASD) strives to achieve the following goals:

1. Promote and maintain timely access to the appeals process
2. Provide an independent review of operating area decisions by senior, very experienced decision-makers
3. Ensure fairness and transparency in resolving worker and employer objections
4. Provide timely, high quality final decisions
5. Guide future operational decisions where appropriate, either through a feedback loop to front-line decision makers and/or to inform policy development

Ensuring an accessible internal appeals program is critical to the fairness of the system. Workplace parties are informed of their right to appeal and given details on the process in every decision letter. Appellants (the objecting parties) have a number of options through which they can access the WSIB's appeals program. We also fund a number of services that help workplace parties through the appeals process, including the Office of the Worker Adviser, the Office of the Employer Adviser and Injured Worker Outreach Services. Government funded legal clinics also provide assistance.

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Timely decisions are a priority for the ASD, given that lengthy decision-making delays can create financial challenges for workers and employers. Resolutions permit workers to begin re-integration into the workforce and allow workplace parties to plan future steps, including pursuing their appeal to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). On

an annual basis, less than 0.5% of all registered claims are appealed to the WSIAT.

Systemic issues causing delays

In 2009, a backlog of appeals cases began to develop. By 2012, almost 20% of appeals were taking over 12 months to resolve. This played a part in the percentage of appeals resolved within six months falling from 60% in 2007 to 43% in 2012. During this period, the inventory of unassigned appeals grew to approximately 8,000 cases and created a wait time upwards of six months for assignment to an Appeals Resolution Officer (ARO).

The percentage of appeals resolved within 6 months fell from 60% in 2007 to 43% in 2012, highlighting a need for change.

We identified a number of systemic inefficiencies that were contributing to delays:

- The absence of a central repository for tracking Objection Forms created difficulties in ensuring they were properly addressed by front line decision makers
- For parties that entered the ASD program before being ready, it was often necessary to withdraw cases, allow late submissions, postpone oral hearings or wait for post oral hearing submissions
- Based on requests from appellants, some appeals that should have been resolved through written submission received oral hearings

Close to 20%, or approximately 2,000 cases, were being withdrawn annually because the case was not appeal-ready. Even in circumstances where cases were not withdrawn, AROs were spending significant time assisting the parties to make their case appeal-ready, creating a potential conflict of roles and leaving less time to focus on providing timely resolutions for those parties that were ready to proceed with their appeal.

Responding to stakeholders

Understandably, workplace parties and their representatives expressed concerns. Delays in receiving timely appeals were cited as one of the top ten complaints received by the Fair Practices Commission in 2009, 2010 and 2011.

In response, the ASD temporarily increased its staff complement from 80 to 100 AROs in 2012. However, we recognized that additional resources were not solving the systemic issues that were contributing to the inefficiencies in the program.



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Responding to concerns, and continuing our commitment to stakeholder engagement, we launched an extensive consultation in June 2012. We sought input to address the systemic inefficiencies and help us manage appeals more efficiently. As part of the consultation process, 43 submissions were received from a variety of stakeholders, including workers, employers, and their representatives. We listened to their concerns and integrated many of the suggestions into our modernized appeals process.

Modernizing the appeals program

The modernized appeals program introduced several changes centered on creating efficiencies and improving performance by imposing greater discipline in three fundamental areas.

1. The operating area: to improve the reconsideration process when new information is provided

Under the modernized appeals program, a claim being appealed on the basis of new information is now sent back to the original decision-maker in Operations for reconsideration. These cases are now resolved in a more expedited manner.

Our experience showed that many appeals were based on new information or new arguments that were received after front-line staff had rendered a decision. To address this, we created a new Objection Intake Team (OIT) that reviews appeals to ensure they are truly “appeal ready”, freeing up the AROs to review cases and render decisions.

2. The appellant/representatives: to ensure their appeals are ready to proceed

A new ‘Intent to Object’ form allows workplace parties to provide new information and bookmark their objection within the time required by the *Workplace Safety and Insurance Act* (WSIA). According to the WSIA, workplace parties have 30 days to file return to work objections and six months for all other objections to WSIB decisions.

Under the new appeals process the percentage of cases withdrawn has been reduced to 6% in 2013 from 20% in 2010.

In the past, we did not strictly enforce these provisions, which contributed to delays in the delivery of final WSIB decisions. Recognizing that timeliness is critical to a modernized appeals program, we decided to enforce the WSIA’s timelines. In exceptional circumstances only, the WSIB will continue to allow flexibility in extending this legislated time limit.

Under the modernized appeals program, the objecting party completes an Appeal Readiness Form (ARF) once they are ready to proceed. There is no time limit for the completion and return of the ARF. The ARF helps the parties gather the necessary information to proceed with their appeal and to understand the strength and weaknesses of their case. As a result, under the new appeals process the percentage of cases withdrawn has been reduced to 6% in 2013 from 20% in 2010.

3. The Appeals Services Division (ASD): to reach a decision within a reasonable timeframe

Another contributor to delays and the growing backlog was the considerable number of appeals being heard through oral hearings. We recognized that if the facts and issues of an appeal are straightforward or will be determined based on the medical information, then high-quality, timely decisions can be made based on the existing claim file and written submissions. This is referred to as a “hearing in writing”. Oral hearings are reserved for those cases that involve more complex issues or that require oral testimony. Ontario continues to be one of the only Canadian jurisdictions that allow oral hearings at two levels, the ASD and the WSIAT.



95% of the new appeals resolved in 2013 were resolved within six months.

All parties still have the opportunity to request an oral hearing and provide arguments as to why it might be warranted. The nature of the case is now assessed before assignment to an ARO to determine the most appropriate hearing method and advise the parties accordingly. The guidelines for hearings are published on the WSIB website for workplace parties to consult when considering which method of hearing to request.

These increases in efficiency and productivity have allowed the ASD to commit to new service timelines – a decision resolved by a hearing in writing now occurs within 30 days from assignment of the file to the ARO; an oral hearing occurs within 90 days from the date of notice that an oral hearing is warranted; and a decision following an oral hearing occurs within 30 days.

Performance improvements

While the modernized appeals program has only been in effect since February, 2013, a number of benefits are already being realized:

- new appeals are being resolved faster, and
- the backlog of appeal cases has now been completely eliminated.

By enhancing efficiency and temporarily increasing the number of AROs, the modernized process has improved productivity, and has led to the ASD resolving 12,528 appeals in 2013, an improvement of 7.1% over 2012. As a result, active inventory of appeal cases was reduced by almost 70%, from approximately 8,000 in 2012 to 2,500 by the end of 2013.

Workplace parties are receiving their decisions faster. After reaching a low of 43% in 2012, the percentage of appeals resolved within six months increased to 49.2% in 2013. For new appeals, 95% of the new appeals resolved in 2013 were resolved within six months.

Active inventory of appeal cases was reduced by almost 70% by the end of 2013.

With the addition of the OIT, and processes that encourage workplace parties to be adequately prepared, the percentage of appeals that are withdrawn or returned to the operating area has also improved - from 26% in 2010 to 7% for new cases in 2013. This means that AROs can now focus on appeal ready cases and provide

timely, high quality resolutions for workplace parties and their representatives that have spent the time they needed to prepare their cases.

Stakeholder engagement remains one of our key priorities and we continue to dialogue with representatives to discuss and more fully understand any remaining concerns. In addition, we will continue to monitor the effectiveness of the modernized program as it matures and as additional outcome data becomes available.

Looking ahead, we are confident that our dedication to a fair, transparent and timely adjudication process, both by front line decision makers and by the AROs, will continue to play a key role in our becoming the leading workplace compensation board.

Percent of appeals resolved within 6 months



*2013 Old - includes all streams received as of February 1, 2013

**2013 New - only cases received on or after February 1, 2013 and resolved up to January 31, 2014

Listening to our stakeholders

The WSIB understands that modernizing our appeals process impacts workers, employers and their representatives. Early feedback indicates that our stakeholders are seeing the benefits of timelier decisions. We have committed to continue monitoring our progress and identifying areas for improvement as the new process matures. Part of this commitment involved inviting workplace parties to share their thoughts following the February 2013 implementation of the new appeals program.

Through a series of stakeholder meetings, we listened and responded by integrating many suggestions, including:

- Making the Appeals Readiness Form (ARF) easier to understand and complete.
- Removing the note on downside risk from the ARF. This information will continue to be explained in the ASD's Practice and Procedures document and parties will still have the option of proceeding with, or withdrawing from, their appeal if a downside risk is identified.
- Increasing time periods for respondents to provide the Respondent Form and for additional submissions in cases where an oral hearing request is denied.
- Revisiting the oral hearing criteria and moving additional issues onto the oral hearing list, where warranted.
- Starting the appeals process over with a new decision maker in cases where there has been a significant process flaw that disadvantages either the objecting party or the respondent to such an extent that there is no other remedy that could render the process fair.

However, not all concerns raised resulted in process changes. The WSIB decided to retain some processes introduced in 2013 as we believe they are critical to the long term success of the appeals program. They include:

- Access to AROs – The WSIB considers it to be a conflict of roles to have the final decision-maker assisting in the preparation of cases and identifying approaches to making an objecting party's argument more persuasive. To ensure that decision-makers approach each case from an impartial perspective, the decision to limit access to AROs will be maintained.
- The Intent to Object (ITO) Form will continue to be made available on the WSIB's web site, but the objecting party may request a mailed copy, or assistance to complete the ITO Form by telephone. The WSIB will also continue to accept a letter of objection.

Modernizing our Appeals Program

Systemic issues were causing delays

Delays were one of the **top ten complaints** received by the Fair Practices Commission

In 2012, Appeals resolved within **6 months** reached a low of **43%**



Significant time spent on **cases** that were **not appeal ready**

PRE-MODERNIZATION

MODERNIZATION

Program Redesign

- Appellants enter process when **appeal ready**
- More **robust reconsideration process**
- Streamlined hearings process for **faster resolution** of appeals

Stakeholder Engagement

Meetings with, and submissions from, workers, employers and representatives



New Service Commitments

- Hearing in writing appeals resolved within 30 days, once assigned
- Oral hearing within 90 days of notice that hearing is warranted
- Decision following oral hearing within 30 days

Launched **February 2013**

Timelier

resolutions while maintaining **quality** decisions

Timeliness Improved

- **95%** of new appeals resolved in 2013 were **resolved** within **6 months**



RESULTS

Backlog Eliminated

- Over **12,000** cases **resolved** in 2013