L. A. Liversidge, LL.B.
Barrister & Solicitor, Professional Corporation

5000 Yonge Street, Suite 1901
Toronto, Ontario
M2N 7E9

Tel: 416-986-0064
Fax: 416-590-9601
email lal@laliversidge.com

July 17, 2025 **Our file: 305-016**

Ana Rodriguez Garcia, Tribunal Counsel Office Lawyer
Tribunal Counsel Office
Workplace Safety and Insurance Appeals Tribunal
505 University Avenue, 7th Floor
Toronto, ON M5G 2P2

Dear Ana Rodriguez Garcia:

Re: WSIAT No. 2023-0001678; CEC Intervenor Submissions

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A. Overview

1. Further to your letter of June 11, 2025, I am writing to provide submissions with respect to the above noted matter on behalf of my client, the **Construction Employers Coalition on Workplace Safety and Insurance Board Health and Safety and Prevention** (CEC). The CEC represents more than 2,000 construction firms employing approximately 80,000 workers. See the details of "Who We Are" at **Appendix A**.

B. How the CEC became an intervenor

1. In the Spring of 2024 the CEC became aware that the Workplace Safety and Insurance Appeals Tribunal (WSIAT or Appeals Tribunal or Tribunal) had chosen a leading case to address the issue of the redaction of Workplace Safety and Insurance Board (WSIB or Board) claim files. The CEC submitted a request to be granted intervenor status at the WSIAT on this matter on March 28, 2024.

2. On July 11, 2025 CEC advised the WSIAT that L.A. Liversidge (LAL) had been retained by the CEC. LAL also wrote to the WSIAT on July 11, 2024.

3. On July 18, 2024 the WSIAT wrote to advise that once the WSIAT Vice-Chair or Panel had been assigned to the matter and instructions were sought with respect to the CEC's intervenor request, we would be provided an update.

4. On November 20, 2024 we received correspondence from the WSIAT advising that the WSIAT has granted the CEC intervenor status in the "*preliminary matter concerning whether the Tribunal has jurisdiction over the Board's determination that their redaction decision was not an appealable issue as it was an "administrative decision."*

5. On June 11, 2025 the WSIAT wrote to provide the submissions of the WSIB, WSIAT Tribunal Counsel (TCO), Office of the Employer Advisor (OEA) (employer) and the WSIB decision dated August 28, 2023. The June 23, 2025 letter also advised that we now have an opportunity to make written submissions on whether "*the WSIAT has jurisdiction over the WSIB's determination that their redaction decision (under s.58 of the WSIA) was not an appealable issue as it was an "administrative decision"* within the next three weeks (July 2, 2025). An extension to July 30, 2025 was requested by LAL on June 12, 2025 and granted by the WSIAT on June 19, 2025. See **Attachment 1** for correspondence referenced.

C. An introduction to the issue under consideration and the CEC submissions

1. The preliminary issue under consideration is set out in the August 28, 2023 letter from WSIB Case Manager Klawitter (CR ADD-01, p. 6):

> When health care information about the worker is determined to be relevant to the issue in dispute, the Board notifies the worker of the intent to disclose the information, and the worker is provided with an opportunity to object. If the worker does object the Board takes that objection into account when making its decision on what to release. Following the Board's decision a party can appeal the

> release or non-release of the information to the Workplace Safety and Insurance Appeals Tribunal. ***However, employers do not have similar rights under section 58 when it comes to medical information the Board considers irrelevant.*** (emphasis added)
>
> The Board's determination under section 58 regarding document relevance is an administrative decision that is not subject to an appeal under the current legislation.

2. The scope of the CEC's intervenor involvement is as set out in the June 11, 2025 letter from Ms. Rodriguez Garcia, TCO (no CR reference):

> You will now have an opportunity to make written submissions on whether the WSIAT has jurisdiction over the WSIB's determination that their redaction decision (under s. 58 of the WSIA) was not an appealable issue as it was an "administrative decision."

3. The scope of the preliminary issue as set out by TCO in submissions of February 28, 2024 (no CR reference) is:

> Does the Tribunal have the jurisdiction to hear and decide an appeal about the WSIB's decision to withhold employer access to redacted medical information in the worker's claim file? (emphasis added)

4. We have received and considered the referenced February 28, 2024 TCO submissions, the April 12, 2024 OEA submissions and the submissions of June 5, 2025 provided by the WSIB (no CR references).

5. We will limit our submissions to the Tribunal's jurisdiction to consider the WSIAT's jurisdiction under the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A (WSIA) to the release of medical information under WSIA ss. 57, 58 and 59. As we do not consider the release of non-medical information to be an issue under active consideration in this preliminary matter, we have presented no submissions. Our silence is not to be interpreted as accepting that the Appeals Tribunal has no jurisdiction with respect to non-medical information. Should the scope of the inquiry in this leading case expand to include non-medical information, we would be pleased to provide supplemental submissions.

6. It is the submission of the CEC that the WSIAT does have the lawful jurisdiction pursuant to WSIA ss. 123(1)(a) and 123(1)(c) to consider an appeal of an employer of a decision of the WSIB resulting in the redaction and non-disclosure of medical information as an essential interlocutory matter whether or not the WSIB has considered an objection of the worker or claimant pursuant to s. 59(2).

7. More specifically, the CEC contends that while s. 59(4) confers an express and assigned jurisdiction on the WSIAT when the conditions and events set out in s. 59(1), (2) and (3) are met, and no submissions argue to the contrary, the WSIAT has jurisdiction to consider an access appeal initiated by an employer even where the Board does not propose to release access to an employer on the basis the Board considers the information to be irrelevant to the issue in dispute.

8. We will analyze in particular the Board's interpretation of the functioning of ss. 58 and 59 and demonstrate that this interpretation leads to essentially identical fact situations being afforded very different process and procedural treatment.

9. One scenario will permit an employer an appeal to the WSIAT and the other will deny appeal access, even though both scenarios address the identical substantive interlocutory consideration, the relevance of undisclosed (to the employer) information.

10. We will argue that this incongruous result flows from a statutory interpretation error on the part of the Board, and that the Board has failed to properly consider and apply the applicable principles set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 ("*Rizzo*") and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 ("*Vavilov*"), specifically, that the Board's interpretation is contrary to the purposes of, and is out of harmony with, the access provisions of the WSIA, and the overall purpose of the WSIA.

11. The CEC has considered the ably argued submissions of the TCO, OEA and WSIB and will attempt to focus only on points of disagreement or those that, in our view, warrant additional argument.

12. With respect to the TCO submissions of February 28, 2024:

    a. We disagree with para. 10. While we agree that the WSIAT acquires jurisdiction under s. 59(4) to address the release of medical information, and while the preliminary issue before the Panel is limited to the release of medical information, we contend and are prepared to argue that the Tribunal's jurisdiction is not limited to the release of medical information.

    b. We agree with paras. 11 - 18. We disagree with paras. 19 and 20. We note paras. 21 - 37. We disagree with paras. 38 – 39 that s. 59 intends to, or does, limit the jurisdiction of the Tribunal. We note paras. 40 – 55. We note paras. 56 – 58 but disagree with the terminology that s. 59 "modifies" s. 58. We will argue that the s. 59 medical access disclosure process presents an additional procedural provision essential to preserve worker privacy interests. S. 59 does not modify s. 58 – it operates in addition to s. 58. We agree with paras. 59 – 60. We note and agree with para. 61 but contend the Tribunal possesses jurisdiction by virtue of s. 123(1)(a) as well. We disagree with para. 62. We note paras. 63 – 66.

13. With respect to the OEA submissions of April 12, 2024:

    a. We agree with para. 1; note paras. 17 – 22; agree with paras. 23 – 24; note para. 25; note and agree with the para. 26 characterization of the *Decision No. 1956/01* Panel's conclusion but disagree with the Panel's conclusions that s. 59(4) limits the Tribunal's jurisdiction, and present the same comment for para. 27.

    b. We note paras. 28 – 30 and will rely on *Decision No. 1354/02* (December 19, 2002).

c. We agree with para. 31 but will argue that the statutory interpretation analysis must be guided primarily by *Rizzo* and *Vavilov* principles.

d. We note para. 32; agree with paras. 33 – 36; note paras. 37 – 39; agree with paras. 40 – 52.

14. With respect to the WSIB submissions of June 5, 2025:

a. We will address the access disclosure process triggered by ss. 58 and 59 as interpreted by the WSIB, and as set out in the submission (pp. 2 – 3) and further explained by Appendix A of the submission.

b. We will show that the Board's interpretation leads to an incongruous result and that the same basic issue, i.e., that the WSIB has determined information irrelevant and is redacted from disclosures, will in one instance receive no employer appeal rights to the Appeals Tribunal and in another will receive employer appeal rights to the Appeals Tribunal. We will argue that this is not the intention of the WSIA, is procedurally unfair and the Board's interpretation is incorrect.

c. We agree with the Board of the importance of both *Rizzo* and *Vavilov* (p. 4) but will argue that the Board did not properly apply those principles in its Tribunal jurisdiction argument (section 4, pp. 9 – 12). We rely on *Rizzo* and *Vavilov*.

d. We note the Board's Section 3 "*Review for relevancy and procedural fairness*" (pp. 7 – 9), and while interesting, the test and content of relevancy is not at issue in this matter. The focus of the inquiry is whether the Appeals Tribunal has the jurisdiction to address the question. With that noted, we will briefly address relevance and offer a guiding principle. See Section E.

e. We note the Board's assertion that (at p. 8) "*There is no principle of procedural fairness that a litigant who requests disclosure is entitled to see every document it requests, regardless of relevance* . . ." (emphasis added). It is our understanding that the employer party in the subject case is not making this request, nor are we as an intervenor. We will argue that an employer is entitled only to relevant information but an appeal right to the Tribunal is not only permitted but essential to process fairness and the fair administration of the WSIA.

D. The issue has been of long interest to the CEC

1. Employer access to relevant medical information has been under active consideration by the CEC since the Summer of 2023 (concurrent with the issuance of the subject decision of August 28, 2023, CR ADD-01, p. 6).

2. On behalf of the CEC, LAL met with senior officials of the Board on November 7, 2023, including the Chief Operating Officer and Senior Director, Appeals. LAL's notes for the meeting

are instructive and consistent with the submissions set out herein and are attached at **Attachment 2**.

3. While there are no minutes for the meeting, on January 6, 2024 a formal response via email was presented by the WSIB Vice-President, Compliance (who was not in attendance at the meeting), and is presented at **Attachment 3**. CEC disagreed then and now with the Board's interpretation and especially with the assertion that the Board's "*current process complies with our legislative duty and should be maintained*" (January 6, 2024 email, **Attachment 3**).

4. We note with interest the Board's statement in the email that "*Ultimately, guidance on procedural fairness and administrative justice is provided by judicial review if an employer chooses that path*" (emphasis added). We will address the judicial review implications of the Board's current interpretation, relying on principles presented in *Grisales v. Workplace Safety and Insurance Board*, 2023 ONSC 3846 ("*Grisales*"). We will argue that it is highly improbable that any such case would be accepted by the Divisional Court.

5. However, we present that the Board's assertion and acceptance that interlocutory matters such as employer access to medical information should proceed to the Divisional Court as a matter of routine is the antithesis of the structural intent of the review mechanisms of the Ontario WSIA and contrary to the very reasons for the establishment of the Appeals Tribunal.

E. A discussion on the role of relevance in this preliminary proceeding

1. As introduced, the WSIB submissions present interesting arguments respecting relevance (WSIB submissions, p. 7 – 9, Section 3). However, what constitutes relevance is not at issue in this matter.

2. With that noted, we disagree with the limitations placed on determining relevance by the WSIB (WSIB submission, p. 3).

3. Whether or not the Board has viewed information as: assisting in determining entitlement; providing insights; whether the information was weighed and/or assessed; was used in the Board's decision-making; was given weight by the Board; contributed in the Board's opinion to establishing facts, (considerations set out at WSIB submission p. 3), is too narrow and improperly limits the determination of relevance.

4. The fault with the Board's analysis is that it limits the determination of relevance to information that the Board itself has concluded is useful in some manner.

5. The Board blinds itself by assessing relevance only through the "*eye of the beholder*" with the Board being the determining observer.

6. Evidence does not need to be conclusive of an issue in order to be considered relevant. The fact that evidence falls short of proving or disproving a fact sought to be established is not in itself sufficient for excluding it.

7. We submit that a better analysis and discussion on the determination of relevance is found in an early decision of the Appeals Tribunal, ***Decision No. 1083/87*, 9 W.C.A.T.R. 181**, at pp. 5 – 7. Relevance is to be broadly defined. As quoted from *Wigmore in Evidence* (1983) (*Decision 1083/87*, page 6), "*The project is to determine whether a particular fact is fit to be considered, not whether it suffices for a demonstration*."

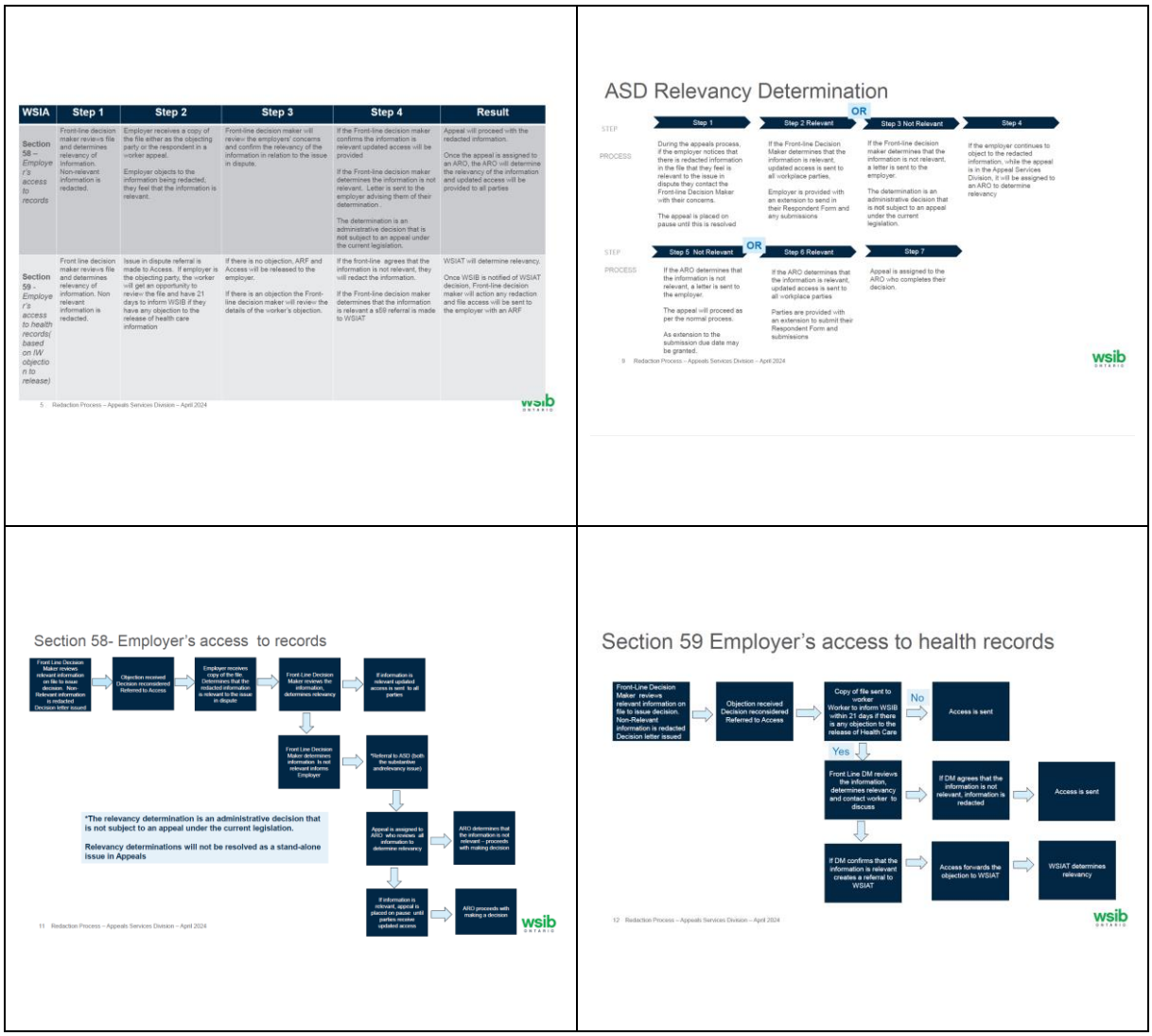
8. The Tribunal's conclusions are instructive to the general determination of relevance of medical information (at *Decision 1083/87,* page 7):

> **(vii) Our conclusions on the relevance and excision issues**
>
> In our view, in order for the employer to properly prepare for the worker's appeal, full particulars of the worker's condition and any factors which might arguably give rise to her disability need to be known. It is necessary to look at the whole person when trying to determine if any one factor (such as organic disability) is a significant contributor to the ongoing disability. In our view, the two reports of Dr. Dolan dated March 14 and July 23, 1984, are generally relevant to the issue in dispute.
>
> The next issue, then, is whether there is any need to excise certain portions of the reports as revealing personal information not relevant to the issues in dispute. We have carefully reviewed the complete versions of the reports in issue. As stated above, we find the reports are generally relevant to the issue of causation. (Indeed, the worker's representative does not argue against their general relevance.) While the portions that he suggests blocking out for the employer constitute what might be viewed as invasions of her privacy, we do not feel that they are of such minimal weight that they should not be disclosed. They all deal with periods of time relevant to her claim that her 1984 lay-off resulted from her accidents in 1973, 1981 and/or 1983. Reference should be made particularly to section 80 of the Act which obliges the WCB to afford the parties "full opportunity for a hearing."
>
> In our view, there could not be a fair hearing of the issue of causation and the possible role played by any other factors without disclosure of the full reports. The relevance of these full reports and their probative value far outweigh the possible adverse consequences to the worker of disclosure to the employer. In our view, this is material which should be disclosed.

9. We submit that relevance must be broadly construed, an idea aptly captured by an authority referenced by the *Decision 1083/87* Panel, at page 6, "*All evidence with the slightest degree of probative value should be admissible in the absence of a specific reason to exclude*."

F. WSIA ss. 58 and 59 process as described and submitted by the WSIB

1. The WSIB submissions set out the Board's interpretation of the functioning of, and process associated with, sections 58 and 59 (WSIB submissions, pp. 1 – 3, and WSIB submissions Appendix A, particularly pages 5, 9, 11 and 12).



WSIA	Step 1	Step 2	Step 3	Step 4	Result
Section 58 – *Employer's access to records*	Front-line decision maker reviews file and determines relevancy of information. Non-relevant information is redacted.	Employer receives a copy of the file either as the objecting party or the respondent in a worker appeal. Employer objects to the information being redacted, they feel that the information is relevant.	Front-line decision maker will review the employers' concerns and confirm the relevancy of the information in relation to the issue in dispute.	If the Front-line decision maker confirms the information is relevant updated access will be provided If the Front-line decision maker determines the information is not relevant. Letter is sent to the employer advising them of their determination . The determination is an administrative decision that is not subject to an appeal under the current legislation.	Appeal will proceed with the redacted information. Once the appeal is assigned to an ARO, the ARO will determine the relevancy of the information and updated access will be provided to all parties
Section 59 – *Employer's access to health records(based on IW objection to release)*	Front line decision maker reviews file and determines relevancy of information. Non relevant information is redacted.	Issue in dispute referral is made to Access. If employer is the objecting party, the worker will get an opportunity to review the file and have 21 days to inform WSIB if they have any objection to the release of health care information	If there is no objection, ARF and Access will be released to the employer. If there is an objection the Front-line decision maker will review the details of the worker's objection.	If the front-line agrees that the information is not relevant, they will redact the information. If the Front-line decision maker determines that the information is relevant a s59 referral is made to WSIAT	WSIAT will determine relevancy. Once WSIB is notified of WSIAT decision, Front-line decision maker will action any redaction and file access will be sent to the employer with an ARF

5 Redaction Process – Appeals Services Division – April 2024

wsib ONTARIO

ASD Relevancy Determination

STEP	Step 1	Step 2 Relevant	OR	Step 3 Not Relevant	Step 4
PROCESS	During the appeals process, if the employer notices that there is redacted information in the file that they feel is relevant to the issue in dispute they contact the Front-line Decision Maker with their concerns. The appeal is placed on pause until this is resolved	If the Front-line Decision Maker determines that the information is relevant, updated access is sent to all workplace parties. Employer is provided with an extension to send in their Respondent Form and any submissions		If the Front-line decision maker determines that the information is not relevant, a letter is sent to the employer. The determination is an administrative decision that is not subject to an appeal under the current legislation.	If the employer continues to object to the redacted information, while the appeal is in the Appeal Services Division, it will be assigned to an ARO to determine relevancy

STEP	Step 5 Not Relevant	OR	Step 6 Relevant	Step 7
PROCESS	If the ARO determines that the information is not relevant, a letter is sent to the employer. The appeal will proceed as per the normal process. As extension to the submission due date may be granted.		If the ARO determines that the information is relevant, updated access is sent to all workplace parties Parties are provided with an extension to submit their Respondent Form and submissions	Appeal is assigned to the ARO who completes their decision.

9 Redaction Process – Appeals Services Division – April 2024

wsib ONTARIO

Section 58- Employer's access to records

*The relevancy determination is an administrative decision that is not subject to an appeal under the current legislation.

Relevancy determinations will not be resolved as a stand-alone issue in Appeals

11 Redaction Process – Appeals Services Division – April 2024

wsib ONTARIO

Section 59 Employer's access to health records

12 Redaction Process – Appeals Services Division – April 2024

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2. To test the efficacy of the WSIB's interpretation of the processes triggered by sections 58 and 59, we present three similar fact scenarios for consideration.

3. Fact Scenario #1: WSIB initially determines subject medical information is relevant and maintains that position throughout the Board's internal decision-review processes:

   a. If the worker objects to the characterization of the medical information as relevant, the WSIB decision-maker will review the worker's objection, and if the relevancy of the information is confirmed, a referral to the Appeals Tribunal under s. 59(4) is made, with both parties enjoying standing in the Appeals Tribunal proceeding.

   b. This is settled and straight forward and no submission disagrees.

4. Fact Scenario #2: WSIB initially determines subject medical information is relevant but reverses its decision during its internal decision review process:

   a. WSIB determines subject medical information is relevant. WSIB notifies the worker (s. 59(1)).

   b. The worker objects to the Board's determination and the Board considers the worker's objection (s. 59(2)).

   c. After considering the worker's objection, the WSIB reverses its decision with respect to relevance and redacts the information previously considered relevant and notifies the parties (s. 59(3)).

   d. The employer now enjoys an express right of appeal to the Appeals Tribunal on the interlocutory question of relevance (s. 59(4)).

5. Fact Scenario #3: The WSIB decision-maker(s) hold that the subject medical information is not relevant:

   a. The WSIB permits and manages an internal review process accessible to the employer on the interlocutory question of the relevance of the redacted medical information (WSIB submissions, Appendix A).

   b. The substantive appeal is paused while the interlocutory access issue is considered (WSIB submissions, Appendix A, page 9).

   c. The front-line-decision-maker is able to reverse the decision and hold that the previously redacted medical information is relevant and ought to be released to the employer (WSIB submissions, Appendix A, page 9). In such a case, the worker may appeal the decision to the Appeals Tribunal (s. 59(4)).

   d. Should the front-line-decision-maker confirm that the information is not relevant, the employer is notified. The employer is able to raise the access relevance issue afresh at the next stage in the Board's decision process, at the Appeals Resolution Officer (ARO). The interlocutory issue of relevance is considered by the ARO (WSIB submissions, Appendix A, page 9).

   e. The ARO is empowered to reverse the front-line-decision-maker's determination and deem the information relevant, or, maintain that the information is not relevant (WSIB submissions, Appendix A, page 9).

   f. WSIB maintains that as s. 59 was not triggered by a worker objection (s. 59(2)), no s. 59(3) decision is issued and therefore no employer appeal right set out in s. 59(4) exists.

6. According then to the Board's submissions, the identical interlocutory issue, specifically that the WSIB has determined that medical information is not relevant, is afforded two very different processes with the difference driving a profound determinative effect on an employer's capacity to fairly engage in an entitlement review.

7. While in both instances (scenarios 2 and 3) the WSIB held that the information is not relevant, the only distinguishing element between scenario 2 (employer has appeal rights) and scenario 3 (employer has no appeal rights) is that the WSIB changed its mind along the way.

8. Yet, the WSIB itself, within its internal access decision-review processes, has embraced the concept of fair process and permits an employer two opportunities to cause and participate in a review of a WSIB relevance determination, once at the front-line-decision-maker and the other at the ARO level. At the very least this is WSIB institutional recognition of the importance of fair process and employer participation to address the issue of information relevance.

9. The scenario 3 result set out, i.e., no employer right of appeal to the Appeals Tribunal, offends the very fair process principles the Board itself respects in its internal review processes, and turns more on happenchance and circumstance than the substance of the issue, the determination of relevance.

G. What is the policy purpose of s. 59 – why does it exist?

1. One of the fundamental considerations of the modern principle of statutory interpretation, as explained by many decisions of the Appeals Tribunal (for example, see *Decision 1736/21* (September 15, 2023), which will be discussed more fully later), is that a statute must be interpretated *inter alia* assessing: "*What was the mischief that motivated the legislature to enact the statute or to enact this section?*"[1]

2. The mischief behind ss. 58 and 59 is, we submit, two-fold:

   a. First, it is to ensure a fair hearing, as well presented by the WSIB in its submissions (at page 9, para. 2):

> Section 58 contextually reflects the Legislature's expectation that a fair hearing will follow disclosure of relevant documents with relevance determined by an impartial decision-maker. The Act contemplates that disclosure of the Worker's information should accommodate the Worker's privacy subject to the Employer's right to fully participate in a fair hearing before the Board and Tribunal. This equilibrium is reflected in s. 58.

[1] *Decision 1736/21*, para. 34, with the Panel quoting from *Administrative Law in Canada 7th Ed*.

Decision 1956/01 (October 24, 2001) at para. 41 succinctly captures the need for employer access:

> No one disputes that natural justice and procedural fairness require that the employer receive access to all relevant file material and that they be given a chance to participate in the adjudication process.

Decision 1354/02 (December 19, 2002), at para. 26, asserts that the provision (or non-provision) of employer access does have "*great and substantial impact on the ultimate issue that is under appeal*":

> [26] When I consider the matter in context, as indeed these matters must be considered, I find this is not just an appeal of a preliminary step in the proceeding. The final decision of the Board in this matter to deny access does have, I find, great and substantive impact on the ultimate issue that is under appeal at the Board, which is the question of transfer of costs. If access were not granted, this would probably pre-determine that other pending appeal. Accordingly, for these reasons, the Tribunal clearly does have jurisdiction to determine the matter of whether access to the worker's prior claim file should be granted.

b. Second, it is to promote worker privacy considerations and provide workers with an opportunity to pursue disagreement with the Board's relevance determination before medical information is released to the employer.

3. All of the information in a worker's WSIB file is "personal" (WSIB Policy Document 21-02-01, Disclosure of Claim File Information – General (September 29, 2023), "*All claim file information is considered personal information*").

4. Clear protocols are in place designed to protect worker privacy, not the least of which are the processes managed by ss. 58 and 59. Medical or health-care information is a special category of personal information demanding more elaborate procedural protections, including strict non-disclosure rules for employers, (WSIA ss. 37(4), 59(6) and 181(3)), and the establishment of improper disclosure as an offence (s. 181(3)).

5. Clearly, the release of medical information is a higher-level concern than the release of non-medical information, likely due to the heightened sensitivity surrounding personal medical information and greater potential for harm to a worker.

6. The s. 59 process respects this consideration by providing a simple but effective process for workers to trigger a second review and associated appeal process of medical information deemed relevant by the WSIB and subject to release to the employer.

7. The primary focus of s. 59 is worker interests and rights, not employer interests or rights. More precisely, in the context of the current matter, the mischief behind the promulgation of s. 59 is not at all connected to diminishing employer interests or rights - it is to enhance worker interests and rights. The context and purpose of s. 59 surrounds worker privacy interests.

8. We submit that the Board's proposition that s. 59(2) creates an employer right of appeal that otherwise would not exist fails to take into account and fails to assess the context and purpose of s. 59. We submit that the Board's interpretation represents the precise type of "reverse-engineering" addressed in *Vavilov* (at page 743, para. 121):

> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

H. Why does this issue present itself now?

1. Employers have been permitted to receive access to information relevant to an issue in dispute since 1982 as a matter of Board policy, even before this right was enshrined in the Act.[2] An employer's statutory right to receive relevant information pertaining to an issue in dispute was first introduced in the *Workers' Compensation Amendment Act*, 1984 (No. 2), S.O. 1984 c. 58 (Bill 101), when (the then numbered) s. 77 was introduced. The content of s. 77 survived intact but was numbered s. 71 in the *Workers' Compensation Act*, R.S.O. 1990, c. W. 11 (Pre-1998 Act). Under the current WSIA in effect since 1998, access is managed through ss. 57, 58 and 59.

2. It appears as if the Board's current interpretation as set out in the Board's submissions, specifically, that an employer has no right of appeal to the Appeals Tribunal on the question of relevance of medical information absent a s. 59(2) triggering worker objection and the Board rendering a s. 59(3) decision, is first (rather obliquely) presented in *Decision 1956/01*, at para. 23, in a letter of July 24, 2001 from WSIB legal counsel and more clearly in *Decision 1354/02* in a string of letters from WSIB legal counsel February 25, March 8 and April 4, 2002 (*Decision 1354/02*, para. 8).

3. Based on the excerpts provided by the *Decision 1354/02* Panel, at para. 11, it was not until the Board counsel's letter of April 4, 2002 that the Board's position was clearly espoused:

> [11] In his April 4, 2002 submissions, Mr. Brar expands upon his comments pertaining to Section 58 and 59 of the Workplace Safety and Insurance Act in part as follows:
>
> …
>
> Subsection 58(1) of the Act is the enabling provision allowing an employer to have access to records in the worker's claim file.
>
> …
>
> [After reviewing what the Section says]

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[2] See the reference to Workers' Compensation Board (WCB), Board Minute #7, November 9, 1982, page 4988 as referred to in WCB Discussion Paper, "Appeal of Access Decisions under Section 71(6)", Admin. Minute #2, June 17, 1992, Page 149, at page 2, Section 2, "Current Board Policy and Practice" (hereinafter "Discussion Paper"). The WSIB submissions at page 11, footnote 19, makes reference to W.C.A.T. *Decision No. 711/92* (December 18, 1992) which in turn refers to the 1992 Discussion Paper. We secured a copy of the Discussion Paper from the WSIB reference library and attach it at **Attachment 4**.

> If such access has been granted and there exists health records that are relevant to an issue in dispute, the Board must abide by the requirements of Section 59. If, however, access under Section 58 has been denied on the ground that there is no information relevant to an issue in dispute, Section 59 cannot be relied upon to obtain access to health records. Section 59 becomes operative only after a determination under Section 58 has been made as to the relevance of information in a claim file to an issue in dispute. The test for relevance under Section 58 must be satisfied before determining access under Section 59. In the above-noted case, access to the workers' prior claim file was denied as there was no information relevant to the issue in dispute. The test under Section 58 was not satisfied and Section 59 therefore has no application. The Board continues to take the position that the Appeals Tribunal does not have jurisdiction to hear this appeal. The Appeals Tribunal only has jurisdiction over those matters conferred by the Act. The Tribunal does not have jurisdiction over matters concerning an employer's right of access to information contained in a worker's claim file except as specifically conferred in Section 59. **The Tribunal does not therefore have jurisdiction in claims where the Board denies access to information under Section 58 of the Act because the test of relevance has not been met. The Tribunal has limited jurisdiction over matters dealing with an employer's access to health records in a worker's claim file as set out in Section 59 of the Act. However, this limited jurisdiction can only be exercised after a decision to grant access under Section 58 is made by the Board.** If a decision maker grants access under Section 58 and there are health records that are relevant to an issue in dispute to be disclosed, the Appeals Tribunal would have jurisdiction if a worker, claimant or employer appealed the Board's decision to disclose or withhold disclosure. This is not the case in the present appeal. (emphasis added)
>
> …

4. The *Decision 1354/02* Panel restated the Board's position at para. 17:

> [17] Mr. Brar discussed sections 57-59 of the Act in his April 4, 2002 submission. In essence, the position of the Board is that, before any right of appeal arises under section 59, the test for relevance under section 58 must first be satisfied. Put another way, "but for" a finding by the Board that the test for relevance is satisfied, there is no appeal right. There can also be no appeal from the Board's determination of whether the test for relevance is satisfied. Mr. Brar noted that the adjudicator did not find the test for relevance satisfied, with the result that section 59 has no application.

5. The *Decision 1354/02* Panel dismissed the Board's analysis at paras. 19 – 26 (the *Decision 1354/02* Panel's decision and analysis will be addressed more fully later):

> [19] To assert that, because of this disputed determination by the adjudicator, the substantive appeal right provided for in section 59(4) does not arise, is a circular argument. If I accepted this position, I would be adding a new hurdle, or new requirement, to the legislated appeal right provided for in section 59(4) of the Act.
>
> [20] Section 59(4) of the Act states as follows:
>
> > 59(4) The worker, claimant or employer may appeal the Board's decision to the Appeals Tribunal and shall do so within 21 days after the Board gives notice of its decision.
>
> [21] Clearly, the "Board's decision" in this matter was a decision to deny access. That is the decision appealed to the Tribunal. Accordingly, when interpreting the relevant section, I take a broad and purposeful approach, considering the context of the matter.
>
> [22] In Mr. Brar's March 8, 2002 submission, he notes that the Adjudicator determined "there was nothing relevant to the issue in dispute, namely SIEF relief, in [the prior claim file]". But, again, is not that the very determination that is at the heart of the issue?

> [23] After all, while the Adjudicator might not believe that the prior claim file has any bearing on the transfer of costs matter, clearly the employer believes that it might. That is the decision and it is thus on this very question that issue has been joined, and the employer accordingly has its right to be heard on this subject. They may be right, they may be wrong, but they deserve the opportunity to be able to appeal that issue and, if successful, use the prior file to support their position, should they wish to do so.
>
> [24] Specifically, given the Adjudicator's determination that "one of the areas of injury is the same, the low back" in both the current and prior claim files of the worker, it is understandable why the employer wishes to pursue this matter. It does not strike me as a frivolous argument that the employer wishes to make.
>
> [25] As that sub-section does provide that an employer has appeal rights, the Board can not circumscribe such rights by a self-limiting sub-process therein that only it can determine, with no right of appeal from its' determination of any such sub or preliminary issue. Reading the sections of the Act in this way, or adding the "but for" test, would allow the Board to preclude the statutory right of appeal on the actual issue in dispute. Rather, the legislative intent, when considering section 59, must be to allow such disputed or "live" issues arising from a Board decision, with real, substantive impact, to be pursued to the Tribunal for final determination.
>
> [26] When I consider the matter in context, as indeed these matters must be considered, I find this is not just an appeal of a preliminary step in the proceeding. The final decision of the Board in this matter to deny access does have, I find, great and substantive impact on the ultimate issue that is under appeal at the Board, which is the question of transfer of costs. If access were not granted, this would probably pre-determine that other pending appeal. Accordingly, for these reasons, the Tribunal clearly does have jurisdiction to determine the matter of whether access to the worker's prior claim file should be granted.

6. It does not appear that there was a reconsideration sought or any judicial review application sought by the Board in the ensuing twenty plus years since the release of *Decision 1354/02*. During that period, employer appeals of the precise character and circumstance of the instant case routinely proceeded to, and were decided by, the Appeals Tribunal.

7. While the precise date is difficult to discern, a change in WSIB practice with respect to its relevance determinations in access disclosure cases began to be noticed by the employer stakeholder community in the early 2020s. See Attachment 2, LAL Notes, paras. F-1 and F-2:

> **F. Why did the WSIB change its approach to providing employer access?**
>
> 1. That it did is undeniable. The May 3, 2021 WSIB letter to LAL was disingenuous in this respect. It is clear that the Board *did* change and has recently stepped up implementing that change.
> 2. *Why did the Board change its practice?* There is only one reasonable explanation consistent with the preponderance of information available – the Board acceded to external outreach from segments of the stakeholder community, and adjusted its process unilaterally, itself an affront to consultation conventions. This should have been addressed in a public forum. It must now.

8. While the speculative but rationally inferred assertion was advanced in that Attachment 2 note that the "*Board acceded to external outreach from segments of the stakeholder community and adjusted its process unilaterally . . .*", this assertion was rejected by the WSIB Vice-President, Compliance in an email to LAL on January 6, 2024 (Attachment 3):

> Good afternoon, Les. The notes and tabs provided to our COO Gavin Pokan on Redaction were forwarded to me for review and response.

> I requested the opportunity to respond to you directly on this issue, as I am responsible for both Corporate Compliance and the Privacy & FOI Office. The Corporate Compliance Branch review of compliance with sections 57-59 the Workplace Safety & Insurance Act and related Operational Policy, reported quarterly as a compliance issue to Governance Committee starting in 2020 and thereafter, noted a "lack of consistent and accurate relevancy reviews prior to a release of claim information". This was supported by the Privacy and FOI office, where a privacy breach occurred each time erroneous information (another worker's mis-filed claim information) had been improperly released. Contrary to your assertion in section F of your notes, the driver for ensuring consistent relevancy redaction as required by s.58 of the Act was compliance, led by the guidance provided by our Compliance Division.
>
> When an employer challenges a WSIB decision to redact irrelevant information when providing access on an issue in dispute, we have updated our response to indicate that the redacted information "does not contribute to the establishment of facts in the claim matter nor was it used to establish entitlement". We disagree that any additional "reasons" are required. A WSIB decision under s. 58 is final and not subject to an employer appeal, pursuant to WSIA.
>
> While we appreciate your submissions with respect to procedural fairness, our current process complies with our legislative duty and should be maintained.
>
> Ultimately, guidance on procedural fairness and administrative justice is provided by judicial review if an employer chooses that path. As a customer service to employers who believe we are not acting fairly, we are prepared to obtain additional advice on our process in following s. 58 of WSIA. We will then consider the issue further and, should changes result, our stakeholders will be duly advised.
>
> Thanks
>
> Mike
>
> Mike Johnston
> Vice-President, Compliance

9. The Board's explanation was that this issue arose from the WSIB Corporate Compliance Branch review of compliance with ss. 57 – 59 and the finding of a "*lack of consistent and accurate relevancy reviews prior to a release of claim information.*"

10. Respectfully, in reply, a more cogent and internally consistent response would be enhanced training and staff development to better understand and apply the content of "relevancy." To reformat and adjust the administration of the access provisions so as to deny employer appeal rights is an institutional response out of harmony with the problem as identified, especially since this new protocol was not practiced by the WSIB (and WCB) from the time access provisions were first codified in 1985 (pre-1998 Act) and restated in 1998 (WSIA).

11. That undefined and undisclosed stakeholder feedback was the catalyst to the Board's practice change is supported by the Appendix A attachment to the Board's June 5, 2025 submissions (Appendix A, page 4):

> **Overview**
>
> **Recently through stakeholder feedback** it has become apparent that clarity is required on the redaction process as well as practices related to Section 58. (emphasis added)

12. As the Board's access practices and procedures were consistently in place since at least 1985 and continued to at least 2020, a period of 35 years, with no significant intervening statutory adjustments, no judicial interventions, and no conflicting interpretations presented by the Appeals

Tribunal, the WSIB's statutory interpretation support for its change in practice very closely, if not absolutely, assumes the characteristics of "reverse engineering" as addressed in *Vavilov* (at para. 121), "*The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome*."

13. We submit that the WSIB not only "reverse-engineered" as understood in *Vavilov,* the WSIB crafted a legal remedy to what was, at best, effectively a quality control problem of a "*lack of consistent and accurate relevancy reviews prior to a release of claim information*" (Attachment 3, January 6, 2024 email).

14. *Vavilov* offers some guidance to administrative bodies that fits precisely with the Board's problem as identified in the January 6, 2024 email (*Vavilov*, page 748, para. 130):

> [130] Fortunately, administrative bodies generally have a range of resources at their disposal to address these types of concerns. Access to past reasons and summaries of past reasons enables multiple individual decision makers within a single organization (such as administrative tribunal members) to learn from each other's work, and contributes to a harmonized decision-making culture. Institutions also routinely rely on standards, policy directives and internal legal opinions to encourage greater uniformity and guide the work of frontline decision makers. This Court has also held that plenary meetings of a tribunal's members can be an effective tool to "foster coherence" and "avoid . . . conflicting results": IWA v. Consolidated-Bathurst Packaging Ltd., [1990] 1 S.C.R. 282, at pp. 324-28. Where disagreement arises within an administrative body about how to appropriately resolve a given issue, that institution may also develop strategies to address that divergence internally and on its own initiative. Of course, consistency can also be encouraged through less formal methods, such as the development of training materials, checklists and templates for the purpose of streamlining and strengthening institutional best practices, provided that these methods do not operate to fetter decision making.

15. The Board did not put its mind to justifying the drastic change in statutory interpretation in place for decades, an interpretation unchallenged judicially or by the Appeals Tribunal. The burden to do so, we submit, rests with the Board.

16. While decisions of the Appeals Tribunal are governed by the standard of correctness, helpful guidance is presented in *Vavilov* (at para. 131):

> [131] Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker does depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable. In this sense, the legitimate expectations of the parties help to determine both whether reasons are required and what those reasons must explain: *Baker*, at para. 26. We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.

17. Whether the Board has solved a management quality control problem (the January 6, 2024 email thesis, Attachment 3) or a "stakeholder feedback" problem (WSIB submissions, Appendix A,

page 4; LAL Notes Attachment 2, page 10, para. F-2), we submit that the statutory interpretation change is driven by "reverse-engineering" considerations as expressed in *Vavilov*.

I. The Board's interpretation creates systemic procedural unfairness for employers

1. The Board's interpretation, should it prevail, results in the effective denial of procedural fairness for employers. An employer's right to access relevant medical information is fundamental and in the context of procedural fairness is akin to providing adequate notice.

2. The denial of the right to contest WSIB relevancy determinations to the Appeals Tribunal deprives an employer of an opportunity to effectively participate. While dealing with the issue of effective notice, *Decision 272/08R* (July 10, 2012) held that depriving a party of the opportunity to participate is "*a breach of a basic principle of procedural fairness . . .*" (at para. 23):

> [23] For all the reasons set out above, I find that the employer was not provided with notice of the worker's appeal, and was therefore deprived of an opportunity to participate. I find that this was a breach of a basic principle of procedural fairness, and constitutes a fundamental error of process for the purposes of the Tribunal's threshold test. Accordingly, I find that the Tribunal's threshold test for granting a reconsideration request been met. Further, I agree with the Vice-Chair in Decision No. 2877/07R2 that in these circumstances the appropriate remedy is to have "a full rehearing on the merits and the matter decided afresh."

3. We agree with, and rely on, the *Decision 1354/02* analysis at para. 26 that a final decision of the Board on access has "*great substantive impact*" that would "*probably pre-determine that other pending appeal*."

4. As noted earlier, the WSIB has tailored its own internal review process to allow an employer at least two official opportunities to cause a review of the Board's determination that withheld medical information is relevant to the issue in dispute, one with the initial-decision-maker and the other with the ARO. This internal review process affirms that through the eyes of the Board reviewing the interlocutory issue of access is a procedural fairness necessity. There is no other explanation for the Board permitting at least two formal internal reviews.

5. That the same procedural safeguards are not permitted to be advanced to the Appeals Tribunal is out of harmony with the fair process safeguards in the WSIA. That the WSIB makes incorrect determinations regarding relevance is indisputable. *Decisions 1354/02*, *864/23*, and *712/22* to list only those decisions presented in the OEA submissions attests to that. All of these cases dealt with an employer appeal to the Appeals Tribunal of a WSIB determination that withheld information that was not relevant to the issue in dispute. All of those decisions were overturned by the Appeals Tribunal.

6. It is clear that the Board often makes relevance determination errors. Whether there is a high or low propensity of WSIB error is immaterial. Access to the Appeals Tribunal in at least those cases cited (and there are many more) was an essential procedural step to not "*preclude the statutory right of appeal on the actual issue in dispute*" (as noted in *Decision 1354/02*, para. 25).

7. The right to pursue an access relevance dispute to the Appeals Tribunal ensures fair process for employers. The denial of that right is an improper impediment to fair process.

J. The practical implications of the Board's interpretation

1. Should WSIB adjudicative proceedings on the substantive issue (the issue in dispute) proceed within the Board without permitting an employer appeal access to the Appeals Tribunal on the interlocutory issue of the relevance of withheld medical information, the integrity and reliability of the WSIB decision review process is compromised. This will erode public confidence.

2. It is reasonably foreseeable that in such a case where an employer has been denied access to the Appeals Tribunal, as a matter of course, should the final decision of the Board be unfavourable to the employer, the employer would be more inclined than otherwise to lodge an appeal of the substantive matter to the Appeals Tribunal, and/or engage at the Board level less vigorously. This scenario is contemplated in the OEA submission (at page 15, para. 49).

3. Such an appeal may be lodged simply to secure access to the withheld medical information or to discover if the Appeals Tribunal would similarly redact the same information, to better assess the quality and persuasiveness of the Board's reasons respecting the substantial matter. This needless waste of resources would be avoided by allowing employer access to the Appeals Tribunal on the interlocutory access question.

4. Such predictable actions, should they occur, would reflect at least a case-specific loss in confidence by a participating employer, or a general loss in confidence of the WSIB decision-making protocols.

5. Contrast this with a participating employer proceeding to the Appeals Tribunal with respect to the interlocutory relevance issue. Should the Appeals Tribunal confirm the Board's relevance determination, the participating employer will have a higher level of confidence that the Board's determination was correct. Should the Appeals Tribunal overturn the Board's relevance decision and order the release of the previously withheld information, the employer is now able to participate fully in the WSIB proceeding. The reasons set out in the eventual WSIB final decision will enjoy a higher degree of persuasiveness.

6. In his seminal November 1980 report, "*Reshaping Workers' Compensation for Ontario*," the report which recommended the establishment of the independent Appeals Tribunal, Prof. Paul C. Weiler, at page 93, wrote:

> The manner in which the Board proceeds must engender a sense of confidence in its decision, must give a legitimacy to its rulings, which render them tolerably acceptable even when they are adverse.

7. This is as important a guiding principle today as it was forty-five years ago.

K. The legal process implications of the Board's interpretation

1. The WSIB's interpretation of the Appeals Tribunal's jurisdiction with respect to the operation of ss. 58 and 59 (i.e., no employer right of appeal unless triggered by a worker s. 59(2) objection), does not close the door on the consideration of the interlocutory access issue, it simply re-defines the venue through which to consider the issue from the Appeals Tribunal to the Ontario Divisional Court.

2. In fact, the WSIB contemplates this very result. In the January 6, 2024 email (Attachment 3), the WSIB Vice-President Compliance advises, "*Ultimately, guidance on procedural fairness and administrative justice is provided by judicial review if an employer chooses that path*."

3. Without presenting a full and in-depth analysis on the Divisional Court's jurisdiction on these questions, involving the Court on interlocutory procedural fairness concerns flowing from routine access considerations is the antithesis of the reasons behind the creation of the Appeals Tribunal in the first place, and on its own, a sound reason for the Appeals Tribunal to assume jurisdiction in these matters.

4. Interestingly, and perhaps paradoxically, in *Grisales v. Workplace Safety and Insurance Board*, 2023 ONSC 3846 (*Grisales*), a case dealing with WSIB benefit indexation policy, the WSIB argued that the case was not subject to appeal (to the Appeals Tribunal) because "*they are not individual adjudicative decisions*" (*Grisales*, para. 2):

> [2] On November 22, 2022, Ms. Grisales submitted an Intent to Object to the aspect of the September 22, 2022 decision that dealt with the indexation of benefits from January 1, 2022. **The WSIB replied saying that that the policy and practice of calculating the indexation of benefits was not subject to appeal because they are not individual adjudicative decisions**. On November 25, 2022, the WSIB formally notified Ms. Grisales that it did not view indexation as an objectionable issue. (emphasis added)

5. Yet, access disclosure issues, the type of case the Board now argues rests outside the scope of the Appeals Tribunal's jurisdiction, are individual adjudicative decisions.

6. In *Grisales* the Court held that the Board denying access to the Appeals Tribunal was unreasonable (*Grisales*, para. 4). The Court considered the effect of s. 126 of the WSIA (*Grisales*, paras. 5 and 6). As addressed in the next section of this submission, we submit that a s. 126 referral is not applicable in the instant case.

7. As in *Decision 1736/21* (September 15, 2023), this leading case rests on "*the interpretation of the relevant statutory provisions*" (*Decision 1736/21*, para. 26):

> [26] The issues in these appeals largely turn on the interpretation of the relevant statutory provisions. This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.

8. We submit that it is within the broader statutory purpose of the WSIA that interlocutory issues with respect to access disclosure not proceed to the Divisional Court (as intimated in the Attachment 3 email), and must be considered by the Appeals Tribunal. We ask that the Panel be guided by the "*broader statutory purposes*" of the WSIA, as set out by the *Decision 1736/21* Panel at para. 33:

> [33] In accordance with the reasoning in *Vavilov* and *Canada Post*, the Panel's interpretation of the relevant provisions in these appeals will be informed by the broader statutory purposes of the WSIA and the large and liberal interpretation accorded to remedial legislation.

9. The raison d'être of the broader statutory purposes of the WSIA is set out in para. 41 of *Decision 1736/21*:

> [41] In Canada, the history of workers' compensation begins with the report of the Honourable Sir William Ralph Meredith, once Chief Justice of Ontario, who was appointed in 1910 to study systems of workers' compensation around the world and make recommendations for Ontario. Sopinka J. summarized the four fundamental purposes underpinning workers' compensation regimes, and their interrelatedness:
>
> (a) compensation paid to injured workers without regard to fault;
>
> (b) injured workers should enjoy security of payment;
>
> **(c) administration of the compensation schemes and adjudication of claims handled by an independent commission; and**
>
> **(d) compensation to injured workers provided quickly without court proceedings.**
>
> I would note that these four principles are interconnected. For instance, security of payment is assured by the existence of an injury fund that is maintained through contributions from employers and administered by an independent commission, the Workers' Compensation Board. The principle of quick compensation without the need for court proceedings similarly depends upon the fund and the adjudication of claims by the Board. The principle of no-fault recovery assists the goal of speedy compensation by reducing the number [of] issues that must be adjudicated. The bar to actions is not ancillary to this scheme but central to it. If there were no bar, then the integrity of the system would be compromised as employers sought to have their industries exempted from the requirement of paying premiums toward an insurance system that did not, in fact, provide them with any insurance. (emphasis added)

10. Points (c) and (d) in Justice Sopinka's summary we submit are compromised by the Board's interpretation, which will routinely require access determinations to proceed to Divisional Court, at least as contemplated by the WSIB (Attachment 3 email).

11. It is within the Appeal Tribunal's capacity to be guided by the effect of the Board's interpretation that runs counter to the broader statutory purposes of the WSIA.

L. Why a section 126 referral is not indicated

1. The Appeals Tribunal is required to apply Board policy (WSIA, s. 126(1)). Should the Appeals Tribunal conclude that an applicable Board policy "*is inconsistent with, or not authorized by, the Act,*" the Appeals Tribunal must refer the policy to the Board for review and direction:

> 126 (4) If the tribunal, in a particular case, concludes that a Board policy of which it is notified is inconsistent with, or not authorized by, the Act or does not apply to the case, the tribunal shall not make a decision until it refers the policy to the Board for its review and the Board issues a direction under subsection (8).

2. The WSIA sets out a review process in ss. 126 (4), (5), (6), (7) and (8).

3. In its June 5, 2025 submission, the WSIB relies on its statutory authority to determine its own practice and procedure and expects "*considerable deference*" by the Appeals Tribunal. At page 5, para. 1:

> The Board has the statutory authority to determine its own practice and procedure and determine what "relevant to an issue" means under s. 58. As a result, we expect considerable deference would be paid to WSIB's policy to determine relevance: *Operational Policy Manual* (OPM) Document No. 21-02-02 *Disclosure of Claim File Information (Issues in Dispute*).

4. Under the heading "**Jurisdiction of WSIAT to hear appeals on relevancy under sections 57-59**" (WSIB submissions, page 9), the Board again relies on its power to control its own practice and procedure, "*Section 131 of the WSIA grants the Board and the Tribunal the power to control their own practice and procedure in relation to applications, proceedings, and mediation."*

5. The Board does not rely on WSIA s. 126(1) as limiting the Appeals Tribunal's scope of inquiry or by necessity, triggering a s. 126 (4) referral.

6. We submit that the Appeals Tribunal is not bound by WSIB practice and procedure other than that set out in formal Board policy. The applicable Board policies in this case are:

> 21-02-02 – Disclosure of Claim File Information (Issue in Dispute)
> 21-02-01 – Disclosure of Claim File Information (General)
> 21-02-04 – Disclosure of Claim File Information to Worker or Employer Representatives
> 21-02-03 – Disclosure of Claim File Information (No Issue in Dispute)

7. None of these policies expressly set out that in circumstances of the instant case an appeal cannot be considered by the Appeals Tribunal. We posit that if such a policy declaration did arise, the Appeals Tribunal would be compelled to refer the matter to the Board pursuant to s. 126. We do not infer that such a policy declaration would cleanse fair process and statutory interpretation errors. It would not. It is simply the process required by the WSIA.

8. The only document in the record available that even obliquely addresses the issue, i.e., appealability of access disputes absent a triggering s. 59 (2) worker objection, is Appendix A to the Board's submissions, "Redaction Process, Appeals Services Division – April 2024." This document is not WSIB policy and is not binding on the Appeals Tribunal.

9. In *Decision 1736/21*, the Panel faced a similar set of circumstances, set out at paras. 218 - 222:

> **(j) Do the circumstances of these appeals trigger a policy referral under section 126 of the WSIA?**
>
> [218] Counsel for the WSIB suggested that the Panel may use the section 126 policy referral mechanism in these circumstances. The Panel finds that this is unnecessary in this case, since the source of the limitation of benefits for SAWP workers is not found in binding Board policy, but rather, it is found in the SAWP Adjudicative Advice Document, which is not a binding Board policy for the purposes of section 126. There is no binding Board policy which states that the LOE benefits for SAWP workers are limited to 12 weeks and they are not entitled to LMR services.
>
> [219] The binding policy which specifically applies to SAWP workers is OPM Document No. 12-04-08, Foreign Agricultural Workers. The Foreign Agricultural Workers Policy provides that SAWP workers injured in Ontario are entitled to benefits under the WSIA and does not include provisions that limit their entitlement to LOE benefits for 12 weeks or exclude them from LMR services.
>
> [220] The section 126 policy referral mechanism is meant for substantial disputes regarding the terms of Board policy. See *Decision Nos. 1692/19I*, 2020 ONWSIAT 1937, *878/06R*, 2007 ONWSIAT 195, and *382/98*, 1998 CanLII 16338 (ON WSIAT).
>
> [221] In this case, the appellants challenge the limitation of their long-term LOE benefits to 12 weeks and the denial of LMR services. This result derives from an Adjudicative Advice Document; none of the Board policies prescribe this outcome. The Foreign Agricultural Workers Policy stands for the general proposition that SAWP workers are covered by the WSIA, and the other policies are silent on benefits for SAWP workers.
>
> [222] In conclusion, the Panel finds that the issues in dispute do not arise from the Leaving the Province Policy or the Post-Accident Change Policy or the Foreign Agricultural Workers Policy. None of these policies contain specific provisions limiting the LOE benefits of SAWP workers to 12 weeks or excluding them from LMR services. Furthermore, as discussed above, these policies do not warrant the termination of LOE benefits in every case in which an injured worker leaves the province following an accident.

10. The s. 126 (4) referral mechanism is not applicable as there is no binding policy in this case that constrains the Appeals Tribunal's assessment of its jurisdiction. The Appeals Tribunal decision with respect to its jurisdiction will be guided by the WSIA and principles of statutory interpretation as accepted by the Appeals Tribunal and guided by relevant judicial determinations.

M. CEC relies on *Rizzo*, *Vavilov*, *Decision 1354/02* and *Decision 1736/21*

1. As noted earlier, in its submission the Board relies on *Rizzo* and *Vavilov* (WSIB submissions, page 4). We agree that *Rizzo* and *Vavilov* are directly applicable to the matter at hand and in effect, act as a jurisprudential beacon for the Appeals Tribunal to assist in the statutory interpretation challenge before the Tribunal.

2. *Rizzo* and *Vavilov* have been relied on extensively in the past by the Appeals Tribunal. We have compiled a chart summarizing our interpretation of the *Vavilov* and *Rizzo* principles applied by the Appeals Tribunal at Appendix B. Our research suggests that as of the date of this submission, *Vavilov* has been applied in at least 109 cases (we present a note in Appendix B for only 21 cases), *Rizzo* in at least nine (9) cases and *Vavilov* and *Rizzo* together in at least 10 cases.

3. Statutory interpretation cannot be found on the words of the legislation alone. From *Rizzo*, para. 21 (emphasis added):

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> **Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament**.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp*., [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

4. From *Vavilov*, paras. 118 – 121 (emphasis added):

> [118] This Court has adopted the "**modern principle**" as the proper approach to statutory interpretation, because **legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context**: *Sullivan*, at pp. 7-8. Those who draft and enact statutes expect that **questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose**, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.
>
> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. **The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise**.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.
>
> [121] The administrative decision maker's **task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue**. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. **The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome**.

5. The Appeals Tribunal must be guided by the overall purpose of the WSIA, including we submit, "*the four fundamental purposes underpinning workers' compensation regimes and their interrelatedness*" (*Decision 1736/21*, para. 41). As already argued, the Board's interpretation would compel employers to pursue judicial intervention, or alternatively, choose to participate in a flawed process that does not respect the basic tenets of procedural fairness. Neither is satisfactory and neither fits within the "*four fundamental purposes*."

6. While after WSIB disposition through the issuance of a final decision on the substantive issue, an employer would have the capacity and right to pursue an appeal to the Appeals Tribunal, this does not cure the procedural fairness defect. Should such an example case be allowed by the WSIB, benefits would be granted and processed. The lodging of an employer appeal will not stay the implementation of the decision. There is no procedural capacity for an employer to petition for a stay in decision implementation under the WSIA or WSIB policy. In fact, the Board would owe a duty to the successful worker appellant to process benefits quickly and efficiently.

7. Should the employer be proved correct at the Appeals Tribunal, that relevant information was improperly withheld and that withheld evidence was determinative in reversing entitlement, the harm, i.e., the expenditure of benefits cannot be remedied. WSIB policy expressly forbids overpayment recovery in such circumstances (WSIB Policy Document Number 18-01-04, Recovery of Benefit-Related Debts (January 2, 2020) - *The WSIB does not pursue recovery of a benefit-related debt if the debt is a result of a previous entitlement decision overturned due to a reconsideration or appeal*).

8. *Decision 1354/02* considered an analogous issue to the one at hand – employer access to a worker's prior claim. The employer was seeking cost relief in a current claim and sought the prior claim to advance the employer's theory of the case. The Board denied the employer access to the prior claim in a decision partially excerpted from *Decision 1354/02*, para. 5:

> (From the WSIB's October 2, 2011 letter): As there is no information on file in Claim No. [the prior claim file] relevant to the employer's issue in dispute, access to this file will not be granted. Although one of the areas of injury is the same, the low back, as in [the worker's] present claim, no information from this previous claim file was used in order to make the decision to continue benefits and deny second injury and enhancement fund (SIEF) relief. Claim No. [the subsequent claim file] was set up as a new claim and as there is no evidence that [the worker] had ongoing problems since the 1993 accident, Claim No. [the prior claim file] is considered to be irrelevant to his present condition. If you do not understand the reason for the decision or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

9. WSIB counsel participated in the proceedings and filed three (3) letters outlining the Board's submissions (*Decision 1354/02*, para. 8). Board counsel in *Decision 1354/02* presented a position similar to the Board's submissions in this matter – the Appeals Tribunal lacked jurisdiction to consider the matter (previously excerpted in this submission at pages 12 and 13, para. H-3).

10. The *Decision 1354/02* Panel characterized the Board's argument as "circular" (at para. 19) and correctly we submit, applied "*a broad and purposeful approach considering the context of the matter*" (at para. 21).

11. We return to paras. 21 – 26 of *Decision 1354/02* (previously excerpted in this submission at pages 13 and 14, para. H-5). We interpret the Appeals Tribunal's "circular argument" analysis this way: The Board's interpretation is out of harmony with the scheme of the WSIA. Fair process would be denied to a participating employer simply because a worker is unable to exercise a s. 59(2) triggering objection. The worker is "unable" since a relevance determination adverse to the worker was not made. This is, we respectfully submit, the interpretive approach that reverse engineers in the manner contemplated in *Vavilov*, at para. 121.

12. In *Decision 1354/02* the Appeals Tribunal ordered that the prior claim be released to the employer to "*properly pursue and present its argument to the Appeals Branch . . .*" (para. 28).

13. For the same reasons as set out in *Decision 1354/02*, denying employer access to the Appeals Tribunal is contrary to the purposes of the WSIA and out of harmony with the scheme of the Act.

N. The Appeals Tribunal's jurisdiction under s. 123(1)(c) - "such other matters as are assigned"

1. The submissions from TCO, OEA and WSIB along with a substantial number of previous Appeals Tribunal decisions support the proposition that the Appeals Tribunal's jurisdiction in these matters flows from s. 123(1)(c), "*such other matters as assigned*." The "other matter assigned" is assigned through s. 59(4). The Board departs this consensus with the stipulation that absent a s. 59(2) objection by a worker, the Appeals Tribunal has no jurisdiction.

2. For the reasons set out earlier throughout this submission, we submit that at the very least, the Appeals Tribunal has jurisdiction under s. 123(1)(c). Applying the *Vavilov* and *Rizzo* principles such jurisdiction would be conferred to ensure procedural fairness respecting employer access matters to ensure the WSIA is applied in a manner harmonious with the scheme of the Act.

3. However, in the next section we argue that the Appeals Tribunal secures jurisdiction through s. 123(1)(a) as an appeal with respect to entitlement.

O. The Appeals Tribunal's jurisdiction under s. 123(1)(a) – "appeal from final decisions of the Board with respect to entitlement . . ."

1. The Board argues that as s. 59(4) specifically confers jurisdiction on the Appeals Tribunal, it must be concluded that the legislature did not intend to confer a general jurisdiction over employer access matters to the Appeals Tribunal.

2. From the Board's submissions at page 9, last para. and page 10 first para.:

> The only clause that could possibly confer jurisdiction is s. 123(1)(a). Clause (a) applies to appeals from final decisions with respect to entitlement to benefits under the WSIA. The Tribunal has only the jurisdiction that it is given in its governing legislation. That jurisdiction is conferred in s. 123(1). It is the WSIB's submission that none of the clauses in that subsection confers jurisdiction on the Tribunal in this matter.

> A review of sections 58 and 59, the employer access provisions in the WSIA, suggests that the legislature did not intend s. 123(1) to confer a general jurisdiction over access issues. Subsection 59(4) specifically confers jurisdiction on the Appeals Tribunal to hear appeals of decisions relating to employer access to a report or opinion of a health care practitioner relating to a worker where there is an issue in dispute. The very fact the legislature conferred express jurisdiction on the Appeals Tribunal in this specific matter suggests that it did not intend to confer general jurisdiction over employer access matters on the Tribunal.

3. TCO highlighted *Decision 1956/01* at paras 21 – 36, noting at para. 35:

> 35. As a result, the Panel noted that the only means by which the Tribunal could obtain jurisdiction over this type of access question would be through section 123(1) (c) as "another matter assigned to the Appeals Tribunal under the Act". The Panel remained satisfied that the Legislature turned its mind to the question of access and specifically assigned the Tribunal jurisdiction pursuant to section 59(4).

4. TCO canvassed Appeals Tribunal decisions following the *Decision 1956/01* analysis at paras. 40 – 53.

5. The OEA appears to accept this analysis at paras. 50 and 52 of the OEA submissions:

> 50. The employer submits that the Tribunal clearly has jurisdiction to review its request to access relevant health records under the authority of sections 123 and 59(4) of the WSIA, not only by virtue of their plain language and meaning, but also because several Tribunal decisions support this position.

> 52. Ultimately, the clear intent of s. 59(4) is that workers, claimants or employers may appeal the Board's decision regarding access to medical records to the Tribunal, and if any of them choose to do so, such appeal must be filed within 21 days after the Board gives notice of its decision. Therein lies the Tribunal's jurisdiction to then use its unique and exclusive expertise to decide whether to uphold that Board decision or not.

6. While we agree and accept that the Appeals Tribunal has jurisdiction under s. 123(1)(c), this is we present, alternative to the Appeals Tribunal jurisdiction being established under s. 123(1)(a), which we submit, notwithstanding past Appeals Tribunal decisions, is an interpretation more in harmony with the scheme of the WSIA, and which better ensures that the objects of the WSIA are interpreted and administered in line with the WSIA's true intent and spirit.

7. We have already presented our analysis respecting the intent and purpose of the access provisions of the WSIA in Section G of this submission (see pages 10 to 12). Employer access to relevant medical information is an essential and fundamental requirement to ensure a fair decision review process for a participating employer. This is undeniable and has not been denied by any past Appeals Tribunal decision or any submission presented in the current matter.

8. This requirement, we submit, is not modified in the least by s. 59. Posed another way in the form of an interrogative, would an employer have a right to appeal a decision of the Board on the question of medical information relevance if s. 59 was never promulgated? We submit that the answer is "yes." We contend that s. 59 does not materially modify employer rights, it enhances worker rights.

9. We will explain why the line of reasoning that s. 59 "modifies" s. 58 (see TCO submissions, paras. 19 and 56) to the point of materially adjusting the capacity of the employer to secure access to medical information under s. 58, is inconsistent with the plain language of ss. 58 and 59 and the contextual application of s. 123(1)(a).

10. As *Decision 1956/01* is the leading Appeals Tribunal authority so far that advanced the reasoning that the Appeals Tribunal lacked jurisdiction pursuant to s. 123(1)(a), we excerpt paras. 34 – 37:

> [34] Turning to section 123(1)(a) then, the question to be decided is whether what we have before us is an appeal from a "...final decision of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan". Going one step further and assuming for the moment (but not deciding) that Ms. Jolley's letter of May 30, 2001, was a "final" decision of the Board, we need to ascertain whether it was a decision "with respect to entitlement".
>
> [35] Giving this particular subsection its plain and literal meaning, we are unable to satisfy ourselves that the Board has yet made a "decision with respect to entitlement". In doing so, we prefer the position of the CEP and the Board that a decision about whether an employer should have access to a worker's file is not a decision about "entitlement". We would suggest that a "decision about entitlement" would be one that decides whether or not these workers have compensable occupational diseases.
>
> [36] Secondly, reading section 123(1)(a) in the context of the entire legislation, we are satisfied that the legislature has turned its mind to the question of employer access to files and has specifically directed that it be dealt with under sections 58 and 59. In fact, the legislature has specifically provided the parties with an option to appeal to the Tribunal in section 59(4). Again, in reaching this conclusion, we agree with the submissions of the Board that:
>
> > A review of sections 58 and 59, the employer access provisions in the WSIA, suggests that the legislature did not intend s. 123(1) to confer a general jurisdiction over access issues. Subsection 59(4) specifically confers jurisdiction on the Appeals Tribunal to hear appeals of decisions relating to employer access to a report or opinion of a health care practitioner relating to a worker where there is an issue in dispute. The very fact that the legislature conferred express jurisdiction on the Appeals Tribunal in this specific matter suggests that it did not intend to confer general jurisdiction over employer access matters on the Tribunal.
>
> [37] In light of the above, it appears to this Panel that the only means by which the Tribunal could obtain jurisdiction over this type of access question would be through section 123(1)(c) as "another matter assigned to the Appeals Tribunal under the Act". As noted earlier, we are satisfied that the legislature has turned its mind to the question of access and has "assigned" the Tribunal a jurisdiction which emanates from section 59(4) of the Act. Section 59(4) provides that a party may appeal "the Board's decision" to the Tribunal. A reading of sections 57and 58 suggests it is clear that before the Board can give access to documents (which decision can then be appealed to the Tribunal), there must first be an "issue in dispute". Put another way, an issue in dispute is a prerequisite for the issuing of such a decision.

11. We contend that the *Decision 1956/01* Panel did not effectively consider the contextual meaning of the words "*with respect to*" in s. 123(1)(a) and did not fully appreciate the effect of the words "*Despite section 58, before giving the employer access . . .*" in s. 59(1). We will present our thesis and submissions on both to assist the Appeals Tribunal.

12. We submit that employer access to relevant medical information is so integral to fair entitlement determinations and employer participation that it is an inherent, indispensable element to the decision-making process "*with respect to*" entitlement, with our wording deliberately chosen.

13. For guidance on the meaning of the phrase "*with respect to*" we turn to *Markevich v. Canada*, 2003 SCC 9 (CanLII), [2003] 1 SCR 94 (*Markevich*). *Markevich* was a tax collection case and addressed whether federal and provincial limitation periods applied. The case materially turned on the meaning of the phrase "*in respect of*." From *Markevich* at paras. 26, 27 and 28 (emphasis added):

> 26 The appellant's submission turns on whether these proceedings are undertaken "in respect of a cause of action". **The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters**. See *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, per Dickson J. (as he then was):
>
> > **The words "in respect of" are, in my opinion, words of the widest possible scope**. **They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.**
> >
> > In the context of s. 32, the words "in respect of" require only that the relevant proceedings have some connection to a cause of action.
>
> 27 A "cause of action" is only a set of facts that provides the basis for an action in court: see *Letang v. Cooper*, [1964] 2 All E.R. 929 (C.A.), at p. 934; *Domco Industries Ltd. v. Mannington Mills, Inc*. (1990), 29 C.P.R. (3d) 481 (F.C.A.), per Iacobucci C.J. (as he then was), at p. 496; and *Black's Law Dictionary, supra*, at p. 221. In this case, s. 222 of the ITA provides that unpaid taxes constitute a debt recoverable by means of a court action, subject to the stay of collection action prescribed by s. 225.1. As a result, as Rothstein J.A. notes at para. 37, the cause of action here involves "the existence of a tax debt and the expiry of the delay period entitling the Minister to take collection action".
>
> 28 In light of the above analysis, the ordinary meaning of the phrase "proceedings . . . in respect of a cause of action" encompasses the statutory collection procedures of the Minister. The exercise of the statutory proceedings is entirely dependent upon a set of facts that would support action by the Minister, i.e., the existence of a tax debt and the expiry of the delay period prescribed by s. 225.1.

14. Comparing the phrase under consideration in *Markevich* "*in respect of"* to the phrase in s. 123(1)(a), "*with respect to*" we submit that an adjustment of "with" (WSIA) to "in" (*Markevich*) and "of" (WSIA) to "to" (*Markevich*) presents no distinction in meaning and are synonymous in this usage.

15. The provision of relevant medical information to the parties is a fundamental component to fair participation in the entitlement process, such that, as addressed, the Board through its own practice provides at least two internal reviews at the request of a participating employer. As providing access is a determinative procedural necessity it is intrinsically connected to decisions "*with respect to*" entitlement. Clearly put, without the provision of relevant information, a fair decision "*with respect to"* entitlement cannot be made. A final decision of the Board on the relevance of medical information must be interpreted as a final decision "*with respect to*" entitlement.

16. This interpretation of the s. 123(1)(a) phrase "*with respect to*" becomes even clearer when assessing the migration from the pre-1998 WCA to the WSIA, and the language adjustments in the access provisions set out in WCA s. 71 to WSIA ss. 57, 58 and 59, along with the adjustments in the general jurisdiction provisions from WCA s. 86(1) to WSIA s. 123(1)(a), which we set out in the next section of this submission.

17. We disagree with the Board's submission that s. 59 "*addresses an employer specific access to health records*" (WSIB submissions, page 5):

> Section 59 addresses an employer specific access to health records. It outlines an exception to the general rule of employer access. Such an interpretation is reflected by the use of the words: "despite section 58". As such, the same process under section 58 to assess relevancy is required for health records and in addition, the Board has an obligation to notify the worker that it will be providing access to a report or opinion of a health care practitioner about the worker prior to disclosure. It provides for a specific process for the worker to object to the disclosure, for the board to consider the objection and make a decision and an appeal right of the decision by the worker, claimant or employer within 21 days after the Board gives notice of its decision.

18. The purpose of s. 59 is not to create an exception for an employer to the general rule of employer access – it is to create a clear and unequivocal procedural safeguard to allow a worker to dispute the Board's interpretation of relevance.

19. We disagree with the Board's submission that as a result of the promulgation of s. 59, the legislature "*did not intend to confer a general jurisdiction over employer access matters on the Tribunal*" (WSIB submissions, page 10):

> A review of sections 58 and 59, the employer access provisions in the WSIA, suggests that the legislature did not intend s. 123(1) to confer a general jurisdiction over access issues. Subsection 59(4) specifically confers jurisdiction on the Appeals Tribunal to hear appeals of decisions relating to employer access to a report or opinion of a health care practitioner relating to a worker where there is an issue in dispute. The very fact the legislature conferred express jurisdiction on the Appeals Tribunal in this specific matter suggests that it did not intend to confer general jurisdiction over employer access matters on the Tribunal.

20. We submit that the language in s. 59(1), "*Despite section 58*" has been misconstrued. The general disclosure provision of s. 58 has not been modified by s. 59 (as contended in TCO submissions, para. 56, an interpretative theory notably advanced in *Decision 1956/91*). We submit that the s. 58 process has been fulfilled, and must be fulfilled, before s. 59 is operative. There must be a recognized "issue in dispute" (the absence of which was the reason the appellant failed in *Decision 1956/91*), the employer must request access, and the Board must determine relevance. All of this is done before s. 59 is rendered operative. In other words, the Board's decision on relevance is made before s. 59 is triggered.

21. "*Despite s. 58*" is simply in relation to the physical release of the information, triggering notice and a delay to present time for the worker to consider a s. 59(2) objection. The relevance (or non-relevance) of the information has been determined by the Board under s. 58. The appeal rights expressly set out in s. 59(4) relates to the Board's decision under ss. 59(2) and (3), and nothing in s. 59 extinguishes any employer appeal rights that otherwise would exist as a matter of procedural fairness and "*with respect to*" entitlement (s. 123(1)(a)).

22. The Appeals Tribunal's general jurisdiction under s. 123(1)(a) continues notwithstanding s. 59. We submit that the process contemplated by the WSIA and WSIB practice is this:

    a. WSIB withholds information the employer considers to be relevant.

i. The employer may seek a review of that determination by the front-line-decision-maker and again at the ARO level.

ii. If the objection persists, as the matter of access is "*respect to entitlement,*" the employer may appeal the final decision on access to the Appeals Tribunal.

iii. The Appeals Tribunal will consider the issue and invite the worker to participate as in any entitlement matter.

iv. The Appeals Tribunal determination settles the matter.

b. WSIB considers medical information to be relevant.

i. Before releasing the information to the employer, the s. 59(1) protocol is triggered, the worker is notified of the Board's intention to release the information and the worker is provided an opportunity to object.

ii. The Board considers the worker objection and makes a decision.

iii. Either party may at that point appeal the Board's decision to the Appeals Tribunal (s. 59(4)).

23. Should either party be denied the capacity to pursue an access dispute to the Appeals Tribunal, fair process is irreparably compromised.

24. While asserting that it does not, the Board submits (at WSIB submissions, page 10) "*The only clause that could possibly confer jurisdiction is s. 123(1)(a)*." While we disagree with the qualifying "only" in this sentence, for the reasons set out, we submit that s. 123(1)(a) does present the Appeals Tribunal with jurisdiction as an access dispute is "*with respect to*" entitlement.

P. Did the statutory evolution from s. 71 of the Pre-1998 Act (WCA) to ss. 57, 58 and 59 of the WSIA adjust and limit the Appeals Tribunal's jurisdiction on access matters?

1. TCO submissions assert that the statutory language in the *Workers' Compensation Act*, R.S.O. 1990, c. W.11 (WCA or Pre-1998 Act), in s. 71 (s. 77 in the previous version of the WCA – the content did not change), "*is similar to that in sections 58 and 59 of the WSIA*" but with one key difference – "*the WSIA appears to have drawn a distinction between employer access to records generally, and employer access to health records*" (TCO submissions, paras. 38 and 39).

2. TCO contends that "*this seems to reflect an intentional amendment by the Legislature to limit the jurisdiction of the Tribunal*" (TCO submissions, para. 39).

3. To assist, at Appendix C we have compiled a simple chart comparing WCA s. 71 (previously s. 77) with WSIA ss. 57, 58 and 59.

4. We disagree with TCO's contention. The effect of any change in statutory language in the migration from the WCA to the WSIA cannot be limited to a comparison of WCA s. 71 and WSIA ss. 57, 58 and 59. One must also consider any changes in statutory language pertaining to the general jurisdiction of the Appeals Tribunal, specifically a comparison of WCA s. 86 and WSIA s. 123.

5. To aid in this comparison, we excerpt WCA s. 86(1) and WSIA s. 123(1):

> **WCA s. 86(1)**
>
> **Jurisdiction**
>
> 86.(1) Subject to section 93, the Appeals Tribunal has exclusive jurisdiction to hear, determine and dispose of,
>
> (a) any matter or issue expressly conferred upon it by this Act;
>
> (b) all appeals from decisions, orders or rulings of the Board respecting the provision of health care, vocational rehabilitation or entitlement to compensation or benefits under this Act; and
>
> (c) all appeals respecting assessments, penalties or the transfer of costs,
>
> and subsection 69 (2) applies with necessary modifications where a matter referred to in that subsection is raised in an appeal.
>
> **WSIA s. 123(1)**
>
> **Jurisdiction**
>
> 123 (1) The Appeals Tribunal has exclusive jurisdiction to hear and decide,
>
> (a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;
>
> (b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and
>
> (c) such other matters as are assigned to the Appeals Tribunal under this Act. 1997, c. 16, Sched. A, s. 123 (1).

6. WCA s. 86(1) provided the Appeals Tribunal with jurisdiction to hear "*any matter or issue expressly conferred upon it by this Act* (WCA, s. 86(1)(a)).

7. WCA s. 71(6), which permits an appeal by a "*worker, employer or party of record*" would be a matter "*expressly conferred upon it*."

8. However, the migration of the general jurisdiction of the Appeals Tribunal from WCA s. 86(1) to WSIA s. 123(1) is also witness to language changes.

9. The use of the word "respecting" in s. 86(1)(b) has a more limiting effect and contextually is similar in meaning to "considering." However, the newer language in WSIA s. 123(1)(a) "with respect to," as addressed, is a prepositional phrase indicating a relationship or connection "*of the*

widest possible scope" (*Markevich*) and bestows a broader jurisdiction on the Appeals Tribunal to include the interlocutory issue of access.

10. While the technical source of that jurisdiction may have changed from WCA s. 71(6) to WSIA s. 59 and s. 123(1)(a), the intention of the Legislature for the Appeals Tribunal to have jurisdiction over access disputes did not change. Under the WCA and the WSIA the Legislature intended these matters to be within the jurisdiction of the Appeals Tribunal. Any other interpretation, respectfully, is out of harmony with the scheme of the WSIA.

Q. Concluding Comments

1. We thank the Appeals Tribunal for the opportunity to participate in this important leading case dealing with an issue with which the CEC has maintained an interest these past two years. We will not attempt to summarize our submissions but conclude with these closing points.

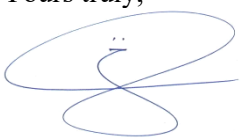
2. *Vavilov* and *Rizzo* offer the best statutory interpretation guidance to the Panel and as set out in the submission, "*act as a jurisprudential beacon for the Appeals Tribunal to assist in the statutory interpretation challenge before the Tribunal."*

3. We argue that the Board's interpretation creates a decision-review scheme with respect to access matters that is out of harmony with the scheme of the WSIA, and which does not promote several of the core objects of the WSIA.

4. For our reasons set out, it is our submission that the Appeals Tribunal receives its jurisdiction with respect to employer access disputes through WSIA s. 123(1)(a) through a contextual interpretation and understanding that access matters, being intrinsically linked to and inseparable from entitlement determinations, are "*with respect to*" entitlement. This interpretation is consistent with guidance presented by *Rizzo* and *Vavilov* and ensures adherence to the principles of procedural fairness, in harmony with the scheme of the WSIA.

5. We trace the evolution of statutory language during the migration from the pre-1998 WCA to the current WSIA with respect to the access provisions as well as the general Appeals Tribunal jurisdiction provisions and conclude that the Legislature intended before 1998 (WCA) and after 1998 (WSIA) for these types of access disputes to be within the jurisdiction of the Appeals Tribunal.

Yours truly,



L.A. Liversidge

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Appendix A

CEC- Who we are

The Construction Employers Coalition on Workplace Safety and Insurance Board Health and Safety and Prevention ("CEC") represents more than 2,000 firms employing approximately 80,000 workers. The CEC (initially named the Construction Industry WSIB Task Force) was formed in 2011 for the purpose of studying and responding to issues related to construction workers and employers in Ontario.

Construction, with one of the highest average premium rates, contributes almost $1 billion in premiums to the WSIB annually, which in turn represents about 25% of the total system premium, making Ontario's construction sector almost as large as the entire Alberta Workers Compensation Board.

CEC members include:

Ontario General Contractors Association (OGCA)
Ontario Road Builders' Association (ORBA)
Mechanical Contractors Association of Ontario (MCAO)
Ontario Sewer & Watermain Contractors Association (OSWCA)
Kingston Construction Association
Niagara Construction Association
Ottawa Construction Association
Sarnia Construction Association
Merit Ontario
Ontario Home Builders Association (OHBA)
Heavy Construction Association of Toronto (HCAT)
Progressive Contractors Association of Canada (PCAC)
Residential Construction Council of Ontario (RESCON)
Ontario Residential Council of Construction Associations (ORCCA) including its members:
Residential Tile Contractors of Ontario (RTCA)
Ontario Concrete and Drain Contractors Association (OCDCA)
Masonry Contractors Association of Toronto (MCAT)
Ontario Formwork Association (OFA)
Residential Framing Contractors Association (RFCA)

Appendix B

WSIAT decisions that reference **Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII), [2019] 4 SCR 653**

Decision	Paragraphs where Vavilov is mentioned	Principle used from Vavilov for decision making
3125/17R	46, 47, 57, 64, 71	In reaching conclusions, the failure to provide reasons for accepting some evidence and not accepting other evidence does not meet the required standard of reasonableness, this constitutes a fundamental error in the adjudicative process.
3247/18R	8, 12	A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility. The reasons for the decision must consider the relevant evidence. They must consider and apply the applicable law and policy. The reasons must be internally coherent and follow a logical chain of analysis. While it is not possible or necessary to review all the evidence submitted on an appeal, important evidence which supports a losing party's case should be addressed and the reasons given should be based on a reasonable interpretation of the evidence. Cumulatively, there are errors of fact and process which are significant and likely affected the outcome of the decision.
1268/19R	26	The decision did not address the presence of evidence which, prima facie, suggested that the worker was continuing to experience problems with his right knee and did not provide an explanation as to why that evidence was not accepted, thereby demonstrating fundamental error of law.
930/19R	9, 12, 13, 14, 15, 20, 27, 28, 30 , 50	There were “serious deficiencies” in the reasoning process and the decision suffered from serious logical flaws, with the result that the outcome was unreasonable.
102/23IR	23, 24, 26, 27, 28	The requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a reviewing court. This has, in any event, always been a test that has been difficult to apply in practice where the consequences of correcting an error, particularly an error of process, are often unknowable. This does not mean that the scope or magnitude of an error is an irrelevant consideration. It means instead that the magnitude of an error must instead be evaluated in terms of the reasonableness of the decision as a whole.
1044/22R	11, 12, 14, 15, 16	It is appropriate for the Tribunal to align its reconsideration threshold test with the test for reasonableness established in Vavilov. The requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a

Decision	Paragraphs where Vavilov is mentioned	Principle used from Vavilov for decision making
		reviewing court.
405/23R	9, 10, 12, 13, 14	It is important to take into consideration the fact that the Tribunal's threshold test has now evolved to be more closely aligned with the standard of review applied by the Courts. In particular, the requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a reviewing court.
229/23R	34, 35, 36, 39, 40, 42, 57, 58, 71	A reconsideration request is an extraordinary remedy that is only granted in circumstances specified in the Tribunal's Practice Directions, namely, where there is a fundamental error in the decision or in the Tribunal's process. The assessment of whether there is a fundamental error in the decision involves an evaluation of whether the original decision is justified, intelligible and transparent, in accordance with Vavilov.
3205/16R2	19, 20, 21	There were significant errors of law and process by failing to take into consideration certain evidence and in accepting certain evidence. The Tribunal's threshold test for granting a reconsideration request has been met.
202/24R	16, 17, 19, 20, 21	The Tribunal's threshold test has now evolved to be more closely aligned with the standard of review applied by the Courts. In particular, the requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a reviewing court.
604/23R	12, 13	The reasons for the decision must consider the relevant evidence, and apply the applicable law and policy. Reasons must be internally coherent and follow a logical chain of analysis. And, while it is not possible or necessary to review all of the evidence gathered in the context of a claim and appeal, important evidence which supports an unsuccessful party's case should be addressed and the reasons given should be based on a reasonable interpretation of the evidence. Significant new evidence is available which could have resulted in a different appeal outcome and the Tribunal's threshold test for granting a reconsideration request has been met.
463/22R	17, 18, 20, 21, 22	It is important to take into consideration the fact that the Tribunal's threshold test has now evolved to be more closely aligned with the

Decision	Paragraphs where Vavilov is mentioned	Principle used from Vavilov for decision making
		standard of review applied by the Courts. In particular, the requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a reviewing court. The significance of the errors of law that exist within the decision warrant the rescission of the decision reached.
1515/19R	33, 41	The written reasons should be read holistically and contextually and should provide a reasonable chain of analysis. The requirement to provide reasons does not obligate the decision maker to review every piece of evidence or address every submission raised by the parties. Accordingly, based on the above, a minor error in the reasoning will not likely be sufficient to meet the reconsideration threshold as a minor error would not have changed the result of the original decision.
129/23R	10, 11	The reasons for the decision must consider the relevant evidence, and apply the applicable law and policy. Reasons must be internally coherent and follow a logical chain of analysis. And, while it is not possible or necessary to review all of the evidence gathered in the context of a claim and appeal, important evidence which supports an unsuccessful party's case should be addressed and the reasons given should be based on a reasonable interpretation of the evidence.
1050/21R	8, 9	Arguing that evidence could have been weighed differently does not demonstrate an error in the decision as contemplated by the Tribunal's threshold test.
1434/21R	15, 16, 18, 19, 20	It is important to take into consideration the fact that the Tribunal's threshold test has now evolved to be more closely aligned with the standard of review applied by the Courts. In particular, the requirement that errors of law or process be of such significance that they would, if corrected, likely produce a different result, could result in a standard of review by the Tribunal that is not aligned with the standard of review that will be applied by a reviewing court.
1330/21IR	58, 59, 63, 67	The standard of review for a decision from an administrative tribunal is one of reasonableness, and that assessment involves the examination of the reasons provided in the decision and whether these reasons demonstrate justification, transparency and intelligibility.
241/17R	9, 10	The reasons for the decision must consider the relevant evidence and apply the applicable law and policy. Reasons must be internally

Decision	Paragraphs where Vavilov is mentioned	Principle used from Vavilov for decision making
		coherent and follow a logical chain of analysis. And, while it is not possible or necessary to review all of the evidence gathered in the context of a claim and appeal, important evidence which supports an unsuccessful party's case should be addressed and the reasons given should be based on a reasonable interpretation of the evidence.
392/22R2	18, 19, 28, 34	A decision's reasons must consider the relevant evidence, apply the applicable law and policy, be internally coherent and follow a logical chain of analysis. An error of process will be a basis for reconsideration, whether or not the error would likely have changed the outcome of the decision.
37/23R	10, 11	The reasons for the decision must consider the relevant evidence, and apply the applicable law and policy. Reasons must be internally coherent and follow a logical chain of analysis. And, while it is not possible or necessary to review all of the evidence gathered in the context of a claim and appeal, important evidence which supports an unsuccessful party's case should be addressed and the reasons given should be based on a reasonable interpretation of the evidence. The application of relevant policy in this case did not lead to an absurd or unfair result that the WSIB never intended.
1839/21R	9, 10, 11, 34, 43, 44, 46	The standard of justification, transparency and intelligibility set out by Vavilov has not been met with respect to the reasons for denying entitlement.

WSIAT decisions that reference ***Rizzo & Rizzo Shoes Ltd.* (Re), 1998 CanLII 837 (SCC), [1998] 1 SCR 27**

Decision	Paragraphs where Rizzo is mentioned	Principle used from Rizzo for decision making
109/18I	18 (quote from Rizzo which is footnote 3)	The words of an Act are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intent of Parliament.
488/21	37, 49	The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
1386/20	37	Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Prior Tribunal decisions have adopted a similar approach.
2158/08	75	Legislative history evidence can play a limited role in the interpretation of legislation provided the decision-maker remains mindful of its limited reliability and weight.
1354/07	78 (talks about the relevance of legislative history and provides Rizzo at footnote 59)	No real application
1736/21	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.
1169/20	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.
1172/20	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.
1171/20	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which

Decision	Paragraphs where Rizzo is mentioned	Principle used from Rizzo for decision making
		requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.

WSIAT decisions that reference both **Vavilov** and **Rizzo**

Decision	Paragraph that references Vavilov	Principle from Vavilov used for decision making	Paragraph that references Rizzo	Principle from Rizzo for decision making
229/23R	34, 35, 36, 39, 40, 42, 57, 58, 71	The assessment of whether there is a fundamental error in the decision involves an evaluation of whether the original decision is justified, intelligible and transparent, in accordance with Vavilov.	15, 38	The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
1046/23	23	The "ordinary meaning" of words is not their "dictionary meaning" but rather "the meaning that spontaneously comes to the mind" and "the meaning that would understood by a competent language user upon reading the words in their immediate context".	24	Every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.
1736/21	28, 29, 31, 33, 37, 197	Legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context. Administrative decision-makers are expected to follow general principles of statutory interpretation in their decisions, although a formalistic statutory interpretation exercise is not required in every case. The Panel's interpretation of the relevant provisions in these appeals will be informed by the broader statutory purposes of the WSIA and the large and liberal interpretation accorded to remedial legislation.	26 (provides Rizzo at footnote 8)	The words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.

Decision	Paragraph that references Vavilov	Principle from Vavilov used for decision making	Paragraph that references Rizzo	Principle from Rizzo for decision making
		An administrative decision-maker's expertise may enrich and elevate the interpretative exercise, as per Vavilov.		
1169/20	28, 29, 31, 32, 33, 37, 197	It is important to note that the administrative decision-maker's reasoning in that case was premised upon the text, context, and purpose of the statute, and the consideration of the practical realities of the possible interpretations was an example of how an administrative decision-maker's expertise may enrich and elevate the interpretative exercise, as per Vavilov.	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.
1172/20	28, 29, 31, 32, 33, 37, 197	It is important to note that the administrative decision-maker's reasoning in that case was premised upon the text, context, and purpose of the statute, and the consideration of the practical realities of the possible interpretations was an example of how an administrative decision-maker's expertise may enrich and elevate the interpretative exercise, as per Vavilov.	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.
1171/20	28, 29, 31, 32, 33, 37, 197	It is important to note that the administrative decision-maker's reasoning in that case was premised upon the text, context, and purpose of the statute, and the consideration of the practical realities of the possible interpretations was an example of how an administrative decision-maker's expertise may enrich and elevate the interpretative	26 (provides Rizzo at footnote 8)	This Tribunal has followed the courts in adopting the modern principle of statutory interpretation, which requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of Parliament or the Legislature.

Decision	Paragraph that references Vavilov	Principle from Vavilov used for decision making	Paragraph that references Rizzo	Principle from Rizzo for decision making
		exercise, as per Vavilov.		
1105/19	39	The "administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose" of the provision. Ultimately, "the decision maker's responsibility is to discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome".	39	The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the Scheme of the Act, the object of the Act, and the intention of Parliament.

Appendix C

There are no substantial differences between the *Workers' Compensation Act*, R.S.O. 1990, c. W.11 (pre-1998 Act) and the current *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sch. A. (WSIA) in terms of access when assessed with the general jurisdiction provisions of the WCA (s. 86(1)) and WSIA (s. 123(1)).

Workers' Compensation Act, R.S.O. 1990, c. W.11 - https://www.ontario.ca/laws/statute/90w11	**Current WSIA - https://www.ontario.ca/laws/statute/97w16**
Access to records by worker 71.(1) Subject to subsection (2), where there is an issue in dispute, upon request, the Board shall give a worker, or if deceased, the persons who may be entitled to benefits under section 35, full access to and copies of the Board's file and records respecting the claim and the Board shall provide like access and copies to a representative of the worker upon presentation of a written authorization for that purpose signed by the worker, or if deceased, signed by a person who may be entitled to benefits under section 35.	**Worker's access to records** 57 (1) If there is an issue in dispute, the Board shall, upon request, give a worker access to the file kept by the Board about his or her claim and shall give the worker a copy of the documents in the file. If the worker is deceased, the Board shall give access and copies to the persons who may be entitled to payments under section 48. **Same** (2) If there is an issue in dispute and the worker is deceased, the Board, upon request, shall give access to and copies of such documents as the Board considers to be relevant to the issue in dispute to persons who may be entitled to payments under subsections 45 (7), (7.1) and (9). **Same** (3) The Board shall give the same access to the file and copies of documents to a representative of a person entitled to the access and copies, if the representative has written authorization from the person.
Medical information 71.(2) Where the file or a record respecting the claim, in the opinion of the Board, contains medical or other information that would be harmful to the worker if given to the worker, the Board shall provide copies of such medical information to the worker's treating physician instead of the worker or the worker's representative and advise the worker or the representative that it has done so.	**Exception** 57 (4) The Board shall not give a worker or his or her representative access to a document that contains health or other information that the Board believes would be harmful to the worker to see. Instead, the Board shall give a copy of the document to the worker's treating health professional and shall advise the worker or representative that it has done so.
Access to records by employer 71.(3) Where there is an issue in dispute, upon request, the Board shall grant the employer access to copies of only those records of the Board that the Board considers to be relevant to the issue or issues in dispute and the Board shall provide like	**Employer's access to records** 58 (1) If there is an issue in dispute, the Board shall, upon request, give a worker's employer access to such documents in the Board's file about the claim as the Board considers to be relevant to the issue and shall give the employer a copy of

access and copies to a representative of the employer upon presentation of written authorization for that purpose signed by the employer.	those documents. **Same** (2) The Board shall give the same access and copies to a representative of the employer, if the representative has written authorization from the employer.
Idem 71.(4) Where the employer or the employer's representative is given access to and copies of records referred to in subsection (3), the worker or worker's representative shall be informed of the access to and copies of records so given.	**Notice to worker** (3) The Board shall notify the worker or his or her representative if the Board has given access and copies to the employer (or the employer's representative) and shall give a copy of the same documents to the worker.
Idem 71.(5) Before granting access to the employer to medical reports and opinions under subsection (3), the Board shall notify the worker or claimant for compensation of the medical reports or opinions it considers relevant and permit written objections to be made within such time as may be specified in the notice before granting access to the employer and, after considering the objections, the Board may refuse access to the reports and opinions or may permit access thereto with or without conditions.	**Employer's access to health records** 59 (1) Despite section 58, before giving the employer access to a report or opinion of a health care practitioner about a worker, the Board shall notify the worker or other claimant that the Board proposes to do so and shall give him or her an opportunity to object to the disclosure. **Objection** **(**2) If the worker or claimant notifies the Board within the time specified by the Board that he or she objects to the disclosure of the report or opinion, the Board shall consider the objection before deciding whether to disclose the report or opinion. **Notice of decision** **(**3) The Board shall notify the worker, claimant and employer of its decision in the matter but shall not, in any event, disclose the report or opinion until after the later of, (a) the expiry of 21 days after giving notice of its decision; or (b) if the decision is appealed, the day on which the Appeals Tribunal finally disposes of the matter.
Appeal (6) A worker, employer or party of record may appeal a decision of the Board made under this section within twenty-one days of the mailing of the Board's decision and no access to or copies of the Board's records shall be provided until the expiry of the twenty-one day period or until the Appeals Tribunal gives its decision, whichever is later.	Appeal (4) The worker, claimant or employer may appeal the Board's decision to the Appeals Tribunal and shall do so within 21 days after the Board gives notice of its decision.
Information confidential	**Same**

71.(7) No employer or employer's representative who obtains access to copies of any of the records of the Board shall disclose any medical information obtained therefrom except in a form calculated to prevent the information from being identified with a particular worker or case	59 (5) If the Board or the Appeals Tribunal decides to disclose all or part of a report or opinion, the Board or the tribunal may impose such conditions on the employer's access as it considers appropriate. **Duty of confidentiality** (6) The employer and the employer's representatives shall not disclose any health information obtained from the Board except in a form calculated to prevent the information from being identified with a particular worker or case.