WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1391/24I

BEFORE	L. Petrykowski: Vice-Chair C. Sacco: Member Representative of Employers M. Tzaferis: Member Representative of Workers

HEARING INFORMATION

Date:	June 12, 2026
Location:	Toronto
Format:	Written
Post-hearing activity:	Not applicable

DATE OF DECISION	October 6, 2026
NEUTRAL CITATION	2026 ONWSIAT 1132
DECISION(S) UNDER APPEAL:	Board Case Manager's decision dated August 28, 2023

APPEARANCES

For the worker:	Not participating
For the employer:	A.R. Cramm, Lawyer, Office of the Employer Adviser
For the intervenor:	L. Vurma, Lawyer, Office of the Worker Adviser
For the intervenor:	S. Bird, Lawyer
For the intervenor (CEC):	L. Liversidge, Lawyer
For the Board:	L. Amara, Lawyer
Tribunal Counsel Office:	A. Rodriguez Garcia, Lawyer

REASONS

1. The employer's objection to a Board decision concerning access

[1] The employer objected to a decision of the Workplace Safety and Insurance Board's (the "Board", also referred to as the "WSIB" in the submissions of some parties in this case) Case Manager dated August 28, 2023. This decision concluded that "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". This decision denied the employer access to information in an injured worker's claim file in the context of its request for Second Injury and Enhancement Fund ("SIEF") cost relief.

[2] The employer started a Notice of Appeal to the Tribunal dated September 25, 2023, which explained the context for how this decision affected their right of appeal, and the remedy being sought from the Tribunal, as follows:

> Pursuant to s. 58 of the *Workplace Safety and Insurance Act, 1997*, the employer is entitled to their worker's claim file relevant to the issue(s) in dispute. The employer objects to initial entitlement and the 50% SIEF quantum decisions, yet access provided by WSIB contained several redacted documents, or portions thereof, thereby impeding the employer's ability to determine the severity of the worker's preexisting conditions and ensure that LOE was paid due to the work-related injury. They appeal via s. 59(4) of WSIA…
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> Direct the WSIB to provide the employer with the unredacted claim file documents, particularly in light of the SIEF requirement to determine the severity of the preexisting condition, and to ascertain whether the LOE benefits flowed from the work-related injury and not the non-compensable condition(s). The employer undertakes to keep the unredacted information confidential pursuant to s. 59(6) of the WSIA, 1997.

2. The issue to be decided at the Tribunal

[3] The only issue to be decided in this case is whether the Tribunal has jurisdiction to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information in the worker's claim file.

3. The identification of preliminary issues and the designation of this case as a "leading case"

[4] The Tribunal's Vice-Chair Registrar provided preliminary direction on how to process this novel case in a memorandum dated November 15, 2023 as follows:

> Further to your request for direction in this matter, this appeal should be assigned to a Motions Day Vice-Chair/Panel to determine, as a preliminary issue, whether the Tribunal has jurisdiction over the WSIB's determination that its decision to redact information is not an appealable issue. Prior to scheduling the Motions Day hearing, Tribunal Counsel Office (TCO) should provide submissions on the preliminary issue. TCO's submissions should be provided to the parties who should then, in turn, be invited to make submissions on the preliminary issue.
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> If the Motions Day Vice-Chair/Panel determines that the Tribunal has jurisdiction to consider the employer's request to access the redacted information, the appeal should then be processed in the usual course.

[5] There were a number of similar appeals at the Tribunal in which employers were seeking access to redacted medical documentation contained in workers' Board claim files. A lawyer from the Tribunal Counsel Office (TCO), Ms. Furmah, noted in correspondence to the employer's representative on March 7, 2024 that "in light of the common issues arising in these appeals, the Tribunal has identified this appeal to be a leading case" and that the other "appeals have been placed on hold pending the outcome in the leading case".

[6] A number of additional matters arose in the processing of this case, which required the further involvement of the TCO. Another TCO lawyer, Ms. Seyler, noted in a memorandum dated October 2, 2024 that a pre-hearing conference had been arranged to consider various procedural matters related to the handling of this case.

4. Pre-hearing conference (October 28, 2024) and the Panel's preliminary directions

[7] The Panel attended the pre-hearing conference on October 28, 2024 with the employer's representative to consider procedural issues relating to the processing of this case. This also included consideration about which parties should have participatory rights at this stage in the Tribunal proceedings. The Panel's direction on that same date was as follows:

Having considered the submissions of the employer's representative, the Panel is providing the following directions about the processing of this matter at this preliminary stage:

1. Mr. Bird is granted 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".

2. The Construction Employers Coalition is granted 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".

3. Both Mr. Bird and the Construction Employers Coalition should be provided with a copy of the Board's decision dated August 28, 2023 and the substantive submissions from all of the other parties concerning the above-identified preliminary matter. All of these materials should be redacted to eliminate any identity-related references concerning the employer or worker, including but not limited to their names, addresses or associated Board claim numbers.

4. The Tribunal should notify the Office of the Worker Adviser about this preliminary matter, including that it is proceeding by way of a "leading case" approach, and invite them to provide submissions as to whether they want to be a potential intervenor for the purposes of the preliminary matter.

5. The Panel reserves the right to provide additional notice to other potential intervenors and this will be subject to further deliberation by the Panel.

6. The Tribunal should invite the Board's Legal Services Branch to provide written submissions concerning the issue of how the Board redacts materials when processing access-related requests, including any difference between how this is accomplished for employers versus workers. These submissions should also address the Board's interpretation of sections 57, 58 and 59 of the *Workplace Safety and Insurance Act, 1997* and their view as to whether the Tribunal has the jurisdiction to consider objections to the Board's determination concerning redaction decisions, including whether these are appealable issues or "administrative" decisions. These submissions should also address how the Board processes these matters with respect to "health records" versus non-health records.

7. The Panel has determined that the above-identified matter is not moot given the particular circumstances identified by the employer's representative. This matter remains justiciable and alive, and will be the subject to future determinations on the merits of the preliminary matter in due course.

8. As the submission of the employer's representative referenced relevant Tribunal correspondence from… dated July 7, 2023, please add this correspondence to the case materials in this matter.

9. The Panel is seized of this matter and any further preliminary matter arising from the implementation of the above directions should be brought to our attention.

[8] Following the release of the Panel's directions, the TCO carried out the directions. The Office of the Worker Adviser advised the Tribunal on December 18, 2024 that it was interested in participating as an intervenor in this case. The TCO then obtained submissions (and additional evidence/documentation) from the various parties. TCO also provided their own submissions concerning this matter, which supplemented their original submissions that were initially added to the file on February 28, 2024. The submissions from the various parties are summarized below.

[9] The Panel acknowledges the professionalism of all of the representatives who made submissions in this case.

5. Law and policy

[10] The *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Schedule A (the "WSIA") applies to this matter. All legislative references in this decision refer to the WSIA, as amended, unless otherwise stated.

[11] The Tribunal applies 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.[1]

[12] The Tribunal also applies section 64 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, which provides that an Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.[2]

[13] The Supreme Court of Canada affirmed the modern principle of statutory interpretation in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 (CanLII) ("*Vavilov*"). In *Vavilov*, the majority emphasized the primacy of text, context and purpose in statutory interpretation. Administrative decision-makers are expected to follow

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1 See, for example, *Decision No. 1362/06I*, 2006 ONWSIAT 2253, which adopted the modern principle of statutory interpretation, with reference to *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27.

2 See, for example, *Decision No. 2502/08R*, 2009 ONWSIAT 1719.

general principles of statutory interpretation in their decisions, although a formalistic statutory interpretation exercise is not required in every case (see, in particular, paragraphs 118-121).

[14] The jurisdiction of the Tribunal is set out in section 123 of the WSIA, as follows, in part:

> **Jurisdiction**
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> 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;
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> (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).
>
> **Same**
>
> (2) For greater certainty, the jurisdiction of the Appeals Tribunal under subsection (1) does not include the jurisdiction to hear and decide an appeal from decisions made under the following Parts or provisions:
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> 1. Repealed: 2011, c. 11, s. 22.
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> 2. Sections 26 to 30 (rights of action) and 36 (health examination).
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> 3. Section 60, subsections 62 (1) to (3) and sections 64 and 65 (payment of benefits).
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> 4. Subsections 81 (1) to (6), 81.1 (1) to (3), 83 (1) and (2) and section 85 (allocation of payments).
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> 5. Part VIII (insurance fund).
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> 6. Part XII (enforcement), other than decisions concerning whether security must be given under section 137 or whether a person is liable under subsection 146 (2) to make payments. 1997, c. 16, Sched. A, s. 123 (2); 2011, c. 11, s. 22; 2019, c. 9, Sched. 13, s. 2.

[15] Sections 57 through 59 of the WSIA encompass the issue of access to records for parties where there is an "issue in dispute". The parties in this case have taken various positions about the applicability and relevance of these statutory provisions. As such, these sections of the WSIA have been reproduced in their entirety, as follows:

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. 1997, c. 16, Sched. A, s. 57 (1).

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). 1997, c. 16, Sched. A, s. 57 (2); 2011, c. 1, Sched. 7, s. 3 (7).

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. 1997, c. 16, Sched. A, s. 57 (3).

Exception

(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. 1997, c. 16, Sched. A, s. 57 (4).

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 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.

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. 1997, c. 16, Sched. A, s. 58.

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

(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.

Same

(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. 1997, c. 16, Sched. A, s. 59.

6. The Board's decision at issue before the Tribunal

[16] The Board Case Manager's decision dated August 28, 2023 to deny the employer access to information in an injured worker's claim file in the context of the employer's request for SIEF cost relief is reproduced as follows:

> …You are requesting information in the claim file that I have determined does not contribute to the establishment of facts in the claim matter nor was it used to establish entitlement nor other decisions.
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> Authority

According to the *Workplace Safety and Insurance Act* (the *Act*) section 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 those documents.

The WSIB collects personal and confidential information in order to determine entitlements under WSIA and administer benefits and services. There are legal obligations under the Freedom of Information and Protection of Personal Information Act (FIPPA) and the WSIA to protect the personal information collected in the administration of a claim. These obligations apply to personal and confidential information about the person with injury/illness, survivors, third parties, concurrent employers, and deceased persons. Protecting this information means ensuring non-relevant or confidential information is redacted and not disclosed in accordance with sections 57, 58 and 59.

As outlined in WSIB Operational Policy 21-02-02 *Disclosure of Claim File Information* (Issue in Dispute), when determining relevancy, information that has no bearing on decisions would not be considered relevant to an issue in dispute and would not be released to employers.

Rationale:

It is the Board's responsibility to determine which documents are relevant to the decision-making process in a claim. This determination is made based on the Board's legal obligations set out in WSIA s.58 internal policies and the specific circumstances of each case.

The purpose of redacting irrelevant documents is to ensure that personal information about the worker is not disclosed and only pertinent information is considered.

As specified in WSIA s.58, the Board must determine which documents are relevant to the issue in dispute and provide these documents to employers.

When health care information about the worker is determined to be relevant to the issue in dispute, the Board notifies the workers 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.

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.

As the Case Manager accountable for the correct application of the Disclosure of Claim File Information policies in this circumstance, I have assessed the information and confirmed that none of it contributed to the decision(s) within the claim that constitute the issue in dispute.

Therefore, access to this information will not be granted.

7. The initial submissions of the employer's representative

[17] On behalf of the employer, Mr. Cramm has provided numerous submissions in support of the position that the Tribunal has the jurisdiction to hear and decide appeals concerning a Board decision to withhold employer access to redacted medical information in the worker's claim file.

[18] His initial submissions dated April 12, 2024 noted that past Tribunal decisions supported its jurisdiction to hear access appeals from both workers and employers. The WSIA specifically grants the Tribunal exclusive jurisdiction to hear appeals from Board decisions on access to a worker's medical records where there is an issue in dispute.

[19] *Decision No. 1956/01*, 2001 ONWSIAT 3228 dealt with the jurisdictional question on access and is instructive in the current case. His submissions then noted as follows, in part:

> 25. The Panel's legal analysis was premised on the principle that administrative bodies like the Tribunal can extend only as far as is permitted by the legislation which creates them. The Panel was also of the view that Tribunal jurisdiction must be found with reference to section 123 of the WSIA, which outlines what the Tribunal has exclusive jurisdiction to hear and decide.
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> 26. Additionally, the Panel determined the only means by which the Tribunal could obtain jurisdiction over the access question would be through section 123(1)(c), which provides jurisdiction for other matters assigned to the Tribunal under the WSIA. The Panel concluded that the legislature has turned its mind to the question of access and has "assigned" the Tribunal jurisdiction in s. 59(4). This subsection provides that workers and employers may appeal "the Board's decision" to the Tribunal provided that there is an issue in dispute prior to the Board's decision on access.
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> 27. In coming to this conclusion, the Tribunal was agreeing with the Board's own submissions in that case, which outlined the Board's view that section 59(4) conferred specific jurisdiction upon the Tribunal relating to employer access to a report or opinion of a health care practitioner, as opposed to general jurisdiction to hear access appeal decisions.

[20] He then submitted that the Board previously took a similar position to their current one on this issue. That approach has already been considered, and rejected, by the Tribunal in *Decision No. 1354/*02, 2002 ONWSIAT 2750*.* The Tribunal disagreed with the Board's interpretation of sections 58 and 59 of the WSIA, and indeed was critical of the circular nature of the Board's position. The Board's current approach is not aligned with

the plain meaning of the WSIA. The employer submits that the Board's interpretation of section 58 and 59 of the WSIA, as outlined in *Decision No. 1354/02,* is simply not consistent with the plain language of the WSIA. It is a well-established principle of statutory interpretation that the statute should be given its plain and literal meaning without the need to infer wordings into sections of the Act. The Board's interpretation fails to give meaning to the key words "Despite section 58" found in the beginning of section 59(1). The plain meaning of these words is that, despite what is outlined in section 58, health records are to follow the process set out in section 59. Support for this interpretation regarding access is also found in *Butterworths Workers' Compensation in Ontario Service*, wherein they indicate that the general disclosure provision of section 58 is modified by section 59.

[21] The Board's interpretation of sections 58 and 59, as outlined in *Decision No. 1354/02,* is not consistent with the general approach found in Tribunal decisions. In fact, several Tribunal decisions have adjudicated access to medical records appeals from Board decisions, and the Tribunal has consistently determined that it has jurisdiction under section 59(4) of the WSIA to address this issue on appeal. In the very recent *Decision No. 864/*23, 2023 ONWSIAT 979*,* the Tribunal best summarized the legal approach and analysis regarding its jurisdiction over access issues:

> Subsection 58(1) of the WSIA and section 71(3) of the WCA permit the employer access to all documents in a worker's Board file which are relevant to an issue in dispute. This access is provided to allow the employer to assess the evidence relevant to the case and to prepare its arguments accordingly. Granting this access, therefore, requires that two conditions be met. First, an issue in dispute must be identified. Second, the documents sought by the employer must be relevant to the issue in dispute. Objections to Board access decisions may be appealed to the Tribunal pursuant to section 59(4) of the WSIA and section 71(6) of the WCA.

[22] He then submitted that a non-exhaustive list of other Tribunal decisions supporting this analysis are as follows: *Decision Nos. 891/*11, 2011 ONWSIAT 1353*; 864/23; 292/23*, 2023 ONWSIAT 436*; 808/20,* 2020 ONWSIAT 1630*; 379/*21, 2021 ONWSIAT 437*; 232/23,* 2023 ONWSIAT 393*; 191/22*, 2022 ONWSIAT 345*; 336/21*, 2021 ONWSIAT 414*; 842/19*, 2019 ONWSIAT 1399*;* and *235/19*, 2019 ONWSIAT 515*.*

[23] *Decision No. 712/22*, 2022 ONWSIAT 1355 involved an employer appeal of Board-initiated redactions. The Tribunal found that employer access to a report or opinion of a health care practitioner about a worker may be appealed to the Tribunal pursuant to section 59(4) of the WSIA. It is worth noting that the Tribunal's approach has also been applied to medical documentation contained in the "No Access" section of the Board's claim file that the Board had determined to be irrelevant to the issue in dispute. For example, *Decision No. 864/23* considered documents contained in the "No Access" section of the claim file and certain medical reports were required to be released to the employer. Similarly, *Decision No. 1810/13*, 2013 ONWSIAT 2103 also dealt with an employer appeal on the issue of whether the employer should be granted access to the "No Access" medical reports, and certain medical reports in the "No Access" section were also released to the employer as a result.

[24] The Tribunal has taken a broad approach to what is a medical record under s. 59 of the WSIA. Recent Tribunal decisions have generally taken a broad approach to access and relevance issues (*Decision Nos. 233/23I* 2023 ONWSIAT 362; *1609/22*, 2022 ONWSIAT 1958; and *457/23,* 2023 ONWSIAT 602). The Tribunal in *Decision No. 457/23* found that section 59 is directed to decisions on medical records or documents which contain references to medical records. Other Tribunal decisions have similarly confirmed that a worker's medical information contained in other documents such as Board memos is protected and treated as health records under the relevant statutory sections on access (*Decision Nos.12/94*,1995 CanLII 8357 (ON WSIAT)*; 422/90*, 1990 CanLII 4549 (ON WSIAT)*; 985/*98,1999 CanLII 17262 (ON WSIAT); and *2519/00,* 2001 ONWSIAT 585).

[25] He went on to submit that it was not necessary to take away an employer's right to appeal access decisions in order to protect worker privacy as there are a number of safeguards already built in for this purpose. Special protections for the privacy of the worker's medical records are incorporated into section 59. When information is disclosed, the employer and its authorized representatives shall ensure that any further disclosure of information is in an anonymized form, pursuant to section 59(6) of the WSIA. Where there are serious concerns about potential misuse of information, the

Tribunal may impose conditions pursuant to section 59(5) of the WSIA. More protection can be found in Section 150 of the WSIA. Section 150(1) provides that an employer or employer's representative who contravenes subsection 37(4), 59 (6) or 181(3) is guilty of an offence. Clarification and guidance regarding these additional forms of protection can be found in *Decision No. 891/11*.

[26] He further submitted that denying the employer access to relevant information – as well as any ability to object to the Board's access decision – would impede the employer's right to a fair hearing. The principles of natural justice and procedural fairness are well established in Tribunal jurisprudence. These principles require that the employer receive access to all relevant file material, and parties have an interest in procedural due process and need access to relevant information to have a fair hearing. These principles have been captured in the Tribunal's Practice Direction entitled *"Access to Workers' Information When the Issue in Dispute is at the Board*" dated July 1, 2014. That Practice Direction states that it incorporates the principles on access found in the Act and Policy and that "in particular, the Tribunal recognizes that both parties need access to relevant information in order to have a fair hearing".

[27] In this vein, he submitted that *Decision No. 1174/87*, 1988 CanLII 1665 (ON WSIAT) was relevant and involved an employer being denied access to a worker's medical reports by a Board decision because the same medical reports were also being withheld from the worker based on instructions by a treating medical practitioner. Despite this, the Tribunal found in favour of releasing the medical reports to the employer with conditions and noted that if the medical reports were clearly relevant and important to deciding the issues in dispute, it is more likely to affect the employer's right to a hearing. That decision stated as follows, in part:

> It is a fundamental principle of administrative law that a party to a proceeding must know the case it has to meet and have an opportunity to present argument and evidence to meet it. In most cases, this requires the production of the records or the information in the records that the decision maker has before it in making a decision.

[28] He went on to submit that *Decision No. 685/93*, 1995 CanLII 8251 (ON WSIAT) dealt with a similar access issue and provided similar guidance, in that justice demands that

an employer be given the information it needs to prepare its appeal. He then returned to *Decision No. 1354/02,* where the employer was appealing a decision on SIEF and requesting access to a copy of another of the worker's claims involving the same area of injury. The Board denied SIEF and also denied access to the prior claim file due to a lack of relevancy. However, the Tribunal found that the Board's decision to deny access had great substantive impact on the ultimate issue of SIEF. That decision stated as follows, in part:

> As that sub-section does provide that an employer has appeal rights, the Board cannot 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

[29] He went on to submit that it is worth noting that if employers do not have the information needed to meaningfully participate in their appeal at the Board level, this may lead some employers to treat the Board's appeal level as a hurdle to move through as quickly as possible, rather than fully engaging in that process. This is because the Tribunal will make its own decision on what, if any, information should be redacted if the issue in dispute is appealed to the Tribunal (in accordance with the WSIAT Practice Direction). This may undermine the benefits to the workplace safety and insurance system of having a fulsome appeal at the Board level.

[30] The initial submissions of the employer's representative then concluded as follows:

> 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.
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> 51. In addition, the employer submits that the principles of natural justice and procedural fairness are well established in Tribunal jurisprudence and have been encompassed in its Practice Direction Access to Workers' Information When the Issue in Dispute is at the Board. In essence, the Tribunal expressly realizes that both parties need access to relevant information to have a fair hearing.
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> 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.

8. The submissions of the Board

[31] On behalf of the Board, Ms. Amara provided written submissions dated June 5, 2025, which discussed the Board's current practice to conduct a relevancy review for employer access under sections 58 and 59 of the WSIA. She also discussed the rules of statutory interpretation and how they applied to section 57 through 59 of the WSIA. She went on to conclude that "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".

[32] Her submissions on the issue of whether the Tribunal had jurisdiction to hear appeals on relevancy under sections 57 – 59 of the WSIA are largely reproduced below:

> 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. Section 132 also allows both bodies to compel evidence. Finally, section 118 of the WSIA grants the Board jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where the Act provides otherwise, and section 123 grants the Tribunal jurisdiction to hear all final appeals from Board decisions.
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> Section 118 (1) of WSIA provides: "The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise." Section 118(2) provides the Board exclusive jurisdiction to determine whether a document or information is relevant to the issue in dispute and needs to be released to the employer under section 58 of the WSIA.
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> 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.
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> 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.

It is a fundamental rule of statutory interpretation that, where the legislature names one specific circumstance or thing and does not name analogous circumstances or things, it intended to exclude those things that were not named. This principle is known as the principle of implied exclusion or by its Latin name of expressio unius est exclusio alterius. In this case, the employer access provisions of the WSIA expressly set out when the Appeals Tribunal has jurisdiction in such matters. By, implication the legislature is assumed to have intended that the Tribunal not have jurisdiction in other employer access matters. This conclusion is buttressed by the failure of subsection 123(1) to confer on the Tribunal any more general jurisdiction over access. In our view, it goes without saying that the jurisdiction of administrative bodies like the Tribunal, can extend only as far as is permitted by the legislation which creates it. The extent of the Tribunal's jurisdiction must be determined with reference to section 123.

Section 58 determinations cannot be appealed to WSIAT. *WSIA* sets out WSIAT's jurisdiction, and neither s. 123 (the general provision giving appellate jurisdiction) nor any specific section provide for an appeal. A decision to produce documents is not a "final decision of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlements to other benefits under the insurance plan" nor a decision on "transfer of costs, an employer's classification under the insurance plan" or "the amount of premiums and penalties payable" by an employer. Appellate jurisdiction is always statutory and cannot be expanded without a statutory amendment. This is reinforced by the contrast by section 58 and section 59. The jurisdiction of the Tribunal under s. 59 of the WSIA is with respect to decisions regarding access to medical records.

The WSIAT has indicated that they do not have jurisdiction over s. 58, unlike their jurisdiction over s. 59. Decisions made regarding employer access at the WSIAT have been exclusively dealing with medical records and the WSIAT has always cited its authority to hear the appeal stems from section 59(4) of the WSIA.[17]This is supported by s. 123(1), which sets out the jurisdiction of the WSIAT, and it does not appear that section 58 is included as a type of decision that they have jurisdiction over…

The WSIAT is not bound by the access determinations of the Board. The question of what documents are to be provided to the employer is incidental to the appeal. The Tribunal adjudicates the access issue on a "de novo" basis just as it considers appeals made to the Tribunal on a de novo basis. The Tribunal does not give deference to the access decisions made by the ARO.

The WSIAT does clearly have jurisdiction over what documents to admit into evidence in proceedings before it, and (like AROs), the WSIAT can issue subpoenas under s.132(1) for evidence if requested by a worker or an employer, if they believe it is justified. The WSIAT similarly has jurisdiction over procedural fairness issues in terms of the hearings before them, and can determine what evidence to allow or exclude, based on submissions from the parties in front of them.

Thus, while the WSIAT does not have jurisdiction to directly hear an appeal of a redaction of evidence under s. 58 (unlike s. 59), once an ARO has issued on the underlying issue in dispute, and that decision has been appealed to the WSIAT, the WSIAT could potentially require production of any particular piece of evidence, including documents that the WSIB had previously redacted under s. 58.

[33] Her submissions then concluded as follows:

> It is the Board's responsibility to determine which documents are relevant to the decision making process in a claim. This determination is made based on the Board's legal obligations set out in WSIA section 58, internal policies, and the specific circumstances of each case.
>
> The purpose of redacting irrelevant documents is to ensure that personal information about the worker is not disclosed, and only pertinent information is considered.
>
> As specified in WSIA section 58, the Board must determine which documents are relevant to the issue in dispute and provide these documents to employers.
>
> 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 objects, the Board takes that objection into account when making its decision on what information 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 (WSIAT). Section 59 is triggered by a worker's objection only.
>
> However, employers do not have similar rights under section 58 when it comes to medical information the Board considers irrelevant. 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

9. The submissions of the intervenor represented by Mr. Bird

[34] On behalf of another employer that was affected by a Board decision to redact medical information, Mr. Bird provided written submissions dated June 25, 2025. Mr. Bird's submissions also touched on the Board's decision to not obtain additional medical information in his case. However, that specific issue is not before the Panel in the present case who is not assigned to the handling of that employer appeal. Mr. Bird's submissions on the *redaction* issue including the following, in part:

> With respect to the first issue for [the employer], the Board redacted medical information and withheld it from the employer. In that respect, Tribunal Counsel's submissions of February 28, 2024 are germane, and [the employer] adopts the conclusions reached that the Tribunal has jurisdiction to hear and decide access appeals as outlined by section 123(1)(c) and 59(4) of the WSIA…

[35] Mr. Bird supported the initial submissions of the TCO at paras. 18 and 26. He further noted as follows:

> The *WSIA* makes no distinctions between the types of decisions which the Board is entitled to make. It contains no reference to the concept of an "administrative

> decision", nor does it grant the Board the power to create such a secondary class of decision. Most importantly, it does not grant the Board to create a class of decision which, by its own internal decision, it can exempt from the jurisdiction of the Tribunal.

[36] Mr. Bird went on to submit as follows:

> …By refusing to inquire about and consider potentially relevant information (and especially in this case where the Board provided no rationale for its decision), the Board has utterly disregarded is statutory obligations under section 119. It cannot abrogate its statutory obligations by creating a legal fiction that a decision is somehow not really a decision under its statutory mandate.
>
> [Employer] repeats its request that the Tribunal determine that it has jurisdiction in respect of its appeals in this matter…

10. The submissions of the intervenor, the Construction Employers Coalition, by Mr. Liversidge

[37] On behalf of the Construction Employers Coalition (CEC), Mr. Liversidge provided detailed submissions and supporting documentation in support of his position as follows:

> 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).
>
> 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.

[38] Mr. Liversidge provided extensive background material about his dealings with the Board about such access issues in 2023/2024. There had been a change in the manner that the Board dealt with these specific matters. It does not appear that there was a reconsideration sought or any judicial review application sought by the Board in the ensuing twenty 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 Tribunal. While the precise date is difficult to discern, a change in Board practice with respect to its relevance

determinations in access disclosure cases began to be noticed by the employer stakeholder community in the early 2020s.

[39] Mr. Liversidge went on to submit that 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. The denial of the right to contest the Board's relevancy determinations to the Tribunal deprives an employer of an opportunity to effectively participate. The Board 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. That the same procedural safeguards are not permitted to be advanced to the Tribunal is out of harmony with the fair process safeguards in the WSIA. That the Board makes incorrect determinations regarding relevance is indisputable as supported by *Decision Nos. 1354/02*, *864/23* and *712/22*, cases where the Board's approach was overturned by the Tribunal.

[40] With respect to the possibility of the Divisional Court being involved in deciding such questions, involving that court on interlocutory procedural fairness concerns flowing from routine access considerations is the antithesis of the reasons behind the creation of the Tribunal. This is a sound reason for the Tribunal to assume jurisdiction in these matters. It is within the broader statutory purpose of the WSIA that interlocutory issues with respect to access disclosure not proceed to the Divisional Court and must be considered by the Tribunal. This should be done within the "broader statutory purposes" of the WSIA as set out by the *Decision No. 1736/21*, 2023 ONWSIAT 1422.

[41] He went on to submit that the Tribunal in *Decision No. 1354/02* ordered that the prior claim be released to the employer to "properly pursue and present its argument to the Appeals Branch . . .". For the same reasons as set out in *Decision No. 1354/02*, denying employer access to the Tribunal is contrary to the purposes of the WSIA and out of

harmony with the scheme of the Act. He also submitted that the Tribunal's jurisdiction, at the least, in this matter flow from section 123(1)(c), "such other matters as assigned." The "other matter assigned" is assigned through section 59(4). The Board departs from this by stating that the Tribunal does not have jurisdiction unless there is a section 59(2) objection by a worker. Such jurisdiction would be conferred to the Tribunal to ensure procedural fairness respecting employer access to ensure the WSIA is applied in a manner harmonious with the Act.

[42] It was then submitted that the Tribunal's jurisdiction is established under section 123(1)(a) of the WSIA and this interpretation is more in harmony with the scheme of the WSIA, which better ensures that the objects of the WSIA are interpreted and administered in line with the WSIA's true intent and spirit. The representative then contended that the Panel in *Decision No. 1956/01* 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). It was then submitted that s. 123(1)(a) does present the Tribunal with jurisdiction as an access dispute is "with respect to" entitlement and that 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. He submitted 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.

[43] Mr. Liversidge's submissions concluded as follows:

> 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.
>
> *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."*

> 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.
>
> 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…

11. The submissions of the Office of the Worker Adviser

[44] On behalf of the Office of the Worker Adviser, Ms. Vurma submitted that the Tribunal "does not have jurisdiction to hear an appeal from an employer's objection to the WSIB's determination of relevance under section 58". Her submissions concluded as follows:

> Section 58 of the WSIA does not include the right for any party to object or appeal the WSIB's determination of relevance under that section. The WSIB's determination of relevance under section 58 is not equivalent to a "decision" under section 59(2) which triggers a right of appeal to the WSIAT under section 59(4).
>
> In its submission, the Employer is effectively requesting that the WSIAT create a new appeal route for employers to raise access concerns that arise under section 58 of the WSIA.
>
> In effect, the Employer is asking the WSIAT to ignore the specific statutory language, context and purpose of sections 58 and 59, to broaden the jurisdiction of the WSIAT, and to "read in" a new route of appeal.
>
> We submit that the Employer's request is not supported by an interpretation of the text, context and purpose of the WSIA. Although we agree that principles of natural justice and procedural fairness are important, those principles do not create a new statutory right of appeal for employers or expand the jurisdiction of the WSIAT. As noted in *Decision No 859/24I* at para. 21, "With respect to fairness and efficiency, neither of these considerations can create jurisdiction where it does not otherwise exist."
>
> Moreover, we submit that the new appeal route requested by the Employer would alter the carefully created balance of the access provisions in the WSIA. The specific drafting of section 59 is based on the need for protection of worker's health information. The objection and appeal process under section 59 occurs before disclosure of the health care information to the employer. The objection and appeal process provides finality to the worker's concerns. It is activated by a specific request of the worker and involves a review of relevance (compared to the potential harm to the worker) before disclosure occurs. As the initiators of the objection process under section 59(2), a worker can weigh their different interests before launching the process.

> Instead, the requested appeal route could provide employers the option to take every file update that includes redactions to the WSIAT for review. This would have significant impacts on the ability of workers to move forward issues in dispute. It could tie up workers' claims with numerous access appeals to the WSIAT and create a new type of "ping pong" between the WSIB and the WSIAT. It could also further increase acrimony between workers and employers. It could allow employers – who don't have an equivalent privacy interest and aren't aware of what is in the redacted content – to potentially delay the adjudication of workers' claims and to routinely and blindly ask the WSIAT to review the WSIB's determination of relevance for each document in a claim.
>
> As discussed earlier in this submission, the statutory language of the WSIA provides for an objection by a worker or claimant to the release of medical information under section 59. Without an objection from a worker under section 59(2), the WSIB does not issue a decision. The WSIB also does not "decide" whether to release a report or opinion under 59(2) or notify the parties of its decision under section 59(3). In this circumstance, the WSIAT does not have jurisdiction to hear an appeal under section 59(4). The WSIB's determination under section 58 that specific documents (or parts of documents) are not relevant to an issue in dispute is not a "decision" under section 59(2) that the "worker, claimant or employer may appeal" to the WSIAT.

12. The submissions of the TCO

[45] TCO takes a neutral role in participating in such cases. TCO stated it takes no position on the outcome of this matter. The Panel recognizes that it can accept or reject all or part of TCO's submissions in this matter as suggested in those same submissions.

[46] On behalf of TCO, Ms. Furmah provided an initial submission dated February 28, 2024, which provided the following "brief answer" to the jurisdictional question being considered:

> The Tribunal only has the jurisdiction to hear and decide appeals pursuant to the provisions set out in the WSIA. The Tribunal's jurisdiction to hear and decide an access appeal is outlined in section 59(4) of the WSIA and appears to be limited to employer access to health records.
>
> Further, in order for the employer to have access, two conditions must be met. First, there must be an issue in dispute at the Board. Second, the documents sought must be relevant to the issue in dispute.

[47] These submissions also noted that TCO submits that *Decision No. 1956/01* is the leading Tribunal decision with respect to the Tribunal's jurisdiction in employer access matters under the WSIA. That case was also considered most recently by the Tribunal in *Decision Nos. 457/23, 903/21,* 2021 ONWSIAT 1336, *1262/23*, 2023 ONWSIAT 1489 and *233/23I*.

[48] The submissions of TCO concluded as follows:

> In determining the present preliminary issue, Tribunal Counsel submits that the Vice-Chair or Panel assigned should have regard for the Tribunal's jurisdiction to hear and decide access appeals as outlined by section 123(1)(c) and 59(4) of the *WSIA*.
>
> It appears from a comparison between section 71 of the *WCA* and sections 58 and 59 of the *WSIA*, that the Legislature intended to limit the Tribunal appeal mechanism to health records under the *WSIA*.
>
> Tribunal Counsel submits that the Vice-Chair or Panel assigned should consider the Tribunal's jurisprudence, namely WSIAT *Decision No. 1956/01*, and the more recent Tribunal case law.
>
> It is for the Vice-Chair or Panel assigned to consider whether the request for access made by the employer should be dealt with under section 58 or 59 of the Act. This requires a determination of whether the redacted documents sought by the employer can be characterized as health records.
>
> Further, in alignment with the guidance provided in the case law, the Vice-Chair or Panel should be satisfied that there is an issue in dispute with regards to SIEF cost relief, and that the documents sought by the employer are relevant to the issue of SIEF cost relief.
>
> Since it does not appear that the Tribunal has previously dealt with the Tribunal's jurisdiction to hear appeals under section 58 of the *WSIA* in a comprehensive way, the Vice-Chair or Panel may wish to obtain additional submissions from the Board.

[49] On behalf of TCO, Ms. Rodriguez Garcia provided additional submissions after reviewing the position of the various parties who participated in this matter. These submissions were dated January 7, 2026 and framed the present jurisdictional issues as follows:

> As noted in the Initial TCO Submissions, the WSIAT's jurisdiction is set out in s. 123 of the *WSIA*. This section states that the WSIAT has jurisdiction over final decisions of the WSIB on a number of specific issues and over other matters assigned to the WSIAT under the *WSIA* (s.123(1)(c)). The issues specifically noted under s.123 do not include employer access to worker's health information. However, s.59(4) gives the Tribunal jurisdiction to hear an appeal from a Board's decision on employer access to health records. The section provides as follows:
>
> "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."
>
> If the WSIAT has jurisdiction to hear an appeal from a Board decision to redact a worker's healthcare information pursuant to s.58 of the *WSIA*, it would be under section 123(1)(c) as "another matter assigned to the Appeals Tribunal under the Act", through s.59(4). Therefore, Tribunal Counsel submits that the question to be

> addressed is whether s.59(4) of the *WSIA* grants the WSIAT jurisdiction to hear an appeal from a WSIB decision to deny employer access to a worker's healthcare information pursuant to s.58.
>
> This is an issue of statutory interpretation. Tribunal Counsel submits that the portion of s.59(4) that requires interpretation is "…may appeal **the Board's decision** to the Appeals Tribunal…" [emphasis added]. To determine whether s.59(4) gives the WSIAT jurisdiction to hear an appeal of a Board's decision to not release healthcare information pursuant to section 58, the Panel will have to determine whether the reference to "the Board's decision" in s.59(4) includes a WSIB decision to deny employer access to a worker's healthcare information pursuant to s.58.

[50] The submissions of TCO went on to note that there is one Tribunal decision that considered the same jurisdictional issue. The Vice-Chair in *Decision No. 1354/02* found that "[c]learly, the "Board's decision" in this matter was a decision to deny access." The Vice-Chair further stated that when interpreting the relevant section, he would take a broad and purposeful approach, considering the context of the matter. However, it does not appear that the Vice-Chair in that decision engaged in a detailed statutory analysis of s. 59(4) and specifically the phrase "the Board's decision" as it appears in that section.

[51] The conclusions of the submissions of TCO were as follows:

> To conclude, TCO submits that the question the Panel must answer is whether s.59(4) of the *WSIA* grants the WSIAT jurisdiction to hear an appeal from a WSIB decision to deny employer access to a worker's healthcare information pursuant to s.58 of the *WSIA*. In answering this question, the Panel should interpret the meaning of s.59(4), in particular the meaning of the phrase "the Board's decision" as it appears in that section.
>
> In interpreting the phrase, the Panel should apply the modern principle of statutory interpretation. Applying this principle, the Panel should determine the ordinary meaning or first impression meaning of the phrase and decide whether there is any reason to reject it. In the absence of a reason to reject it, the ordinary meaning should prevail.
>
> This meaning should then be tested against the larger context, which includes the purpose of the section. In determining the purpose, the Panel may rely on direct and indirect indicators of purpose, which are discussed above.
>
> Finally, the Panel should consider the consequences of its interpretation to ensure it does not result in an absurdity. Finally, the Panel must ensure that its ultimate interpretation is one which the words of the section can bear.

13. The reply submissions of the employer's representative

[52] On behalf of the employer, Mr. Cramm provided further submissions dated October 3, 2025 where he agreed with the submissions of Mr. Liversidge and disagreed with the submissions of the Board and OWA on the salient matter of whether the Tribunal had jurisdiction in this matter. Mr. Cramm acknowledged the submissions of Mr. Liversidge on section 123(1)(a). However, the Board's decision in this case is about the redaction of medical information which squarely engages the appeal rights explicitly set out in section 59(4) and the jurisdiction granted in section 123(1)(c). Section 59(4) assigns to the Tribunal jurisdiction over all access disputes related to medical records, thereby directly engaging the Tribunal's authority under section 123(1)(c). When read together, the employer submits these provisions create a clear framework for appeal rights.

[53] He then submitted that Tribunal jurisprudence consistently supports a broad and purposive interpretation of its jurisdiction, rooted in both modern principles of statutory interpretation and the historic objectives of the workers' compensation system. He submitted that the scope of appeals under section 59(4) should be broad and liberal to achieve the goals and intent of the legislation. There are several Tribunal decisions that set out this principle and reasoning which are applicable to the present case. The Tribunal Chair concluded that the Tribunal ought to consider its jurisdiction broadly where the decision under appeal implicitly or indirectly determines an issue in *Decision No. 1891/18IR*, 2020 ONWSIAT 1093 and affirmed the Tribunal's general approach of interpreting its jurisdiction broadly in *Decision No. 1998/19R*, 2020 ONWSIAT 2071. The Tribunal taking a broad view of its jurisdiction is well-settled in Tribunal jurisprudence and was also stressed in *Decision No. 2899/17I*, 2017 ON WSIAT 2989. The analysis in these decisions is relevant in this case. The scope of what is considered relevant, or implicitly deemed irrelevant and redacted, is integral to the access decision. Thus, the Tribunal must have jurisdiction to consider the access decision that is being made under section 59(4) in its entirety. Again, this is what was first considered in section 58 and then ultimately decided in section 59.

[54] Mr. Cramm also responded to procedural concerns about delay and costs as follows:

> …A risk of delay exists from disputes over access resulting in increased appeals while claims proceed. Where employers are denied access to relevant medical information, they cannot fully know the case they need to respond to. As a result, key arguments and evidence that could inform decision-making from an employer's perspective may not be presented to the Board.
>
> If these claims are appealed to the Tribunal and employers are given access to previously redacted information enabling them to present a complete case, and entitlement is not upheld, employers may incur significant and potentially irreversible costs.[29] Employers are statutorily mandated to fund the system and every effort must be made to ensure this occurs in a financially responsible and accountable manner.[30] Failing to resolve access issues early can lead to unfair and costly outcomes for the system. Expediency is key, and this is exactly why, we submit, section 59(4) explicitly provides a very short 21-day time frame in which to file an appeal with the Tribunal.

[55] Mr. Cramm also responded to privacy concerns as follows:

> …We submit that worker privacy is already robustly protected under the *WSIA* via sections 59(6), 150, 158, and 181.
>
> These statutory protections are further reinforced by WSIB policies, including Operational Policy Manual Documents 22-01-05, *Offences and Penalties – General* and 22-01-08, *Offences and Penalties – Employer* which provide the WSIB with authority to enforce privacy rules, impose penalties, and pursue prosecutions for unauthorized disclosures. In this context, the suggestion that sections 58 and 59 should be interpreted narrowly to curtail employer appeal rights is not justified.

[56] Mr. Cramm also noted these access matters were properly before the Tribunal in the following manner:

> If the Board's interpretation is accepted, the only remaining avenue of appeal would be by way of Judicial Review in the Divisional Court. As the CEC correctly submits, Judicial Review is neither an appropriate nor effective forum for resolving an interlocutory procedural issue of this nature. It undermines the very purpose for which the Tribunal was created and runs contrary to the Legislature's intention in establishing the Judicial Review process.

[57] Mr. Cramm's submission then concluded as follows:

> The employer respectfully submits that the Tribunal has jurisdiction under section 59(4), read in conjunction with section 123(1)(c) of the *WSIA,* to adjudicate appeals arising from WSIB decisions that deny access to medical information in a worker's claim file.
>
> The Board's narrow interpretation, limiting employer appeal rights only to instances where a worker has objected and the WSIB has deemed the information relevant, is not in line with the modern principles of statutory interpretation. Such an approach is inconsistent with the text, purpose, and structure of sections 58 and 59. Doing so would allow the WSIB to shield its

> access decisions from review by simply asserting irrelevance, thereby immunizing its determinations from oversight.
>
> Tribunal jurisprudence has consistently recognized its authority to hear access appeals under section 59(4), interpreting its jurisdiction broadly to ensure meaningful access to justice for both workers and employers.
>
> Contrary to concerns raised about delay or privacy, the employer submits that appeal rights under section 59(4) are structured to ensure expedited interlocutory review and are supported by robust statutory and policy safeguards for worker privacy. There is no evidence of employers abusing this right. Instead, denying meaningful access to medical records risks uninformed adjudication, unnecessary appeals, increased system costs, and the erosion of confidence in WSIB decision making.
>
> Employers have had a robust and long-standing right to appeal WSIB access decisions to the Tribunal. The WSIB maintains the burden of justifying a change in statutory interpretation and practice, and that burden has not been met or discharged in this case.
>
> The employer respectfully requests the Tribunal affirm its jurisdiction under section 59(4) and 123(1)(c), and to confirm that its mandate includes the authority to review and decide access appeals involving medical information redacted by the WSIB, even in the absence of a worker objection.
>
> This finding is consistent with statute and jurisprudence and is essential to upholding the integrity, fairness, and effectiveness of Ontario's Workplace Safety and Insurance system.

[58] Mr. Cramm then provided further reply submissions on February 26, 2026, which included the following framing of the issue following the review of TCO's submissions:

> The issue is whether an appeal under section 59(4) for access to medical information includes a determination of relevance pursuant to section 58, and whether such a determination constitutes the "Board's decision", and whether that is appealable to the WSIAT.

[59] He went on to submit that when the Board applies section 58, it identifies information it considers relevant and suitable for disclosure, and it simultaneously determines what it considers not relevant and therefore not disclosable. The access decision is a single decision comprised of both disclosure and non-disclosure determinations.

[60] He further submitted that it was the employer's position that Tribunal case law for the past two decades has shown consensus on a legal approach with respect to section 59(4) appeals on health records. Panels have routinely exercised jurisdiction over such appeals without having to analyze their authority to do so. By contrast, there has been less clarity regarding whether section 59(4) extends beyond health records. As noted in

the employer's prior submission, that broader question is not before this Panel and does not arise in this case.

[61] He then submitted that in the recent TCO submissions, it was noted that past Tribunal decisions did not turn their minds specifically to the question of whether the WSIAT has jurisdiction to consider an appeal from a Board decision denying access to a worker's medical information due to lack of relevance pursuant to section 58 of the WSIA. It is respectfully submitted that the Tribunal did not engage in this specific jurisdictional analysis because jurisdiction was understood to exist. Where a legal principle is well settled and consistently applied, decision-makers have no occasion to revisit foundational questions. The exercise of jurisdiction over section 59(4) health record appeals reflects consensus on this point rather than an oversight.

[62] He then again referenced *Decision No. 1354/02* that considers the jurisdictional issue in this case. The TCO submission quotes from this key decision at length, highlighting that the Vice-Chair in that decision took a "broad and purposeful approach, considering the context of the matter". The employer agrees with this approach and relies on it. A contextual and purposive interpretation is consistent with modern principles of statutory interpretation and the Tribunal's role in the workers' compensation system. In a legal framework that values well-reasoned decision-making, it is worth noting that the Board has provided no compelling rationale for revisiting and reinterpreting sections 58 and 59. A decision to narrow Tribunal jurisdiction and abrogate established appeal rights requires a strong and principled justification. The absence of a sound legislative basis for such a significant restriction weighs heavily against the restrictive interpretation advanced by the Board.

[63] Mr. Cramm's submissions then concluded as follows:

> For the reasons set out above, and in the employer's prior submissions, it is the employer's position that the Tribunal does have jurisdiction under sections 59(4) and 123(1)(c) of the WSIA to hear and decide this appeal.
>
> The Board's decision under section 59(4) encompasses both the disclosure of medical records deemed relevant under section 58 and the withholding of information deemed not relevant. It is the latter determination that forms the subject of the current appeal.

> For more than two decades, the Tribunal has exercised jurisdiction over section 59(4) appeals concerning access to health records. That long-standing practice, as reflected in the analogous *Decision No. 1354/02*, supports the finding for jurisdiction in this case.
>
> There is no persuasive legislative rationale or policy justification to depart from that settled understanding or to support a restrictive interpretation that would insulate the Board's access determinations from Tribunal review.
>
> Accordingly, the employer respectfully requests that the Tribunal affirm its jurisdiction and proceed to determine the appeal on its merits.

14. Analysis and conclusions

a. Overview

[64] The Board has determined that a decision withholding access from an employer to medical information in the worker's claim file is an "administrative decision" that is not subject to an appeal to the Tribunal based on the current legislation. The Board has explained that employers do not have appeal rights when it comes to medical information it considers irrelevant.

[65] The employer in this case, as supported by some of the above-noted intervenors, has submitted that the Tribunal does indeed have jurisdiction to consider appeals of decisions where the Board has determined that medical information is irrelevant in a worker's claim file. They rely on a "broad" view of the Tribunal's jurisdiction. The Board, supported by the Office of the Worker Adviser, takes a narrow view and restrictive interpretation of the Tribunal's jurisdiction in that regard.

[66] In this decision, the Tribunal has affirmed its jurisdiction to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information in the worker's claim file for the following reasons.

b. Section 123 of the WSIA

[67] Section 123 of the *WSIA* gives the Tribunal the "exclusive jurisdiction" to "hear and decide" appeals from "final decisions" of the Board on specific issues. Subsection 123(1)(a) provides the Tribunal with jurisdiction to hear and decide all appeals from "final Board decisions with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan." Subsection

123(1)(b) grants jurisdiction over final decisions of the Board with respect to specified employer issues. Pursuant to subsection 123(1)(c) the Tribunal also has jurisdiction over "other matters" assigned under the legislation.

[68] In the Panel's view, the Tribunal's statutory authority to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information in the worker's claim file is sourced in subsection 123(1)(c) of the WSIA as an "other matter" assigned under the legislation. It is also sourced in subsection 59(4) of the WSIA that embodies a statutory "appeal" avenue where employers can object to a Board's decision concerning access.

c. Subsection 59(4) of the WSIA

[69] In this vein, the Panel has considered that subsection 59(4) of the WSIA outlines the timeline and right to appeal to the Tribunal of a decision made by the Board regarding an employer's access to a worker's health records as follows:

> 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.

[70] The question has arisen as to whether this statutory authority to appeal to the Tribunal extends to the Board's decision to restrict access to such information after making a determination that such information is irrelevant under subsection 58(1) of the WSIA, which reads as follows:

> 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 those documents.

d. Tribunal case law

[71] The Panel then notes that the Tribunal has considered the interplay between sections 58, 59 and 123 of the WSIA in a number of noteworthy cases. *Decision No. 1956/01* is a leading Tribunal decision with respect to the Tribunal's jurisdiction in employer access matters under the WSIA. That decision also stressed the importance of having an "issue

in dispute" for such jurisdiction to be exercised by the Tribunal. The Panel in that case noted as follows, in part:

> …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 57 and 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.

[72] The Panel in that case then explained the need for an "issue in dispute" to consider an employer's request, as follows:

> …we are satisfied that through the combination of section 123(1)(c) and 59(4), the Tribunal has been provided with jurisdiction to consider access appeals if there is an issue in dispute. In our view, the legislature clearly intended that disputes about access be determined within the confines of sections 57-59 and before that process can be triggered, an issue in dispute is required

[73] The Panel then notes that the Vice-Chair in *Decision No. 457/23*, another case involving an employer's request for access, relied on *Decision No. 1956/01* and provided the following summation of the Tribunal's authority in such cases:

> With respect to the Tribunal's jurisdiction in these types of appeals, Tribunal decisions have accepted that section 59 is directed to decisions on medical records (or documents which contain references to medical records). See *Decision No. 1956/01*, 2001 ONWSIAT 3228 in particular. The Legislature turned its mind to the question of employer access and has specifically directed that it be dealt with under sections 58 and 59. As noted above, there is specific provision regarding appeal in subsection 59(4). Subsection 123(1)(c) provides the Tribunal with jurisdiction over such other matters as are assigned to the Tribunal. The Legislature assigned the Tribunal jurisdiction over access appeals under subsection 59(4). Subsection 59(4) of the WSIA provides for a right of appeal to the Tribunal by a "worker, claimant or employer" in respect of a Board decision concerning access to a report or opinion of a health care practitioner. The Tribunal only decides the access to information issue, and does not adjudicate the issue in dispute.

[74] The Panel has further considered that another Tribunal decision (*Decision No. 903/21)* agreed with the Tribunal's jurisdiction over access as outlined in *Decision No. 1956/01.* The Vice-Chair in that decision noted as follows:

> Section 58(1) of the WSIA permits the employer access to all documents in a worker's Board file which are relevant to an issue in dispute. This access is provided to allow the employer to assess the evidence relevant to the case and to prepare its arguments accordingly. Granting this access, therefore, requires that two conditions be met. First, an issue in dispute must be identified. Second, the documents sought by the employer must be relevant to the issue in dispute. Objections to the Board giving the employer access to a report or opinion of a health care practitioner about a worker may be appealed to the Tribunal pursuant to section 59(4) of the WSIA.

[75] However, the Vice-Chair in *Decision No. 903/21* clarified that "there is no specific provision in the *WSIA* with respect to appeals from non-medical access decisions made pursuant to sections 57 and 58". The issue of non-medical access is not at issue in the present case before the Tribunal.

[76] In this vein, a Tribunal decision (*Decision No. 1262/23*) concerning employer access, another Panel denied the employer's request for general claim information rather than "health records" on the following basis:

> The Panel does not allow the employer representative's request… more importantly, section 58 does not provide an appeal mechanism regarding the Board's exercise of discretion in allowing the employer access to general (as opposed to health record) claim information. It would be contrary to the Act for the Tribunal to review a Board Section 58 access decision within the scope of a subsection 59(4) appeal to the Tribunal, since the latter relates only to health records.

[77] The Panel in that decision accepted the Tribunal's jurisdiction under subsection 59(4) for the Tribunal to consider an employer's appeal of a Board's decision limiting access as follows:

> Section 58 of the WSIA sets out provisions governing the accident employer's access to documents in a worker's Board file which are relevant to an issue in dispute; section 59 of the WSIA sets out provisions specific to health records. This access is provided to allow the employer to assess the evidence relevant to the case and to prepare its arguments accordingly. Granting this access, therefore, requires that two conditions be met. First, an issue in dispute must be identified. Second, the documents sought by the employer must be relevant to the issue in dispute. Objections to Board access decisions may be appealed to the Tribunal pursuant to section 59(4) of the WSIA of the WCA.

[78] Another Tribunal decision (*Decision No. 233/23I)* concerning employer access was also precipitated in the context of an employer's request for SIEF cost relief. The Vice-Chair in that decision affirmed the Tribunal's "broad approach" to access issues and sourced the statutory authority for doing so in subsection 123(1)(c) of the WSIA, as follows:

> I note that Tribunal jurisprudence generally takes a broad approach to access issues. Further, Tribunal decisions have accepted that section 59 is directed to decisions on medical records (or documents which contain references to medical records). See *Decision No. 1956/01*, 2001 ONWSIAT 3228, in particular. The Legislature turned its mind to the question of employer access and has specifically directed that it be dealt with under sections 58 and 59. There is specific provision regarding appeal in section 59(4). Section 123(1)(c) provides the Tribunal with jurisdiction over such other matters as are assigned to the Tribunal. The Legislature assigned the Tribunal jurisdiction over access appeals under subsection 59(4).

[79] In the Panel's view, the Tribunal has consistently considered and held that it has the jurisdiction to consider appeals concerning employer access requests flowing from the Board's determination not to release such access, including where this involves "health records" under subsection 59(4) of the WSIA.

[80] More so, the Tribunal had not been interdicted for decades in proceeding with such cases and routinely assessed whether Board-redacted information was relevant in employer access cases. It appears that the Board, according to the submissions of Mr. Liversidge, has begun to curtail the opportunity for employers to have such matters heard at the Tribunal in recent years by classifying such decisions as non-appealable "administrative decisions". The case at present is one example of this recent Board approach.

e. The consideration of "relevance" in this matter

[81] The Panel has considered that once there is an "issue in dispute", subsection 58(1) of the WSIA provides that the Board shall provide (upon request) employer access to such documents it "considers to be relevant to the issue". The determination on relevance is a salient step in the Board's assessment of whether it will provide access to an employer.

[82] As was noted in the above-cited Tribunal cases, access is provided to allow the employer to assess the evidence relevant to the case and to prepare its arguments accordingly. This is consistent with the Tribunal's Practice Direction #16, entitled "Access to Workers' Information When the Issue in Dispute is at the Workplace Safety and Insurance Board (WSIB)", which states that "both parties need access to relevant information in order to have a fair hearing". The Panel also notes that *Decision*

No. 1956/01 explains the requirement that an employer, in particular, should be provided access for the following reason:

> 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.

[83] The Board has taken the position that once it determines that such information is *irrelevant*, including health records, this becomes an "administrative decision" that cannot be appealed to the Tribunal. According to the Board, this differs from a situation where the "health records" are determined to be *relevant* to the issue in dispute and the worker is provided an opportunity to object. In that case, a party can appeal the release or non-release of the information to the Tribunal. In the Panel's view, it is incongruous that both sets of access-related circumstances deal with the same "health records" yet only one offers a right of appeal for an employer. The Board's interpretation in this regard results in a denial of procedural fairness for employers where the health records are initially determined by the Board to be irrelevant. The Panel agrees with the submission of Mr. Liversidge in this regard that "an employer's right to access relevant medical information is fundamental and in the context of procedural fairness is akin to providing adequate notice".

[84] The Panel notes that the Tribunal has primarily considered the very question of relevance in access-related requests where the Board has withheld or redacted information in a worker's claim file. Importantly, the Tribunal has determined on numerous occasions that the Board has erred in its determination on relevance and granted the employer access to information, including health records (See, for example, *Decision Nos. 1354/02*, *712/22* and *864/23).*

[85] In the Panel's view, the Tribunal is well-situated to independently consider whether the Board's determination of relevance in access-related matters was appropriate, including as it relates to health records. If the Tribunal acquiesced to the Board's position to exclude what they determined to be "irrelevant" information as final and without an appeal avenue to the Tribunal, employers would only have recourse to challenge such a decision to the Divisional Court on judicial review. This goes against the very purposes

of the Tribunal's creation as being an independent decision-making body that provides expert and timely adjudication to parties without the complexity and cost associated with the traditional court system. On this point, the Panel further agrees with the submission of Mr. Liversidge that "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".

f. Safeguarding confidentiality and imposing conditions on access

[86] The Panel has then considered that safeguards exist in the WSIA to protect the worker's privacy concerning health records when it comes to employer access. Robust protections exists in the WSIA at subsections 59(5) and 59(6) of the WSIA as follows:

> **Same**
>
> (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

[87] Subsection 59(5) of the WSIA allows the Tribunal to impose "such conditions on the employer's access as it considers appropriate" while subsection 59(6) mandates employers not to disclose any Board-released health records in a manner that safeguards it "from being identified with a particular worker or case". The WSIA also has a statutory penalty scheme encompassing sections 150, 158 and 181 to enforce these privacy/confidentiality requirements.

[88] More so, the Tribunal has often prescribed protective conditions in its decisions, including the above-described Tribunal cases, where employer access had been granted. This invariably includes a direction that the "records are released to the employer on the condition that they shall be used solely for workplace safety and insurance purposes in a manner consistent with the limitations set out in the Act".

[89] In this vein, the Vice-Chair in *Decision No. 457/23* balanced the relevance of such documents against their sensitivity in order to decide whether the employer ought to have access and which documents would be redacted. *Decision No. 891/11* has often been cited in support of the proposition that the Tribunal "may exclude information when relevance is outweighed by the sensitive or prejudicial nature of the information" and that "information that is not relevant, or only marginally or peripherally relevant, should not be disclosed where its potential relevance is outweighed by its sensitive or prejudicial nature".

[90] The Tribunal solemnly appreciates the need to protect a worker's privacy in the context of employer access requests. The Tribunal has a long history of carefully releasing sensitive information that is relevant to the issues under appeal. This process includes releasing the worker's health records but only with appropriate safeguards, conditions and direction. In the Panel's view, it would therefore not be necessary to accept a restrictive interpretation of sections 58 and 59 of the WSIA to protect the worker's privacy in access-related cases.

g. The Tribunal's jurisdiction to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information

[91] The Panel also recognizes the importance of statutory interpretation in this case. The Panel accepts the helpful commentary from another Panel, including the Tribunal Chair, in *Decision No. 1736/21*, which spoke to the principles of statutory interpretation as follows:

> 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.
>
> The Tribunal also applies section 64 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, which provides that an Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.
>
> The Supreme Court of Canada affirmed the modern principle of statutory interpretation in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 (CanLII) ("*Vavilov*"). The Panel finds it instructive to review the

reasons of the majority in *Vavilov* with respect to statutory interpretation (at paragraphs 118-121):

> [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.

Thus, in *Vavilov*, the majority emphasized the primacy of text, context, and purpose in statutory interpretation. 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.

[92] In the Panel's view, the WSIA should be interpreted as being remedial in nature and should be given a fair, large and liberal interpretation to best ensure the attainment of its objects. This includes sections 58, 59 and 123. As noted earlier, the Tribunal has held in numerous decisions that subsection 123(1)(c) of the WSIA provides the Tribunal with jurisdiction to consider "such other matters as are assigned to the Appeals Tribunal under this Act", including issues relating to employer access under sections 58 and 59. The Panel also notes that sections 58 and 59 of the WSIA do not form part of the specifically excluded parts/provisions listed in subsection 123(2) of the WSIA for jurisdictional purposes.

[93] Sections 58 and 59 of the WSIA govern an employer's right to access a worker's claim file, and health records, held by the Board for workers' compensation purposes. The purpose of these sections of the WSIA is to set out a process whereby an employer can seek access to the worker's Board claim file (documents) when there is an issue in dispute. Employers regularly seek such access to consider the validity of the Board's claim-related decisions and to assess whether there is a viable basis to appeal such decisions.

[94] In the Panel's view, section 59 of the WSIA needs to be read in conjunction with, rather than apart from, section 58. The opening line of section 59 undergirds a relationship between the two when it states "Despite section 58". Section 58 of the WSIA is linked to section 59 of the WSIA. The latter deals with the employer's access to the worker's "health records", specifically, rather than the overall collection of "documents in the Board's file about the claim" in the former. However, the latter is a documentary constituent of the former and is holistically reviewed by the Board to facilitate access to the employer when certain conditions are met. That process is first triggered by the existence of an "issue in dispute", which forms part of the opening line of section 58 ("If there is an issue in dispute"). Section 59 does not mention any "issue in dispute" nor does it explain that the Board makes a determination about what documents are relevant or irrelevant under subsection 58(1). The parameters of section 59 only make sense when reviewing them in tandem with section 58 of the WSIA. This includes the appeal mechanism available to parties at subsection 59(4) of the WSIA. The purpose of

section 59 is not to create an exception for an employer to the general rule supporting employer access but rather to set out safeguards arising from disputes about access.

[95] In the Panel's view, subsection 59(4) assigns the Tribunal with jurisdiction over access-related disputes related to "health records". This directly engages the Tribunal's authority under subsection 123(1)(c) of the WSIA. This is the applicable framework of appeal rights that undergirds an employer's opportunity to object to the Board's access decisions and is not interdicted or curtailed by the Board's interpretation that such an objection cannot proceed where it determined that such "health records" are irrelevant to an issue in dispute.

[96] Subsection 59(4) states that an "employer may appeal the Board's decision to the Appeals Tribunal". In the Panel's view, the "Board's decision" there necessarily includes a decision of the Board to deny access to the employer concerning the worker's "health records" in the claim file. The titles preceding both sections 58 and 59 of the WSIA deal with the "Employer's access". Section 59 operates in tandem with, and not apart from, the initial determination about whether the documents are relevant has been made by the Board under subsection 58(1) of the WSIA. This is also consistent with *Decision No. 1354/02*, where the Vice-Chair found that the "Board's decision" for the purposes of subsection 59(4) encompassed "a decision to deny access". The Vice-Chair there took a "broad and purposeful approach, considering the context of the matter" in determining that a claim file that the Board determined was irrelevant would be released to the employer with conditions.

[97] The Panel notes that *Decision No. 1354/02* set out the difficulties in preventing an employer from pursuing an access-related objection under the section 59 appeal framework as follows:

> As that sub-section does provide that an employer has appeal rights, the Board cannot 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.

[98] The Panel agrees that intent of the WSIA encompasses disputed or “live” issues arising from the Board’s access decisions where they have a substantive impact on employers, which also applies to the employer in the present case. In the Panel’s view, these are justiciable issues that can be pursued to the Tribunal for final determination and are within its assigned jurisdiction.

[99] If the employer, after receiving redacted health records from the Board, requests access to those health records on the basis that they appear to be potentially relevant, the Board’s decision to deny access to those health records should be open to appeal to the Tribunal under subsection 59(4) regardless of whether the worker initially objected to the redaction or not. It is incongruous that both sets of circumstances deal with the same “health records” yet only one would allow a right of appeal for the employer to the Tribunal under subsection 59(4) of the WSIA.

[100] The Panel understands that the Board has interpreted the appeal avenue in subsection 59(4) of the WSIA to only include “health records”, which are subject to a worker's objection under subsection 59(2). In the Panel’s view, this is a restrictive and narrow interpretation of the WSIA that effectively eliminates an employer’s right to appeal the Board’s decision to initially classify some “health records” as irrelevant. In the Panel’s view, the text, context and purpose of section 58 and 59 supports a broad interpretation that the statutory right of appeal under subsection 59(4) of the WSIA encompasses all “health records” rather than just documents that the Board has determined to be relevant without any further recourse to the Tribunal. This conclusion is supported by the Tribunal’s longstanding practice to review employer access objections under subsection 59(4) of the WSIA including “health records” as a whole and not just “health records” that are subject to a worker’s objection to disclosure under subsection 59(2).

[101] For all the foregoing reasons, the Panel finds that the Tribunal has jurisdiction under subsections 59(4) and 123(1)(c) of the WSIA to hear and decide an appeal about the Board’s decision to withhold employer access to redacted medical information in the

worker's claim file. This is irrespective of whether or not the Board has considered an objection of a worker pursuant to subsection 59(2) of the WSIA.

[102] As such, the employer in the present case is permitted to appeal the Board Case Manager's decision dated August 28, 2023 to the Tribunal, which includes an objection to the decision to withhold access to redacted medical information in the worker's claim file.

DISPOSITION

[103] In this case, the Panel finds as follows:

- The Tribunal has jurisdiction under subsections 59(4) and 123(1)(c) of the WSIA to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information in the worker's claim file.
- The employer in the present case is permitted to appeal the Board Case Manager's decision dated August 28, 2023 to the Tribunal, which includes an objection to the decision to withhold access to redacted medical information in the worker's claim file.

DATED: October 6, 2026
SIGNED: L. Petrykowski, C. Sacco, M. Tzaferis