From: The Liversidge Letter <the_liversidge_letter@laliversidge.com>
Sent: Tuesday, October 13, 2026 10:58 AM
To: the_Liversidge_Letter@laliversidge.com
Subject: Message from L.A. Liversidge - Report on a leading WSIAT decision released relating to WSIB claim file redactions

W.S.I.A.T. *Decision No 1391/24I* (October 6, 2026) – a leading case recently released relating to WSIB claim file redactions

Good morning,

I am pleased to report that we have finally received the WSIAT's decision on the redaction matter - **W.S.I.A.T. *Decision No 1391/24I* (October 6, 2026)** – see it **here**. The decision is favourable.

More than two years ago, on behalf of the Construction Employers Coalition (for WSIB and Health & Safety and Prevention) (CEC), I requested intervenor status in a leading case before the Appeals Tribunal dealing with employers' right to appeal WSIB file access decisions to the WSIAT. The CEC was granted status and I filed extensive submissions in July 2025 (link **here**).

I will not review the entire history behind the issue (**see my Submissions, Sections C and H for details** **here**), suffice to note that in recent years the WSIB adjusted its approach to employer access to worker file information. At the same time, the Board improperly disallowed employer appeals to proceed to the WSIAT, claiming that the Appeals Tribunal lacked the lawful jurisdiction to consider such cases.

The case before the WSIAT dealt with the crucial but narrow and legally complex issue of the Appeals Tribunal's jurisdiction.

The decision finds that the Tribunal has the jurisdiction to hear and decide an appeal about the Board's decision to withhold employer access to redacted medical information in a worker's claim file.

The CEC's submissions played a pivotal and persuasive role in this case

The decision is detailed and comments on the submission of each party. The WSIAT Panels' summary of the CEC's submission can be found at **paras. 37-43**.

More than provide argument, in light of our extensive and historical experience, particularly our engagement with senior WSIB officials in recent years, I was able to place before the Tribunal new evidence that otherwise would not have been available:

> [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***. (emphasis added)

We argued that the Board's approach was unlawful and denied an employer's right to procedural fairness. The Appeals Tribunal agreed:

> [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***". (emphasis added)

While the WSIB had advanced the inexplicable proposition that such disputes should be considered judicially and not by the Appeals Tribunal, the Appeals Tribunal accepted our arguments that administrative consideration of such appeals is the very reason for the creation of the Appeals Tribunal:

> [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".*** (emphasis added)

Concluding Remarks

This represents a major win for all Ontario employers. Still concerning however, is the Board's overall approach that curiously changed a proper and legal protocol structurally entrenched for 40 years, without notice or consultation.

Regards, LAL

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