

**OFFICE OF THE WORKER ADVISER**  
**Annual Report**  
**April 1, 2014 to March 31, 2015**

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## **A MESSAGE FROM THE DIRECTOR**

I am pleased to report on the accomplishments of the Office of the Worker Adviser (OWA) for fiscal year 2014-2015. With staff in 16 offices across Ontario, OWA is an important resource for vulnerable non-unionized workers in dealing with their WSIB claims or possible reprisals for exercising their health and safety rights. The bulk of our resources are devoted to serving those workers through our 16 local offices across Ontario. Below, I briefly highlight our workplace insurance services and then review our third year of services around reprisals.

OWA carries out its mandate as a partner in Ontario's workplace insurance system, along with the Workplace Safety and Insurance Board (WSIB), Workplace Safety and Insurance Appeals Tribunal (WSIAT) and Office of the Employer Adviser (OEA). We are also now a partner in Ontario's health and safety system. We are committed to helping both of these systems work for all the workers and employers that they serve.

### **Workplace insurance services**

The OWA had 13,164 new requests for service during 2014-2015, a decline of about 5% from the previous fiscal year. The number of case reviews for workers that requested representation, 2,386, also decreased by 4%. This continued the trend in 2013-2014, where service demand moderated following several years of high demand. The reduction gave OWA some breathing space and enabled us to maintain the increase in percentage of new cases accepted for representation from its low of 52% in 2012-2013 to 59% in 2013-2014 and 57% in 2014-2015. Overall caseload stayed steady in 2014-2015 with an increase in the waiting list for representation services from 220 at the end of the 2013-2014 to 310. In the majority of cases the delay in providing representation services was short, but this is a matter of significant concern which we addressed through a review of our service delivery model, with major changes to be implemented in 2015-2016. I want to thank the staff and managers who contributed to this review, which will help OWA address major changes in our operating environment.

During 2014-2015, OWA was involved in some of the most complex cases in the system, including clusters of occupational disease and Charter of Rights matters. This annual report highlights a number of WSIAT decisions obtained by worker advisers. We also dealt with a growing number of workers who were in financial or psychological crisis. We continued to strengthen our protocols with WSIB and WSIAT in responding to these situations.

OWA was involved in proactive partnerships to deal with the workplace insurance system's challenges. In particular, we partnered with employer representatives to develop consensus proposals to WSIB on potential improvements to their appeals process and alternative dispute resolution.

Also during 2014-2015, OWA participated in the final phase of WSIB's consultation on five benefits policies. The new policies were implemented in November 2014. I look forward to working with WSIB on the next phase of this crucial policy exercise, as implementation issues emerge. Throughout

2014-2015, OWA also played an important role in supporting constructive dialogue between WSIB and the worker community around various issues.

## **Health and safety reprisal services**

Starting on April 1, 2012, amendments to the Occupational Health and Safety Act (OHSA), gave OWA the mandate to serve non-unionized workers who may have suffered reprisal by their employers for exercising their OHSA rights. 2014-2015 was the second year for this new mandate.

Even with no outreach or publicity, we continued to experience a very significant increase in reprisals workload. These impressive results confirmed the importance of OWA's role helping these particularly vulnerable non-union workers. We learned a lot about their situations and needs.

### **Thank you!**

I wish to thank all those who contributed to OWA's work in 2014-2015 – beginning with our workplace insurance program staff, who continued to show dedication to serving vulnerable workers; the staff of our Reprisals Program, who helped over 1000 workers in the third year of this service; and our legal, administrative and management team. I also want to acknowledge the support of the Ministry of Labour, which facilitated inter-agency partnerships; and our many friends and colleagues at WSIB, WSIAT, and OEA, with whom OWA worked on solving problems and serving the public. I want to thank our partners in the worker community, with whom we collaborated closely in dealing with another year of major change. And to the many employer representatives with whom we worked on resolving cases as well as on strategic issues. Finally, special thanks to the thousands of vulnerable workers and family members who entrusted their cases to us – we tried our best to serve every single worker with dedication and care; and we learned much from those workers as well.

## **THE MANDATE OF THE OFFICE OF THE WORKER ADVISER**

The OWA's mandate, established by s. 176(1) of the Workplace Safety and Insurance Act, 1997 (WSIA) is "to educate, advise and represent workers who are not members of a trade union and their survivors."

In addition to its existing mandate under the WSIA, the OWA was entrusted with a new mandate with the passage of the Occupational Health and Safety Statute Law Amendment Act, 2011 (Bill 160). Effective April 1, 2012, the OWA was mandated to advise, educate and represent non-unionized workers who have complaints under the Occupational Health and Safety Act (OHSA) that their employer may have engaged in a reprisal against them for exercising their rights under the OHSA.

The OWA's vision is to:

- be a leader in advice, representation, and education in workplace safety and insurance matters, on behalf of the most vulnerable injured workers and their survivors;
- provide expert and effective advice, representation and education to vulnerable, non-unionized workers who may have suffered reprisal for asserting their rights under the Occupational Health and Safety Act;
- provide a vital public service that contributes to the effective functioning of Ontario's workplace safety and insurance and health and safety systems, and support a healthy workforce as a foundation for a strong, vibrant provincial economy; and,
- contribute to improving workplace safety and insurance and health and safety through community and system partnerships.

The OWA is an operational agency of the Ministry of Labour (MOL). The director of the OWA is an Order-in-Council appointment. During this reporting period, the director was Alec Farquhar, who was appointed by Order-in-Council for a three year term beginning in June 2012.

## OWA SERVICE DELIVERY

Workplace insurance related services are provided from 16 offices divided into four regions:



**Toronto East Region:** Downtown Toronto, Scarborough and Ottawa

**Central Region:** Downsview, Mississauga, Hamilton and St. Catharines

**Southwest Region:** London, Waterloo, Windsor and a satellite office in Sarnia

**North Region:** Sudbury, Elliot Lake, Sault Ste. Marie, Timmins and Thunder Bay

In addition to the offices noted above, scheduled clinics in a number of other communities across the province allow injured workers the opportunity to meet in person with worker advisers without having to travel long distances. These communities include: Barrie, Brantford, Kingston, North Bay, Oshawa, Peterborough and St. Thomas.

Occupational health and safety reprisal complaint services are provided by the OWA Occupational Health and Safety Reprisal Program (OHSRP) located at the OWA's provincial office in Toronto. Most OLRB mediations and hearings are held in Toronto. Some mediations are held in regional centres. During 2014-2015, OHSRP staff attended mediations on behalf of clients in London, Ottawa, Sudbury, Timmins, Thunder Bay and Windsor.

## CENTRAL CLIENT SERVICES UNIT (CCSU)

OWA's Central Client Services Unit provides services relating to:

- advice and representation services for OWA clients in legally complex and/or precedent setting cases

- internal legal advice and assistance to OWA managers and staff, including support around fulfilling professional responsibilities to OWA clients
- system improvement initiatives and policy submissions
- development of educational sessions and resources for OWA staff and other worker-side representatives
- development of educational materials for the public.

CCSU primarily provides the above services in relation to the OWA’s workplace insurance mandate. Similar services are also provided to support the occupational health and safety reprisal mandate.

## **Overview of Services**

In accordance with OWA’s workplace insurance mandate, the agency focuses on the following services to non-union injured workers and their survivors:

- information and advice
- representation in the appeal process and
- educational services.

In addition to serving individual clients, the OWA also seeks to work with system and community partners to help ensure that the system is responsive to the needs of injured workers and survivors.

This following section of the annual report relates to services provided under the OWA’s workplace insurance mandate. Services provided under the OWA’s occupational health and safety mandate are reported separately later in this report.

## **REPORT ON THE OWA’S WORKPLACE SAFETY AND INSURANCE MANDATE**

Some workers contact the OWA with a question about workplace insurance or for information to help them understand their entitlements. Other workers contact us because they have been denied benefits or services by WSIB and they want to appeal a decision. The OWA provides assistance in both situations: in the first, by providing information and “summary advice” (advisory services) and in the second by representing the worker in the dispute resolution and appeal process (representation services).

When a worker contacts the OWA for either advice or representation, we refer to this as a “new request” for service. Sometimes workers experience ongoing difficulties with their WSIB claims, and as a result call us on several occasions with questions. Each occasion is considered a new request. Because of this, the total number of new requests is always higher than the number of different workers who contact us.



# KEY ACHIEVEMENTS

## Advisory Services

The OWA had 13,164 new requests for service, from 10,648 different workers, during the 2014-2015 fiscal year. The number of new requests decreased slightly from 13,881, or by about 5%, from the previous fiscal year, 2013-14.

For 10,510, or approximately 80%, of the new requests in 2014-2015, the OWA was able to assist the worker by providing summary advice. The remaining 2,654 new requests involved workers requiring representation services.

Table 1 shows the number of new requests for service involving both summary advice and requests for representation services during the past five years.

**Table 1: Disposition of New Requests for Service**

	<b>10-11</b>	<b>11-12</b>	<b>12-13</b>	<b>13-14</b>	<b>14-15</b>	<b>Change from 13-14 to 14-15</b>
Number of New Requests for Service*	17,394	18,081	17,105	13,881	13,164	-5%
Number of New Requests Resolved with Summary Advice	13,932	14,599	13,771	11,150	10,510	-6%
Number of Cases Reviewed for Representation	3,146	3,048	3,179	2,473	2,386	-4%
Number of Cases Selected for Representation**	1,791	1,809	1,658	1,471	1,479	negligible
Number of Cases Declined Representation	1,355	1,239	1,521	1,002	1,025	+2%
% of Cases Reviewed which are offered Representation	57%	59%	52%	59%	57%	-2%

\*Note that the sum of "Number of New Requests Resolved with Summary Advice" and "Number of Cases Reviewed for Representation" does not total the "Number of New Requests for Service." This is because the "Number of Cases Reviewed for Representation" includes only those reviews completed during the fiscal year, and not reviews initiated, but still in progress, as of March 31.

\*\* Note that the number of cases selected for representation does not match the number of representation files opened. This is because some files go on a waiting list prior to opening.

## **OWA Website**

In addition to directly responding by phone or in person to questions workers may have about their workplace insurance claims, the OWA also promotes its website as a source of information to clients.

In 2013-2014, the OWA launched its redesigned and updated web site. The new OWA website better reflects our expanded mandate, with separate sections covering workplace insurance and health and safety reprisals in Ontario. In addition, the new design has a focus on user friendliness and accessibility, which gives our clients more efficient access to helpful information. Containing over 30 updated pages, including 16 pages with new content or major revisions, the site continues to be a key source of information for workers in both English and French.

Highlights of the website include:

- forty-one web pages on varying workplace insurance related topics;
- a brand new appeals overview page features visuals and text outlining the key agencies in the system, the WSIB vs. the WSIAT, and describes their differences in terms of level of appeal, time limits, and decision makers;
- an updated page with the forms necessary to meet appeal time limits and to initiate an appeal;
- three pages of “frequently asked questions” about the OWA, workplace insurance, and health and safety reprisals; and
- information sheets in 21 languages providing an overview of OWA’s work for potential clients.

A featured Spotlight section also gives the OWA space to highlight important news and events, allowing the agency to give voice to the issues affecting workers and network with the community of groups assisting injured workers and promoting health and safety in the workplace. This section features notable changes in our field relating to legal decisions, social events and notable legislation.

The website gives the OWA a platform to continue its work offering information and representation to workers in Ontario for years to come. In addition, the site provides functionality for injured workers to contact OWA directly by e-mail for assistance.

Future additions will include features such as fillable forms, a Google Translate tool, Google Analytics and an OWA blog.

The new site can be accessed at <http://www.owa.gov.on.ca>.

## **Representation Services**

### ***Case Review***

When clients contact the OWA because they have received a WSIB decision that they want to appeal, the file is assigned to a worker adviser for review. The purpose of this review is to determine if there is sufficient evidence to support an appeal. We call this a “case review.”

Unfortunately, because resources are limited and the demand for representation services is high, the OWA is not able to represent every worker who asks for help. To ensure that we are available to assist the most vulnerable injured workers, we have to make difficult decisions about the cases in which we will represent.

To make these decisions, worker advisers carefully review each case, based on OWA's criteria, before an offer of representation is made.

The OWA offers representation services in cases where:

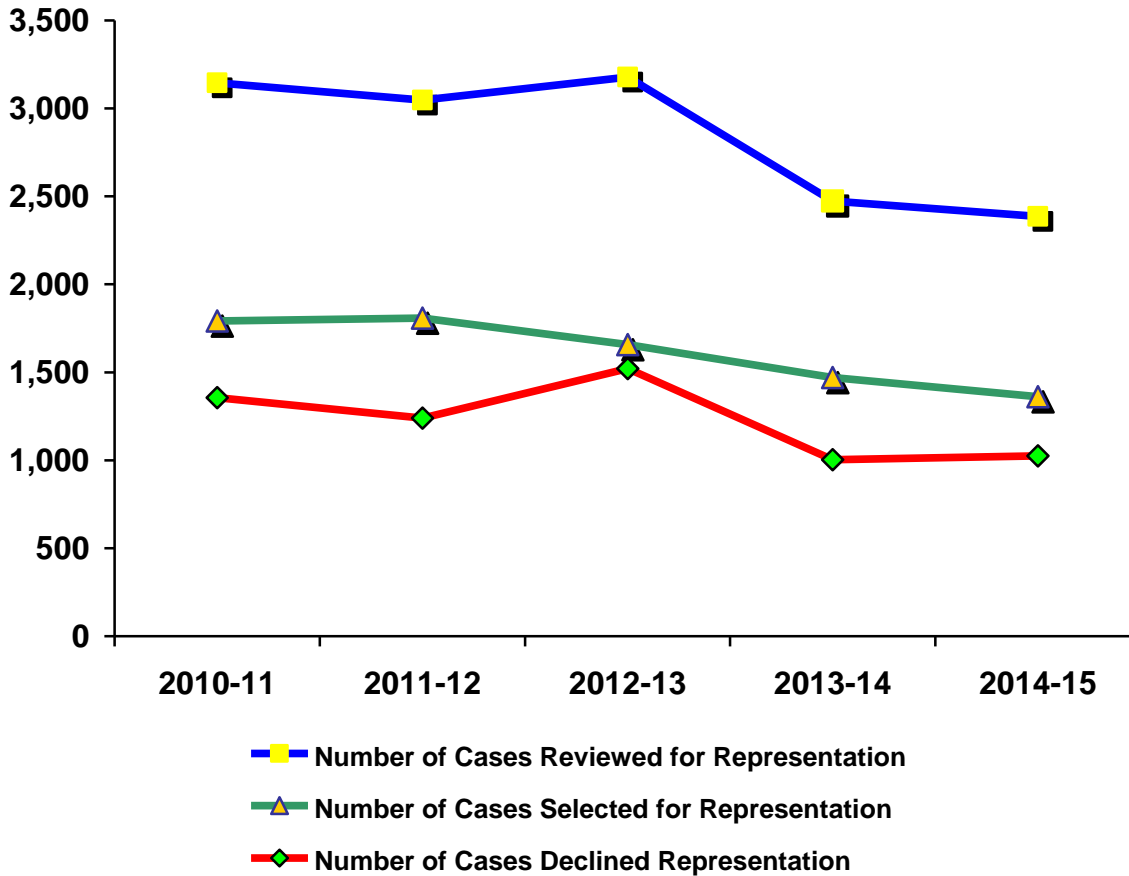
- the entitlement issue is valued at more than the equivalent of four weeks of wage loss benefits;
- the issue(s) are complex enough to require the assistance of a skilled and knowledgeable representative; and
- it is likely that sufficient evidence is available to support a reasonable chance of success in the appeal process. This does not mean that the case is guaranteed to succeed – but it does mean that a worker adviser must find enough evidence and/or legal grounds to justify an appeal.

The OWA does not represent in cases with straight forward, single issue appeals involving a non-economic loss (NEL) increase, commutation of a pension, or an employer's request for Second Injury Enhancement Fund (SIEF) relief, although we do provide information and support to workers who wish to represent themselves. The OWA will also not represent in issues involving a challenge of a WSIB security restriction decision.

In 2014-2015, the OWA completed 2,386 case reviews, compared to 2,473 in 2013-2014, a decline of 4%. This decline was significantly less than the 22% reduction in case reviews from 2012-2013 to 2013-2014. The overall decline was consistent with the decrease in new requests for service from 2012-2013 levels. The volume of new claims at WSIB also declined during the same period, with a gradual impact on the numbers of injured workers pursuing appeals. As of the end of 2014-2015, it was unclear whether the moderation in downward trend would continue.

The decline in new requests for service in 2013-2014 and 2014-2015 did allow OWA to accept a higher proportion of cases for representation. This was important particularly because, in 2012-2013, OWA clients and stakeholders had responded strongly against the tightening of OWA case selection criteria in the face of a surge of incoming workload. There was an increase in the percentage of cases accepted for representation from 52% in 2012-2013 to 59% in 2013-2014 and 57% in 2014-2015, which represented a return to the levels prior to 2012-2013. Table 1 and Figure 1 demonstrate this trend.

**Figure 1: Selecting Cases for Representation**



### ***Representation Files***

If the OWA, at the conclusion of the case review, determines that the case meets the criteria for service, an offer of representation is made. These files are called “representation files.”

At the beginning of the 2014-2015 fiscal year, the OWA had 3,625 representation files open. As the work on files was completed during the course of the fiscal year, 1,434 of these files were closed. This, in turn, allowed the OWA to open an additional 1,375 representation files. The open caseload declined by 1.6% in 2014-2015 from 2013-2014. This is because the OWA opened slightly fewer cases than it closed.

In total, the OWA represented 5,000 injured workers and survivors during the 2014-2015 fiscal year.

### **Waiting List for Appeal Level Representation Services**

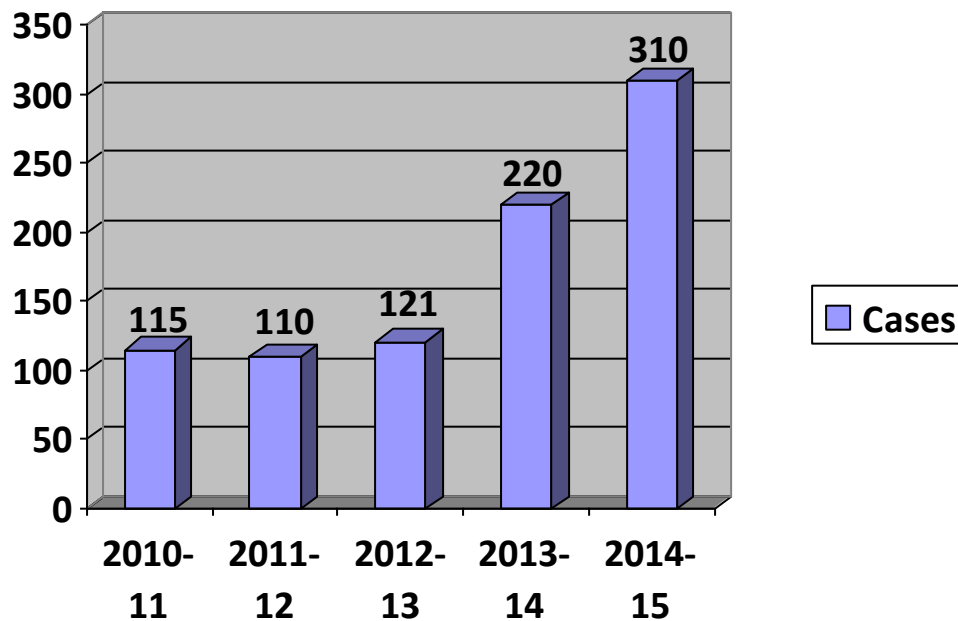
The OWA is committed to providing quality and timely service to all of our clients. Unfortunately, however, the demand for representation services is high and we sometimes do not have a worker

adviser immediately available to open a file at the conclusion of the case review process. When this happens, the file is placed on a waiting list for service.

The OWA makes every effort to ensure that files are placed on the waiting list only when it is absolutely necessary to do so. Further, the waiting list is carefully monitored to ensure that wait times are kept as brief as possible.

At the end of the 2013-2014 fiscal year, the OWA had 220 files on the waiting list. This number increased to 310 files in 2014-2015. In the majority of cases the delay in providing representation services was short. Eighty-one percent of the files placed on the waiting list during 2014-2015 were opened within 120 days. The average age of files on the waiting list, however, increased from 3.48 months at the end of 2013-2014 to 4.73 months at the close of 2014-2015. This is documented in Figure 2 below. The key factor contributing to this development was the overall delay resolving cases within the dispute resolution and appeals system; combined with the impact of recruiting and transferring caseloads to 12 new worker advisers that replaced a group who retired under a government wide incentive program. During 2013-2014, OWA focused on the backlog of appeals at WSIB. Beginning in 2013-14 and continuing in 2014-15, however, delays grew at the WSIAT level, reaching over one year from appeal request to hearing. OWA had previously implemented case prioritization procedures as this situation evolved, to ensure that urgent cases (for example terminal occupational diseases) could be taken immediately. Protocols are also in place with WSIB and WSIAT to expedite such appeals.

**Figure 2: Waiting List at Year End**



### **Total Inventory of Cases**

The OWA's total inventory of cases at any given time includes both representation files and waiting list files, as in both instances a commitment has been made to represent the worker in the appeals

process. As illustrated in Table 2, the total inventory of cases increased from 2010-2011 to 2011-2012 and has since remained stable. Currently, it appears that OWA is operating at or very close to its maximum capacity for representation services at current staffing levels.

**Table 2: Total Inventory of Cases: Representation and Waiting List Files at the End of Each Fiscal Year**

	10-11	11-12	12-13	13-14	14-15	% change 13-14 to 14-15
Open Files	3,613	3,769	3,709	3,625	3,566	-1.6%
Waiting List Files	115	110	121	220	310	+41%
Total Workload	3,728	3,879	3,830	3845	3,876	+0.8%

## Decisions

The OWA represents a substantial number of workers in the appeals system each year. During the 2014-2015 fiscal year, the OWA was the worker's representative in approximately 11% of the new appeals from workers received by the WSIB's Appeals Branch. OWA also represented the worker in 4.8 of the new appeals from employers against WSIB decisions which had favored the worker. During the 2014 calendar year, the OWA represented the worker at WSIAT in 16% of appeals initiated by workers and also represented workers in 6% of appeals initiated by employers.

In 2014-2015, the OWA obtained a total of 2,746 decisions from the adjudication and appeals levels of the WSIB and from WSIAT, a decrease of 15% from the previous year's total of 3,225 decisions (see Table 3). The numbers appear to reflect the impact of the combined WSIB and WSIAT appeals backlog of the past three fiscal years – plus a significant reduction in operating level decisions from the level of five years ago. The reduction in operating level decisions resulted mainly from Worker Advisers selecting a smaller number of cases for operating level review, focusing on the ones with a significant chance of success at that level. There was a reduction in WSIB appeal decisions from 2012-2013 and 2013-2014, but those years had been anomalous because of the impact of WSIB's backlog clearance in 2013-2014 and the first quarter of 2014-2015. WSIAT decision numbers were slightly higher than in 2013-2014, and would have been higher still but for the growing backlogs at WSIAT. At fiscal year-end, OWA had around 1650 appeals in WSIAT's inventory, representing almost half of OWA's total open caseload, much higher than historic levels. In addition to the system wide factors, OWA decision numbers were also affected by the loss of 12 experienced worker advisers to retirement.

The 2,746 decisions obtained in 2014-2015 involved a total of 4,364 issues, 1,707 of which were allowed either fully or in part during the reconsideration or appeals process. When compared with 2013-2014, this represents a 1% increase in the number of issues allowed at the Operating Level, and a 3% decrease at both the Appeals Branch and WSIAT (See Table 4). Overall, OWA success rate was the same as in 2013-2014, at 39%. It is likely that the slightly higher success rate at the operating level reflected the fact that worker advisers significantly reduced the number of cases taken back to that level for reconsideration, choosing only those where they determined that there was a significant chance of success. It is important to note that in spite of the stable success rate in

2014-2015 from 2013-2014 levels, the overall allowance rates at all levels remained below 2010-2011, at 44%, with a particularly great reduction at the WSIB Appeals level. This has meant that a growing proportion of cases had to proceed to WSIAT for resolution. WSIAT is more formal and resource intensive. In addition, backlogs and delays grew significantly at WSIAT through 2013-2014 and 2014-2015. Overall, this development affected OWA's ability to achieve efficient case turnover and restricted capacity to accept new cases.

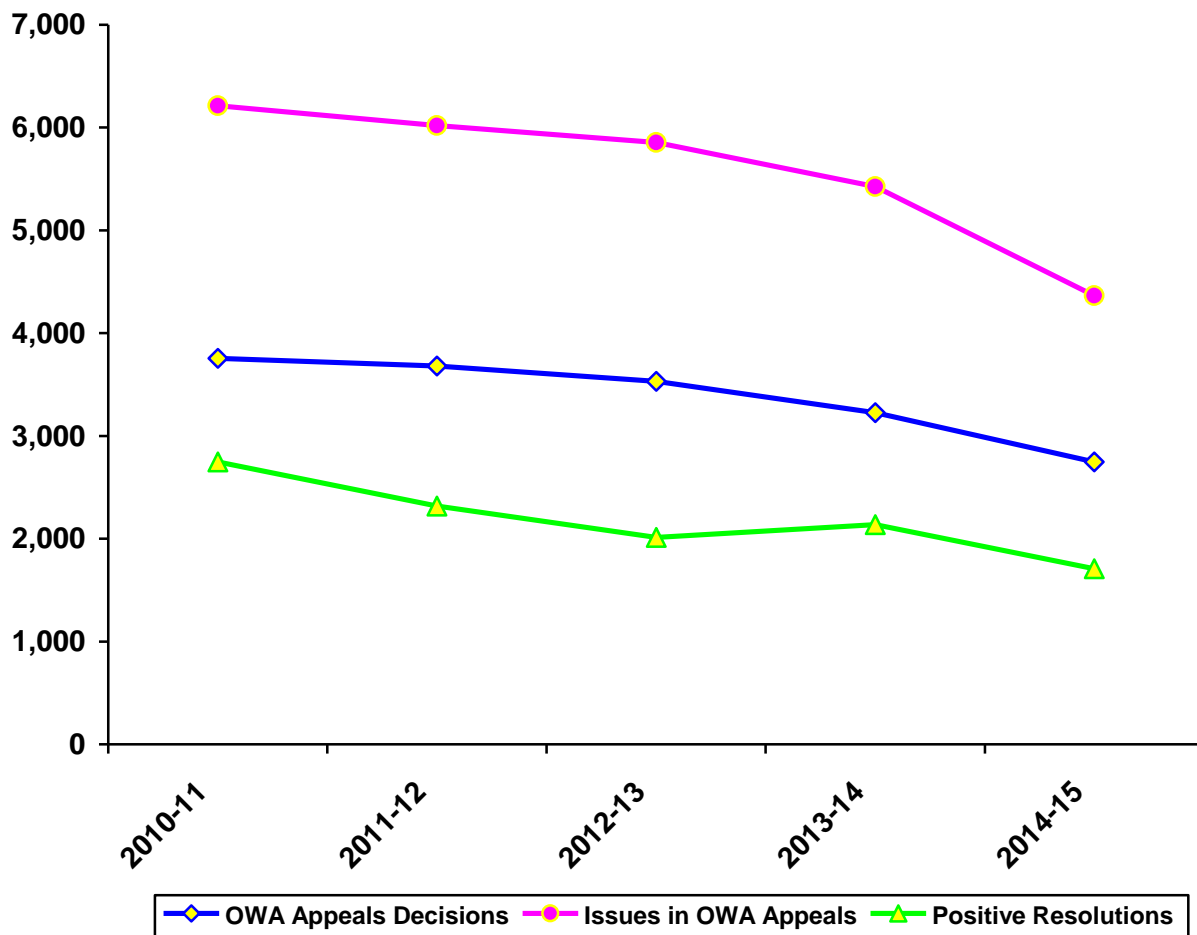
**Table 3: Decisions by Level**

<b>Decisions by Level</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
<b>WSIB – Operating Level</b>	2,174	2,055	1,872	1,669	1,433
<b>WSIB – Appeal Level</b>	1,093	1,136	1,287	1,178	927
<b>WSIAT</b>	488	488	373	378	386
<b>TOTAL DECISIONS FROM ALL LEVELS</b>	3,755	3,679	3,532	3,225	2,746
<b>TOTAL ISSUES IN DECISIONS FROM ALL LEVELS</b>	6,214	6,020	5,854	5,425	4,364

**Table 4: Percentage of Issues Allowed**

	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>Change 13-14 to 14-15</b>
<b>Operating Level</b>	34%	26%	25%	31%	32%	+1%
<b>Appeals Branch</b>	52%	47%	39%	44%	41%	-3%
<b>WSIAT</b>	64%	67%	58%	60%	57%	-3%
<b>Total of all Levels</b>	44%	39%	31%	39%	39%	0%

**Figure 3: Results from OWA Representation**



## Case closures

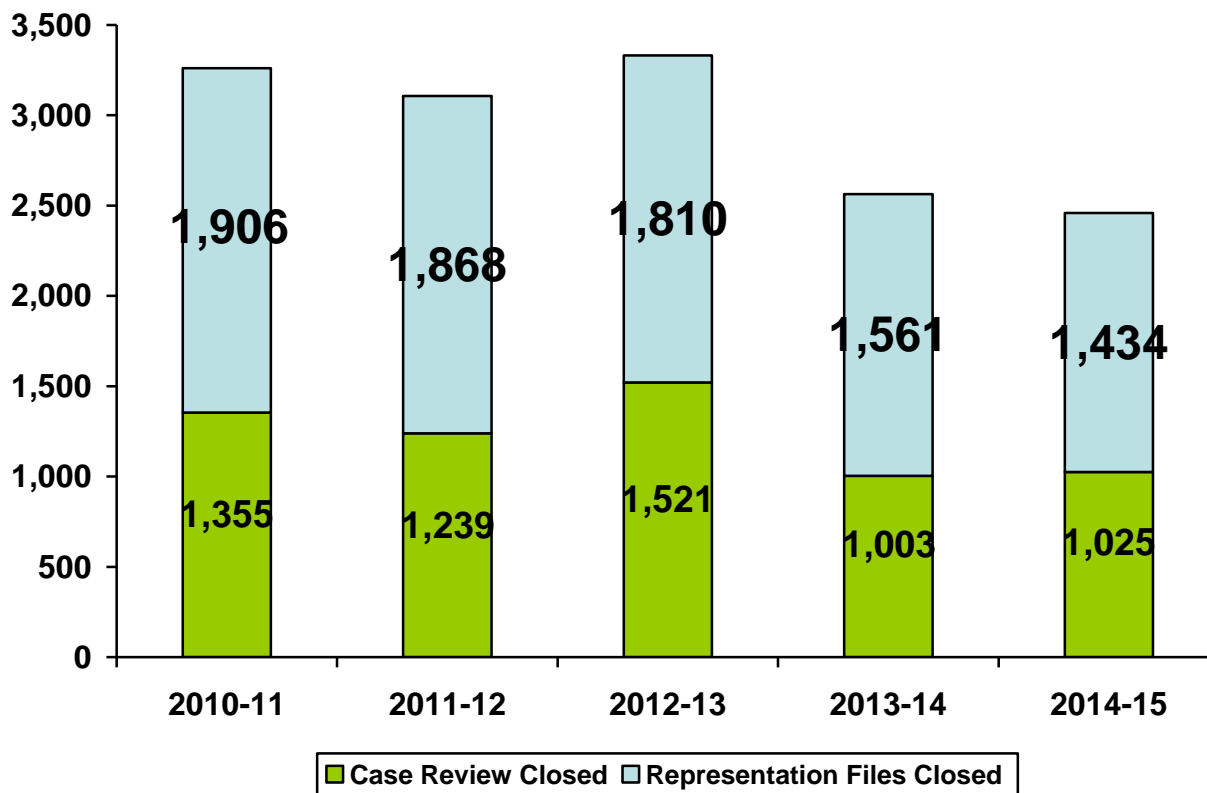
The case closure count is a measure of the OWA's capacity to manage its workload. The faster cases are resolved, the more quickly injured workers are able to return to economic and vocational wellbeing. In addition, timely file closures allow the OWA to assist more workers, keeping both the number of files and waiting time for service to manageable levels.

The closure count, depicted in Figure 4, includes both representation files and cases declined representation and therefore, diverted from the appeal system as a result of case reviews. The OWA closed a total of 2,413 files in 2014-2015, consisting of 1,025 case reviews where the OWA did not believe there was sufficient evidence to support an appeal, and 1,434 representation files.

In total, this represented an overall 4% decrease in the number of file closures from 2013-2014. This reflected challenges in overall case turnover due to the historically lower success rate at the WSIB operating level and WSIB Appeals Branch, and growing backlogs at the WSIAT; plus the impact of staffing challenges due to the departure of 12 worker advisers who took retirement packages.

**Figure 4: Representation Cases Closed**





## Analysis of OWA Workload and Productivity Statistics

Because OWA staff can handle only a finite number of cases, the capacity to open new files depends on how efficiently staff are able to meet their representation commitments on current files. If unable to resolve issues and close files, the OWA is placed in the difficult position of having to defer representation in new cases until a worker adviser becomes available. In these situations, as detailed earlier in this report, the file is temporarily placed on a waiting list for service.

There are a number of factors that affect the OWA's ability to resolve issues and close files, including:

### ***Actual staffing levels during the fiscal year***

The OWA recognizes its responsibility to be a prudent steward of its staffing and financial resources. In 2013-2014 and 2014-2015, OWA lost a number of experienced worker advisers due to retirement, with a major province wide recruitment in 2014-2015. This meant some staffing gaps and delays related to transfer of caseloads. This staff turnover affected the number of file closures and contributed to growth in the size and age of the waiting list.

### ***Complexity of cases***

The cases handled by the OWA tend to include a high proportion of complex files that can take considerable time and resources to resolve. The reasons for this are numerous:

- the OWA selects out some of the simple and straightforward issues in order to focus its resources on the more complex cases where we can be of most assistance;
- the OWA represents in a significant number of occupational disease, and other complex cases such as Charter, age discrimination, and stress cases, all of which involve difficult legal and/or evidentiary challenges;
- the OWA often inherits complex cases abandoned by other representatives, particularly fee-for-service representatives.

Complex cases generally take longer to prepare for hearings. This extends the life of the file, delaying file closure and, in turn, the OWA's ability to open additional files.

Additional complexities resulted from the growing proportion of injured workers who were in financial and/or psychological crisis, which often required OWA staff to devote substantial time to support the worker in trying to resolve or reduce the crisis.

### ***Developments at the Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal***

In 2012-2013, WSIB experienced significant delays at its Appeals Branch level. This affected OWA's ability to process its cases in that year. WSIB cleared much of this backlog starting in the second half of 2012-2013 and introduced changes to its appeals process in February 2013. OWA then worked its way through these backlogged cases in 2012-2013 and 2013-2014. This however meant that a bulge of cases then proceeded to WSIAT in 2013-2014 and 2014-2015, where lengthy delays in appeals scheduling developed. Overall, it meant that OWA was operating in an environment of appeal delays from 2012-2013 through 2014-2015.

As a result, during these three fiscal years, OWA was involved in intensive collaboration with WSIB, WSIAT and stakeholders to deal with this overall situation. At the end of the 2014-2015 reporting period, OWA had around 1650 cases in the WSIAT appeals inventory, an unprecedented level which will need to be addressed collaboratively with WSIAT and employer representatives in 2015-2016.

### **Summary of OWA's achievements in 2014-2015**

In summary, although the OWA faced a number of challenges during the 2014-2015 fiscal year, we were successful in assisting a very substantial number of workers with their workplace insurance questions and appeals:

- OWA responded to 13,164 new requests for service. This was 5% below 2013-2014 levels and may indicate a levelling off in demand for OWA service;
- OWA completed 2,386 case reviews for workers that requested representation service, 4% less than in 2013-2014, again indicating possible stabilization of service demand;
- At the completion of case reviews, the percentage of workers who received offers of representation declined by 2% from 2013-2014, but remained 5% above the low level of 2012-2013. This was well received by those seeking OWA services and within the worker community;
- The overall success rate in representation services in 2014-15 remained consistent with 2013-2014 levels at 39%, a significant increase from 2012-2013, although less than in 2010-2011;

- There was no appreciable change in the number of representation files, but the waiting list increased by 41%, from 220 to 310 files. As a result there was a 2% increase in the overall inventory of cases – 3,845 at the end of 2013-2014 and 3,876 at the close of 2014-2015.

### ***Client Satisfaction Levels***

The OWA takes pride in the quality of service it provides to clients. In order to identify and address any deficiencies, clients are asked to complete satisfaction surveys at the conclusion of OWA's representation service to them. Of the 186 individuals who responded to the survey in 2014-2015, 94.6% were "very satisfied" or "satisfied" with the service they received.

### **Educational Services**

#### ***Injured Workers and the General Public***

The OWA provides educational services to injured workers and the general public through information sessions held in communities across the province. During 2014-2015, the OWA held 11 information sessions for MPPs' staff, 17 information or educational sessions for the public, and 19 clinics for injured workers in communities across the province.

The OWA also provides general information through its website. The OWA's updated site contains a comprehensive collection of web pages and frequently asked questions on workplace insurance topics.

#### ***Community and System Partners***

The OWA provides educational services at a more advanced level to community and system partners. OWA staff is also invited to appear at continuing legal education sessions on workplace insurance topics. In 2014-2015, these services included the following:

- The OWA partnered with the Canadian Mesothelioma Foundation on a major conference in April 2014 on mesothelioma (a usually fatal cancer caused by asbestos exposure). OWA's role was to present on the workplace insurance considerations for mesothelioma.
- The OWA Director and a Worker Adviser co-presented on occupational disease from the Elliot Lake uranium mines at a major conference in Sudbury in April 2014, commemorating the 40<sup>th</sup> anniversary of the miners' strike which led to the Ham Commission on worker health and safety.
- In September 2014, worker advisers presented two major webinar sessions for worker representatives – one for the Canadian Association of Worker Advisors and Advocates (CAWAA) on dealing with workers in psychological crisis and the other on dealing with cases involving pre-existing conditions.
- In October 2014, the OWA Director co-presented with a major employer representative to the annual conference of the Schedule 2 Employers' Association, on innovative win/win solutions for dispute resolution.
- In November 2014, the OWA Director presented to a national conference on occupational stress compensation in Halifax, focusing on the evolving situation in Ontario.
- In February 2015, the Directors of the Office of the Employer Adviser and OWA presented along with WSIB staff to a major webinar session on WSIB's new benefits policies, to a large audience of worker and employer representatives.

# **HIGHLIGHTS OF OWA CASEWORK**

## **Significant Casework in Progress**

### ***Occupational Disease***

During 2014-2015, the OWA also continued to represent in a number of occupational disease clusters and individual cases in various locations throughout the province. This included Peterborough factory workers; Sarnia foundry, petrochemical and factory workers; Elliot Lake uranium miners and Kitchener-Waterloo rubber workers. The claims arising from these clusters were at various stages of adjudication, from initial evidence gathering up to the Appeals Tribunal. Taken as a whole, OWA involvement in occupational disease cases is one of its most vital roles, affecting hundreds of occupational disease victims and in many cases their survivors, after the victims succumb to their diseases.

### ***Peterborough Occupational Disease Cluster***

In 2014-2015, the OWA continued to work with UNIFOR, OHCOW, WSIB and members of the Peterborough Occupational Environment Mental Health Coalition, to move forward these Peterborough Occupational Disease cases. These cases are factually complex, involving many years of multiple exposures. Careful case reviews continue to be necessary in order to move these cases forward through to appeals. We continue to provide representation services to about 22 of these cases.

### ***Rubber Workers – Kitchener/Waterloo:***

As a result of an intake clinic organized by the USW union in 2002 for the workers of B.F. Goodrich/Uniroyal, approximately 400 WSIB claims were initiated. Many were cancer claims, and many were allowed at the operating level. Another clinic was held in 2005, with an additional 200 claims initiated. The majority of these were claims for cancer.

54 rubber workers/families have come to the Waterloo OWA for assistance with their claims. 28 have been closed. Three claimants have had their cases allowed at the operating level. Another three claimants have Tribunal level decisions, all of which have been allowed. The OWA is working closely with OHCOW for hygiene reports and medical assessment on those files that have not yet moved through the appeals system.

Currently the OWA is representing 26 Rubber Workers and their families for entitlement to various cancers as a result of occupational exposures. The vast majority of the claims are for gastro-intestinal cancers (colon, rectal, stomach, esophageal), several for bladder and lung cancer. There is also Non-Hodgkins Lymphoma, Chronic Obstructive Pulmonary Disease and kidney disease.

The primary exposures are asbestos, PAH's, aromatic amines and nitrosamines.

## ***Mental Stress***

In 2014-2015, the OWA continued to represent clients in mental stress cases that have led to challenges under the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code* of subsections 13(4) and (5) of the *WSIA*. These are provisions that exclude workers with chronic mental stress from entitlement under the Act. In addition, at the invitation of the WSIAT, the OWA participated as an intervenor in two appeals. One resulted in WSIAT *Decision No. 1945/10*, which held that the exclusion of chronic mental stress was contrary to the Charter. The other appeal in which the OWA is intervening is still in progress at the WSIAT.

## ***Age Discrimination***

For part of 2014-2015 the OWA continued its involvement in challenges to s. 43(1)(c) of the *WSIA*, which restricts loss of earnings (LOE) benefits for workers aged 63 or older to two years after the date of workplace injury or onset of occupational disease. The argument was that the limitation on benefits for older workers, who in many cases would have continued to work well past age 65, is discriminatory and violates the equality provisions of the Charter.

Sadly, the injured worker in our lead case passed away. Generally Charter rights do not survive a claimant's passing. In addition, the Divisional Court considered an application for judicial review of this issue. In December 2014 it released its decision in *Gouthro v. Workplace Safety and Insurance Appeals Tribunal et al.*, 2014 ONSC 7289. The Divisional Court held that the limit on the receipt of LOE benefits based on age is not discrimination under the Charter. Given these two circumstances, the OWA has decided not to pursue this issue any further.

## **OTHER KEY ACTIVITIES IN 2014-2015**

### **System and Community Partnerships**

OWA believes very strongly in the importance and power of partnerships, both within the workplace insurance system and in the community. Across the province, OWA works actively with many local partners, to ensure good service and referrals. This includes local WSIB offices, Members of Provincial Parliament, health care providers and social service agencies. OWA also works at the provincial level. Highlights of provincial partnerships are reported below.

### ***WSIB Labour and Injured Worker Advisory Committee (LIWAC)***

The OWA director and General Counsel sit on this committee, which is convened by the chair of the WSIB and is comprised of senior staff of the WSIB and worker members from unions, injured worker groups and organizations representing non-unionized workers (community legal clinics and OWA). Through this committee, worker members provide feedback and input on high level initiatives of the WSIB, including policy and system change consultations.

### ***Fatalities and Immediate Response (FAIR) Partnership***

We have continued our Partnership with WSIB, MOL, and Threads of Life to ensure that our services and information are provided to families and survivors following traumatic workplace fatalities. As of October 1, 2014, the FAIR partnership expanded to include workers and their families following

catastrophic workplace injuries resulting in severe and permanent life altering physical impairment. Together we have identified possible gaps in service and worked in partnership to find solutions. We have provided ongoing learning and awareness opportunities to all involved. On September 29, 2014, a Webinar Session was offered to OWA staff on the FAIR Partnership: a presentation from each partner about their services and how we are working together to find solutions.

### ***Workers in Crisis and Critical Need***

In 2014-2015, OWA continued our system partnership with WSIB and WSIAT to ensure that identified cases are considered for prioritization in the appeal system. These cases are defined as: demonstrating significant financial hardship, homeless, in imminent likelihood of death, posing a suicide threat, or having a severe mental health issue. Together we have ensured that any possible gaps in services are dealt with on a priority basis. The partners dealt with several serious cases in 2014-2015.

### ***Support to Clients with Asbestos Cancers***

OWA over the years has represented hundreds of workers and surviving family members in asbestos disease cases, including mesothelioma, lung cancer and asbestosis. Ontario is now at the crest of a wave of asbestos cancers stemming from exposures in and previous to the 1980s, with around 160 new mesothelioma cases and 340 new lung cancers annually. There is an urgent need for early detection and treatment, as well as prevention of any new exposures. As reported above, OWA has built a strong partnership with the Canadian Mesothelioma Foundation, including a joint conference in April 2014, especially around support to OWA clients with mesothelioma and a mesothelioma health care network.

### ***Partnerships around appeals and dispute resolution***

2014-2015 was another year of tremendous challenge in the appeals system, given the extensive backlogs at WSIB in previous years and the growing delays at WSIAT. OWA continued to place a high priority on the need to work collaboratively on improving dispute resolution. The OWA continued to work with a joint employer/worker dispute resolution advisory group through the Ontario Bar Association, which the OWA Director co-chaired with a prominent employer lawyer. The group developed a joint submission to the WSIB Appeals Modernization consultation. The focus was on potential improvements to the WSIB's new appeals process and broader collaboration between the employer and worker representatives to improve dispute resolution. The joint group met with WSIB in April 2014.

### **Policy and Law Reform Consultations**

2014-2015 was a very active year for strategic policy consultations by WSIB, especially around its foundational benefits policies. Given the importance of the issues addressed, OWA devoted significant resources to participation in these consultations.

## ***WSIB Benefits Policy Review***

On April 30, 2014, the OWA provided comprehensive legal submissions to the WSIB's public consultation on the suite of draft benefits policies released in response to the final report of the Benefits Policy Review chaired by Jim Thomas. WSIB released its final policies in November 2014, including several changes which responded to issues raised by OWA.

## ***Law Society of Upper Canada Review of OWA Exemption from Paralegal Regulation***

The OWA is mandated to provide representation and advice to workers in workplace safety and insurance disputes and occupational health and safety reprisal matters. These constitute legal services under the jurisdiction of the Law Society of Upper Canada. Since the initial implementation of paralegal regulation in 2007, the OWA and OEA have been exempted from licencing for workplace insurance legal services, but not for their occupational health and safety reprisals legal services. The Law Society has indicated its intention to eliminate the workplace insurance licencing exemption at some point in the future.

If this takes place, the OWA will be obligated to provide these services using only licensed paralegals. If OWA staff are subject to mandatory licensing and possibly mandatory insurance there will be significant transitional human resources implications as well as an annual financial impact on the Agency. OWA would work with the LSUC on a transition plan with the objective of minimizing any potential negative impacts on OWA staff and on client service.

During 2013-2014 OPSEU went to the Grievance Settlement Board to challenge the jurisdiction of the LSUC to regulate paralegals employed by the Ontario Government. In response, the LSUC applied to the Divisional Court to confirm its jurisdiction. In April 2014, the Divisional Court, in *LSUC V. OPSEU et al.* (ONSC 270), ruled in favour of both of the LSUC's and the Crown's positions in this matter. First, and most significant, it ruled that the *Law Society Act* applies to Crown employees practicing law or providing legal services. Second, it confirmed that the exemptions from paralegal regulation do not cover the legal services provided under the *Occupational Health and Safety Act* mandates. This court decision opened the way for the LSUC to move forward with its plan to eliminate the current exemption.

As of 2014-15 fiscal year-end, no decision had been communicated by LSUC to OWA regarding the OWA's exemption. Further developments were anticipated for 2015-16.

## **Service Excellence, staff learning initiatives and wellness**

During 2014-2015, OWA moved forward with several initiatives to ensure service excellence and support staff wellbeing.

### Learning programs for OWA Staff

As part of its commitment to continuing professional development, the OWA delivers extensive educational programs to its own staff. During fiscal 2014-2015, this included the following delivered by CCSU:

- training on changes to the OWA's internal procedures related to time limits and steps to take when we become retained;
- several trainings regarding new procedures and documents that support the OWA service delivery changes being rolled out in 2015-2016;

### ***Developing best practices to address key service issues***

The OWA Strategies Committee was established to address a need identified by Worker Advisers to develop tools, strategies and best practices on key issues related to the changing adjudicative and appeals environment. This included:

- pre-existing conditions, degeneration and psychological issues
- "suitable and available" work and employability
- dealing with the operating level of WSIB
- advocating at the Appeals level of the WSIB and WSIAT
- understanding the employer's perspective
- case management

In 2014-2015, two important webinar learning sessions were delivered: "Dealing with Clients with Psychiatric Issues" and "Back disability: the challenges of determining work relatedness and the role of "pre-existing" or "degenerative" conditions". These were delivered in September 2014 to the Canadian Association of Worker Advisors and Advocates (CAWAA) and to a large group of worker representatives as well as to OWA staff.

A webinar was also offered to OWA staff on the Employer's Perspective: A Guide to Understanding Experience Rating for Worker Advisers. Helpful information was provided to assist with preparing workers' appeals. A webinar session was also offered to staff regarding a Checklist for Earnings Basis Calculations. This session provided support in understanding and appealing earnings basis issues.

## **Service Delivery Model Improvements**

The workplace insurance environment in which the OWA operates has evolved over time, while the OWA's service delivery model had remained relatively static up to 2014-2015. In order to ensure that the OWA continues to provide service as efficiently, effectively and professionally as possible, a review of the service model was undertaken during the 2014-15 fiscal year. The review was carried out by a joint management/staff working group.

This review was important for a number of reasons:

- Waiting lists for representation services within the OWA were increasing;
- Changes in the appeal process at WSIB were impacting the way Worker Advisers approached their work; and
- With increasing numbers of Worker Advisers licenced by the Law Society of Upper Canada, professional responsibilities of OWA staff had to be taken into account.



The review of the service model brought recommendations to strengthen the OWA's capacity to meet clients' needs in a timely way. This included elimination of duplication of reviews of injured workers' WSIB claim files and provision of comprehensive case reviews to help workers understand the merits and challenges in their cases. These recommendations will be implemented during the 2015-2016 fiscal year.

## **Workplace Violence Prevention and Peer Support**

OWA Staff deal with vulnerable workers who sometimes experience crisis situations – often from a combination of financial, health and psychological factors. In extreme cases, workers may pose a threat of harm to themselves and/or others. OWA has long recognized the importance of supporting these workers but also when appropriate, protecting them, OWA staff and other system partners from potential harm. The Workplace Violence Prevention Committee (WVPC) continued to provide leadership and support around this in 2014-2015. WVPC reviewed incident reports and made recommendations to management on improvements to response. The WVPC also surveyed OWA staff in May 2014 to benchmark and track worker behaviours.

During 2014-2015, OWA also participated actively in the MOL's Peer Support Program, an initiative to provide peer to peer emotional support and resources in times of personal crisis.

## **Health & Safety Reprisal Complaint Mandate**

The OWA's occupational health and safety reprisals mandate is to provide the following services to non-union workers who may have suffered reprisal for adhering to or trying to enforce Ontario's health and safety laws:

- Information and advice
- Representation in complaints under s. 50 of the Occupational Health and Safety Act
- Educational services

In addition to serving individual workers, the Occupational Health and Safety Reprisal Program (OHSRP) works with the Ministry of Labour and community partners to ensure that the system is responsive to the needs of non-union workers.

### ***Staffing***

In fiscal year 2014-2015, the staff complement of OHSRP was:

- 3 worker representatives
- 1.5 legal assistants
- 1 counsel/manager
- 0.5 service coordinator

This was a permanent increase from the previous level of two worker representatives, one client service representative and a shared manager and was implemented in response to significant increases in demand for service.

The program's small staff complement means that staff absences can have a significant effect on capacity to deliver services. In 2014-2015, the program dealt with a number of staff-related absences due to both illness and leave entitlements. As a result, the program was staffed with only two worker representatives for approximately eight months of the year. This is an effective reduction in worker representative staffing of 22%.

Worker representatives and the counsel/manager are licensed by the Law Society of Upper Canada to provide legal services as the OWA's exemption from paralegal regulation does not extend to the occupational health and safety reprisals mandate.

## **Description of Services**

The OHSRP delivers services to workers across Ontario from the OWA's Toronto office. Most workers contact the program through its province-wide toll free phone number. Worker representatives travel to attend proceedings when they are held outside of Toronto. In 2014-2015, worker representatives traveled to all regions of the province, attending mediations in London, Ottawa, Sudbury, Timmins, Thunder Bay, and Windsor.

The OHSRP provides escalating levels of service depending on the situation and needs of the worker. Some workers' service requests are resolved through providing advice, while other may require representation to properly resolve their issues.

## **Advisory Services**

### ***New Requests***

Every request for service or assistance from a worker to the OHSRP is recorded as a new request (NR). New requests are resolved when the worker has provided with assistance, usually through summary advice or by setting up an intake appointment. New requests are handled by legal assistants. In urgent cases, workers can be referred immediately to a worker representative.

### ***Summary Advice***

If the worker's situation does not fall within the mandate of the program (e.g., it does not involve the necessary elements of a health and safety reprisal or the worker is unionized), basic information and, where possible, an appropriate referral is provided. In such cases, service is completed and recorded as summary advice.

### ***Intake***

At the intake stage, a worker receives a telephone consultation (intake interview) with a worker representative. Workers are asked to supply additional details regarding what happened to them and their documentary evidence prior to the interview being scheduled, which allows for more focused and efficient interviews.

In the intake interview, the worker representative and the worker discuss the facts, the law and the strengths and weaknesses of a potential reprisal complaint. The worker representative assesses whether there is sufficient evidence to pursue a health and safety reprisal claim. Usually, the worker representative's assessment is communicated to the worker at the conclusion of the interview.

If there is sufficient evidence and the worker chooses to pursue a reprisal case, an offer to represent is made and a retainer is prepared for the worker's signature. If there is an insufficient basis for a reprisal complaint, the worker is provided with detailed legal advice and appropriate referral information.

## **Representation Services**

### ***Applications***

The first stage of representation for most workers is the drafting and filing of an application to the Ontario Labour Relations Board (OLRB). In some cases, this is unnecessary because the worker had already done so or an inspector has made a referral on the worker's behalf under s. 50(2.1) of the Occupational Health and Safety Act.

### ***Early Dispute Resolution***

Settlements are usually achieved during formal mediation at the OLRB, but can occur at any time in the process. If a settlement is reached before mediation is held, it is recorded as early dispute resolution (EDR). Settlements achieved at this stage save OLRB resources and result in a quicker resolution for the worker, but are often more time consuming for worker representatives than the formal mediation process.

### ***Mediation/Pre-hearing Conferences***

Prior to a hearing, the OLRB holds a pre-hearing conference at which a labour relations officer will attempt to facilitate a settlement between the parties. This is the formal mediation stage of the process. Most cases resolve at this stage and this is a key area of the OHSRP's representation work.

### ***Hearings/Consultations***

If mediation is unsuccessful, the matter proceeds to a hearing before a vice-chair. In some cases, the OLRB will hold a less formal consultation. Due to the high settlement rate, hearings are unusual for occupational health and safety reprisal complaints.

### ***Representation Outcomes***

The OHSRP tracks the outcome of representation cases in addition to representation activities. The representation outcomes tracked by the program are:

- **Settlement.** An agreement between the parties to settle to resolve the reprisal complaint. These almost always involve financial compensation, but can also address non-monetary terms such as corrections to a worker's Record of Employment.
- **Interim decision.** A decision issued by the OLRB prior to a final decision on the matter. They often concern procedural or preliminary matters and can be the result of written submissions.
- **Final decision.** A decision by the OLRB that allows or denies the complaint.
- **Withdrawal of application.** Termination of the complaint by the applicant.
- **No further contact.** The worker has ceased responding to communications from the OWA.
- **Withdrawal of representation.** A decision by the OWA to withdraw representation. This is usually for ethical reasons (e.g., the emergence of a conflict of interest).

## Achievements

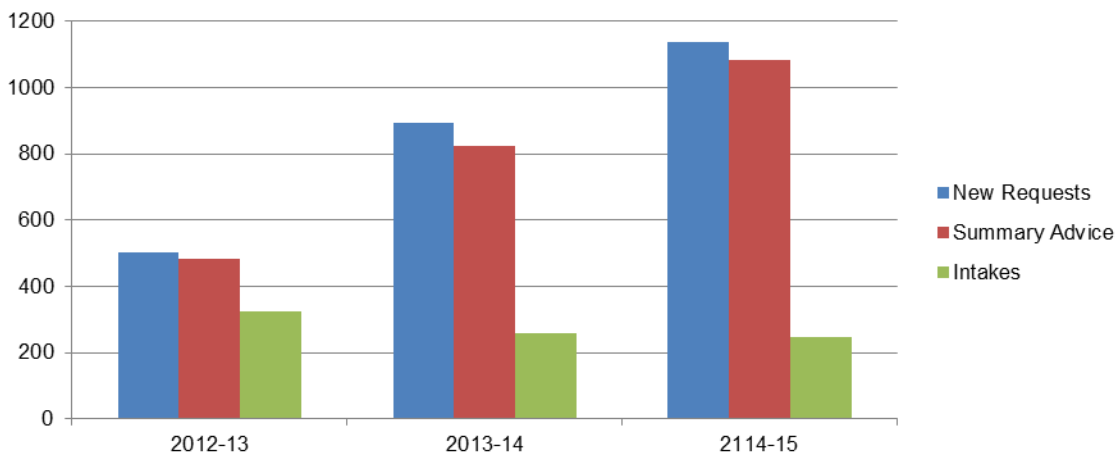
### Summary of Achievements

Overall, the statistics show that demand for the OHSRP’s advisory services is continuing to grow at a substantial rate, although more slowly than the very large growth seen between the first and second year of the program.

The greatest increase in demand can be seen at the front end of the program, new requests and summary advice. The program delivered 1082 instances of summary advice in 2014-2015, an increase of 27% from the 823 achieved in 2013-2014. In the same period, representation outcomes increased 16% from 81 to 94. These increases were achieved with only limited public outreach. Were such outreach to occur, it is likely that even greater increases in service demand would occur.

## Advisory Services

**Chart 1: Overview of Advisory Statistics 2013-2014 to 2014-2015**



**Table 1: Overview of Advisory Statistics 2012-2013 to 2014-2015**

	2012-13	2013-14		2014-15	
Service	Quantity	Quantity	Annual Change	Quantity	Annual Change
<b>New Requests</b>	502	894	+78%	1137	+27%
<b>Summary Advice</b>	485	823	+70%	1082	+31%
<b>Intake</b>	326	260	-17%	246	-9%

### New Requests and Summary Advice

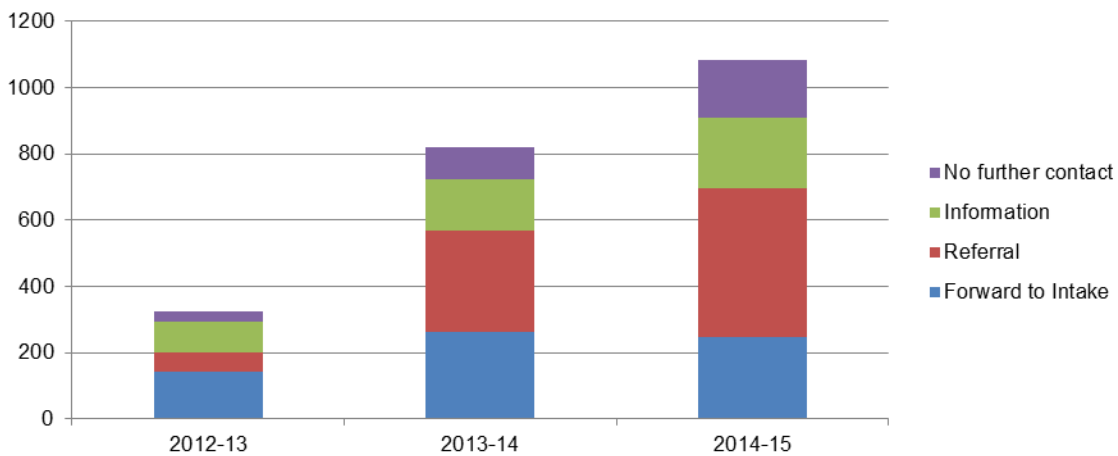
Both new requests and summary advice continued to increase significantly in 2014-2015. In 2014-2015, the OHSRP received a total of 1137 new requests, an increase of 27% over 2013-2014. The number of instances of summary advice provided in 2014-2015 was 1082. This is a 31% increase

over the previous year. Although these increases were not as large as those seen from 2012-2013 to 2013-2014 (78% and 70% respectively), they are still substantial.

Of the 1083 incidences of summary advice completed, 451 (41.6%) were resolved by providing referrals. A further 213 (19.7%) were resolved by providing information only. Proportionally, these numbers have remained fairly steady compared to 2013-2014, in which 37% of summary advice was resolved through referrals and 18.8% were resolved by providing information only. This shows that a significant portion of the program’s front end workload is devoted to initial screening and providing of basic assistance to workers who situations are out of mandate or do not require representation.

The number of new requests forwarded to intake declined from 2013-2014 to 2014-2015, both in terms of quantity and as a proportion of summary advice resolutions. Summary advice forwarded to intake fell from 264 to 246 or (-7%) or from 32% to 22.7% of the total. This decline appears to have several causes. These include increases in the number and proportion of referral and information summary advice as well as an increase in the number of workers who did not respond to requests for intake documents.

**Chart 2: Disposition of New Requests for Service: 2012-13 to 2014-2015**



**Table 2: Disposition of New Requests for Service: 2014-2015**

Service	2012-13		2013-14			2014-15		
	Quantity	Percent	Quantity	Annual Change	Percent	Quantity	Annual Change	Percent
<b>Forward to intake</b>	143	43.9	264	-18%	32.0	246	-7%	22.7
<b>Referral</b>	59	18.1	305	+119%	37.0	451	+48%	41.7
<b>Information</b>	90	27.6	155	+933%	18.8	213	+37%	19.7
<b>No further contact</b>	34	10.4	98	+989%	11.9	172	+76%	15.0
<b>Withdraw service</b>	0	0	1	N/A	0	0	-100%	0

<b>Total</b>	326	100	823	+70%	100	1082	+31%	100
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### ***Intake***

In 2014-2015, 246 intakes interviews were completed, a decrease of 7% from 2013-2014. A number of factors likely account for this decline. These include more accurate front-end screening by experienced legal assistants, a higher rate of clients who did not respond to requests for documents and reduced worker representative capacity due to temporary vacancies.

## **Representation Statistics**

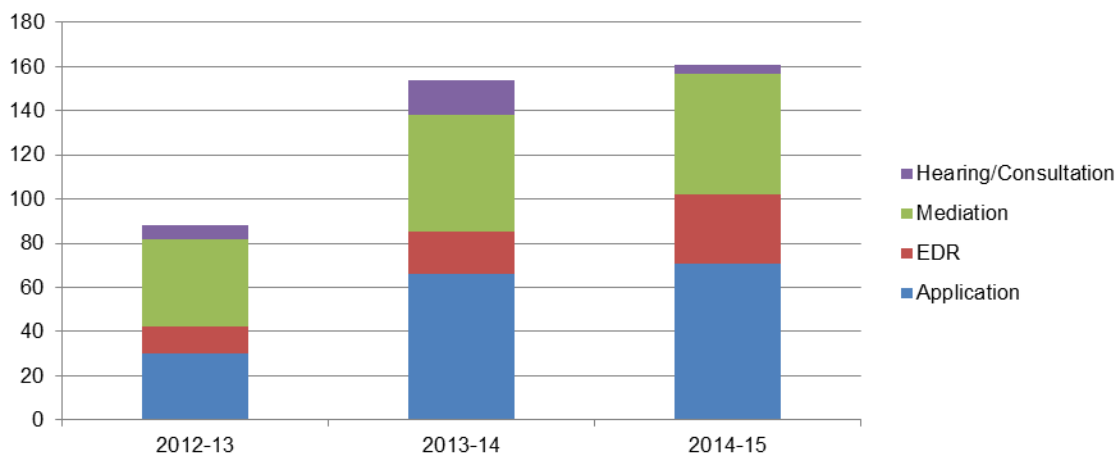
### ***Representation Activities***

Overall, representation activities increased from 154 in 2013-2014 to 161 in 2014-2015, an increase of 5%.

The OHSRP drafted and filed 71 applications to the OLRB in 2014-2015, an increase of 8% over the 66 applications completed the previous year. The number of mediations carried out increased 4%, from 53 in 2013-14 to 55 in 2014-2015. Early dispute resolution increased significantly from 19 to 31, an increase of 63%. This means that a higher proportion of cases were resolved without resort to formal mediation at the OLRB.

Staff attended fewer hearings and consultations in 2014-2015. There were four hearings and no consultations in 2014-2015, compared with 12 and 4, respectively, in the previous year. The reduction in hearings is largely offset by the increase in early dispute resolution activity. At this point, it appears that this is likely the result of normal variation in cases rather than a longer-term trend.

**Chart 3: Representation Activities 2012-13 to 2014-2015**



**Table 3: Representation Activities 2012-13 to 2014-2015**

	2012-13	2013-14		2014-15	
Service	Quantity	Quantity	Annual Change	Quantity	Annual Change
<b>Applications</b>	30	66	+120%	71	+8%
<b>Early dispute resolution</b>	12	19	+58%	31	+63%
<b>Mediations</b>	40	53	+33%	55	+4%
<b>Hearings</b>	5	12	+140%	4	-67%
<b>Consultations</b>	1	4	+300%	0	-100%
<b>Total</b>	88	154	+75%	161	+5%

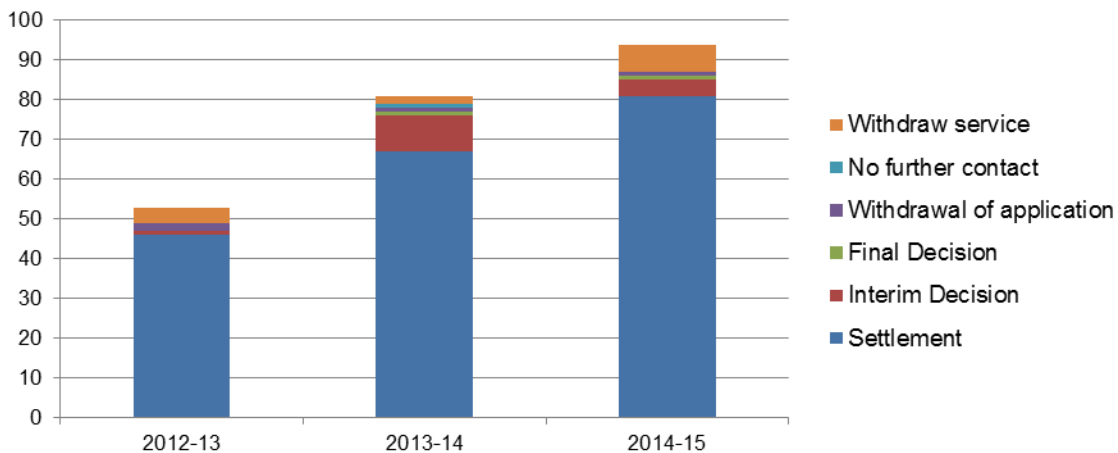
***Representation Outcomes***

Overall, representation outcomes (i.e., the number of cases in which a resolution was obtained) increased to 94 in 2014-2015 from 81 in 2013-2014. This is an increase of 16%. Although smaller than the overall increases seen in advisory service, and the very large (53%) increase seen between the first and second year of the program, this is a significant increase.

In 2014-2015, the program achieved 81 settlements, an increase of 21% over the 67 achieved in 2013-2014. Settlements remain by far the largest and most important category of representation outcomes.

The program received only one final decision and four interim decisions in 2014-2015. This illustrates how few occupational health and safety reprisal cases go to hearing and result in a decision from the OLRB. The number of decisions obtained by the program declined from 2013-2014, but the totals for both years are relatively small, which tends to exaggerate even minor changes. It is likely that the decline in decisions is result of normal variation in cases rather than being representative of a longer-term trend.

**Chart 4: Representation Outcomes 2012-2013 to 2014-2015**



**Table 4: Representation Outcomes 2012-2013 to 2014-2015**

	<b>2012-13</b>	<b>2013-14</b>		<b>2014-15</b>	
<b>Outcome</b>	<b>Quantity</b>	<b>Quantity</b>	<b>Annual Change</b>	<b>Quantity</b>	<b>Annual Change</b>
<b>Settlements</b>	46	67	+46%	81	+21%
<b>Interim decisions</b>	1	9	+800%	4	-56%
<b>Final decisions</b>	0	1	N/A	1	0%
<b>Withdrawal of application</b>	2	1	-50%	1	0%
<b>No further contact</b>	0	1	N/A	0	-100%
<b>Withdraw service</b>	4	2	-50%	7	+250%
<b>Total</b>	53	81	+53%	94	+16%

## **Educational Services**

In addition to answering workers' questions about health and safety reprisal complaints by phone, the OWA also promotes its website as a source of information. The OWA website contains a section on reprisals which contains information on:

- What health and safety reprisals are.
- How workers can enforce their rights.
- How the OWA can provide assistance.
- Other organizations that can provide assistance.

## **Outreach and Partnerships**

In 2014-2015, outreach for the OHSRP focused on system partners to help ensure better communications and referrals for workers within the occupational health and safety system. Program staff also continued to develop relationships and work cooperatively with community legal clinics and organized labour.



## APPENDIX A –PERFORMANCE ACHIEVEMENTS - WSIA MANDATE

<b>Measure</b>	<b>Standard/Long Term Target</b>	<b>2013-2014 Achievement</b>	<b>2014-2015 Commitments</b>	<b>2014-2015 Year-End Achievements (as of March 31, 2015)</b>	<b>2015-2016 Commitments</b>
Early and Alternative Dispute Resolution	70% of all decisions to be obtained by early (EDR) or alternative dispute resolution (ADR).	78% of all OWA decisions were obtained by early or alternative dispute resolution.	OWA expects to achieve at least 70% of all issues resolved by EDR or ADR.	OWA exceeded commitment by resolving 79% of all issues by EDR or ADR.	OWA expects to achieve at least 70% of all issues resolved by EDR or ADR.

Measure	Standard/Long Term Target	2013-2014 Achievement	2014-2015 Commitments	2014-2015 Year-End Achievements (as of March 31, 2015)	2015-2016 Commitments
Effectiveness of advisory & representation services	200 issues per full time staff.	175 issues per full time staff* were achieved through advice and representation .	200 issues per full time staff.	162 issues per full time staff.	<p>During 2014-2015, OWA benchmarked a new performance measure recognizing the value of OWA's advisory and representation work. This work includes:</p> <ul style="list-style-type: none"> <li>• The number of case reviews completed</li> <li>• Assistance provided to workers who are in crisis</li> <li>• Referral information for other disability programs and services in response to identified needs</li> <li>• The number of issues in decisions received</li> </ul> <p>Because 2015-16 will be a year of transition for the OWA as we move to a new service model, the target has been set at 170 per full time staff. The long term target is 190 per full time staff.</p>

<b>Measure</b>	<b>Standard/Long Term Target</b>	<b>2013-2014 Achievement</b>	<b>2014-2015 Commitments</b>	<b>2014-2015 Year-End Achievements (as of March 31, 2015)</b>	<b>2015-2016 Commitments</b>
Timeliness of Appeals Representation Service	100% of all cases involving appeals representation service to commence within 120 days of commitment.	OWA opened 88% of all cases placed on the waiting list for representation services within 120 days.	To achieve a target of commencing 100% of representation cases within 120 days.	OWA opened 94% of all cases placed on the waiting list for representation services within 120 days. When including all requests for representation, including individuals who received immediate service, 94% of all requests for representation service commenced within 120 days. The main factor contributing to this was the significant appeals backlogs within the system and the difficulty in maintaining efficient case turnover. Given the many challenges of 2014-2015, this was still a good result.	Because the OWA's service model is changing in 2015-16, a new timeliness measure is required. This measure will track the time between requests for representation service and case reviews. OWA's long term goal is the commencement of the case review within 120 days of request in 85% of cases. During the 2015-16 transition year, however, when OWA will be concentrating on existing backlogs, the goal has been reduced substantially to 20% of cases.

\*Staff includes all OWA staff with the exception of the SIX positions dedicated to the new reprisal complaint mandate

## APPENDIX B – FINANCIAL REPORT FOR THE FISCAL YEAR 2014-2015

Account	Final Budget*	Total Actual Expenditures* *	Variance	Variance %
<b>Salary &amp; Wages</b>	7,783.1	7,659.9	123.2	1.6%
<b>Benefits</b>	2,253.5	2,237.0	16.5	0.7%
<b>Other Direct Operating Expenses (ODOE)</b>				
<b>Transportation &amp; Communications</b>	300.0	267.4	32.6	10.9.%
<b>Services (incl. Office Leases)</b>	1,428.7	1,396.1	32.6	2.3%
<b>Supplies &amp; Equipment</b>	100.0	92.1	7.9	7.9%
<b>ODOE TOTAL</b>	1,828.7	1,755.7	73.0	4.0%
<b>OWA TOTAL</b>	11,865.3	11,652.5	212.8	1.8%
<b>Recoveries</b>	(11,864.3 )	(11,652.4)	(221.8)	-1.8%
<b>TOTAL</b>	1.0	0.1	1.0	

Final Budget = Printed Estimate

\* Final Budget = Printed Estimates +/- TBO, re-alignment of funds by Standard Account.

\*\* Total Actual Expenditures including Office Leases

\*\*\* Total annual remuneration of appointee is \$131,450

## **APPENDIX C - NOTEWORTHY WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (WSIAT) DECISIONS BY OFFICE OF THE WORKER ADVISER STAFF**

The WSIAT summarizes its significant decisions and identifies those that are especially important as noteworthy. A selection of noteworthy decisions resulting from OWA representation is summarized below.

### ***Decision No. 1167/13R***

The WSIB requested a re-consideration of a Tribunal decision that granted loss of earnings benefits to a worker who had not received a non-economic loss award. The Tribunal denied the WSIB's appeal on the grounds that the test for awarding loss of earnings benefits was not whether the worker was awarded a non-economic loss benefit, but whether the worker's wage loss was due to the compensable injury.

### ***Decision No. 1265/14***

Under WSIB policy, gastro-intestinal cancers in asbestos workers are accepted if the asbestos exposure is continuous and repetitive, represents a major component of the job, and there is at least a 20 year period between the first exposure and the diagnosis of disease. The WSIB denied the worker's claim on the grounds that his exposure was occasional and that the 20 year latency period was not met.

The Tribunal found that the WSIB exposure criteria were met because the worker was exposed to moderate to high levels of asbestos dust about 50% of his work time over a 17 year period. Because the latency period was not met (it was 19 years from exposure to diagnosis), the presumption of work-relatedness did not apply. Referring to the WSIB's Merits & Justice policy and the facts of the case, the Tribunal found that it was more likely than not that the worker's cancer was caused his occupational exposure.

### ***Decision No. 2439/12***

The worker was diagnosed with esophageal cancer at the age of 47 and died a year later. The worker had substantial exposure to metalworking fluids for 6 years. In this case, there were two theories for the development of the worker's cancer: 1) he had a non-work-related history of gastric reflux which increases the risk of esophageal cancer; 2) workplace exposure to metalworking fluids. The worker had adenocarcinoma, a type of esophageal cancer associated with metalworking fluids. The Tribunal found the evidence for each theory about equal in weight, applied the statutory benefit of the doubt provision, and allowed the claim.

### ***Decision No. 911/14***

The worker had been exposed to respirable dust for about 38 years in several jobs. He also had a 30 pack year smoking history. The WSIB denied entitlement for chronic obstructive pulmonary disease (COPD) on the grounds that the worker did not meet the exposure threshold to warrant entitlement to COPD for occupational dust and that the worker's smoking history overwhelmed the occupational exposures.

The Tribunal emphasized that the WSIB's guidelines on COPD and respirable dust are not policy, and do not create a rigid threshold. It found that the worker's smoking had contributed to the development of COPD, but had not overwhelmed the occupational exposures and granted entitlement.

***Decision No. 962/14***

In this traumatic mental stress case, the Tribunal gave a broad reading to the WSIB's policy and granted entitlement. The traumatic event was not life threatening, and may not have been traumatic for every worker. But the Panel took into account that, for this particular worker, it amounted to a traumatic event.

***Decision No. 874/14***

The WSIB denied a worker entitlement for depression following a serious, debilitating injury because the psychiatric condition arose more than five years after the compensable injury. The Tribunal held that the "five year rule" in WSIB policy is a guideline only, and that the question before it is whether or not the worker's condition was caused by the workplace accident.

***Decision No. 906/14***

The WSIB denied entitlement to a homecare nurse on the grounds that she was not in the course of employment when she was injured. The injury occurred while performing a patient transfer an hour after the worker's shift should have ended. In this case, the Tribunal found that the worker was in the course of her employment at the time of the injury and granted entitlement.

***Decision 1856/14***

After a workplace injury with no lost time, the worker was dismissed from employment. We successfully argued that the employer had breached its obligation to re-employ the worker.

***Decision No. 1069/14***

In this re-employment case, the Tribunal held that a mutual agreement between the worker and the employer for the worker to take a month's unpaid vacation did not amount to an interruption of employment. The worker was therefore entitled to the benefit of the re-employment obligation.

***Decision No. 99/14***

The worker was receiving partial loss of earnings benefits and CPP disability benefits. The WSIB was deducting the whole of the CPP from the worker's benefits, even though the worker had other, non-work-related disabilities. The Tribunal held that 50% of the CPP disability should be off-set given the extent of the worker's non-compensable disabilities.

## **APPENDIX D - CLIENT TESTIMONIALS – WORKPLACE INSURANCE PROGRAM**

I was overwhelmed with the service I received from (two worker advisers). Forever grateful for the hard work and commitment to my case!

Deepest appreciation for the wonderful representation (the Worker Adviser) provided. \*\*\* was extremely well prepared and confident. Thank you very much!

\*\*\* was an amazing representative! Extremely happy with the service. Cannot thank her enough. Greatly appreciated.

Not enough room on survey for comments. We cannot say enough about how much we appreciate everything the OWA has been so helpful. So much support and help with all our questions from (the Worker Adviser). He made us feel very comfortable. He was very patient and understanding. We were astonished at how well prepared he was. He went above and beyond for us. A paid lawyer would not have done so well. We cannot thank \*\*\* enough for everything he did. Many thanks to OWA offices for always being there when we need you.

This Worker Adviser was completely understanding & helpful. Without her constant help we would never had any help. She is priceless.

Everything was great, \*\*\* was extremely helpful and helped me with everything. I am very happy I had him fighting for me. \*\*\* was knowledgeable and very helpful great at what he does.

I really cannot think of any way you could improve services. You have been very prompt, courteous, knowledgeable and understanding. I don't know what I would have done without your help. I would like to express my sincere gratitude on a job very well done. It has been a pleasure having someone so knowledgeable helping me through the whole procedure. Thank you again.

Deepest thanks for your perseverance and hard work toward a satisfactory resolution. My gratitude for your dedication. You are a fine example of the high standards of quality work in representing your organization.

I am so thankful that we have people like you (OWA) working for the injured workers. A great thank you to you and your staff.

I can't think of anything. You did a wonderful job. And the secretaries were awesome too. I truly appreciate all your hard work and dedication in resolving this case. Don't know where I would have been without you. THANK YOU!

Don't stop doing what you do. You are very good at what you do and I am grateful for all your help. I thank everyone who was involved and for believing me as you helped me to stand back and fight for my rights and believe "the truth is the only way".

[The Worker Adviser] took over my case and turned it all around. I am eternally grateful for her in depth knowledge of my case and WSIB law. Her professionalism, dedication and attention to detail in defending my case was admirable.

## **Client testimonials – Occupational Health and Safety Reprisals Program**

The whole process left me with a feeling of confidence. Kudos to all involved!

Nothing but good things to say about my experience.

[My worker representative] was excellent. His professionalism, courtesy, and dedication were truly appreciated and the matter was resolved quickly and effectively. 10/10!

Everyone was very helpful, professional and friendly and easy to talk to.

In my opinion, your service to me was excellent.



## APPENDIX E – OWA OFFICE LOCATIONS

### TORONTO & EASTERN REGION

HEAD OFFICE &  
TORONTO OFFICE  
123 Edward Street  
Suite 1300  
Toronto, ON M5G 1E2

SCARBOROUGH OFFICE  
305 Milner Avenue  
Suite 918  
Scarborough, ON M1B 3V4

OTTAWA OFFICE  
347 Preston Street  
3<sup>rd</sup> Floor  
Ottawa, ON K1S 3H8

### SOUTHWEST REGION

LONDON OFFICE & SARNIA  
SATELLITE  
495 Richmond Street  
Suite 810  
London, ON N6A 5un9

WATERLOO OFFICE  
155 Frobisher Drive  
Unit G (213)  
Waterloo, ON N2V 2E1

WINDSOR OFFICE  
100 Ouellette Avenue  
10<sup>th</sup> Floor  
Windsor, ON N9A 6T3

### NORTH REGION

SAULT STE. MARIE OFFICE  
70 Foster Drive  
Suite 480  
Sault Ste. Marie, ON P6A 6V4

THUNDER BAY OFFICE  
435 South James Street  
Suite 335  
Thunder Bay, ON P7E 6S7

SUDBURY OFFICE  
159 Cedar Street  
Suite 304  
Sudbury, ON P3E 6A5

TIMMINS OFFICE  
60 Wilson Avenue, Suite 303  
Timmins, ON P4N 2S7

ELLIOT LAKE OFFICE  
50 Hillside Drive North  
Elliot Lake, ON P5A 1X4

### CENTRAL REGION

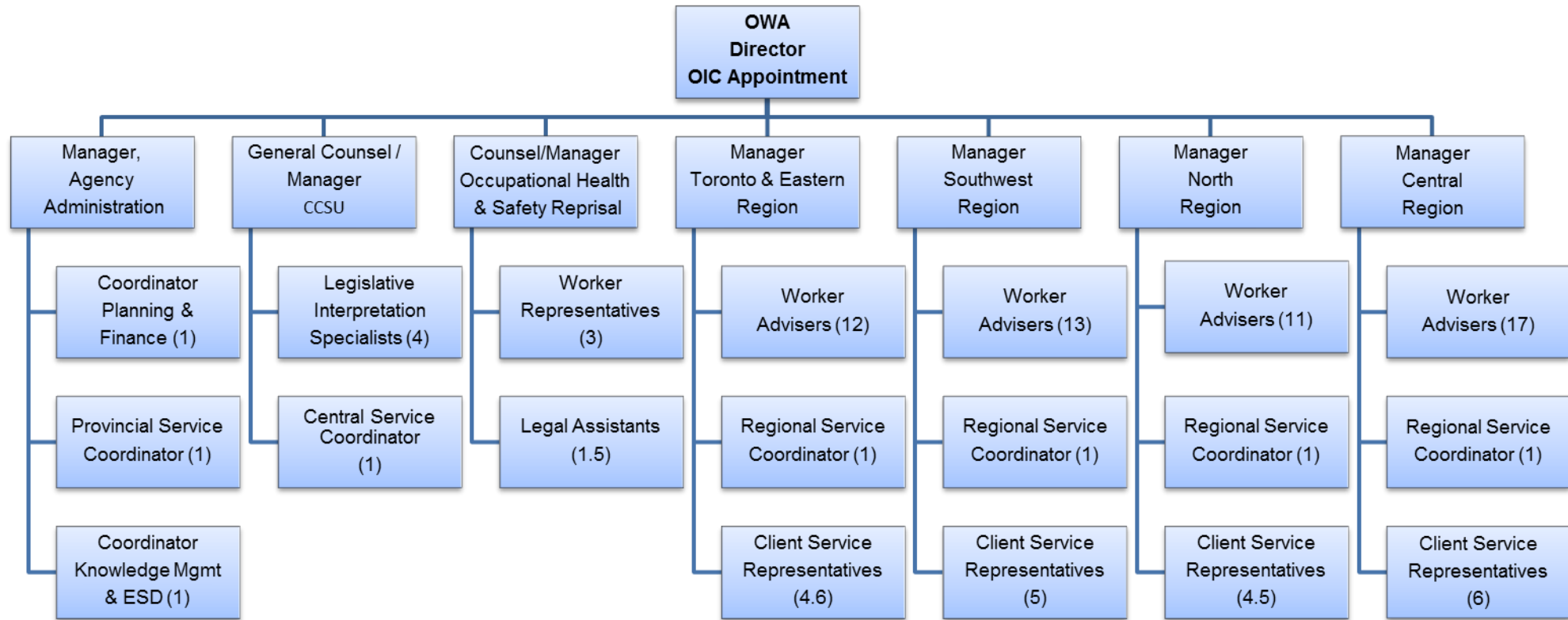
DOWNSVIEW OFFICE  
1201 Wilson Avenue  
Building C, Suite 125  
Downsview, ON M3M 1J8

HAMILTON OFFICE  
119 King Street West  
13<sup>th</sup> Floor  
Hamilton, ON L8P 4Y7

ST. CATHARINES OFFICE  
301 St. Paul St.  
9<sup>th</sup> Floor  
St. Catharines, ON L2R 7R4

MISSISSAUGA OFFICE  
10 Kingsbridge Garden Circle,  
Suite #512  
Mississauga, ON L5R 3K6

# APPENDIX F – ORGANIZATION CHART



2014-2015 OWA STAFF ALLOCATION = 97.6 FULL TIME EQUIVALENTS (FTE)