

# OFFICE OF THE WORKER ADVISER

Annual Report  
April 1, 2011 to March 31, 2012



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## **A MESSAGE FROM THE DIRECTOR**

I am pleased to submit the annual report of the Office of the Worker Adviser for fiscal year 2011–2012. This report covers the period from April 1, 2011 to March 31, 2012.

It was an eventful and challenging year. Most notably, the OWA experienced and responded to an increase in demand for our workplace safety and insurance services. At the same time, the OWA prepared to launch a new program to help workers who were threatened or punished by their employer for following occupational health and safety laws. In the area of system improvement, the OWA participated in the Workplace Safety and Insurance Board (WSIB) Funding Review chaired by Professor Harry Arthurs, preparing and presenting written and oral submissions.

### ***Workplace Insurance Workload***

The OWA's main focus continued to be our day-to-day work of advising and representing injured workers and their survivors in workplace safety and insurance matters. While the demand for this service increased somewhat over last year, our ability to resolve issues through representation decreased slightly.

An important reason for the decrease in the number of WSIB issues resolved appears to be the growing backlog at the WSIB's Appeals Branch. At fiscal year-end, there was a backlog of more than 4,000 appeals waiting to be assigned to an appeals resolution officer, of which over 600 were OWA clients.

Starting in early 2012, OWA participated in a number of important meetings between WSIB senior management and worker stakeholders to provide initial feedback on WSIB's preliminary proposals for changes to the WSIB appeals system and to provide input on possible solutions going forward. Toward the end of the fiscal year, OWA also offered to work with the WSIB Appeals Branch to find ways to resolve some of the OWA cases in the backlog and at the same time test approaches that might assist in resolving cases more efficiently for other users of the appeals system. This work would begin in the 2012–2013 fiscal year.

### ***Occupational Health and Safety Reprisal Program***

Effective April 1, 2012, OWA was given a new mandate to educate, advise and represent non-unionized workers with occupational health and safety reprisal complaints. During the 2011–2012 fiscal year, the OWA set up a new Occupational Health and Safety Reprisals Program to provide services under the new mandate. These efforts included designing a service delivery model, developing a new job description, recruiting and hiring staff and creating systems for recording and reporting casework activities. Training about the new program was also provided to OWA staff working in other program areas.

The hard work, dedication and skill of OWA staff who work diligently to serve vulnerable workers and their survivors make it the caring and effective advocacy agency that it is and one that I am very proud to be a part of. I thank them all for their efforts.

**Cindy Trower**

Acting Director, OWA

## **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 has been mandated to advise, educate and represent non-unionized workers who have reprisal complaints under the Occupational Health and Safety Act (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 have been threatened or punished for following the Occupational Health and Safety Act;
- provide a vital public service that contributes to the effective functioning of Ontario's workplace safety and insurance system, and support a healthy workforce as a foundation for a strong, vibrant provincial economy; and,
- contribute to improving workplace safety and insurance through community and system partnerships.

The OWA is an operational agency of the Ministry of Labour (the Ministry). The director of the OWA is an Order-in-Council appointment. Since the retirement of the director in November 2010, Cindy Trower, OWA's general counsel and manager of the Central Client Services Unit (CCSU), has been acting director while the Ministry recruits a suitable replacement.

# OWA SERVICE DELIVERY

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: Brantford, Brampton, Kingston, North Bay, Oshawa, Peterborough and St. Thomas.

## 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.

## **Central Client Services Unit (CCSU)**

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

- internal legal advice and assistance to OWA managers and staff
- advice and representation services for OWA clients in legally complex and/or precedent setting cases
- system improvement initiatives
- the development of educational sessions and resources for OWA staff and other worker-side representatives
- the development of educational materials for the public.

## **KEY ACHIEVEMENTS**

Some workers contact the OWA with a question about workplace insurance or for information to help them understand their entitlements. In other instances, 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 instances: in the first, by providing information and "summary advice" (advisory services) and in the second by representing the worker in the 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 repeated 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.

### **Advisory Services**

The OWA had 18,081 new requests for service, from 13,406 different workers, during the 2011–2012 fiscal year. The number of new requests increased from 17,394, or by about 4%, from the previous fiscal.

For 14,599, or approximately 80%, of the new requests in 2011–2012, the OWA was able to assist the worker by providing summary advice. The remaining 3,482 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. While there was a drop in the demand for OWA services in 2010–2011 when compared to the previous



three years, 2011–2012 saw the demand climb once again, approximating historical levels.

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

	<b>07-08</b>	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>Change from 10–11 to 11–12</b>
Number of New Requests for Service*	18,025	18,552	18,456	17,394	18,081	+4%
Number of New Requests Resolved with Summary Advice	14,775	15,249	15,123	13,932	14,599	+5%
Number of Cases Reviewed for Representation	2,322	2,911	3,037	3,146	3,048	-3%
Number of Cases Selected for Representation	1,471	1,706	1,816	1,791	1,809	+1%
Number of Cases Selected Out	851	1,122	1,221	1,355	1,239	-9%
% of Cases Reviewed with offer of Representation	63%	59%	60%	57%	59%	+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.

### ***OWA website***

In addition to answering questions workers may have about their workplace insurance claims by phone and in person, the OWA also promotes its website as a source of information to clients. Current highlights of the website include:

- forty-one fact sheets on varying workplace insurance related topics
- three detailed "Worker Kits" that provide the information necessary for workers to represent themselves in straight forward cases
- "Frequently Asked Questions" about the OWA and workplace insurance
- a glossary of workplace insurance related acronyms and terminology
- the forms necessary to meet appeal time limits and to initiate an appeal
- updates on changes in the workplace safety and insurance field
- three newly developed fact sheets on health and safety reprisal complaints.

To better serve our clients, the OWA redesigned its website in 2011–2012, with plans to launch the new site during the 2012–2013 fiscal year.

## **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 difficult decisions, worker advisers carefully review each case, based on predetermined criteria, before an offer of representation is made.

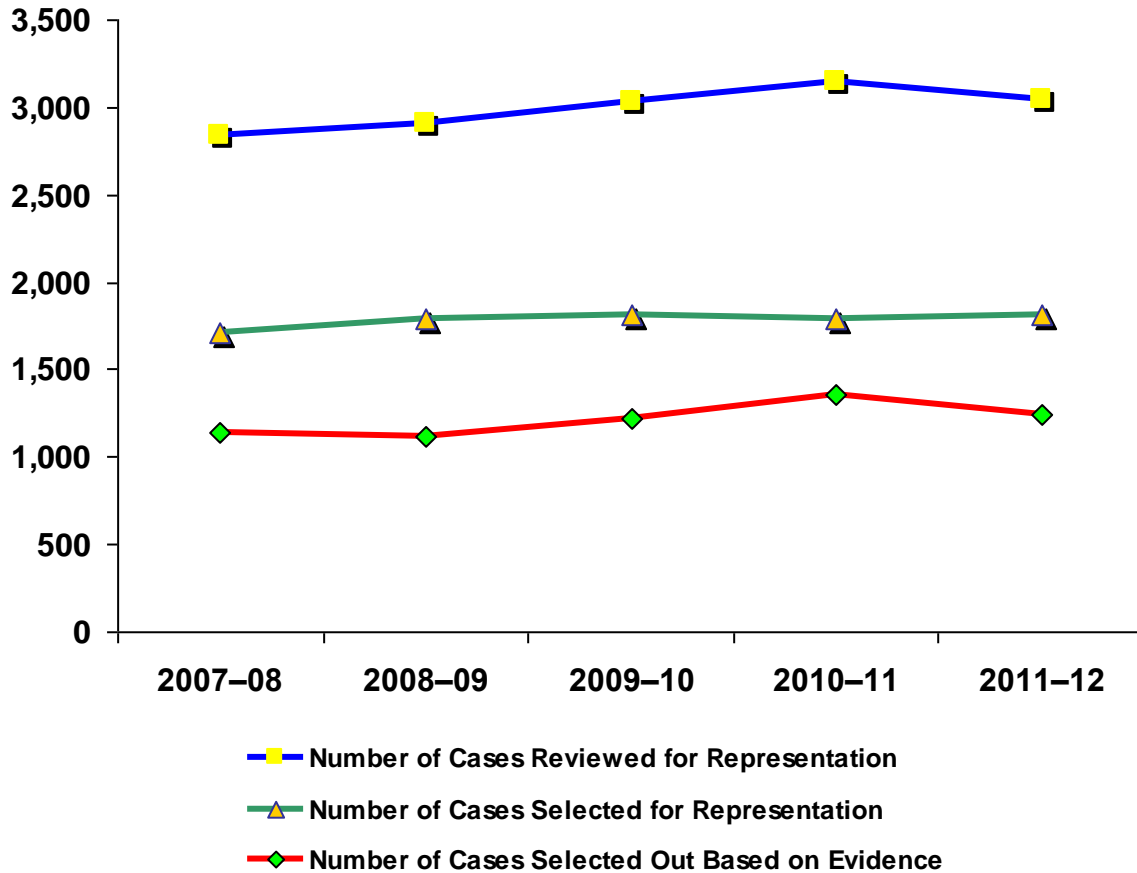
The OWA offers representation services in cases where

- 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.

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 if the issue involves a challenge of a WSIB security restriction letter.

In 2011–2012, the OWA completed 3,048 case reviews. In 2010–2011, 3,146 case reviews were completed. Although the total number of case reviews in 2011–2012 decreased by 3%, the OWA offered to represent more workers in 2011–2012 than the previous fiscal year. Offers of representation were made to 1,809, or 59%, of cases reviewed in 2011–2012, while in 2010–2011 offers of representation were extended to 1,791 workers, or 57% of the cases reviewed. This means that in 2011–2012 the OWA offered services to a greater percentage of the workers who requested representation in the appeals system than in the previous year.

**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 2011–2012 fiscal year, the OWA had 3,613 representation files open. As the work on files was completed during the course of the fiscal year, 1,868 of these files were closed. This, in turn, allowed the OWA to open an additional 2,024 representation files. In total, the OWA represented 5,637 injured workers and survivors during the 2011–2012 fiscal year.

Because the OWA opened more files than it closed in 2011–2012, the number of open representation files increased from 3,613 at the beginning of the fiscal to 3,769 at the end of the year, an increase of 4%. This allowed us to provide more workers with the help they needed to navigate the WSIB appeals system.

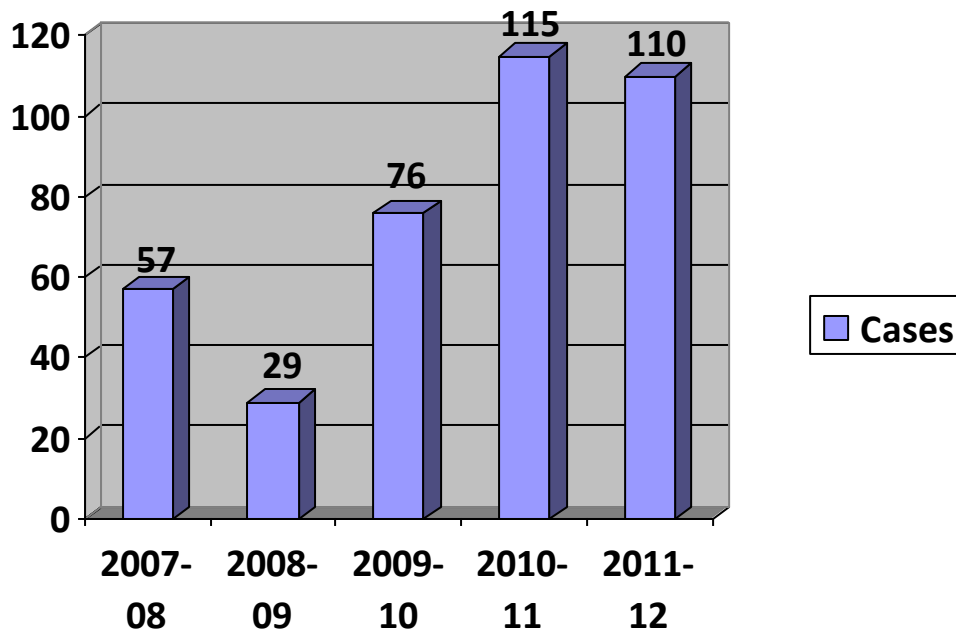
## Waiting List for Appeal Level Representation Services

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 2010–2011 fiscal year the OWA had 115 files on the waiting list. This number decreased slightly to 110 files on the waiting list in 2011–2012. In the majority of cases the delay in providing representation services was short. Ninety-five percent of the files placed on the waiting list during 2011–2012 were opened within 120 days. In addition, the average age of files on the waiting list at year end was only 1.8 months.

**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 has increased each fiscal year since 2007–2008, including a 4% increase from 2010–2011 to 2011–2012.

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

	<b>07-08</b>	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>% change 10-11 to 11-12</b>
Open Files	3,381	3,501	3,546	3,613	3,769	+4%
Waiting List Files	57	29	76	115	110	-4%
Total Workload	3,438	3,530	3,622	3,728	3,879	+4%

### ***Decisions***

The OWA represents a substantial number of workers in the appeals system each year. During the 2011 calendar year, the OWA was the representative in approximately 10% of the new appeals received by the WSIB's Appeals Branch. During the same calendar year, the OWA represented at the Tribunal in 18% of appeals initiated by workers and also represented workers in 9% of appeals initiated by employers.

In 2011–2012, the OWA obtained a total of 3,679 decisions from the adjudication and appeals levels of the WSIB and from the Tribunal, a slight decrease (2%) from the previous year's total of 3,755 decisions (see Table 3).

**Table 3: Decisions by Level**

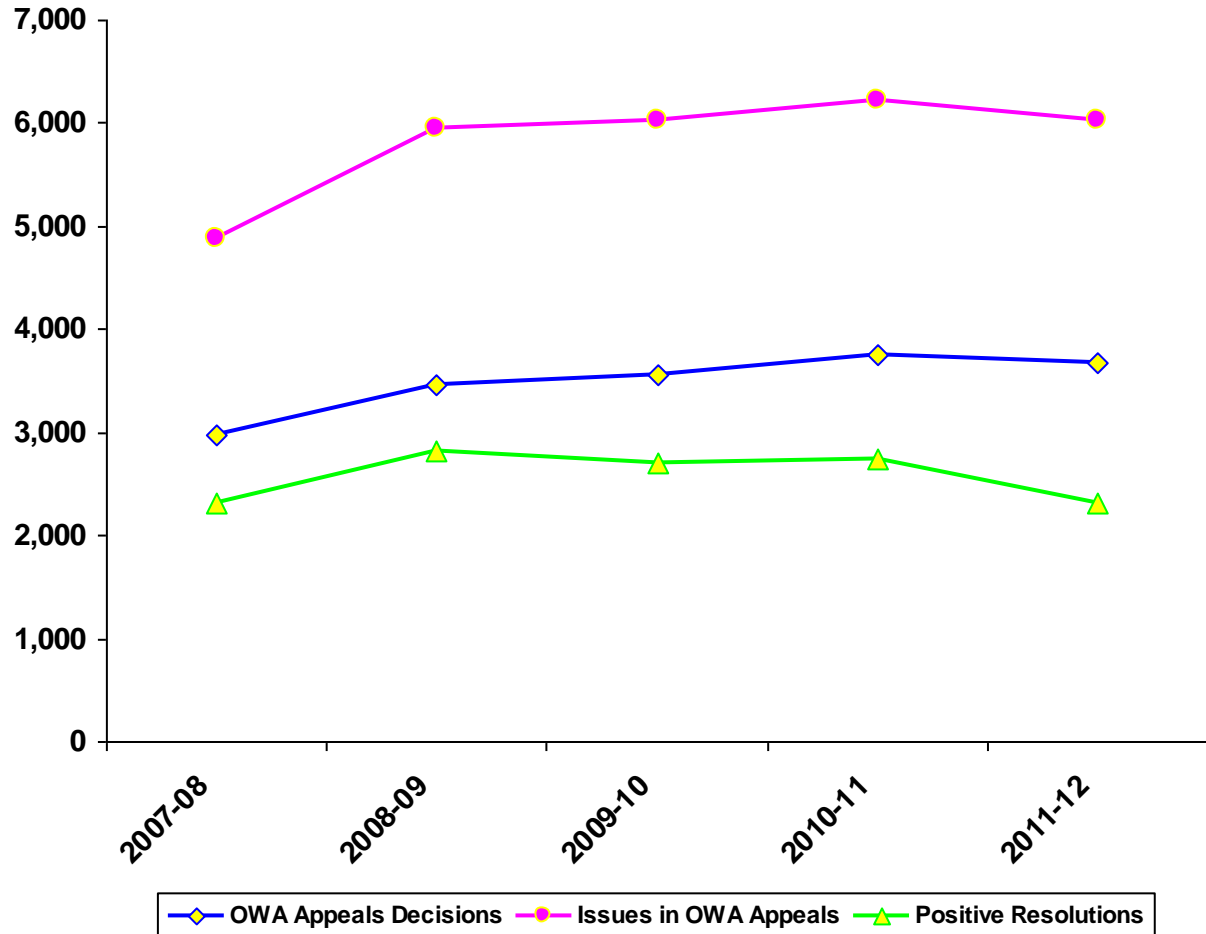
<b>Decisions by Level</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-2012</b>
<b>WSIB – Operating Level</b>	1,614	1,915	2,059	2,174	2,055
<b>WSIB – Appeal Level</b>	876	968	1,055	1,093	1,136
<b>WSIAT</b>	494	582	439	488	488
<b>TOTAL DECISIONS FROM ALL LEVELS</b>	<b>2,984</b>	<b>3,465</b>	<b>3,553</b>	<b>3,755</b>	<b>3,679</b>
<b>TOTAL ISSUES IN DECISIONS FROM ALL LEVELS</b>	<b>4,890</b>	<b>5,943</b>	<b>6,037</b>	<b>6,214</b>	<b>6,020</b>

The 3,679 decisions obtained in 2011–2012 involved a total of 6,020 issues, 2,318 of which were allowed either fully or in part during the reconsideration or appeals process. When comparing with 2010–2011, this represents an 8% decrease in the number of issues allowed at the Operating Level, and a 5% decrease at the Appeals Branch (See Table 4).

**Table 4: Percentage of Issues Allowed**

	<b>07-08</b>	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>Change 10-11 to 11-12</b>
<b>Operating Level</b>	39%	37%	38%	34%	26%	-8%
<b>Appeals Branch</b>	53%	61%	51%	52%	47%	-5%
<b>WSIAT</b>	62%	60%	60%	64%	67%	+3%
<b>Total of all Levels</b>	48%	48%	45%	44%	39%	-5%

**Figure 3: Results from OWA Representation**



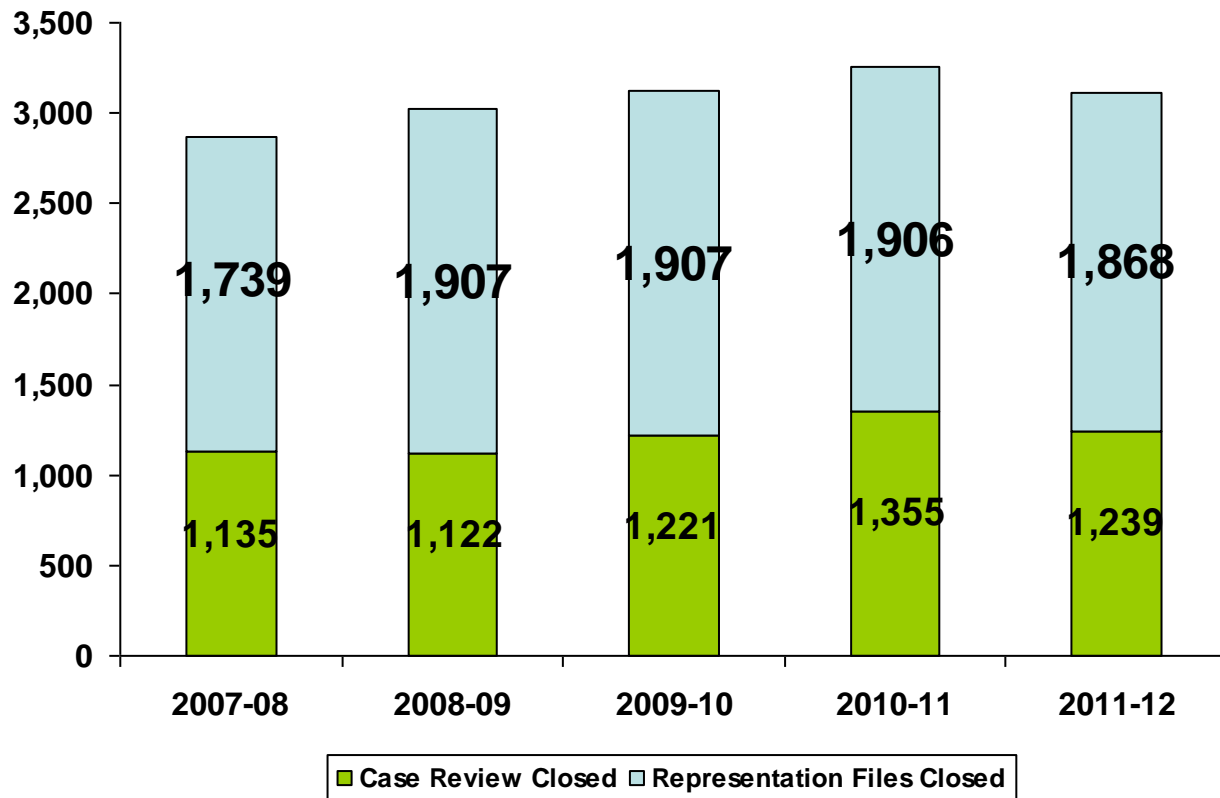
### ***Case Closures***

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 reclaim their lives. In addition, timely file closures allow the OWA to assist more workers, keeping both the number of files and the length of time cases are on the waiting list to manageable levels.

The closure count, depicted in Figure 4, includes both representation files and cases selected out and diverted from the appeal system as a result of case reviews. The OWA closed a total of 3,107 files in 2011–2012, consisting of 1,239 case reviews where the OWA did not believe there was sufficient evidence to support an appeal, and 1,868 representation files.

In total, this represented a 5% decrease in the number of file closures of both kinds from 2010–2011. While the number of closures after case review declined by 116 cases (9%), the closure rate for representation files decreased by only 38 cases (2%).

**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, the file is temporarily placed on a waiting list for service.

There are a number of factors that impact on 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 exercising this responsibility, the OWA needed to temporarily leave vacant a number of positions during the course of the fiscal year. Staffing shortages, however, invariably result in delays in moving cases through the appeal system. This, in turn, impacts the number of file closures and can contribute 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 straight forward 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.

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

From 2010–2011 to 2011–2012, the number of allowed issues in decisions received from WSIB's operating level decreased by 8%. In the same period, the number of allowed issues obtained from the Appeals Branch dropped by 5%.

In addition, WSIB's Appeals Branch experienced a significant backlog of cases during the 2011–2012 fiscal year. This backlog was approximately 4,000 unassigned files at year end, with OWA acting as a representative in over 600 of these files. On average, assignment of files to an appeals resolution officer was taking about six months.

In 2011–2012, because of the decrease in the number of successfully reconsidered issues at the operating and Appeals Branch levels, fewer files were closed at the early stages of the appeal process. This made it necessary to appeal more decisions from the operating level to the Appeals Branch, and from the Appeals Branch to the Tribunal. Once at the Appeals Branch, many of these files waited for up to six months in a growing backlog of cases awaiting assignment to an appeals resolution officer. Both of these factors delayed the OWA's ability to obtain decisions and close files and, in turn, impacted our capacity to open new files. In total, the OWA obtained 2% fewer decisions, and closed 38, or 2%, fewer files in 2011–2012 than in 2010–2011.

To avoid a growing waiting list, OWA's staff allowed their open caseload counts to increase, in some instances beyond the maximum level. At the close of the 2011–2012 fiscal year the OWA was representing in 149, or 4%, more files than at the end of the prior year.

## **Summary of OWA's achievements in 2011–2012**

In summary, although the OWA faced a number of challenges during the 2011–2012 fiscal year, we were successful in assisting more workers with their workplace insurance questions and appeals in 2011–2012 than in the previous fiscal:

- New requests for service increased by 4%
- At the completion of case reviews, the percentage of workers who received offers of representation services increased by 2%
- The number of representation files increased by 4% at year end, while at the same time the waiting list decreased from 115 to 110 files.

### ***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 commitment. Of the 246 individuals who responded to the survey in 2011–2012, 96% were "very satisfied" or "satisfied" with the service they received.

**"The OWA ... has helped me more than I know how to express. I hope someday I can help another human being the way he has helped me!"**

Quote from an OWA client

**"OWA does such amazing work – without them where would people go? I always felt better after speaking with the OWA. Really helped to keep on track."**

Quote from OWA client

**"Representation was superb. I would have been doomed. Thank you for helping me rebuild my life!"**

Quote from OWA client

**"Very grateful for the OWA services and the worker made me feel that I was getting the best possible care, the worker made me feel important. Thank you."**

Quote from OWA client

**“Very satisfied. I’ve never had anyone speak so well on my behalf. I am truly thankful. Thank you again.”**

Quote from OWA client

**“The case worker was excellent and when someone is in such a stressful situation having somebody so helpful is so much needed.”**

Quote from OWA client

**“Thank you for your patient, care, understanding and advocacy. I really appreciate all the help you’ve provided to myself and my family.”**

Quote from OWA client

## **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 2011–2012, the OWA held 25 information sessions for MPPs’ staff, 10 information or educational sessions for the public, and 39 clinics for injured workers in communities across the province.

The OWA also provides general information through its website. The website contains a comprehensive collection of fact sheets, kits 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 are also invited to appear at continuing legal education sessions on workplace insurance topics. In 2011–2012, these services included the following:

- The OWA’s general counsel was a speaker at an Ontario Bar Association’s Workplace Safety and Insurance Case Law Update.
- The OWA’s general counsel co-chaired the annual Lancaster House Workplace Safety and Insurance Conference.
- CCSU staff delivered an all-day advanced workshop on work reintegration to the CAW Ontario Workers’ Compensation Conference.
- CCSU staff moderated a panel discussion on current challenges in workers’ compensation at the annual conference of the Ontario Network of Injured Workers’ Groups.
- The OWA director presented at the Canadian Association of Worker Advisors and Advocates annual conference.

### ***OWA Staff***

As part of its commitment to continuing professional development, the OWA also delivers educational services to staff. During fiscal 2011–2012, educational services to staff included the following:

- Online seminars on the OWA’s new occupational health and safety reprisals mandate and its interplay with workplace insurance
- Major revisions and updating of the OWA’s Occupational Disease Course and delivery of this training.

## **HIGHLIGHTS OF OWA CASEWORK**

### **Significant Casework in Progress**

#### ***Occupational Disease***

The OWA continued to represent at the Tribunal in the lead case in a cluster of occupational disease claims arising from a workplace in Sarnia. The lead case will make key findings on exposure and causation that will be applied in the remaining cases. In this fiscal year, the OWA presented exposure witnesses at the Tribunal and obtained expert evidence critiquing the WSIB’s exposure model. In 2012–2013, the OWA expects to provide written submissions and make oral arguments on the exposure evidence. This lead case will continue to require significant OWA resources.

The OWA also continued to represent in a number of occupational disease clusters and individual cases in various locations throughout the province. The claims arising from these clusters are at various stages of adjudication, from initial evidence gathering up to the Appeals Tribunal.

#### ***Mental Stress***

In 2011–2012, the OWA continued to take on mental stress cases that could lead to challenges under the Charter of Rights and the Ontario Human Rights Code. The OWA currently represents a worker whose case is entering the Charter challenge stage of the hearing process. At the first stage of the hearing, the Tribunal found that the worker’s stress reaction was due to managerial action by the employer (Decision No. 214/10I). A hearing has not yet been scheduled, but is expected in fiscal 2012–2013.

#### ***Age Discrimination***

The OWA continued to pursue its challenge to s. 43(1)(c) of the WSIA, which restricts loss of earnings benefits for workers aged 63 or older to two years after the accident. The OWA is involved in two cases testing the argument that the limitation on benefits for older workers is discriminatory and violates the equality provisions of the Charter of Rights. These cases will likely be scheduled for hearing in the fall of 2012.

The OWA received a decision in the age discrimination case in which OWA staff acted as co-counsel with a member of the private bar (Decision No. 512/06). While the majority of the panel held that there was no discrimination, the vice-chair disagreed in a strong dissent.

### ***Jurisdiction of Human Rights Tribunal Over WSIB***

The OWA intervened in several cases before the Human Rights Tribunal of Ontario. Decisions in these cases established that WSIB benefits are “services” for the purposes of the Ontario Human Rights Code, and therefore that the Human Rights Tribunal of Ontario had jurisdiction to hear complaints against the WSIB. It is uncertain whether these precedents will stand in light of recent case law from the Supreme Court of Canada.

### ***Survivor Benefits in Occupational Disease Cases***

The OWA challenged the Tribunal’s general practice of awarding the statutory minimum survivor benefit to spouses of workers who die of long latency occupational diseases but are retired when diagnosed. The OWA argued that the worker’s spouse had lost the worker’s retirement benefits upon his death and should, therefore, be compensated for that loss. In an interim decision, (Decision No. 435/12I), dated March 27, 2012, the Tribunal found that the OWA had raised a novel legal argument and requested submissions from Tribunal counsel.

A second case on the same issue is expected to go to hearing early in the 2012–2013 fiscal year.

## **Noteworthy WSIAT Decisions**

The Tribunal 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. 387/09***

The Tribunal clarified the effect of an earlier decision that allowed entitlement for symptoms relating to chemical exposures. The worker’s entitlement was under the WSIB’s psychotraumatic disability policy and the worker was awarded a pension.

### ***Decision No. 2538/11I***

The worker appealed a WSIB decision denying benefits for head injuries related to a seizure at work. On a preliminary issue, the Tribunal considered whether it had jurisdiction over a new legal argument raised by the worker. The Tribunal concluded that the worker could raise all plausible arguments related to the issue under appeal and that it had jurisdiction.

***Decision No. 2028/11***

The Tribunal allowed the worker's appeal of the WSIB's decision to end labour market re-entry (LMR) services. The worker's training course required him to be away from home overnight, which he was unable to do because of his spouse's psychiatric condition and his children's special needs. These were compelling personal circumstances and LMR should not have been closed.

***Decision No. 1691/11***

The worker returned to work with his accident employer. He continued working there until three months after his 72-month lock-in date for loss of earnings (LOE) benefits had passed, when he was laid off because of a plant closure. The Tribunal found that, because the worker had been performing modified duties, he was engaged in early and safe return to work. As a result, the WSIA permitted the worker's LOE benefits to be adjusted. The worker was granted a labour market re-entry assessment and full LOE benefits until it was completed.

***Decision No. 1372/11***

The worker, a resident of Ontario working for an Ontario company, was injured in British Columbia. The Tribunal found that the worker had a substantial connection to Ontario at the time of the accident and was entitled to claim benefits under the WSIA.

***Decision No. 1064/11***

The employer appealed the WSIB's decision to extend the worker's labour market re-entry program. It argued that the WSIB had a statutory obligation to consult with the employer on the extension and did not do so. The Tribunal held that the statute only required consultation on the initial plan and that there were many circumstances in which it would be inappropriate to engage in consultation with the employer, such as when time was of the essence.

***Decision No. 434/0912***

The employer requested that the Tribunal suspend the worker's benefits because he was initially unwilling to participate in a sleep study recommended by a Tribunal medical assessor. The Tribunal held that it could not suspend benefits as the sleep study had been requested by the employer, not directed by the Tribunal. Ultimately, the worker was willing to participate in the sleep study.

***Decision No. 1271/11***

The worker was denied entitlement for a recurrence of an earlier back injury that occurred on the first day of work for a new employer. The Tribunal allowed the appeal, noting that there was clinical compatibility between the worker's condition after the initial accident and the recurrence. As he had only worked one day and there was no evidence of seasonal or temporary employment, actual earnings were to be used for both short and long-term benefits.

### ***Decision No. 970/11***

The worker appealed a WSIB decision refusing to pay interest on benefits withheld as a result of three significant administrative errors. Under WSIB policy, interest on pre-1990 claims was only paid where a decision had been overturned on appeal. The Tribunal found that it was not necessary to address the issue of whether the policy was ambiguous. There were exceptional circumstances warranting payment of interest: the worker had been deprived of significant benefits—some for up to 26 years—and the errors would not have been readily apparent to the worker. Denying interest would have resulted in manifest unfairness.

### ***Decision No. 660/11***

The worker had returned to highly-accommodated work following his injury and was permanently laid off after his final future economic loss (FEL) review because of a plant closure. The WSIB denied entitlement to a FEL supplement and labour market re-entry services and the worker appealed. The Tribunal found that the worker was not entitled to a supplement as there had not been a significant deterioration in his condition. He was, however, entitled to labour market re-entry services as he had been performing highly-accommodated work and was unlikely to find such a well-paying job in the general labour market.

### ***Decision No. 1428/09***

The worker was employed on a ship in Ontario but was a resident of Newfoundland. The employer appealed the worker's entitlement for Achilles tendonitis, entitlement to a non-economic loss award and the calculation of the loss of earnings benefits based on the minimum wage in Newfoundland and Labrador. The Tribunal upheld the worker's initial entitlement and non-economic loss award. It held, however, that the worker's loss of earnings benefits should be based on the Ontario minimum wage.

## **OTHER KEY ACTIVITIES IN 2011–2012**

### **System and Community Partnerships and Committee Work**

#### ***WSIB Labour and Injured Worker Advisory Committee***

The OWA director sits on this committee, which is convened by the chair of the WSIB and 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. In this fiscal year, this included providing preliminary feedback on the timing, content and/or process of the WSIB's Appeals Modernization proposal, policy framework and benefits policy consultation.

### ***WSIB Best Practices Steering Committee***

The OWA director sits on this committee, which is comprised of a small number of key worker-side representatives and senior Board staff who determine the issues to be referred to the Best Practices Working Groups. This committee reviews and comments on documents produced by the working groups. It also discusses broader systemic compensation issues impacting workers. While this committee did meet early in the fiscal year to discuss outstanding issues, the working groups did not meet and the systemic issues were addressed through LIWAC.

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

The OWA, the WSIB, Ministry of Labour Operations Division, and a peer support organization called Threads of Life continued a partnership to improve services and support to families of workers killed on the job. Meeting twice per year, the goal of the FAIR Partnership is to provide timely, seamless, and comprehensive assistance to the survivors following a traumatic workplace fatality. With ongoing communication, the partners continue to identify and address gaps in service, and increase opportunities for awareness among survivors of the services available to them.

## **Policy and Law Reform Consultations**

### ***WSIB Funding Review***

Throughout the year, the OWA participated in the WSIB Funding Review, a major consultation on a wide range of fundamental questions relating to the funding of the workplace insurance system, chaired by Professor Harry Arthurs. As part of the review process, the OWA provided written submissions and appeared before Professor Arthurs at public hearings held in Toronto. The OWA also participated in a number of consultation meetings with worker and employer stakeholders held as part of the review.

### ***WSIB Policy Consultation Framework***

In September 2011, the OWA provided written submissions to the WSIB's public consultation on its proposed Policy Consultation Framework. In the second half of the year, the OWA was involved in extensive discussions with WSIB senior management regarding its policy reform agenda and approach to public consultation.

## **HEALTH & SAFETY REPRISAL COMPLAINT MANDATE**

As a result of the Occupational Health and Safety Statute Law Amendment Act, 2011 (Bill 160), the OWA's mandate was expanded to include advice, education and representation to non-unionized workers in reprisal complaints under the Occupational Health and Safety Act. The new occupational health and safety mandate is in addition to the OWA's existing workplace insurance mandate.



The OWA's new mandate was to take effect at the beginning of the 2012–2013 fiscal year, April 1, 2012. As a result, the OWA efforts in fiscal 2011–2012 were focused on designing and implementing a new program to deliver occupational health and safety reprisal related services to the public.

A service delivery model was designed and estimates of the necessary staffing and other resources were developed. These were translated into a business case for extra resources.

The OWA developed a new job description, worker representative, to deliver the occupational health and safety reprisal services. Two worker representatives and one client service representative were recruited to staff the new program. For the first phase of the new program, occupational health and safety reprisals services will be delivered centrally out of the OWA's head office in Toronto.

The OWA also created a series of fact sheets for the general public. These explain workers' rights around reprisals, the process for enforcing them and the assistance that the OWA can provide. The fact sheets are available on the OWA website. Training was also developed for OWA staff to assist them in understanding the new mandate and referring workers to the new program.

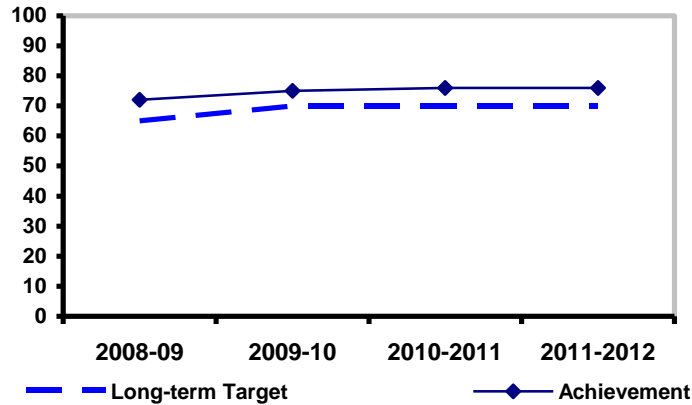
Throughout the year the OWA worked with system partners to ensure a coordinated and smooth implementation of the Bill 160 changes in the area of reprisals. Central to this effort was the inter-agency Section 50 Working Group which, in addition to the OWA, included representatives from the Ontario Labour Relations Board, Office of the Employer Adviser, various branches of the Ministry of Labour and the Health and Safety Review Project Secretariat.

The necessary preparations for delivering occupational health and safety reprisals services under the expanded mandate were successfully completed by the end of the 2011–2012 fiscal year. The OWA's Occupational Health and Safety Reprisals Program was in place and ready to begin delivering services to the public by the April 1, 2012 deadline.

# APPENDIX A – OUTCOME PERFORMANCE MEASURE

## Performance Measure #1: Early and Alternative Dispute Resolution

### Percentage of Decisions Obtained by EDR or ADR



### Agency Contribution

Whenever appropriate, OWA seeks to provide support for early and safe return to work and for early resolution of disputes without recourse to formal hearings, both by diverting cases from the appeals system and by pursuing opportunities for alternative dispute resolution at the appeals level.

### What does the graph show?

This graph shows the proportion of decision results for OWA appeals that were achieved without formal hearings. The long-term commitment reflects an anticipated increase in case complexity which, in turn, is expected to impact OWA's ability to resolve disputes without resorting to formal hearings.

### 2011–2012 Year End Performance Achievements

76% of all decisions were obtained by EDR or ADR. Although OWA has been anticipating that this percentage will decrease as the service delivery continues to shift toward more complex representation, the appeal bodies are increasingly trying to conduct appeals without resorting to hearings. The long-term target remains at 70%.

## APPENDIX B – INTERNAL PROGRAM PERFORMANCE ACHIEVEMENTS

<b>Measure</b>	<b>Standard/Long Term Target</b>	<b>2010–2011 Achievement</b>	<b>2011–2012 Commitments</b>	<b>2011–2012 Year-End Achievements (as of March 31, 2012)</b>	<b>2012-2013 Commitments</b>
<b>Early and Alternative Dispute Resolution</b>	70% of all decisions to be obtained by early (EDR) or alternative dispute resolution (ADR)	76% 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 76% of all issues by EDR or ADR.	OWA expects to achieve at least 70% of all issues resolved by EDR or ADR.
<b>Effectiveness of advisory &amp; representation services</b>	200 issues per full time staff.	206 issues per full time staff were achieved through advice and representation.	200 issues per full time staff.	218 issues per full time staff* were achieved through advice and representation.	The 2012-2013 target continues to be 200 as OWA work shifts increasingly from advice to representation and representation cases take much longer to resolve than advisory cases.
<b>Timeliness of Appeals Representation Service</b>	100% of all cases involving appeals representation service to commence within 120 days of commitment.	OWA moved toward its long term target by opening 94% 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 once again moved toward its long term target by opening 95% of all cases placed on the waiting list for representation services within 120 days.	OWA's commitment is to maintain or improve 2011–2012 timeliness.

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

## APPENDIX C – FINANCIAL REPORT FOR THE FISCAL YEAR 2011–2012

Account	Final Budget*	Total Actual Expenditures**	Variance	Variance %	Explanation
Salary & Wages	7,564.2	7,256.8	307.4	4.1%	Savings due to the hiring delay of the 3 health and safety reprisal mandate staff.
Benefits	1,522.7	2,018.3	(495.6)	(32.5%)	In addition to annual rising benefits costs, pressures included severance payments, pension contributions for LTIP staff and maternity leave top-up expenditures.
<b>ODOE</b>					
Transportation & Communications	392.4	260.3	132.1	33.7%	Savings generated from reduced travel expenditures as a result of fleet vehicle usage.
Services (incl. Office Leases)	1,472.3	1,396.7	75.6	5.1%	In general, lower services costs.
Supplies & Equipment	132.3	94.3	38.0	28.7%	
<b>ODOE TOTAL</b>	<b>1,997.0</b>	<b>1,751.3</b>	<b>245.7</b>	<b>12.3%</b>	Overall reduction in all areas of ODOE expenditures.
<b>OWA TOTAL</b>	<b>11,083.9</b>	<b>11,026.4</b>	<b>57.5</b>	<b>0.5%</b>	
<b>Recoveries</b>	<b>(11,082.9)</b>	<b>(11,026.3)</b>	<b>(56.6)</b>	<b>(0.5%)</b>	
<b>TOTAL</b>	<b>1.0</b>	<b>0.1</b>	<b>0.9</b>	<b>90%</b>	

\* Final Budget = Printed Estimates +/- Treasury Board Order (TBO), re-alignment of funds by standard account.

\*\* Total Actual Expenditures including office lease costs

## **APPENDIX D – 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 5A9

#### **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 1C7

### **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

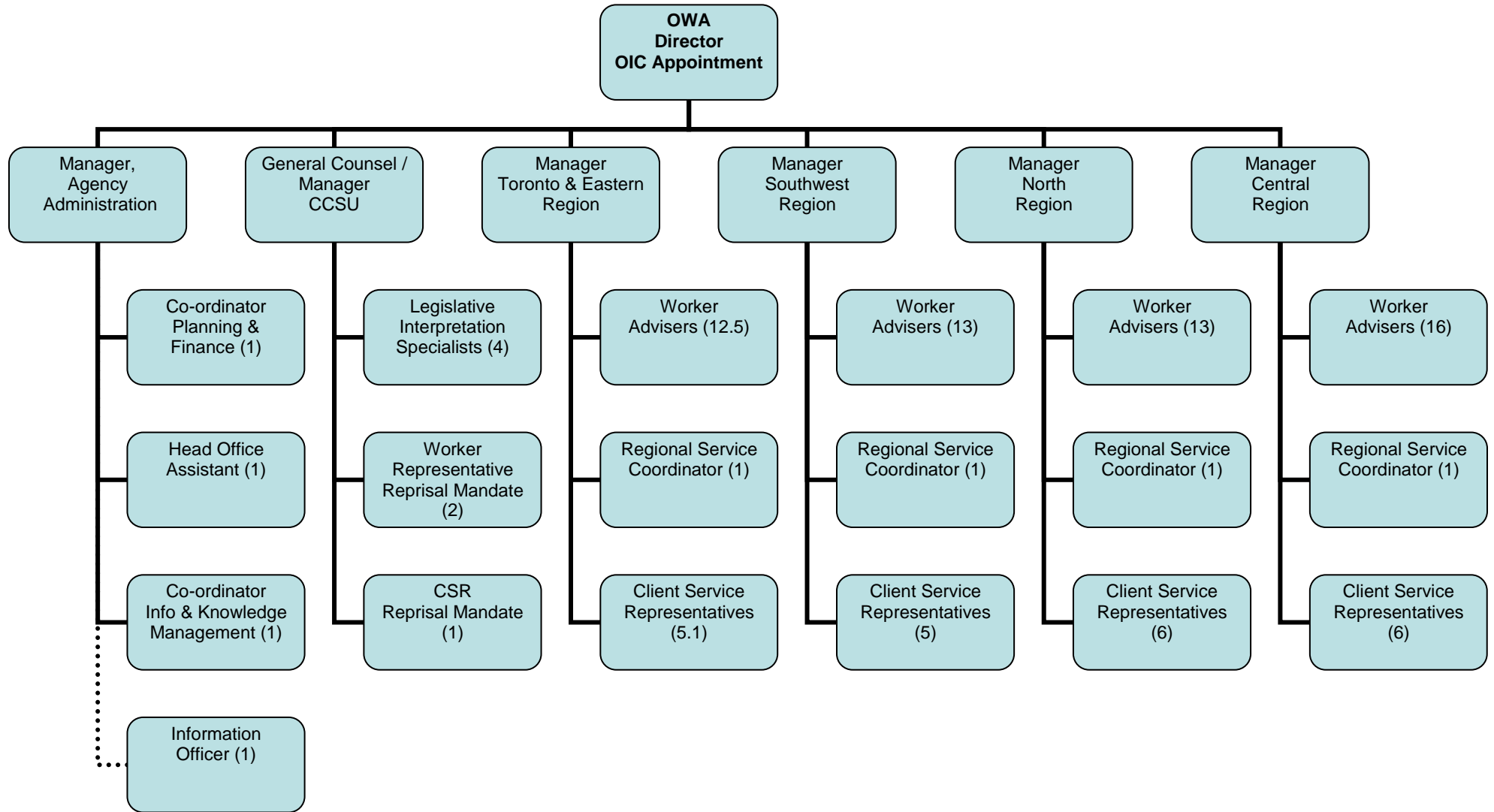
#### **ST. CATHARINES OFFICE**

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 E – ORGANIZATION CHART



2011-2012 OWA STAFF ALLOCATION = 97.6 FULL TIME EQUIVALENTS (FTE)