

# OFFICE OF THE WORKER ADVISER

Annual Report  
April 1, 2012 to March 31, 2013



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## **A MESSAGE FROM THE DIRECTOR**

I am very pleased to report on the accomplishments of the Office of the Worker Adviser (OWA) for fiscal year 2012-2013. I was Director for most of that time period, having been appointed on June 6, 2012. I wish to acknowledge the hard work and dedication of Cindy Trower, OWA's General Counsel, who stepped forward in 2010 to serve as acting Director. Cindy led OWA in dealing with many challenges during that time, most notably the implementation of the new mandate to help non-unionized workers who may have suffered reprisals for exercising their health and safety rights.

OWA carries out its mandate as a partner in Ontario's workplace insurance system, which consists of the Workplace Safety and Insurance Board (WSIB), Workplace Safety and Insurance Appeals Tribunal (WSIAT), Office of the Employer Adviser (OEA) and OWA. We are fortunate in Ontario to have a publicly delivered workplace insurance system. As Director of OWA, I am committed to helping this system work for all the workers and employers that it serves. 2012-2013 was a challenging year for the system, and OWA played its role in facing these challenges.

With around 98 staff across Ontario, OWA is an important resource for vulnerable non-unionized workers in dealing with their WSIB claims or about 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 first year of services around reprisals.

### ***Workplace insurance services***

The OWA had 17,105 new requests for service, from 12,682 different workers, during the 2012-2013 fiscal year. The number of new requests declined by about 5% from the previous fiscal year. However, the number of injured workers requesting representation increased by 4%. This led to significant challenges for our worker advisers, who were also facing backlogs at the WSIB Appeals Branch, making it difficult to move their cases through the system. Given the pressures, we had to reduce the percentage of cases accepted for representation from 59% in 2011-2012 to 52% in 2012-2013. I am concerned about this trend and will be striving in 2013-2014 to keep OWA's representation services accessible to all those who need them.

Overall caseload stayed steady in 2012-2013 with a small increase in the waiting list for representations services from 110 at the end of the 2011-2012 to 121. In the majority of cases the delay in providing representation services was short. In 2013-2014 we will be aiming to reduce the waiting list and waiting times.

During 2012-2013, 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 some workers who were in financial or psychological crisis. We strengthened our protocols with WSIB and WSIAT in responding to these urgent cases.

OWA was very involved in proactive partnerships to deal with the system's challenges. This included a new inter-agency partnership group convened by the Deputy Minister of Labour. We worked closely with WSIB throughout the year on efforts to reduce the appeals backlog. I partnered with employer representatives through the Ontario Bar Association to jointly develop proposals to WSIB on alternative dispute resolution and more recently on engaging health care providers in supporting sustainable return to work. OWA responded to the WSIB's appeals modernization consultation and toward the end of the fiscal year worked with WSIB on implementation of the new process. Some of the changes were controversial with stakeholders and we will be dialoguing with WSIB through 2013-2014 as implementation continues.

Also during 2012-2013, WSIB engaged in an intensive consultation on four foundational benefits policies. OWA participated actively in that consultation and are expecting the consultation report early in 2013-2014.

Throughout 2012-2013, OWA played an important role in ongoing dialogue between WSIB and the worker community around various strategic issues. We received a good reception for the idea of worker representatives and WSIB officials to establish a "Best Practices" process where we could sit together and address operational service issues.

During 2012-2013, extensive work was done to update and improve OWA's website. The new site will launch at the start of the 2013-14 fiscal year. The site allows injured workers to contact OWA directly by e-mail for assistance.

### ***Health and safety reprisal services***

Pursuant to amendments to the Occupational Health and Safety Act (OHSA), the OWA was given the mandate to provide services to non-unionized workers who may have suffered reprisal by their employers for exercising their rights under OHSA. 2012-2013 was the first year for this new mandate. With a small staff of three, we served 500 workers in this initial year. We learned a lot about their situations and needs. This annual report contains a summary of that learning and some recommendations for the future. We are particularly proud of the fact that we obtained settlements for 46 of these workers, some of whom faced circumstances of extreme need.

In addition to serving individual workers, OWA also worked with the Ministry of Labour and community partners to help ensure that the system is responsive to the needs of these workers.

### ***Thank you!***

Many people contributed to OWA's success in 2012-2013. I wish to thank all those who played such an important role – beginning with our staff in OWA's 16 local offices across Ontario, who continued to show dedication to serving vulnerable workers under sometimes challenging circumstances; the staff of our Reprisals Program, who helped 500 workers in the very first year of this service; our provincial staff 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 so well on solving problems and serving the public. I want to thank our partners in the worker community, including the labour movement, injured worker groups and legal clinics, with whom we collaborated so closely in dealing with a year of major change. 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.

Alec Farquhar  
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 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 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. From April 1 until June 5, 2012, the acting director of the OWA was Cindy Trower, OWA's general counsel and manager of the Central Client Services Unit/Occupational Health and Safety Reprisals Program. From June 6, 2012 to March 31, 2013, the director was Alec Farquhar, who was appointed by Order-in-Council for a three year term.

## 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, Brampton, 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 downtown Toronto office location.

## **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
- 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 new 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.

The following sections of the annual report relate 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.

## **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 17,105 new requests for service, from 12,682 different workers, during the 2012-2013 fiscal year. The number of new requests decreased from 18,081, or by about 5%, from the previous fiscal year, 2011-2012.

For 13,771, or approximately 81%, of the new requests in 2012-2013, the OWA was able to assist the worker by providing summary advice. The remaining 3,334 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>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>12-13</b>	<b>Change from 11-12 to 12-13</b>
Number of New Requests for Service*	18,552	18,456	17,394	18,081	17,105	-5%
Number of New Requests Resolved with Summary Advice	15,249	15,123	13,932	14,599	13,771	-6%
Number of Cases Reviewed for Representation	2,911	3,037	3,146	3,048	3,179	+4%
Number of Cases Selected for Representation	1,706	1,816	1,791	1,809	1,658	-8%
Number of Cases Selected Out	1,122	1,221	1,355	1,239	1,521	+23%
% of Cases Reviewed which are offered Representation	59%	60%	57%	59%	52%	-7%

\*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.

## **New 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. During 2012-2013, extensive work was done to update and improve the website. The new content and redesigned site launched at the start of the 2013-14 fiscal year.

With a modern and simplified design, the new OWA website better reflects our expanded mandate, with separate sections covering workplace insurance and health and safety reprisals in Ontario. With a focus on user friendliness and accessibility, the new design 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 in 2012-13 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 straightforward 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.

All pages have been updated to reflect the new WSIB Appeals System Procedures effective February 1, 2013, and 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.

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 project was a major agency initiative during the fiscal year, drawing on the joint efforts of both CCSU and the Planning, Finance and Electronic Service Delivery Unit (PFESD). The new site 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.

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.

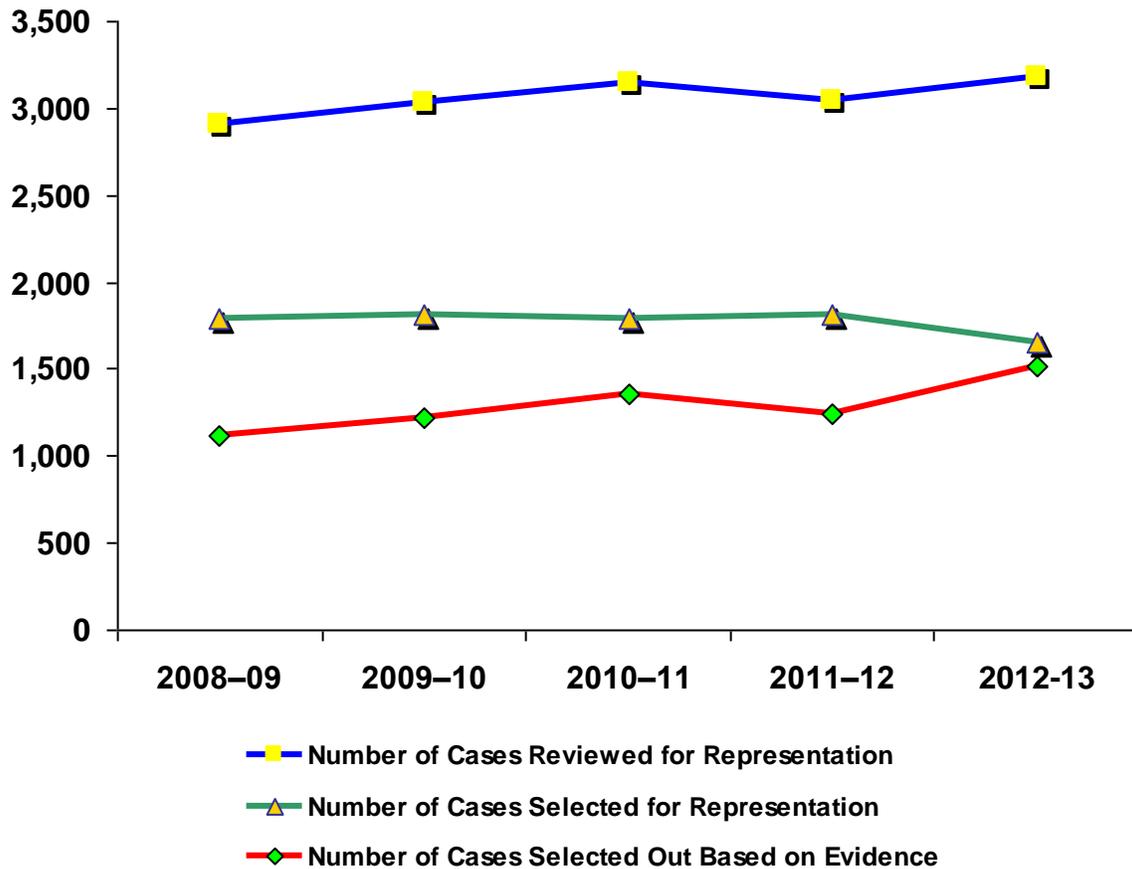
The OWA does not represent in cases with straight forward, single issue appeals involving a non-economic loss (NEL) increase, commutation of a pension, or an employer's request for Second Injury Enhancement Fund (SIEF) relief, although we do provide information and support to workers who wish to represent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

In 2012-2013, the OWA completed 3,179 case reviews, compared to 3,048 in 2011-2012. This means that, although the number of new requests declined from 2011-2012 levels, the number of injured workers requesting representation services increased by 4%. Basically, a higher proportion of the injured workers coming to OWA in 2012-2013 needed representation in an appeal. This increase came during a fiscal year where there were significant additional pressures, discussed later in this report. Most important, OWA's worker advisers had to deal with significant backlogs at the WSIB Appeals Branch combined with declining success rates at the WSIB operating level and Appeals Branch. This meant that worker advisers were facing major challenges in moving their cases through the system – and as a result very cautious in accepting new

appeal cases. This led to a reduction in the percentage of cases accepted for representation from 59% in 2011-2012 to 52% in 2012-2013. Figure 1 documents this trend.

Clients and stakeholders responded strongly to what they perceived as a tightening of OWA case selection criteria. At the end of 2012-2013, workload analysis indicated that a return to historical approaches to case selection might be feasible in 2013-2014.

**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 2012-2013 fiscal year, the OWA had 3,769 representation files open. As the work on files was completed during the course of the fiscal year, 1,810 of these files were closed. This, in turn, allowed the OWA to open an additional 1,762 representation files. In total, the OWA represented 5,531 injured workers and survivors during the 2012-2013 fiscal year.

The Open caseload declined by a small amount in 2012-2013 from 2011-2012. This is because the OWA opened slightly fewer cases than those which were closed.

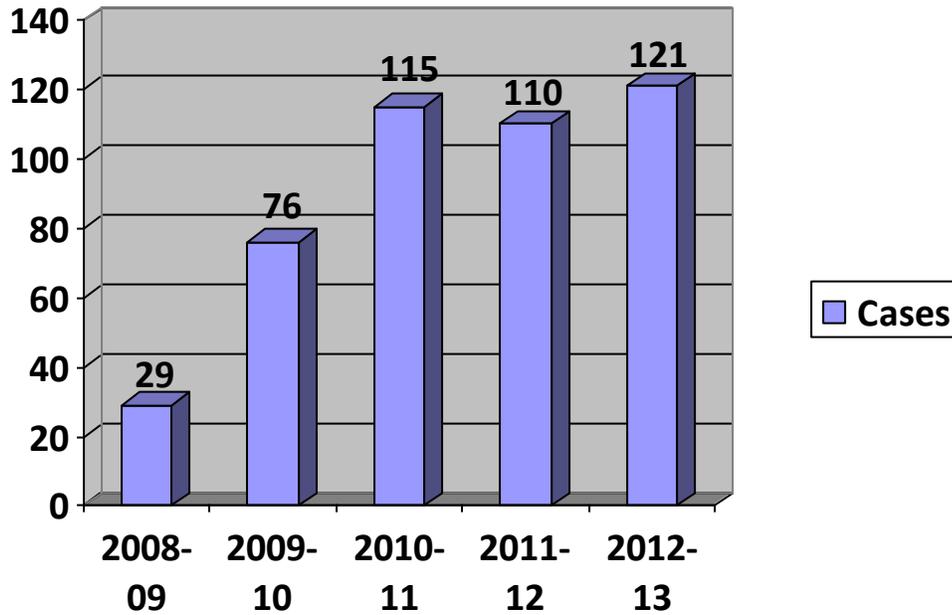
## **Waiting List for Appeal Level Representation Services**

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 2011-2012 fiscal year the OWA had 110 files on the waiting list. This number increased slightly to 121 files in 2012-2013. In the majority of cases the delay in providing representation services was short. Ninety percent of the files placed on the waiting list during 2012-2013 were opened within 120 days. In addition, the average age of files on the waiting list at year end was only 2.67 months. This is documented in Figure 2 below. While these numbers represent a relatively modest proportion of cases waiting for service, OWA management is watching them carefully with the intention to reduce waiting lists and waiting times in 2013-2014.

**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 each fiscal year since 2008-2009, with a very slight decrease of 1% from 2011-12 to 2012-13. Currently, it appears that OWA is operating at or very close to its maximum capacity for representation services.

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

	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>12-13</b>	<b>% change 10-11 to 11-12</b>
Open Files	3,501	3,546	3,613	3,769	3,709	-2%
Waiting List Files	29	76	115	110	121	+10%
Total Workload	3,530	3,622	3,728	3,879	3,830	-1%

***Decisions***

The OWA represents a substantial number of workers in the appeals system each year. During the 2012 calendar year, the OWA was the representative in approximately

12.5% of the new worker appeals received by the WSIB's Appeals Branch and in 2.6% of employer appeals. During the same calendar year, the OWA represented at the Tribunal in 15% of appeals initiated by workers and also represented workers in 5% of appeals initiated by employers.

In 2012-2013, the OWA obtained a total of 3,532 decisions from the adjudication and appeals levels of the WSIB and from the Tribunal, a slight decrease (4%) from the previous year's total of 3,679 decisions (see Table 3). The numbers appear to reflect the impact of the WSIB appeals backlog – a reduction in operating level and WSIAT decisions, with a major increase in WSIB appeals decisions mainly resulting from a surge of decisions in the fourth quarter of 2012-2013 after WSIB added 20% to its complement of Appeals Resolution Officers.

**Table 3: Decisions by Level**

Decisions by Level	2008-09	2009-10	2010-11	2011-12	2012-13
<b>WSIB – Operating Level</b>	1,915	2,059	2,174	2,055	1,872
<b>WSIB – Appeal Level</b>	968	1,055	1,093	1,136	1,287
<b>WSIAT</b>	582	439	488	488	373
<b>TOTAL DECISIONS FROM ALL LEVELS</b>	3,465	3,553	3,755	3,679	3,532
<b>TOTAL ISSUES IN DECISIONS FROM ALL LEVELS</b>	5,943	6,037	6,214	6,020	5,854

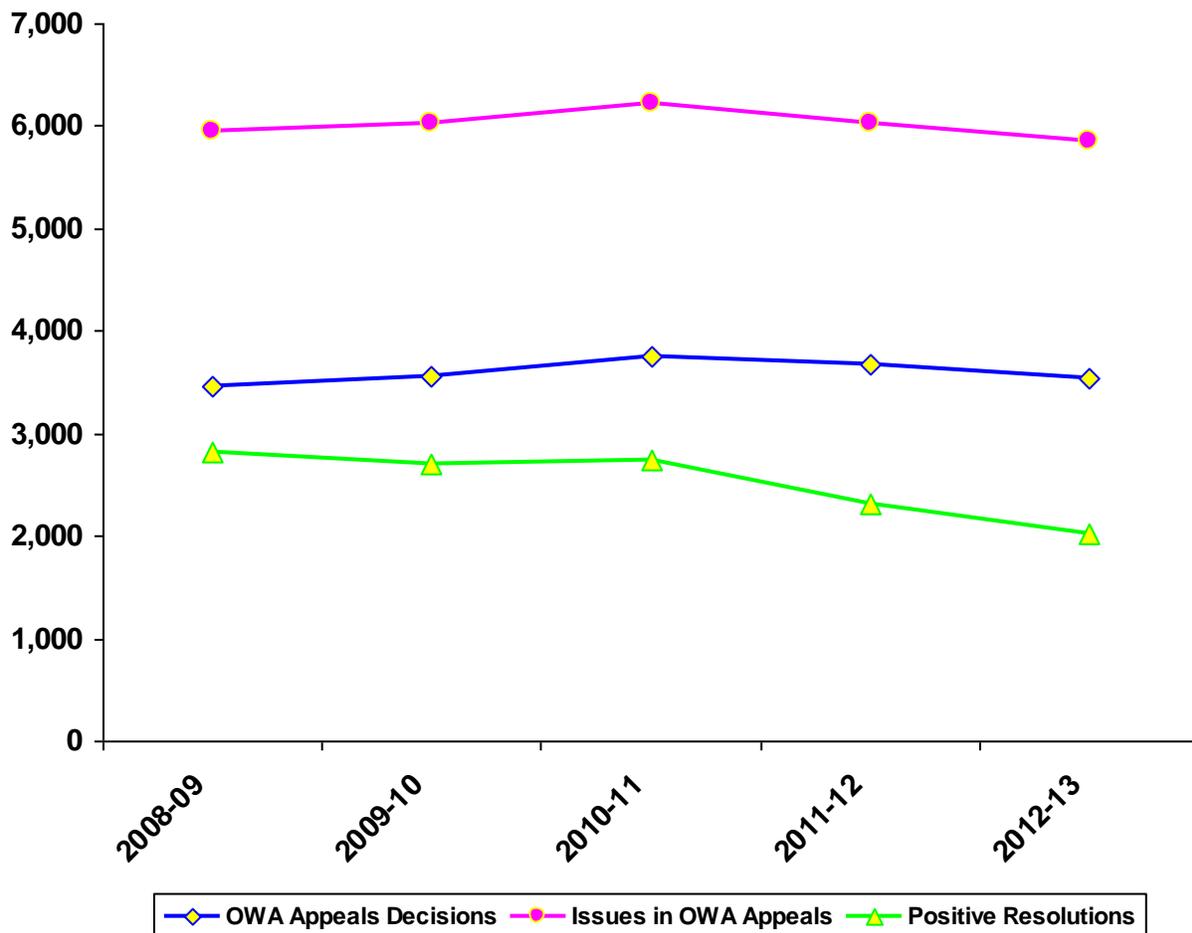
The 3,532 decisions obtained in 2012-2013 involved a total of 5,854 issues, 2,014 of which were allowed either fully or in part during the reconsideration or appeals process. When compared with 2011-12, this represents a 1% decrease in the number of issues allowed at the Operating Level, an 8% decrease at the Appeals Branch and a 9% decrease at WSIAT (See Table 4). These results reflect trends which began several years ago and likely reflect several factors. There appears to be a more stringent adjudication standard at the WSIB operating level, reflected in a significant reduction in successful OWA reconsiderations at that level. A similar trend seems to have developed at the WSIB Appeals Branch. The WSIAT result seems possibly anomalous – it follows two years where OWA success rate that level actually increased. Overall, when success rate at the WSIB operating and appeal levels fall, an increased proportion of cases must be taken to the WSIAT level – which is more formal and resource intensive. Overall,

this affects OWA’s ability to achieve efficient case turnover and restricts capacity to accept new cases.

**Table 4: Percentage of Issues Allowed**

	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>12-13</b>	<b>Change 11-12 to 12- 13</b>
<b>Operating Level</b>	37%	38%	34%	26%	25%	-1%
<b>Appeals Branch</b>	61%	51%	52%	47%	39%	-8%
<b>WSIAT</b>	60%	60%	64%	67%	58%	-9%
<b>Total of all Levels</b>	48%	45%	44%	39%	31%	-8%

**Figure 3: Results from OWA Representation**



***Case closures***

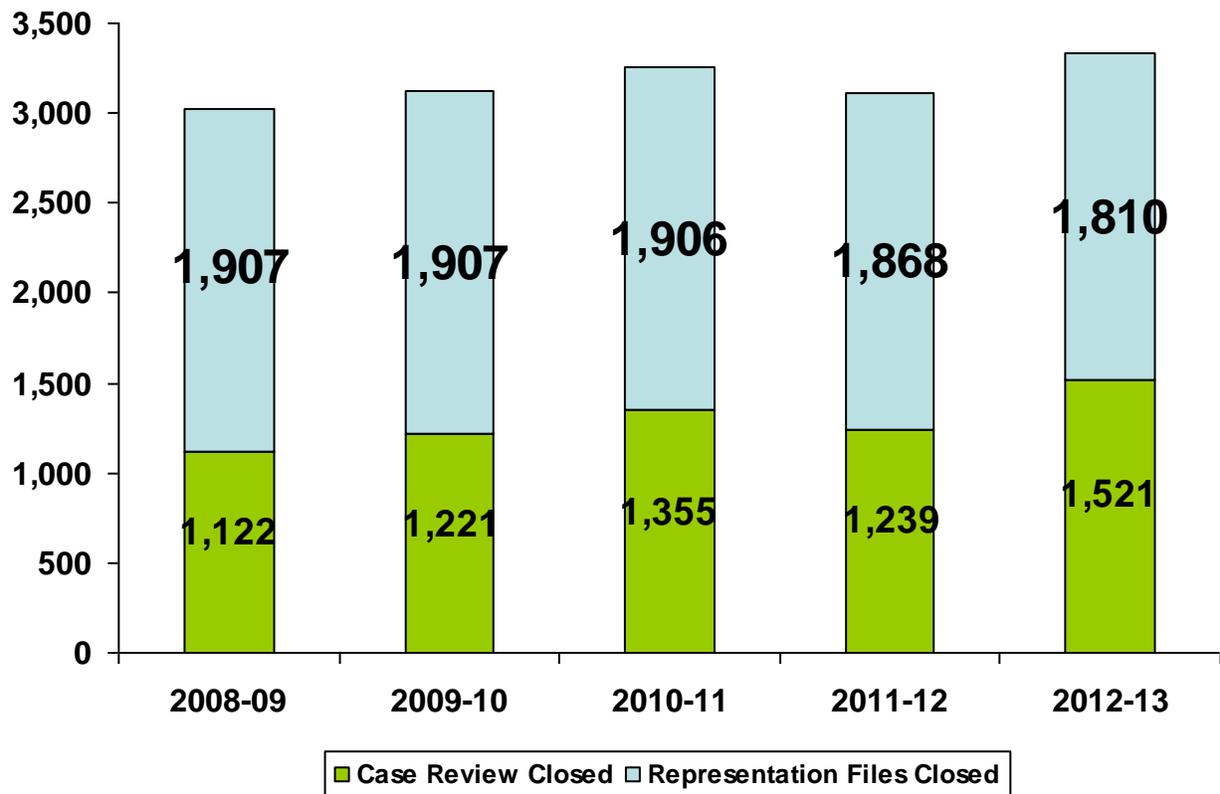
The case closure count is a measure of the OWA’s capacity to manage its workload. The faster cases are resolved the more quickly injured workers are able to reclaim their

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 3,331 files in 2012-2013, consisting of 1,521 case reviews where the OWA did not believe there was sufficient evidence to support an appeal, and 1,810 representation files.

In total, this represented an overall 7% increase in the number of file closures from 2011-2012. However, on deeper analysis, while the number of closures after case review increased, the closure rate for representation files actually declined by 3% from 2011-2012. This likely reflected challenges in overall case turnover due to declining success rate at the WSIB operating level, backlogs at the WSIB Appeals Branch, and growing backlogs at the WSIAT.

**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***

For the four year period from 2009-2010 to 2012-2013, the percentage of allowed issues in decisions received from WSIB's operating level decreased by 13% . In the same period, the number of allowed issues obtained from the Appeals Branch dropped by 12%.

In addition, WSIB's Appeals Branch experienced a significant backlog of cases during the 2012-2013 fiscal year. This backlog was approximately 5,000 unassigned files at the beginning of the fiscal year, with OWA acting as a representative in over 600 of these files. On average, assignment of files to an appeals resolution officer was taking more than six months.

In 2012-2013, because of the decrease in the number of successfully reconsidered issues at the operating and Appeals Branch levels, fewer files were closed at those 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.

During 2012-2013, OWA was involved in intensive collaboration with WSIB and stakeholders to deal with this situation. WSIB undertook an appeals modernization consultation which OWA and stakeholders responded to. OWA, primarily through the Ontario Bar Association, also played a leading role in efforts to improve collaboration in dispute resolution between employer and worker representatives. This included a joint paper on dispute resolution by the OWA Director and a prominent employer lawyer; and formation of a joint worker/employer working group which met with WSIB and developed a submission to the WSIB consultation. At the end of the reporting period, WSIB had just begun to implement its new appeals process, with the intent to reduce the appeals backlog in 2012-2013.

## **Summary of OWA's achievements in 2012-2013**

In summary, although the OWA faced a number of challenges during the 2012-2013 fiscal year, we were successful in assisting a very substantial number of workers with their workplace insurance questions and appeals:

- New requests for service declined by 4%;
- However, the number of workers requesting representation service increased by 4%;
- At the completion of case reviews, the percentage of workers who received offers of representation services declined by 7% - a worrying trend which OWA hopes to reverse in 2013-2014;
- The number of representation files decreased by 2% at year end, while at the same time the waiting list increased from by 10%, from 110 to 121 files. During 2013-2014, OWA will strive to reduce this number.

### ***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 247 individuals who responded to the survey in 2012-2013, 98.4% 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 2012-2013, the OWA held 6 information sessions for MPPs' staff, 16 information or educational sessions for the public, and 22 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 2012-2013, these services included the following:

- The OWA Director, shortly before beginning at OWA, co-presented with a major employer representative on alternative dispute resolution, at the Ontario Bar Association's annual continuing legal education conference, in May 2012;
- The OWA Director organized and chaired a major symposium on asbestos disease prevention, detection and treatment, including international presenters, in September 2012 at St. Michael's Hospital, Toronto;
- The OWA Director presented on key developments in Ontario at the annual conference of the Canadian Association of Worker Advisors and Advocates (CAWAA) in September 2012 in Regina;
- The OWA Director presented on workers' compensation and stress at the provincial conference of the Mental Injuries Tools group in October 2012 in Sudbury and by webcast;
- CCSU staff delivered two half-day workshops on access to justice for injured workers and participated in a panel discussion on occupational disease clusters at the CAW National Workers' Compensation Conference in October 2012;

- CCSU staff presented on case law and legislative developments in the past year at the Lancaster House annual Workplace Safety and Insurance Conference in November 2012;
- The OWA Director co-chaired the Lancaster House Health and Safety Conference in November 2012 in Toronto;
- The OWA Director and Office of the Employer Adviser Director co-chaired a major webcast presentation on the WSIB's new appeals process, in March 2013, hosted by the Ontario Bar Association and in partnership with the WSIB. The WSIB's Appeals Services Division Executive Director and an Appeals Manager were the main presenters. This session was attended by over 200 employer and worker representatives and was a major opportunity for WSIB to communicate about its new appeals process.
- The OWA Director and regional managers and staff met with system partners, primarily WSIB, on an additional 9 occasions through the fiscal year

## **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 2012-2013, the OWA drafted three lengthy written submissions and made oral arguments on the exposure evidence. In 2013-2014, we expect the Tribunal to release an interim decision with findings about the exposure at the Sarnia facility. We hope this will allow us to move into the second (causation) phase of the case. 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. Most significant in 2012-2013 were the clusters arising from two workplaces in Peterborough. OWA played a major role bringing all the local partners together in July 2012, where the partners agreed to form a joint working group, including the Canadian Auto Workers, WSIB, Occupational Health Clinics for Ontario Workers, OWA and the local environmental and occupational health coalition.

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

The OWA challenged WSIAT's general practice of awarding the statutory minimum survivor benefit to spouses of workers who die of long latency occupational diseases

which are diagnosed after the worker has retired. The OWA argued before WSIAT that due to the worker's premature death, the worker's spouse had lost a significant period of the worker's retirement pension and benefits upon his death and should, therefore, be compensated for that loss.

Although WSIAT agreed that the OWA argument was novel and Tribunal Counsel submissions were obtained, the argument was not successful. In its final decision, (Decision No. 435/12), dated March 28, 2013, WSIAT determined that the language of the Workplace Safety and Insurance Act (WSIA) only allowed benefits to be paid to the surviving spouse in these circumstances based on the minimum amount specified in subsection 48(3). The OWA's other case on this issue was withdrawn by the employer in 2012-2013 following the exchange of written submissions.

On October 22, 2012, the Ontario government announced that it would propose an amendment to the WSIA that, if passed, would base survivor benefits on the average earnings of the deceased worker's occupation or trade rather than the statutory minimum currently provided under the Act. It is expected that amendments to the WSIA on this issue will be proposed in the 2013-2014 fiscal year.

### ***Mental Stress***

In 2012-2013, the OWA continued its involvement in mental stress cases that could lead 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, which exclude workers with chronic mental stress from the protection of workplace insurance. In addition, the OWA accepted an invitation from WSIAT to participate as an intervenor in an appeal in which WSIAT is currently considering a Charter and Human Rights Code challenge to the exclusion of chronic mental stress (Decision No. 1945/10I). The OWA will file its materials in April 2013, and hearing days are expected to be scheduled in January and February 2014.

### ***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 ***date of workplace injury or onset of occupational disease***. 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. One of these cases will have a first hearing date in May 2013, with continuation dates likely to be scheduled in the following winter.

## **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 1861/10 IR***

The panel partially allowed expansion of the types of asbestos exposures suffered by the worker, in determining if the worker's lung cancer was occupationally related.

### ***Decision 594/12***

The Panel allowed entitlement for asbestosis, but did not grant entitlement for survivors' benefits because the worker died from causes unrelated to asbestos exposure.

### ***Decision 1955/12***

The worker had a 14% Non-Economic Loss (NEL) award for a shoulder injury. The worker developed an alcohol dependency following termination of his employment in 2008. The panel granted secondary entitlement based on the impact of the pain and treatment that arose from the original accident. The panel granted entitlement for the alcohol addiction and Loss of Earnings (LOE) benefits from the date that his employment was terminated.

### ***Decision 1448/11***

The Panel accepted jurisdiction over the broader issue of occupational exposures rather than limiting consideration to benzene exposure and its relationship to the development of non-Hodgkin's lymphoma (NHL). The Panel determined that the worker's exposures were a significant contributing factor to the development of NHL and allowed entitlement.

### ***Decision 1322/12***

Applying the benefit of doubt, the Panel found that the worker's compensable asbestosis made a significant contribution to the workers death and that the estate was entitled to survivor benefits.

### ***Decision 1998/12***

The Vice Chair allowed further LOE benefits beyond the usual healing times for carpal tunnel surgery, noting that actual healing time information was available and should have been used.

***Decision 1934/12***

The Vice Chair allowed an extension of time to file a claim regarding the neck, shoulders and elbows, considering that the delay was only four months, that the worker had been able to continue working for a number of years and that he filed the claim when it became apparent he would no longer be able to work.

***Decision 1017/12***

The Vice Chair found that the Board did not have the authority to review s. 147(4) supplementary benefits, on the basis of material change because the material change provisions do not apply to s. 147. The Vice Chair further found that there is authority to review s. 147(17) benefits, but not s. 147(4) benefits. The appeal was allowed in part.

***Decision 1169/12***

A Labour Market Re-entry (LMR) assessment was granted to the worker after the 72 month lock in date, noting the worker had not previously received LMR services. However, LOE benefits were not allowed. The appeal was allowed in part.

***Decision 1220/12***

The Panel overturned a decision of WSIB that had denied partial LOE benefits because the worker was not cooperating in providing information to WSIB. The Panel found in favour of the worker because WSIB had not given notice of non-cooperation.

***Decision 1541/12***

The worker appealed a WSIB decision which had denied an earnings basis calculation based on his status as an apprentice. The Vice Chair found that the worker was an apprentice and that his benefits should be based on those of a journeyman carpenter.

***Decision 1078/12***

The Vice Chair determined that a family was entitled to additional travel and living expenses for the disposition of the deceased worker's cremated ashes in India.

***Decision 1722/11***

A worker appealed WSIB's denial of LOE benefits. The Panel found that the worker had entitlement to a period of both partial and full LOE benefits based on changes to the policy on LOE reviews.

***Decision 1179/12***

The Vice Chair reviewed a WSIB decision to deny a period of pool therapy prescribed by a kinesiologist. The Vice-Chair determined that although a kinesiologist is not on the Boards list of health professions, that list is not considered exhaustive. The Vice Chair allowed the pool therapy for a trial period to determine if it was helpful to treat the worker's fibromyalgia.

### ***Decision 1507/11***

The Panel granted entitlement for prostate cancer, based on the exposures, medical evidence and accepting the current state of epidemiology around the relationship between prostate cancer and exposure to cadmium and PAH's.

### ***Decision 476/05 R***

The Vice Chair allowed a reconsideration application, based on the fact that a new medical report from the family doctor came from the only medical professional who knew the worker's condition prior to the compensable accident. It was also noted that the family doctor could not have supplied the letter sooner because there was no way of knowing that the original Vice Chair would find that the worker had pre-existing fibromyalgia.

### ***Decision 918/10 R2***

The Panel allowed a reconsideration application for a previous WSIAT decision that had denied a worker entitlement to benefits because he initiated horseplay. The Panel allowed benefits, noting that the initiating incident was disproportionate to the co-worker's response and that there was a significant time gap between the initiating incident and the response, allowing for the conclusion that the worker was not the initiator of the horseplay that resulted in the injury.

### ***Decision 1428/09***

The Vice Chair denied the employer's appeal, finding that it is appropriate to round a NEL award up from 6% to 10% and the earnings basis should be based on Ontario's minimum wage, not Newfoundland's minimum wage.

## **OTHER KEY ACTIVITIES IN 2012-2013**

### **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.

### **System Partnerships**

Important progress was made on workplace insurance system partnerships during 2012-2013.

### ***Standing Committee on Government Agencies***

In July 2012, the OWA Director presented to Standing Committee on Government Agencies in the course of its review of WSIB. The Director highlighted the role of OWA

in system and community partnerships, especially those dealing with dispute resolution, appeals and return to work. He also commented on some of the issues in the WSIB consultation on appeals modernization.

### ***Inter-agency partnership group***

During 2012-2013, the Deputy Minister of Labour convened a senior level system partnership group including WSIB, WSIAT, OWA and OEA. The group met in September 2012 and March 2013. It focused on the challenges arising from the volume of appeal cases and especially the WSIB appeals backlog; and on how to support workers in crisis during these times.

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

The OWA director sits 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.

During 2012-2013, discussions focused on providing preliminary feedback on the timing, content and/or process of the WSIB's Appeals Modernization proposal, the WSIB policy framework and the 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. At the end of the fiscal year, the OWA Director was actively involved in discussions with WSIB senior management on establishing a new framework which would lead to re-establishing the Best Practices process in 2013-2014.

### ***Workplace Safety and Insurance Appeals Tribunal (WSIAT)***

OWA represents workers involved in around 15% of WSIAT's appeals and as a result, a strong partnership is essential to success for both organizations. Throughout 2012-2013, the OWA Director maintained regular communication with the WSIAT Chair, addressing ongoing developments and most significantly the growing incoming caseload at WSIAT.

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

In 2012-2013, the OWA, the WSIB, Ministry of Labour Operations Division, and a peer support organization called Threads of Life continued an innovative partnership to improve services and support to families of workers killed on the job. The goal of the FAIR Partnership is to provide timely, seamless, and comprehensive assistance to the surviving family members following a traumatic workplace fatality. With ongoing communication, the partners continued to identify and address gaps in service, and increase opportunities for awareness among survivors of the services available to them.

### ***Canadian Association of Worker Advisors and Advocates (CAWAA)***

OWA is an active participant in the activities of the national organization of Worker Adviser/Advocate programs, CAWAA. The OWA Director attended and presented at the CAWAA annual conference in September 2012. He also participated in regular CAWAA meetings through the year. In 2012-2013, CAWAA carried out a pilot of a national webcast for staff at member organizations. The webcast was presented by the Director of the Nova Scotia program, and consisted of a comprehensive review of recent workers' compensation jurisprudence across Canada.

### ***Centres for Research Expertise in the Prevention of Musculo-skeletal disorders and occupational diseases***

During 2012-2013, the OWA Director served on the advisory committees for both of these important centres for research expertise.

## **Community Partnerships**

During 2012-2013, OWA developed and maintained vital partnerships in the community, in support of services to vulnerable injured workers.

### ***Members of Provincial Parliament***

Local MPP offices were surveyed during 2012-2013 to determine how useful OWA services were to them and if improvements could be made. The results of the survey indicate that 84% were satisfied or very satisfied with the services the OWA provides. MPPs reported that of the services offered by the OWA, the most important to them are the ability to refer clients to our offices and the ability to contact a Worker Adviser in a timely manner to get answers to questions posed by their constituents.

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

2012-2013 was a year of tremendous challenge in the appeals system, given the extensive backlogs at WSIB and the growing delays at WSIAT. OWA identified early on the need to work collaboratively on dispute resolution.

The OWA Director initiated a joint employer/worker dispute resolution advisory group through the Ontario Bar Association, which he co-chaired with a prominent employer

lawyer. The group developed a joint submission to the WSIB Appeals Modernization consultation – the only joint submission received. The group went on to meet with the WSIB Chief Corporate Services Officer and Executive Director, Appeals Services Division, to promote ways to improve dispute resolution in the workplace insurance system.

### ***Partnerships with health care providers***

OWA was involved in two important partnered initiatives with health care providers in 2012-2013.

**Asbestos disease symposium and health care network** – 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.

The OWA Director organized and chaired an important asbestos disease symposium in September 2012, featuring a powerful presentation from India's most prominent occupational physician, Dr. TK Joshi and interventions from European asbestos disease activists. Dr. Eudice Goldberg of the Canadian Mesothelioma Foundation issued a call for the formation of an asbestos disease health care network.

During 2013-2014, OWA will be participating in this network as it develops.

**Ontario Bar Association working group with health care providers in support of return to work** – During 2012-2013, the OWA Director participated in an Ontario Bar Association (OBA) working group linking employer and worker representatives with health care providers. At fiscal year-end, plans were well underway to pilot the program in 2013-2014.

### ***Community outreach: Director's Tour***

During 2012-2013, the OWA Director visited the majority of OWA's 16 offices and in each case met with key local partners. This included visits to Thunder Bay, Sarnia (including participation in the walk to honour asbestos victims), Sudbury, Timmins, Windsor, Mississauga, Ottawa, Toronto, Downsview, Hamilton and St. Catharines.

### ***Worker community partnerships***

During 2012-2013, OWA remained strongly engaged with its partners in the worker community. This included both provincial level organizations such as the Ontario Federation of Labour, Building Trades and Ontario Network of Injured Workers' Groups and individual unions and worker community organizations on a local level.

One highlight was the major involvement of OWA in the launch of an innovative worker community initiative for the prevention and compensation of work related mental injuries. The launch of the Mental Injuries Toolkit took place in Sudbury in October 2012 and included a presentation by the OWA Director.

### ***Research partnerships***

OWA strives to support research relevant to its mission. In 2012-2013, OWA was involved primarily in one important project.

**Disability policy alignment** – OWA’s clients sometimes experience the negative impact of various disability programs which have conflicting entitlement criteria and processes. The Institute for Work and Health invited the OWA Director to play a major role advocating for federally funded research to explore improving alignment and collaboration among disability programs. Toward the end of 2012-2013, the Director participated in the funding meeting for the project, which was funded for 7 years at approximately \$1 million annually. In 2013-2014 and beyond, the project will provide an excellent vehicle for OWA to participate in partnerships and pilots to help improve income and employment outcomes for injured workers.

OWA was also involved in a University of Toronto project on Knowledge Mobilization for Work Ability and Health, which was funded toward year end; and in providing information for an Occupational Cancer Research Centre project on developing a database for mining occupational exposures.

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

2012-2013 was a very active year for strategic policy consultations by WSIB. Given the importance of the issues addressed, OWA devoted significant resources to participation in the consultations.

#### ***WSIB Appeals Modernization Consultation***

Early in 2012-2013, the WSIB announced plans to make major changes to its internal appeals system. In June 2012, it began a formal consultation on its proposal. CCSU staff developed learning materials on the proposal and online seminars were held with all OWA staff to explain the proposed changes and discuss them. CCSU staff also consulted extensively with community partners. Following these sessions, CCSU staff prepared formal submissions to the WSIB consultation. WSIB changed its approach to downside risk partly in response to the OWA submissions.

In February 2013, WSIB began implementation of its new approach, including a transition strategy to reduce and eliminate its appeals backlog. OWA was intensively involved with WSIB in this process.

### ***WSIB Benefits Policy Consultation***

In July 2012, the WSIB began a consultation on revisions to four policies covering core benefit entitlement principles: recurrences, work disruptions, permanent impairment and aggravation basis. The WSIB appointed an external chair, Jim Thomas, former Alternate Chair of WSIAT and Deputy Minister of Labour, to carry out the consultation. As part of the review process, the OWA provided written submissions and appeared before Mr. Thomas 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. As of the end of 2012-13, the final report on the consultation had not yet been released.

### ***Law Commission of Ontario Vulnerable Workers and Precarious Work Project***

In September 2012, the OWA provided a written response to the Law Commission of Ontario's (LCO) Interim Report on Vulnerable Workers and Precarious Work. Our submission responded to the LCO recommendations regarding the Ontario workers' compensation system and/or those that mentioned the OWA.

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

Since July 1, 2007, the Law Society of Upper Canada's (LSUC) by-laws have exempted the staff at the OWA from paralegal regulation. The LSUC by-laws have also exempted other free legal service providers, such as staff at legal clinics and injured workers' groups.

In 2012-13, the LSUC started a review of the paralegal exemptions under their by-laws. The OWA attended a meeting in January 2013 with the Exemptions Working Group of the LSUC's Paralegal Standing Committee and provided written submissions in March 2013 to this group regarding our exemption. At the end of the reporting period, it appeared that LSUC would not be making a decision on these matters until sometime in 2013-2014.

### ***Service excellence, staff wellness and training initiatives***

During 2012-2013, OWA identified several initiatives which would contribute to service excellence and staff wellbeing.

### ***Training and education to OWA Staff***

As part of its commitment to continuing professional development, the OWA delivers extensive educational programs to its own staff.

## **Continuing professional development**

During fiscal 2012-13, training and education to staff included the following:

- CCSU staff developed training on the extensive changes to the WSIB's appeals system and delivered it to all worker advisers and client service representatives.
- OWA staff also attended major educational events organized through the Ontario Bar Association, and at which OWA Director and/or staff presented, notably the May 2012 Continuing Legal Education session and the March 2013 provincial webcast on the new WSIB appeals system
- OWA's Client Service Representatives and other administrative staff attended the MOL Administrative Professionals Conferences in early 2013

### ***Occupational Disease Advisory Group (ODAG)***

Over the past several years, OWA has dealt with a number of occupational disease cases, both individually and in local clusters. This highlighted the need to strengthen OWA staff skills and knowledge of this complex area. A staff working group was established, consisting of Worker Advisers, CCSU and a management lead, to lead OWA's work on occupational disease. In 2012-2013 the ODAG began to offer short "roundtable" sessions on specific topics using WebEx technology in order to meet the objective of disseminating knowledge and skills around occupational disease cases. The first session focused on how to carry out a case review of an occupational disease case, to determine whether there was a reasonable chance of success on appeal.

ODAG's future plans include holding three Occupational Disease Roundtables per fiscal year.

## **Staff health, safety and wellness**

### ***Workplace Violence Prevention Committee***

OWA staff deal with vulnerable workers who sometimes experience crisis situations – often from a combination of financial, health and psychological factors. Some workers may reach the stage where they 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 and OWA staff from potential harm. Several years ago, this led to the establishment of an OWA Workplace Violence Prevention Committee (WVPC).

The WVPC was active in 2012-2013. It reviewed incident reports submitted during the fiscal year and at year end was formulating recommendations to management to reach the goal of making our staff as safe and threat free as possible.

The WVPC also developed a plan to undertake annual surveys, beginning in 2013-2014, about the kind of difficult behaviours faced by OWA staff. This will be a longitudinal study with staff recording difficult behaviours during the same month each year. This will establish a benchmark and consistent methodology to enable the WVPC to monitor and respond to changing behaviour patterns over time.

### ***Peer support***

During 2012-2013, OWA participated actively in the MOL's Peer Support Program, an active initiative intended to provide peer to peer support to staff in dealing with difficult situations.

# **HEALTH & SAFETY REPRISAL COMPLAINT MANDATE**

## **Overview of Services**

The OWA's occupational health and safety reprisal complaint mandate is to provide the following services to non-union workers who have been threatened or punished for following or trying to enforce health and safety laws:

- information and advice
- representation
- educational services

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

## **Composition of OHSRP**

The OHSRP is composed of one client service representative (CSR) and two worker representatives (WR) who report to the OWA general counsel/manager CCSU and OHSRP. All OHSRP staff except the CSR are required to be licensed by the Law Society of Upper Canada to provide legal services.

The OHSRP is located in the OWA downtown Toronto office.

### ***Description of OHSRP Service Model and Services***

Extensive work to establish the basic infrastructure and service delivery model for the OHSRP was completed during 2011-12. This allowed us to begin providing services as of the target date of April 2, 2012. As was anticipated, additional work was required throughout 2012-13 to get the program running smoothly and develop subject matter expertise. Refinements and adjustments were made along the way and will continue into the next fiscal year.

The service delivery model for the reprisal program is similar to that used for the OWA's workplace safety and insurance services. In particular, there are different levels of service depending on the situation and needs of the worker. The types of service include: summary advice, intake interviews, case reviews and representation. These services are described in the Key Achievements section below.

## **KEY ACHIEVEMENTS**

### **Advisory Services**

#### ***New Request and Summary Advice***

Each worker who contacts the OHSRP for service is counted as a new request (NR) and receives some level of summary advice (SA). Service is completed at this stage if the worker's situation does not fall within the mandate of the program. Workers fall outside of the mandate of the program if it is clear that their situations are not health and safety reprisals or because they are unionized. For these workers appropriate referral information is provided. Summary advice includes the assessment of whether a non-union worker's situation may involve a health and safety reprisal and, if so, referring them to the next stage of service, intake.

#### ***Intake***

Non-union workers who may have a reprisal case are scheduled for an intake interview with a worker representative. The representative assesses whether there is sufficient evidence to establish a health and safety reprisal claim. The representative will also consider whether the worker may have other legal remedies available. If it is clear after the interview that there is not sufficient evidence to establish a health and safety reprisal or there is a more appropriate right of action to pursue (e.g., human rights complaint, wrongful dismissal action) the worker will be provided with appropriate referral information and/or advice.

#### ***Case Review (CR)***

If after the intake interview it appears that there is or may be sufficient evidence to establish a reprisal case, any further evidence needed to complete this assessment is gathered. At the time of the interview, if possible, or after additional information is received, a decision is made about whether OWA can offer to represent the worker. If there is sufficient evidence to establish a reprisal case, an offer to represent is made. If there is not sufficient evidence, appropriate referrals and/or advice is provided.

#### ***Analysis of Advisory Statistics for 2012-2013***

The OHSRP received 502 new requests for service during the 2012-2013 fiscal year. Of these, 485 were provided summary advice during the same period.

Of the 485 workers who received summary advice, the majority (approximately 65%) of them also had an intake interview with a worker representative. Of these, 59 workers were offered representation services.

Many of the workers interviewed did have significant complaints about their treatment in the workplace. They did not, however, fall within the narrow scope of section 50 of the Occupational Health and Safety Act and the related case law. There were also

some workers interviewed at intake whose complaints did fall within the scope of section 50 but who were referred out for independent legal advice if it appeared it would be to the worker’s advantage to seek a remedy in an alternative forum (e.g., cases that involved strong human rights and wrongful dismissal grounds). See more discussion on this issue later in this report.

Table 1 shows the number of new requests, summary advice, intake interviews and offers to represent in each quarter and the total for fiscal year 2012-2013. While there was a drop in most of the recorded activities in the fourth quarter, this is very likely due to significant staffing changes during that time period. In particular, it appears that there may have been some under-reporting of new requests and summary advice for the fourth quarter. Despite the apparent drop in new requests, close to the average number of intake interviews occurred. In addition, more offers to represent were made than in the first and third quarters and the same numbers of offers were made as in the second quarter of the year.

**OHSRP Table 1: Overview of Advisory Statistics**

<b>Service</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total</b>
New Requests	143	114	162	83	502
Summary Advice	138	112	154	81	485
Intake	99	74	73	72	318
Offer to Represent	14	19	11	19	59

## **Representation Services - Activities**

Worker representatives can represent workers at every stage of the reprisal complaint process from filing an application that initiates the complaint process to representing the worker at mediation or a hearing at the Ontario Labour Relations Board (OLRB).

The number of applications filed averaged 7.5 per quarter for a total of 30 by year end. Some workers come to OWA after filing their own application or after a health and safety inspector filed a statutory referral to the OLRB. In these situations, it is not necessary for the OWA to prepare an application for the worker. The worker may already have a mediation date set when they request our assistance.

The process of negotiating settlements usually occurs during mediation at the OLRB, but can occur before, during or after formal mediation. If a settlement is successfully negotiated before mediation, it is referred to and tracked as early dispute resolution (EDR). In fiscal year 2012-2013, 12 cases were settled at this stage. While this

process arguably saves OLRB resources, it was in some cases found to be more time consuming than settling through the formal mediation process.

If mediation is unsuccessful and a hearing is set, the OLRB will generally encourage further settlement discussions on the day of hearing. In 2012-2013 only five cases went to hearing and all were directed back to mediation and the parties were encouraged to settle by the OLRB. These cases were counted as hearings in the representation activity statistics rather than mediations.

Representation at mediation was by far the most common representation activity. During the course of the year the number of mediations steadily increased, going from five in the first quarter to 15 in the fourth quarter for a total of 40 by year end. If a matter is not resolved at mediation, negotiations often continue up to the date of hearing. These negotiations are often more time consuming than those that occur at mediation. Nevertheless, they are been counted in OHSRP statistics as mediations.

Table 2 provides an overview of the number of representation activities performed in each quarter and the total for fiscal year 2012-2013.

**OHSRP Table 2: Representation Activity Statistics**

<b>Service</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total</b>
Application	7	10	7	6	30
EDR	1	5	1	5	12
Mediation	5	9	11	15	40
Interim decision	0	0	0	1	1
Hearing	1	2	1	1	5
<b>Total</b>	<b>14</b>	<b>26</b>	<b>20</b>	<b>28</b>	<b>88</b>

***Representation Services – Outcomes***

The OHSRP tracks representation outcomes separately from representation activities. While the activities statistics help keep track of workload, outcome statistics report on the value of the program for the workers it serves.

By far the most significant outcome is the 46 settlements achieved for workers. Settlements almost always involve financial compensation, but can also involve changes to a worker’s record of employment, letters of apology and other non-monetary agreements that are of particular importance to the individual worker.

As noted above, although five hearings were attended, none were completed and therefore none resulted in a final decision. Two applications were withdrawn after significant evidence affecting the workers' chance of success came to light.

In addition, service had to be withdrawn from four workers whose cases had been joined by the OLRB and who were therefore being represented under a joint retainer agreement. The agreement broke down after the first attempt at mediation did not result in a settlement and it became clear that the interests of the workers had diverged, making it unethical for OWA to represent any of the workers.

Table 3 provides an overview of the number of representation activities performed in each quarter and the total for fiscal year 2012-2013.

**OHSRP Table 3: Representation Outcomes**

<b>Service</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total</b>
Settlement	4	12	9	21	46
Final decision	0	0	0	0	0
Withdraw Application	1	1	0	0	2
Withdraw service	0	0	0	4	4
<b>Total</b>	<b>5</b>	<b>13</b>	<b>9</b>	<b>25</b>	<b>52</b>

### **Summary of OWA's OHSRP achievements in 2012-2013**

In summary, the first year of OWA's Occupational Health and Safety Reprisal Program has been a success. Hundreds of workers have received assistance from the program and many have been provided with an opportunity to consult a qualified representative. Over 50 workers also received representation services and, of these, 46 received financial compensation and other benefits.

- New requests for service - 500;
- Summary Advice - 485;
- Intake interviews - 318;
- Number of workers represented - 52;
- Settlements obtained - 46.

## **Educational Services**

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

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. Current highlights of the website content on this topic include:

- A separate section of the OWA website containing health and safety reprisal information;
- Helpful links including links to:
  - The Occupational Health and Safety Act,
  - Ministry of Labour,
  - Ontario Labour Relations Board.
- Separate pages in this section on:
  - "Reprisals under the Occupational Health and Safety Act",
  - "Enforcing Your Rights",
  - "How OWA Can Help".

## **OTHER KEY ACTIVITIES IN 2012–2013**

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

The OWA general counsel participated in, and represented, the OWA OHSRP at a number of important meetings throughout fiscal year 2012-2013. These included:

**Section 50 Working Group:** In addition to the OWA, this group included representatives from the Ontario Labour Relations Board, Office of the Employer Adviser (OEA), various branches of the Ministry of Labour and the Health and Safety Review Project Secretariat. This group was originally set up in 2011-2012 to assist in the start-up of the enhancements to the occupational health and safety reprisal complaint process brought in by Bill 160. These included, most significantly, the new mandates of the OWA and OEA to provide legal services to workers and employers with respect to health and safety reprisal complaints. The group continued to meet periodically throughout the year to share experience and ensure a smooth transition to the new regime.

### **Meetings with Ministry of Labour, Occupational Health and Safety Branch:**

Various meetings occurred during the year with the MOL director and manager responsible for implementing the Ministry's new role in occupational health and safety reprisal complaints. Among other things, these meetings focused on clarifying the roles of OWA staff and health and safety inspectors in the reprisal complaint process.

**Ontario Federation of Labour Health and Safety Committee:** This committee is comprised of health and safety representatives from various unions, an OFL staff co-ordinator and guests who represent non-union workers, including the Toronto Workers Health and Safety Legal Clinic. The OWA director or general counsel also attended, on occasion, as guests. At two separate meetings, OWA reported on its reprisal program and responded to questions from committee members.

## **Reflections on First year of OHSRP**

### ***Significant Workload Despite Minimal Outreach***

There was some concern prior to the launch of the program (based on historical data from the OLRB) that demand for assistance with reprisal complaints would be low. It became clear early in the life of the new program that these concerns were unfounded.

From the outset, the OHSRP had a significant workload despite a very modest level of outreach or promotion by OWA or MOL. In order to allow the OHSRP the chance to get settled and determine whether it could meet the initial demand for service, very little of the program's limited resources were devoted to outreach. While the workload ebbed and flowed to some extent over the year, there was always more work to do than there was staff time available to complete it, and this is expected to continue into the next fiscal year.

### ***Nature of Reprisal Work***

While the OWA's reprisal mandate concerns only one section of the Occupational Health and Safety Act, the cases are not simple. They are often factually complex, involve multiple or overlapping jurisdictions or have no clear forum to address them. In addition, the tight timelines at OLRB require quick turnaround, making the representation work very fast paced. For example, under the OLRB's expedited process for reprisal cases involving termination, mediations are set within weeks of an application being filed and hearings are scheduled soon after.

The OLRB is a more formal and adversarial forum than the WSIB or the WSIAT. Its procedures are formal and complex. This makes support for the worker representatives more demanding. For example, strict rules must be followed for filing and serving applications and other documents. And drafting applications is similar to preparing pleadings for a court case. A detailed and comprehensive legal analysis of all the evidence is required in order to determine relevant facts and make appropriate arguments.

### ***Most Workers Seeking Help for Workplace Harassment are Not Covered by OHS***

As noted in the previous section, a significant proportion of workers seeking assistance from the OHSRP raised issues related to bullying, harassment and interpersonal or

labour relations issues. While many of these workers arguably experienced some form of reprisal (e.g., discipline or termination) for raising their concerns with their employers, the current legislation and case law does not cover most of these workers' concerns.

In a leading case on this issue, the OLRB summarized the law as follows:

In the case of an employee who complains that he has been harassed, there is no provision in the OHS Act that says an employer has an obligation to keep the workplace harassment free. The only obligation set out in the Act is that an employer have a policy for dealing with harassment complaints. The legislature could very easily have said an employer has an obligation to provide a harassment free workplace but it did not.<sup>i</sup>

The current state of the law leaves many workers with legitimate reprisal complaints related to bullying and harassment in the workplace without recourse through the health and safety reprisal complaint process.

Simply put, there are limited legal options for workers whose experience of harassment does not contravene the Human Rights Code.

### ***Advantages for Workers***

The primary advantages of filing a health and safety reprisal complaint for workers is that it achieves relatively speedy results and can involve resolution of multiple issues. For example, a worker who has been terminated without notice could potentially have grounds for a wrongful dismissal action, entitlement for pay in lieu of notice under the Employment Standards Act and grounds for a health and safety reprisal complaint to the OLRB. Because the process for resolving reprisal complaints at OLRB is so quick and allows the worker and employer to reach a settlement that covers all of the issues in one forum, many workers choose this forum to resolve their issues. Timely resolution of multiple legal matters allows the workers involved to get on with their lives.

The free and confidential legal advice and representation available through the OWA OHSRP is also of great assistance to workers. These services are especially helpful for workers who would not qualify for legal aid.

### ***Challenges for Workers***

The OHSRP's experience in its first year revealed many challenges facing workers who have experienced health and safety reprisal. These include:

- **Small monetary settlements.** Settlements generally only cover lost wages and the OLRB does not award punitive damages. Small settlements do not act as

deterrent to employers and send a poor message to other workers in the workplace.

- **Difficulty attending proceedings.** Most mediations and all hearings are held in Toronto. The OLRB does not cover travel costs or lost wages for workers or witnesses who have to travel to attend a mediation or hearing. These costs are covered by WSIB or WSIAT in workplace insurance appeals.
- **Lack of access to interpreters.** The OLRB does not cover the cost of interpreters for workers who cannot speak English or French. Again, these costs are covered in workplace insurance appeals.
- **Reinstatement is not an effective remedy.** Reinstatement is generally not a realistic option for non-unionized workers, who legitimately fear being terminated by their employer at a later date with no effective recourse. As a result, most do not return to work with their former employer.
- **Lack of assistance in other areas of employment law.** There are very few affordable sources of legal assistance for workers in Ontario in the areas of wrongful dismissal or general employment law.

## Recommendations

In the OWA's view, while the enhancements to the health and safety reprisal complaint process has offered some very needed and welcome support for workers, there are improvements that could be considered to address the challenges identified above.

### ***Quotes from workers - OHSRP***

"Thank you so much for assisting me in standing up for what is right . . . you really do make a difference in the lives of the common man"

"[The worker representative's] determined stance is an asset to anyone fortunate enough to have her in their employ and all I can do is recommend her highly and hope the program endures"

"I felt very looked after by [the worker representative] especially after being so mistreated by my employer"

### ***Client Testimonials***

My Worker Adviser "was very helpful and provided professional service throughout the complete process"

"Thank you for helping me put my issues to rest. It was a long tedious road..."

\*\*My Worker Adviser "has always been and continues to be both exceptionally competent and exceedingly well informed."

"I am very grateful ...the assistance she gave me to win my appeal. Excellent!!!"

\*\*"I can honestly say that I was so impressed in the professionalism of the adviser that I had I cannot at this time offer any suggestions. My adviser was so knowledgeable and so professional as well as very courteous. Her representation was in my opinion top notch and I am very pleased with the outcome."

\*\*"The office in St. Catharines were very much polite and made you feel very comfortable and also trying to understand."

"A job very well done. I am totally satisfied. I was very satisfied with all of their help."

"Thank you for your excellent help."

"Extremely well job done by my individual assigned to my case."

\*\*"If everyone there is like WL, the world would be a better place. I am so ever grateful. WL was very prompt and very patient, kind and understanding."

\*\*"I am happy this service is available to workers in time of their need. This is not only a big help physically but emotionally too."

"Fantastic Job – Thank you."

\*\*"Continue courteous and help to the employees who need this service. Thank you to GL – always was polite with me and answered any calls. Thank you so much."

\*\*"More representatives and less time waiting so the rep can help and solve claims. JT did amazing at helping with my WSIB claim."

"I was very impressed with their knowledge and all the help I got. Very professional and they seemed to care about their clients."

\*\*"Make public a little more aware of your service. My adviser was terrific and handled my case in a timely manner. Thank you very much."

\*\*"I would like to thank OWA for assigning RS to my case. In your life you seldom meet a true professional with such knowledge and pleasant attitude. Try RS has all these qualities. Thanks again."

"I would just like to thank everyone very much. Thank you,"

\*\*"So nice to call your office and speak directly with a real live person! Thank God for the Office of the Worker Adviser! A positive experience with a positive outcome. Thank you."

"Thank you to everyone who was involved with my case."

\*\*"Very organized. I was always kept in the loop. I'm glad there is a service like this. Thank you for all you did. WL did a great job."

"I was so pleased with all the people who helped me. I thank you all very much."

"Very pleased with the help I received from Mr S. and thank you OWA."

\*\*"It's hard to improve on perfection. JT was very helpful and took her time to help me understand, as a lot of this was all Greek to me. Thank you JT for your patience. God bless you!!"

"I am very happy with MG. He was very professional and a gentleman."

"I commend you on your dedication, your support and great advice. Thank you."

\*\*"I was very pleased with my representative. He had a lot of patience with me as I did not process things very quickly. For that I am very grateful. Mr L. did an awesome job. Thank you."

\*\*"You have an OWA rep as good as any lawyer – better. Thank you for all of your help."

"Thank you for all your time and patience. We are very happy with the service you have provided."

\*\*"JP got me my money from WSIB in a timely and effective amount of time. I'm very thankful and appreciate everything she did for me."

"Keep up the good service and thank you for all your help."

"Have every one respond in the friendly casual way Mr SM does."

"Do not change anything. Thank you very much."

\*\*"would like to thank you for helping me with all the knowledge and also provide me the Spanish translator to understand all the processes."

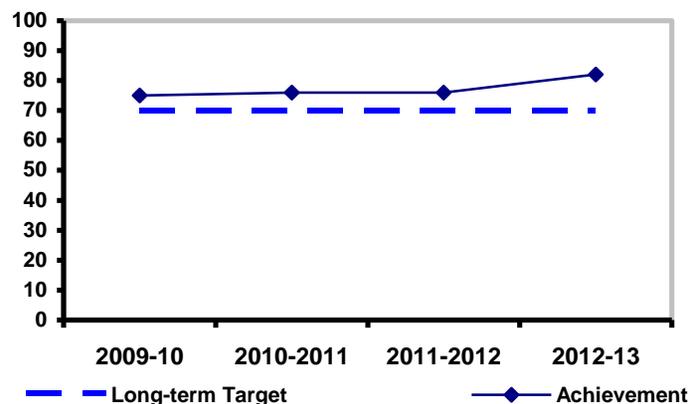
"Great job and my worker knew his stuff"

\*\*As a display of appreciation a client paid tribute to a Worker Adviser by having a star named in her honour,

## APPENDIX A – OUTCOME PERFORMANCE MEASURE - WSIA MANDATE

### Performance Measure #1: Early and Alternative Dispute Resolution (EDR/ADR)

#### 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.

#### 2012-2013 Year End Performance Achievements

82% 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 - WSIA MANDATE

Measure	Standard/Long Term Target	2011-2012 Achievement	2012-2013 Commitments	2012-2013 Year-End Achievements (as of March 31, 2013)	2013-2014 Commitments
<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 82% 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.	218 issues per full time staff* were achieved through advice and representation.	200 issues per full time staff.	207 issues per full time staff* were achieved through advice and representation.	The 2013-2014 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 95% 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 90% of all cases placed on the waiting list for representation services within 120 days. The main factor contributing to this was the significant appeals backlogs within the system.	OWA's commitment is to maintain or improve 2012-2013 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 2012-2013

<b>Account</b>	<b>Final Budget*</b>	<b>Total Actual Expenditures**</b>	<b>Variance</b>	<b>Variance %</b>
Salary & Wages	7,788.9	7,773.0	15.9	0.2%
Benefits	1,899.5	1,972.5	(73.0)	(3.8%)
ODOE				
Transportation & Communications	310.7	242.1	68.6	22.1%
Services (incl. Office Leases)	1,429.9	1,397.7	32.2	2.3%
Supplies & Equipment	108.6	57.2	51.4	28.7%
ODOE TOTAL	1,849.2	1,697.0	152.2	8.2%
OWA TOTAL	11,537.6	11,442.5	95.1	0.8%
Recoveries	(11,536.6)	(11,442.4)	(94.2)	(0.8%)
TOTAL	1.0	0.1	0.9	

Final Budget = Printed  
Estimat

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

\*\* Total Actual Expenditures including office lease cost

## **APPENDIX D – OWA OFFICE LOCATIONS**

### **TORONTO & EASTERN**

#### **REGION**

#### **PROVINCIAL 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 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

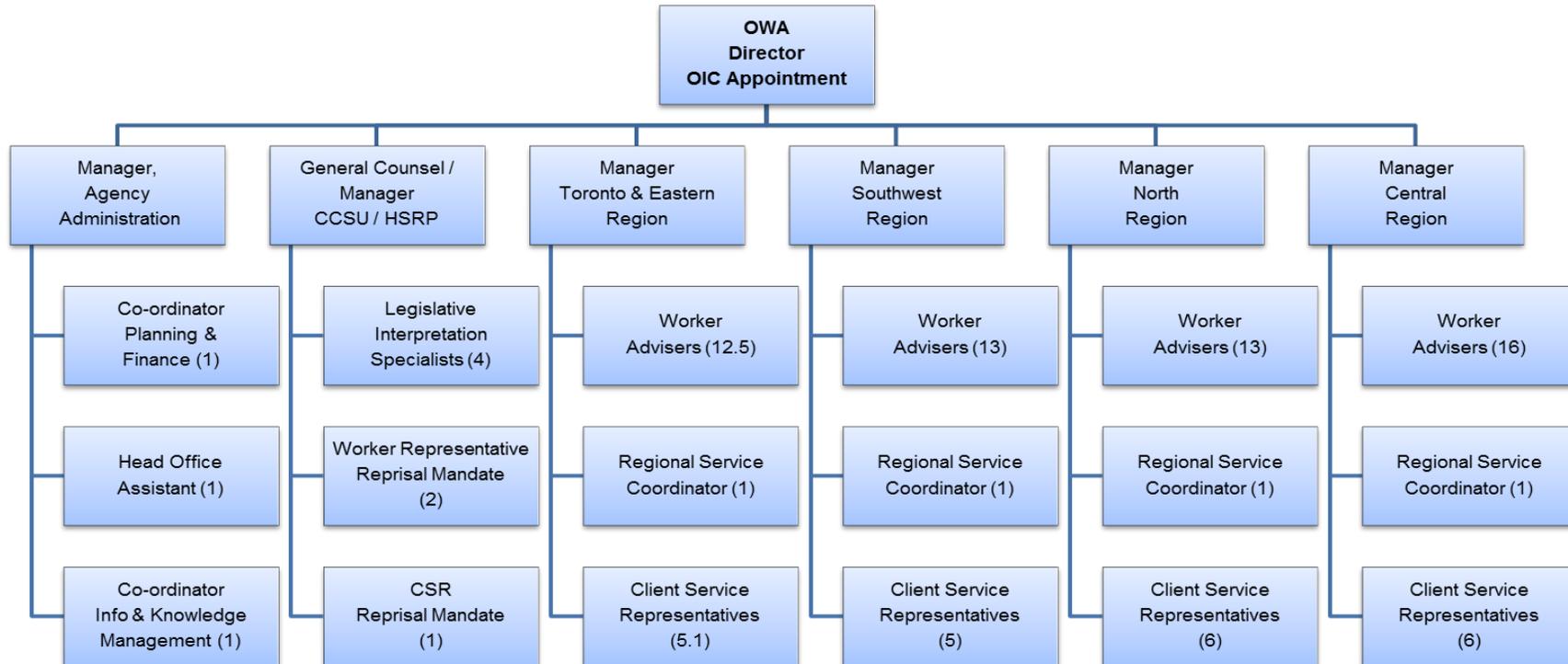
#### **ST. CATHARINES OFFICE**

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 E – ORGANIZATION CHART



2012-2013 OWA STAFF ALLOCATION = 97.6 FULL TIME EQUIVALENTS (FTE)

<sup>i</sup> Investia Financial Services Inc., 2011 CanLII 60897 (ON LRB), 2011 CanLII 60897 (decision dated September 23, 2011, Board File No. 3990-10-OH)