



Workplace Safety and Insurance Appeals Tribunal

Occupational Disease Project

Submitted to: Workplace Safety and Insurance
Appeals Tribunal

Submitted by: Ontario Bar Association

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ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

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BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide feedback on the Occupational Disease Project, with the goal of improving the processing of occupational disease appeals at the Workplace Safety and Insurance Appeals Tribunal (“**WSIAT**”). We provide targeted recommendations for the enhancement and development of this project. We would be happy to provide feedback on specific questions or proposals once developed.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA’s Workers’ Compensation section. Members of this section include barristers and solicitors across Ontario with extensive experience dealing with all aspects of WSIAT proceedings.



Comments & Recommendations

Keyword Searches

We recommend that WSIAT enhance the keyboard searchability of the summaries at the top of its online Tribunal decisions. In doing so, WSIAT can support more effective searches. This would assist legal professionals, and self-represented litigants trying to navigate the process.

The keywords should capture, among other things, the following information:

- The disease or condition involved in the claim;
- The exposure element;
- The worker's position; and
- The industry/sector they worked in.

This proposal would enable legal representatives for workplace parties to better serve their clients.

Reconsideration of the 6-month Deadline

Currently, WSIAT policy imposes a 6-month deadline for requesting reconsideration of a decision. We propose that this policy recognizes an exception or extension for cases where new medical or scientific evidence emerges after the fact. Specifically, if a decision was denied or granted based on the state of medical research at the time, and subsequent discoveries later establish or minimize the link between a particular exposure and disease, then that new evidence should allow the claim to be reconsidered, even if it is beyond the 6-month deadline. This policy amendment would better support just outcomes considering the fast and evolving nature of research.

Use of Medical Consultants

WSIAT importantly relies on medical consultants to assess the connection between a worker's disease and the alleged workplace exposure. We recommend policy changes to ensure that key exposure details are highlighted and made clear before any opinion is formed about the link or connection. These details should include:



- (a) The type of exposure (inhalation, intravenously, touching skin, etc.);
- (b) The type of substance; and
- (c) The duration of exposure.

Noteworthy Decisions

We recommend that WSIAT ensure that any decisions that grant or remove entitlement based on a newly recognized link or connection between workplace exposure and a disease are clearly designated as Noteworthy Decisions.

WSIAT could implement this through its own resources, as well as in partnership with legal stakeholders like the OBA that serve professionals who appear before the WSIAT on a regular basis. This would ensure that the information comes to the attention of practitioners and the broader bar.

The OBA would be pleased to discuss this further and answer any questions that you may have.