

# **WSIB & WSIAT Updates**

**Presentation for Injured Workers & Health & Safety  
Conference**

# WSIB Updates

- Jeffrey Lang – Appointed President and CEO in 2022; from London, Ontario
- WSIB is moving HQ to London from downtown Toronto, doors open in 2025
- WSIB recently announced to be the title sponsor for NYE event in London

# Premium Rates & “Surplus Distribution”

- Average premium rate per \$100 of insurable earnings in 2024 will be \$1.30 (same as in 2022 and 2023); in 2018, the rate was \$2.35 and it was \$3.17 in 1990.
- Nearly \$1.2 billion of the \$1.5 billion was distributed to eligible employers in 2022 as part of the WSIB’s so-called surplus.
- The provincial government announced that they would explore increasing LOE benefits to 90%, from 85% in the lead-up to the last provincial election. No movement, despite employers receiving billions in premium rate reductions and rebates since 2018.

# Consulted to Death

- **Serious Injury Program VFMA:** The WSIB launched a consultation re the recommendations from the VFMA on the SIP. The consultation closed in October 2022. The WSIB is still reviewing submissions.
- **New Communicable Illnesses Policy:** stakeholders invited to comment on the WSIB's draft Communicable Illness policy in the spring of 2023. Submissions and a summary of the results will be posted on the WSIB website. Policy will include illnesses such as COVID, influenza, etc.
- **Updates to Practice and Procedure Document:** stakeholders invited to comment on updates to the P&P document. Updated P&P to be posted on the WSIB website once the submissions are reviewed & considered.

# 2022 Value for Money Audit

- The WSIB is mandated by s. 168 of the *WSIA* to conduct an annual value for money audit.
- 2022 VFMA, completed by audit firm KPMG, focused on the Dispute Resolution and Appeals Process at the WSIB (WSIAT excluded)
- Final report was submitted to the WSIB in November 2022 and presented to the MOL in February 2023.

# KPMG's Recommendations

- KPMG manufactured a crisis
- KPMG's recommendations would require changes to the Act and WSIB policy and procedures and lead to claims/appeals suppression
- Consultation was announced in June, with submissions due later in the summertime.

# Stakeholder Submissions in Response to KPMG Report

- 53 group/organization submissions (majority from injured workers, trade unions, legal clinics).
- 28 individual submissions (majority from injured workers/reps)

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

On October 31, the Director of Appeals sent an email indicating that the WSIB issued its responses to KPMG's report and the stakeholder submissions



# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## Changes to Time Limits:

**WSIB response:** It's not within the WSIB's jurisdiction to make any changes to time limits and the Board does not intend to pursue administrative practise changes to time limits with the MOL.

Positive result: KPMG proposed reducing existing time limits and introducing new time limits, which would lead to appeals suppression.

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## One-Year Appeal Readiness Form (ARF) Submission Timeline:

KPMG recommended introducing a 1 year time limit (from the date of the initial decision) to submit the ARF. Currently, there is no time limit to submit the ARF.

**WSIB Response:** The Board will **pause work** on this until other recommendations have been implemented/reviewed and then the Board will **revisit** this recommendation to determine if a time limit is required. The WSIB's position is that some of the other recommendations may address some of the delays in appeals.

The Board will “revisit” the issue, so the time limit for submitting the ARF may still be introduced at a later date.

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

**Making certain decisions final decisions of the WSIB and appealable directly to WSIAT**

**WSIB response:** The Board will assess/evaluate processing these issues through a dedicated team of AROs with expertise/specialization. The Board is exploring processes to expedite final decisions where there are live issues at the WSIAT, so all issues can be heard at the same time

Positive result: appeal rights not restricted.

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## **30 Days to implement appeal decisions**

**WSIB Response:** The Board will commit to asking as early as possible for information that may be needed to implement a decision. This includes working with the parties to better understand the issue, why there is disagreement, and the desired resolution

Unclear what will change without specifics

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## Reasons for the dispute and the resolution sought

**WSIB Response:** An injured worker's ability to proceed with an appeal will not be impacted if they don't know or aren't able to explain why they are objecting to a decision or if they can't explain the resolution they are looking for.

Positive: KPMG's recommendation read language into the Act that doesn't exist.

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## Expediting RTW decisions through Appeals

**WSIB response:** Once the ARF is submitted, appeals with RTW issues will be expedited to prevent delays.

Positive: if an injured worker submits the ARF and is ready to proceed, it's logical that appeals with RTW issues be expedited.

# WSIB Response to KPMG Recommendations & Stakeholder Submissions

## ADR Resolution Method

**WSIB response:** The Board will proceed with ADR training, tools and certification and use those skills in the pre-hearing/hearing process. External 3<sup>rd</sup> party vendor will provide training. DMs will receive ADR training. The Board may consider more formal ADR interventions/mechanisms once experienced obtained. ADR is not intended to limit entitlement, will be used where early resolution is possible.

Positive: the Board explicitly stated it will not use ADR to limit entitlement.

Unclear what will be achieved by this additional training. ADR was used before in the early 2000s for a brief period, but did not last.

# Major Updates to WSIAT Processes

- WSIAT held a consultation on its pre-hearing processes beginning in 2022
- In early 2024, the WSIAT will introduce its new pre-hearing processes
- Major changes that will have a significant impact on injured workers/ reps
- Two general stakeholder information sessions will be provided by WSIAT in 2024. The dates will be posted on the WSIAT website before year end



# What's Changing?

## **Revised & New Forms:**

- Revised Notice of Appeal (NOA) and Response forms
- A new Consent Form to Release Worker's Information
- A new Hearing Ready form
- A new Not Ready for Hearing Form

## **Forms to be eliminated:**

- Readiness Form and Confirmation of Appeal (COA)

# Revised NOA

- Option to indicate interest in **ADR /Mediation**. Moved from COA (which is being eliminated) in an attempt to resolve appeals earlier in the process.
- Select **hearing format** preference (written, teleconference, videoconference). Final decision up to WSIAT.
- Identify **accommodations** needed to access services/participate in hearings.

# New Consent Form

- Consent to release has moved from the NOA to its own form.
- Workers now have the ability to review the case materials before they are sent to participating parties.
- Case materials will be sent to both the injured worker and the representative.

# New Hearing Ready form

- Appellants have 4 weeks from the date of the Issues on Appeal Letter to complete and return their Hearing Ready Form.
- The purpose of the Hearing Ready Letter is to:
  1. provide an outline of key evidence and applicable law, policies or legal precedence;
  2. file any new evidence;
  3. file submissions for hearings in writing; and
  4. advise the WSIAT and other parties about witnesses for oral hearing

# New Not Hearing Ready Form

- The form gives parties the option to ask for more time if they're not ready for a hearing
- The form asks for parties to explain why they're not ready and how long they'll need
- If WSIAT agrees with your request, the appeal will be placed on inactive status, for a reasonable amount of time, to allow you to prepare further

# WSIAT Practice Direction Documents Consultation

- **Elimination of WSIAT's 3-week rule:** “This rule established a timeframe where it is understood that if evidence is provided more than three weeks before the hearing, it will generally be allowed, and if evidence is provided within three weeks of the hearing it will be brought as a preliminary matter to be discussed at the hearing” (IAVGO).

# WSIAT Practice Direction Documents Consultation

- **New Disclosure Period:** In the new PD document, evidence must be submitted within 4 weeks from the date of the appellant's Issues on Appeal Letter. In other words, evidence is considered late and beyond the disclosure period if it is not included with the Hearing Ready form (4 weeks to complete). It will likely take months for a hearing to be scheduled once the Hearing Ready form is submitted. Therefore, evidence will now have to be submitted months earlier – no specific reason was given by WSIAT to explain why this is necessary. If evidence is submitted late, it will be handled as a preliminary issue at the hearing.
- Exception: “The disclosure requirements do not apply to submissions on the law (including copies of decisions) or Workplace Safety and Insurance Board (WSIB) policy. Parties may send the WSIAT these submissions up to 1 business day before the hearing.”
- In the event you are still in the process of obtaining evidence, it would be best to submit the Not Hearing Ready form.

# What's Changing?

- Default to electronic case records – paper copies still available; however, representatives expected to work electronically
- Introduction of Navigation Services for self-represented parties. This service will help guide parties through the appeals process. Offered at 2 stages of the pre-hearing process: 1. starting an appeal/consent process; and 2. Preparing an appeal



# What about Appeals already in pre-hearing when these changes are official?

- 18 months or older and still waiting to submit the COA – **the 2 year deadline will remain to file the COA.** The Tribunal will send a letter with further instructions.
- If the appeal is younger than 18 months, the Tribunal will **send a letter to advise of next steps.** This may take up to 6 months, as cases will gradually move to the new process.