



WSIAT

In Focus

April 2005
Vol. 16, No. 1

The Newsletter of the Workplace Safety and Insurance Appeals Tribunal

MESSAGE FROM THE CHAIR

Ian Strachan

Renewed Commitment Toward a Quality Administrative Justice System

There was a consistent theme concerning appointments in the Chair's message carried in the Tribunal's Annual Reports for 2001 through 2003. In 2001, the report observed: "If the quality of administrative justice is to remain at a high level, ways must be found to ensure that qualified competent individuals remain in the administrative justice system." The 2002 report noted: "No skilled CEO devises a business plan which automatically terminates the employment of the most qualified, most competent and most experienced employees after six or nine years. Knowledgeable CEOs attempt to retain the services of those quality individuals through a variety of employment inducements." The message in the 2003 report focused on the need for additional knowledgeable adjudicators at the Appeals Tribunal and on the emergence of a new appeal backlog resulting from the previous government's ill-conceived reduction in the Tribunal's OIC roster.

Since the quality of the adjudicative product obviously depends upon the quality of the people involved in decision-making, the need for a "merit-based" system for appointing people to the administrative justice system was apparent. At the end of 2004, there emerged a "ray of light" for quality appointments to Ontario's administrative justice system, as the Ontario government announced an agency review and a renewed focus on the appointment process. The Divisional Court and the Ontario Court of Appeal had made it clear that they

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WSIAT Vice-Chair Appointed Dean of Queen's Faculty of Law

The Tribunal wishes to congratulate Bill Flanagan on his appointment as Dean of the Queen's University Faculty of Law. The appointment is for a five-year term, effective July 1, 2005.

Professor Flanagan served as a Vice-Chair of the Tribunal from June 1991 to May 2003, and was most recently appointed as part-time Vice-Chair for a three-year term, effective July 2004. He holds a JD from the University of Toronto Faculty of Law (1985), a DEA in international economic law from the University of Paris I (1986), and an LLM from Columbia University

(1989). He served as law clerk to the Hon. Justice W. Z. Estey of the Supreme Court of Canada in 1986-87.

Professor Flanagan began teaching at Queen's University in 1991 and was appointed a Queen's National Scholar in 1996. He is the recipient of two teaching awards at the Faculty of Law (1994 and 1998). His areas of research interest include international law, business law and property law. He is the co-author of one of Canada's leading property law casebooks and has published in a variety of other areas, including international human rights, international trade law and business law. He recently completed a research project examining the effects of globalization in Brazil, sponsored with an SSHRC/Law Commission of Canada grant. Since

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DECISION SUMMARY SEARCH TIP

Filters

With the continually growing number of records in the Decision Summary database, Keyword searches often return a lengthy list of results. Filters can be used to limit those search results.

There are three optional filters on the search screen that you may find useful: Reported Decisions Only; Noteworthy Decisions Only; and Summarized Decisions Only.

Reported decisions are those that appear in the W.S.I.A.T. Reporter, a quarterly bound paper publication produced by the Tribunal.

The **Noteworthy** designation is applied to decisions that may be of particular interest. They cover novel or unusual issues, different approaches to an issue, procedural points, contentious medical issues and conditions, etc.

Summarized decisions have a summary in the Summary field. The Tribunal no longer provides summaries for all decisions. Decisions of a routine nature on well-established issues are not summarized (but keywords are assigned to all decisions).

For more information about the filters and their use, click on the Help button at the bottom of the Decision Summary Search screen.

Ontario Workplace Tribunals Library To Go On-line

The Ontario Workplace Tribunals Library (OWTL) is preparing to go online. In the spring of 2005 the library will be launching a dedicated web site at owtlibrary.on.ca, enabling users to access and search the library catalogue on-line. In addition, users will be able to access a range of library services, from contacting a librarian for research assistance, to searching the decisions of the Workplace Safety and Insurance Appeals Tribunal, Ontario Labour Relations Board, Pay Equity Hearings Tribunal and Human Rights Tribunal of Ontario from a central source.

WSIAT PUBLIC INFORMATION MEETINGS 2005

Since 1999, the Tribunal has held public information sessions in the centres where it holds hearings. These sessions are designed to provide information to our stakeholders about our processes and services, to explain special initiatives, to assist stakeholders in understanding how to better access Tribunal resources, and to provide a forum for feedback regarding Tribunal processes.

The 2005 program will focus on many of the technical aspects of processing appeals at the Tribunal, including production, the “life of an appeal” (addressing such elements as pre-hearing and post-hearing processes from application to decision release), case assignments, staff communications with OICs, hearing preparations, scheduling, the roles of OIC vice-chairs and members, decision writing, decision making and the decision release process.

Sessions include a technical presentation by Tribunal staff and a vice-chair, as well as a discussion segment with a full hearing panel. The public information sessions are co-ordinated by the Tribunal’s Resource Department.

A SESSION IS SCHEDULED TO TAKE PLACE IN:

Thunder Bay

Tuesday, June 21, 2005

(9:00am-11:00am)

Valhalla Inn, 1 Valhalla Road,

Thunder Bay, Ontario P7E 6J1

(807) 577-1121

For more information and a complete schedule of upcoming sessions, visit our web site at: www.wsiat.on.ca or contact the Tribunal’s Resource Department at: (416) 314-3733, or toll free at: 1-888-618-8846, ext. 4-3733.

regarded the Appeals Tribunal as an “expert” tribunal which provides an informal, but informed, alternative to the courts. It is the quality of key OIC appointees which allowed the Tribunal to develop this reputation within the judicial system and to ultimately serve as a model for the new British Columbia Workers’ Compensation Appeals Tribunal. Both British Columbia and Quebec have begun significant reforms in the public appointments process designed to improve the integrity of their administrative justice systems. The Ontario government’s agency review, together with the focus on a reformed appointment process, signals a renewed commitment to a quality Administrative Justice system for Ontario and to the development of more expert tribunals.

This potential government reform was extremely timely from the Tribunal’s perspective, because the loss of some knowledgeable and competent adjudicators meant that the Tribunal’s appeal backlog continued to grow in 2004. While the Tribunal’s constituency continued to be understanding about appeal delays related to the backlog, the sense of frustration conveyed at the Tribunal’s regional outreach sessions was apparent. Having gone through one appeal reduction program, it was difficult for constituents to accept that a second backlog could be allowed to develop.

There were a number of factors which contributed to the loss of some adjudicators and the creation of a new backlog, including a 15-year salary freeze for OICs, which led a number of Tribunal lawyers/adjudicators to seek other employment. Persons who might otherwise have applied to join the Appeals Tribunal, saw the level of remuneration as a major obstacle which, when combined with the uncertainty of the appointment process, made career prospects in the Ontario administrative justice system less attractive. They saw that the only tangible reward for good work was not increased remuneration, but merely the opportunity to take on additional work. The government review, which includes a review of remuneration for OICs, should help address the long-term erosion in the salary levels at the Tribunal.

As the Appeals Tribunal enters 2005, it maintains its ongoing commitment to provide effective delivery of services within the workplace safety and insurance system; however, provision of this effective delivery can only take place if and when the Tribunal receives adequate tools to do the job. A roster of knowledgeable and competent adjudicators, together with sufficient budget resources, is the foundation for

any effective appeals system. Fortunately, many of the current OICs have shown remarkable dedication and professionalism by continuing to provide a quality adjudicative product in spite of the eroding remuneration levels. System-wide co-operation in the use of early intervention, improved training, knowledge management and ADR techniques, will allow the Board and Tribunal to build upon this foundation.

By the end of 2004, there were signs that the ray of light would continue to shine throughout 2005. Cabinet’s addition of nine new Vice-Chairs, including two university law school professors, towards the end of the fiscal year and the prospect of another 12 new Vice-Chairs in 2005 should enable the Appeals Tribunal to address the appeals backlog, once those individuals are trained and integrated into the hearing process. In addition, groundwork has been laid for the introduction of a new Knowledge Management system in 2005, which should enable new appointees to obtain information on a more timely basis and also allow experienced adjudicators to readily access research memos, case law and legislative provisions relating to their appeal caseloads.

As the quality of the Tribunal’s roster of adjudicators continues to evolve in 2005, the ray of light from 2004 should shine brighter and the shadow of the appeals backlog should diminish along with the timelines for appeals. It should also be a year in which Ontario rejoins British Columbia and Quebec as leaders in the Canadian administrative justice system.

TRIBUNAL MEMBERS

Since the last issue of *WSIAT In Focus* (August 2004), **Joseph Donaldson** has been appointed a part-time Member representative of employers; **Maureen Doyle, Robert Gale, Bernard Kalvin, Alan Levy, Julia Noble, Susan Peckover** and **Albert Suissa** have been appointed part-time Vice-Chairs.

NEWS FROM MLO

Medical Discussion Papers

The Tribunal has discussion papers on a variety of medical topics that are commonly involved in appeals. The papers are available to the public on the Tribunal's web site, and in the Library.

The following discussion papers have been added or updated:

- Chronic Stress Due to Job Strain
- Traumatic Brain Injury
- The Venous System

Generic Medical Reports

From time to time medical assessors provide reports on individual cases that contain generic information on a particular medical topic. This generic information may be useful in other cases where a similar medical issue is raised. Reports selected by MLO as having potential reference value are anonymized and forwarded to the Library.

Medical generic reports on the following topics have been placed in the Library, and are available in the vertical files:

TITLE	AUTHOR	DATE	LIBRARY LOCATION
Avascular Necrosis of Bilateral Femoral Heads	Dr. James P. Waddell	June 11, 2004	VF 11375
Bladder Cancer; Effect of Smoking and Exposure to Machining Fluids	Dr. Grant Angus Farrow	June 18, 2004	VF 11377
Cardiovascular and Endocrine Aspects of Hypertension	Dr. D.S. Beanlands	June 17, 2004	VF 11376
Colorectal cancer	D.S.R. Sarma, Ph.D.	August 8, 2002	VF 11369
Diffuse Interstitial Lung Disease	Dr. D. Ahmad	December 17, 2002	VF 11370
Gastrointestinal (GI), cancer, stomach,	Dr. Ron House	August 30, 2004	VF 11344
Gouty Arthritis	Dr. Duncan A. Gordon	June 8, 2004	VF 11374
Hepatitis C	Dr. George Sweeney	March 21, 2003	VF 11371
IgA Nephropathy	Dr. Daniel C. Cattran	October 27, 2003	VF 11372
Portal Hypertension	Dr. Morris Sherman	November 14, 2004	VF 11368
Priapism and Closed Head Injury	Dr. W.J. McIlroy	December 16, 2003	VF 11373
Psoriatic Arthritis	Duncan A. Gordon, MD	October 21, 2004	VF 11364
Report on the Association Between Lung Cancer and Radon Progeny	Dr. Robert Dales	August 28, 2004	VF 11345
Respiratory, lung, COPD, silicosis	Dr. Dildar Ahamad	July 26, 2004	VF 11343

All discussion papers and medical generic reports listed above are available in the Ontario Workplace Tribunals Library. When ordering medical generic reports, please quote the Library location number. Self-serve photocopies may be made in the Library for 20 cents per page. Alternatively, copies may be ordered for \$5 per document.

2005 PUBLICATIONS ORDER FORM

We are still accepting 2005 orders for the publications of the Workplace Safety and Insurance Appeals Tribunal. To send in a new order, use the 2005 Publications Order Form, which is now available on the web site. The order form is offered in both Word and pdf formats, and can be filled in on-line using either format. Fill in the form and mail it with any payment required to the Tribunal's mailing address, to the attention of the Library.

As in previous years, we offer two of our publications on a subscription basis. These are the W.S.I.A.T. Reporter (Reporter) and the W.S.I.A.T. Decisions on CD-Rom (CD). The Reporter is a book published quarterly that contains the full text and headnotes of selected Tribunal decisions. For the price of \$150 plus G.S.T., you will receive four volumes (numbers 71 to 74) for your 2005 subscription. The CD contains the full text of all decisions released by the Tribunal since 1985. The decisions are offered in Microsoft Word format. You will receive quarterly CD updates with your annual subscription. The cost of a new CD subscription is \$375 plus G.S.T. (price includes a one-time fee of \$250). When you renew your subscription in subsequent years, you will only pay \$125 plus G.S.T. annually. Back issues of the Reporter are also available using the order form and a number of free publications as well. For a complete list of our publications, please visit the "Forms" section of our web site.

Please take note: if you are a current subscriber to our publications, you do not need to fill in the 2005 Publications Order Form. Your renewal forms will have been mailed to you in late November 2004.

New Features Added to WSIAT Web Site (www.wsiat.on.ca)

Resource Materials

Recent Noteworthy Decisions

The section called Selected Recent WSIAT Decisions has been replaced by Recent Noteworthy Decisions. Broader criteria are used for posting decision summaries in this section. Previously, the section contained summaries of recent Tribunal decisions under consideration for publication in the WSIAT Reporter. The section now contains recent Tribunal decisions that have been identified by the Tribunal as "noteworthy." These are decisions that readers may find of particular interest because they cover novel or unusual issues, different approaches to an issue, procedural points or contentious medical issues and conditions. Decisions published in the WSIAT Reporter are chosen from the noteworthy decisions.

WSIAT Vice-Chair Appointed Dean *continued from page 1*

1998, he has served as Co-Chair of the Queen's Annual Business Law Symposium.

Professor Flanagan is the founder of the International Law Spring Program at the Queen's University International Study centre in the UK, and has served as Director of this program since 2001. Since 1998, he has also served as the Executive Director of the Canada AIDS Russia Project (CARP), an HIV research and training project in Russia funded by the Canadian International Development Agency.

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Tribunal Chair: Ian Strachan

Tribunal Director: Marsha Faubert

Publications Manager: David Beattie

Editor: Dawn Tam Patterson

Contributors: David Beattie,
Maria Erskine, Marvin Goldstein,
Melinda Reyes, Ellen Schoffer,
Ian Strachan

French Version: Véronique Lavoie-Naster

Subscriptions: Mary Pavic

Workplace Safety and Insurance Appeals Tribunal

505 University Ave., 7th Floor
Toronto ON M5G 2P2

Telephone: (416) 314-8800

Fax: (416) 326-5164

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