



WSIAT

In Focus

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The Newsletter of the Workplace Safety and Insurance Appeals Tribunal

WSIAT Celebrates 25th Anniversary at Osgoode Hall Symposium



Suzanne Dajczak, Worker Counsel; David Brady, partner at Hicks Morley LLP; Ian J. Strachan, Tribunal Chair; Ron Ellis, former Chair; Susan Adams, Tribunal Director

by *Melissa Fedsin*

In October 2010, the Workplace Safety and Insurance Tribunal (WSIAT) celebrated its 25th anniversary, and in recognition of this significant milestone held its 25th Anniversary Symposium at Osgoode Hall on December 14, 2010. During the

symposium, which drew a crowd of nearly 150 professionals from the workplace safety and insurance law community, guests were treated to an afternoon in the company of distinguished panel speakers and an evening of congenial discussion at the reception afterward.

The first panel, which was moderated by **Susan Adams**, WSIAT Director, consisted of the former Chair of the Tribunal and two leading counsel in the area of workplace safety and insurance law. The panel considered the topic “WSIAT: The Future Revisited.”

Ron Ellis, the first Chair of the Tribunal, provided a careful review of the unique structural advantages enjoyed by WSIAT, which allowed it to become an “exemplar of all that is good in the tribunal world.” Mr. Ellis highlighted the significance the Tribunal’s institutional independence and freedom from financial or political threat of any ministry, specifically the importance of the Tribunal’s ability to control appointments, to develop and defend its own budgets and to freely create and implement its own innovative operational designs. Mr. Ellis stated that WSIAT is evidence of what can be achieved by any optimally competent group of managers and adjudicators when the government “gets

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the structure right,” and recommended that this model be adopted as the standard structural template for adjudicative tribunals everywhere.

David Brady, partner at Hicks Morley LLP, and a previous winner of the Ron Ellis award for excellence in workers’ compensation law, described the Tribunal as “a body that keeps its promises.” Mr. Brady commended the Tribunal for its well-reasoned and consistent decisions, noting that “it is extraordinary to receive decisions which are understandable, readable and that representatives can share easily with their clients.” Mr. Brady praised the Tribunal for the transparency of its process and its careful attention to conducting hearings that are fair and sensitive to the needs of the parties, specifically noting the Tribunal’s clear practice directions, easily accessible database of case law and library of expert medical papers. Mr. Brady also commented on the Tribunal’s continued history of outreach, particularly its significant presence and leadership at the Ontario Bar Association. Mr. Brady praised the Tribunal as an administrative success story; engendering trust, possessing credibility, and engaging both workers and employers.

Suzanne Dajczak, Worker Counsel, stated that over the past 25 years the Tribunal has breathed life and given meaning to the *Workplace Safety and Insurance Act* and WSIB policy for injured workers. Praising the Tribunal as “second to none” in terms of accessibility, fairness and independence, Ms. Dajczak attributed that the Tribunal’s well-reasoned, consistent and balanced decisions were due in part to the tripartite panel compositions, and in part to the knowledgeable and dedicated Vice-Chairs, Members and staff. Ms. Dajczak also commented that with the injured workers of today facing increasingly complex issues both medically and legally, the opportunity for a *de novo* hearing and the role of the Tribunal are more important than ever before.

The second panel, moderated by **Dan Revington**, General Counsel to the Tribunal, consisted of the Honourable Justice John Laskin of the Ontario Court of Appeal, the Honourable Justice John Murray of the Ontario Superior Court and Professor Emeritus David Mullan. They considered the topic of “Delivering Administrative Justice.”

Justice John Laskin, Ontario Court of Appeal, recognized WSIAT as one of the most important administrative tribunals in Ontario and commented on the Tribunal’s good fortune to have enjoyed such strong leadership from the



Justice John Murray, Dan Revington, Tribunal General Counsel, David Mullan, Professor Emeritus – Queen’s University, Justice John Laskin, Ian J. Strachan, Tribunal Chair

former Chair Ron Ellis and current Chair Ian Strachan. Justice Laskin highlighted the Tribunal’s near impeccable record with the Divisional Court and how their decisions have been consistently upheld by the Ontario Court of Appeal. He also discussed the importance of the Tribunal’s duty to provide not only adequate reasons, but reasons for reasons, noting the thousands of workers affected by Tribunal decisions each year.

Justice John Murray, Ontario Superior Court, congratulated WSIAT on its success. He noted WSIAT’s outstanding record on judicial review. He commented on the only decision where the courts had ever quashed a Tribunal decision, the surprising analysis applied in that decision, and the difficulties that created for WSIAT. Justice Murray also focused on the topic of access to justice and self-represented litigants; particularly the right to represent oneself, the right to equal access and the right to meaningful access. Justice Murray stated that the objective of adjudicators, especially in the context of self-represented individuals, is to create transparent and engaged neutrality. Justice Murray recognized that WSIAT has already achieved this objective in a number of ways, specifically in that procedures are simplified, there is accessible “do-it-yourself” information and that an array of advisers is available to facilitate cases involving self-represented individuals.

David Mullan, Professor Emeritus from Queen’s University Law School and one of the foremost experts on Canadian Administrative Law, delivered a paper he had prepared for the WSIAT Symposium. In his presentation, Professor Mullan described consistent decision-making as a core value for high-volume jurisdiction tribunals and agencies, highlighting the importance of precedent and *stare decisis* in the tribunal context. Professor Mullan recognized WSIAT’s highly regarded reputation for predictability and consistency in decision-making, specifically citing *Decision No. 795/94*, which he stated

WSIAT STAFF ACTIVITIES

On March 8, 2011, at an Ontario Bar Association (OBA) professional development program on “Current Issues in Tribunal Adjudication: an Update for Advocates and Members” Tribunal Vice-Chair, **Eleanor Smith**, participated as a member of a panel on “How Qualified? Using Expert Testimony.” Counsel to the Tribunal Chair, **Carole Prest**, participated as moderator of a panel on “Active Adjudication or Entering the Arena – How Much is Too Much?”

On March 29, 2011, Tribunal Counsel Office lawyer **Danielle Allen** was part of a panel of volunteer judges at the OBA Secondary School Mock Trial Tournament. The annual tournament is hosted by the OBA, in conjunction with the Law Day committee, as a lead-up to a week of public educational activities that mark the anniversary of the *Charter of Rights*. Ontario secondary school students are given a fictional criminal case, and act out the roles of counsel and witnesses for either the defence or the crown. Ms. Allen was inspired by the students’ talent and dedication, and said that making the decision on which team would progress to the next round was a real challenge.

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John Slinger, WSIB Chief Operating Officer; Sid Ryan, President of the Ontario Federation of Labour; Steve Roberts, partner at McTague Law Firm LLP

demonstrated the Tribunal’s awareness of how issues of precedent and *stare decisis* should be addressed. Professor Mullan commented that WSIAT has already successfully employed a number of internal techniques which help administrative tribunals to ensure consistency in their decisions, including continuing education for adjudicators, the designation of certain decisions as key precedents and the use of tripartite panels for matters where issues of particular significance seem likely to arise.

The third panel, moderated by **John Slinger**, WSIB Chief Operating Officer, consisted of two well-known management and labour advocates, Steve Roberts and Sid Ryan. They discussed the topic “Why the Tribunal Matters.”

Steve Roberts, partner at McTague Law Firm LLP, recognized that the Tribunal “cares about getting it right and they have cared about getting it right for 25 years.” In

measuring the success of the Tribunal, Mr. Roberts praised the accessibility of the Tribunal’s appeal system and its superior, quality service to employers, workers and other stakeholders. Mr. Roberts also spoke highly of the Tribunal’s website, commenting that it “provides a plethora of information” not just on Tribunal processes, but also on Tribunal case law, noteworthy decisions and up-to-date medical discussion papers about issues relevant to workers’ compensation law. Mr. Roberts commended the Tribunal’s excellent work and noted that employers have not taken full advantage of the opportunities that are available through the Tribunal.

Sid Ryan, President of the Ontario Federation of Labour, voiced his pride in the tremendous success of the Tribunal over the years, as well as the various agencies dedicated to making the workplace safety and insurance system work. Mr. Ryan expressed his belief that the Tribunal “is part of a system which is very much worth protecting and one that could work across Canada.” Mr. Ryan described the Tribunal as a fair, open and transparent system, free from the interference of politicalization and ideology, which has the confidence of both the labour and employer communities. While urging the Tribunal to restrict the number of written hearings and increase the number of full panel hearings, Mr. Ryan mentioned his appreciation for the dedication of the Tribunal Vice-Chairs and the value of tripartite Panels of adjudicators in ensuring fair and consistent decision-making.

Following the panels’ presentations, Ian Strachan, Tribunal Chair, thanked the speakers and symposium guests, inviting everyone to stay for the reception afterward.

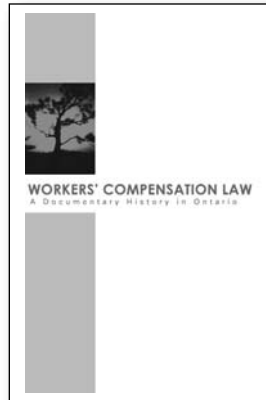
Revision to COA form

The Tribunal will be introducing a revised version of the Confirmation of Appeal (COA) form shortly. With the help of stakeholder feedback, we have simplified the form and reduced its length from 6 pages to 2. Like the Response form, it will now be available for staff to generate in the Tribunal's case tracking system, on a party-by-party basis. This will allow staff to customize the form for each party. The new, generated version of the form will confirm whether proof of service is required and, if it is, to whom it should be served. It will also provide the specific deadline for the submission of the form. In this way, the form should provide clearer instructions to parties with cases at the Tribunal, particularly those for whom the Tribunal process is new.

A generic version of the simplified COA will also be available on the Tribunal's public website at: www.wsiat.on.ca.

NEWS FROM THE OWT LIBRARY

Visitors to the Ontario Workplace Tribunals Library may notice a new face. Peter Marques, our Head Librarian, is on secondment for nine months with the Ontario Ministry of Government Services working on a knowledge management initiative for the government. His replacement during this period is Martha Murphy. Martha comes to us from the Ontario Fire Marshall's office. She has a wide experience in delivering library services in the public sector. Martha has already begun providing services at the reference desk and is always available to assist library users with reference requests. Do not hesitate to phone Martha at 416-314-3700.



One of the Ontario Workplace Tribunals Library's newest information products is the *Workers' Compensation Law: A Documentary History in Ontario*. This web-based guide provides a document-based overview of workers' compensation law and policy in Ontario, from origins and foundations to the major reforms which occurred over the last 40 years. To assist with your research needs, we have also included the OWTL catalogue record for all the historical documents we have in our reference library.

SCHEDULING UPDATES FOR TORONTO AND HAMILTON HEARING LOCATIONS

Hamilton is one of 10 regional centres where the Tribunal conducts hearings. The Tribunal will continue to hold hearings in Hamilton but, in the near future, parties from the Hamilton area will have their hearings scheduled in either Hamilton or Toronto. This is already currently taking place on a limited basis. The selection of Toronto and Hamilton hearing locations will be made at the time appeals are forwarded to the Scheduling Department.

The Tribunal schedules hearings in 10 locations throughout the province. The Tribunal has a fixed number of adjudicators and resources needed to support the hearings in the regional centres. The parties in other locations are a significant distance from Toronto and do not therefore have an option of coming to Toronto for hearings. Parties in and around Hamilton are a reasonable distance from Toronto and this provides the added option for a Toronto hearing location. The availability of hearings in either Hamilton or Toronto gives the parties an opportunity to have a hearing scheduled in a timely manner.

The Tribunal is focused on reducing the wait time for hearings. By providing two hearing locations, we expect to be able to process cases more smoothly and with shorter wait times for appellants. Parties, including representatives and employers, can anticipate a mix of both Toronto and Hamilton hearing locations. The primary criterion for the selection of the hearing location will be the availability of the next hearing date that can be offered to parties. The Tribunal cannot simply schedule a hearing date in Hamilton based on preference. We will try to accommodate parties scheduled for Toronto hearings. An example would be to suggest afternoon start times for half day hearings.

Details concerning the implementation date for the change will be posted on the Tribunal's website (www.wsiat.on.ca).

TRIBUNAL MEMBERS

Since the update published in the previous issue of *WSIAT In Focus* (Fall 2009), **Keith Cooper** was appointed as a part-time Vice-Chair and **David Purdy** was appointed as a part-time Member.

In the same period, **Mel Crystal**, **Julia Noble** and **Angus Patterson** were reappointed as full-time Vice-Chairs, and Vice-Chair **Rosemarie McCutcheon**'s appointment was converted from part-time to full-time. **Bonnie Goldberg**, **Susan Peckover** and **Wendy Sutton** were reappointed as part-time Vice-Chairs.

Bill Davis, **Kelly Hoskin**, **Arthur Lust**, **Antonio Signoroni** and **Marcel Trudeau** were reappointed as part-time Members.

Congratulations, all.

Jim Dimovski, who has been a WSIAT Vice-Chair, full-time and then part-time, for over seven years, resigned earlier this year to return to private practice; **Maureen Doyle**, a part-time Vice-Chair at the WSIAT for over six years, was recently appointed full-time at the Human Rights Tribunal of Ontario (Social Justice Tribunals of Ontario); and **Rosemary Muzzi**, a part-time WSIAT Vice-Chair since 2007, is now an Arbitrator at the Financial Services Commission of Ontario.

The Tribunal appreciates their years of service, and wishes them bright futures.

NEWS FROM MLO

Medical Discussion Papers

The Tribunal commissions medical discussion papers to provide general information on a variety of medical topics that are commonly involved in appeals. Each paper is written by a recognized expert in the field who is selected by the Tribunal. Each expert is asked to provide a balanced view of the current medical knowledge on the topic.

The following is a list of the new discussion papers posted on our public web site since our last issue of *In Focus*:

- Addiction by Dr. Tony George
- Complex Regional Pain Syndrome (RSD – Reflex Sympathetic Dystrophy) by Dr. Anthony Weinberg
- Hand-Arm Vibration Syndrome by Dr. Ronald A. House
- Post Traumatic Stress Disorder by Dr. Diane Whitney
- Shoulder Injury and Disability (Revised) by Dr. Hans K. Uthoff

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