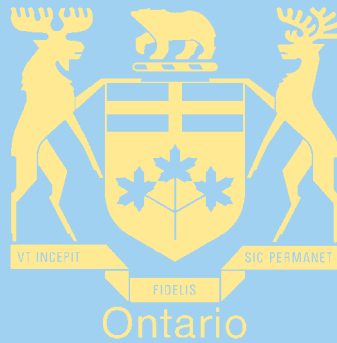


2001



Annual Report



Workplace Safety and Insurance Appeals Tribunal

**Tribunal d'appel de la sécurité professionnelle et
de l'assurance contre les accidents du travail**





2001



Annual Report



**Workplace Safety and Insurance
Appeals Tribunal
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INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal (WSIAT or Tribunal) considers appeals from final decisions of the Workplace Safety and Insurance Board (WSIB or the Board) under the *Workplace Safety and Insurance Act, 1997* (WSIA). The WSIA, replacing the *Workers' Compensation Act*, came into force January 1, 1998. The Tribunal is a separate and independent adjudicative institution. It was formerly known as the Workers' Compensation Appeals Tribunal, until the name was changed pursuant to section 173 of the WSIA.

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2001 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

The Tribunal Report focuses on Tribunal activities, financial affairs and the evolving administrative policies and practices.

Chair's Report

END OF THE BEGINNING

“This is not the end. It is not even the beginning of the end; but it is, perhaps, the end of the beginning.” The words were a telling prophecy when spoken by Churchill in the context of a war. In a diminished WSI context, the phrase “end of the beginning” could apply to the year 2001 and to the Appeals Tribunal’s recent adjudicative evolution.

The changes introduced by the *Workplace Safety and Insurance Act, 1997*, and the massive inflow of appeals which followed, necessitated significant changes in the Tribunal’s structure and operations. Problems involving long delays in processing and in fixing hearing dates for a caseload that had increased by approximately 400% over three years, essentially required a new beginning for the Tribunal. One of the first steps was the development of a business plan to deal with the increased caseload and to point the Tribunal towards a target date when it would hopefully reach a “steady state” mode, i.e., one where the outflow of appeal dispositions matched the inflow of appeals. With the assistance of the Workplace Safety and Insurance Board (WSIB), the Ministry of Labour (MOL) and the Ombudsman, the Tribunal began its appeal inventory reduction project.

It was clear that, in order to be successful, the project would require assistance throughout the WSI adjudicative system. The WSIB pledged its support and began by filling a large number of vacancies at the initial adjudication level. The WSIB Appeal Branch agreed to consolidate related appeals within the adjudicative system under a “whole person adjudication” guideline and reduce the outflow of final appeals to the Tribunal. Regular discussions between Board and Tribunal personnel evolved into a “Quality Loop” process in which staff met to identify administrative problems within the adjudicative system and to propose solutions. The Tribunal’s external Advisory Group lent its support to adjudicative changes and to the new Appeal Application process. With a renewed emphasis on alternative dispute resolution (ADR), as well as an expanded roster of adjudicators and appeal administrators, the Tribunal took aim at a series of quarterly targets. While there were many bumps along the road, Tribunal personnel overcame most internal problems.

These included lack of space, mould contamination in our building, extensive training for new personnel, development and implementation of a new case management system, rumours of a mega-tribunal designed to swallow the Appeals Tribunal, introduction of revised Appeal Applications and ongoing construction disruptions. By the end of 2001, the combined efforts of everyone involved in the WSI administrative justice system allowed the Tribunal to achieve its year-end target. With continued co-operation, the Tribunal anticipates meeting its March 31, 2002 target and, after that date, maintaining a steady-state appeal flow.

One of the Tribunal objectives for 2002 was the guarantee to parties of a hearing date within four months of those parties filing the Confirmation of Appeal notice advising that the parties were ready to proceed to a hearing. By the end of 2001, the Tribunal was offering parties a hearing date within 90 days of filing of the Confirmation of Appeal form. This change in availability of hearing dates meant a significant change in the approach of many representatives. At one time, representatives would automatically advise the Tribunal that they were ready to proceed to hearing, knowing that it would take two years to actually reach the hearing stage. Now representatives do not file the Confirmation of Appeal form until they are fully prepared for a hearing; they know that the hearing date will be set well within a four-month period. This change in availability of Tribunal hearing dates, combined with the shortened timelines for WSIB internal appeals, puts even more pressure on lawyers and representatives who specialize in the workplace safety and insurance area. They are now offered early dates by both the Appeals Branch and the Tribunal and must balance their caseloads and time commitments to accommodate both agencies.

If March 31, 2002 is viewed as the “end of the beginning” phase, it means that the remainder of 2002 will represent a “step down” phase for the Tribunal operation. Given the reduced appeal inventory, the Tribunal will have a reduced budget and this, in turn, will result in reduced numbers of adjudicators and appeal administrators. Although the number of personnel will decline, experienced staff and adjudicators should ensure that there is no erosion in the quality of service. They will be assisted by improvements in the Information Technology system (traclT) which should enhance accessibility to appeal information and simplify the overall process. As the traclT system is further refined, the Tribunal will be able to store new material electronically and not depend upon paper records. In the next phase of the Tribunal’s evolution, we should move towards the electronic transfer of Appeal Records from the WSIB to the Tribunal and, ultimately, to the parties. The groundwork at the Tribunal for this type of e-system was laid during 2001 and, at least potentially, signals a major move towards e-adjudication. During 2001, the Tribunal also opened a new user-friendly website which provides access to some Tribunal resources, including Tribunal decisions. Interested parties can access the website at www.wsiat.on.ca. In November, this new website received 136,000 “hits,” 25% of them involving the decision summary search page.

Of necessity, the primary focus at the Appeals Tribunal over the past few years has been increased production and reduction of the appeal inventory. As the Tribunal moves towards a steady-state scenario, there will be a renewed focus by stakeholders

on the quality of our administrative justice system. Within the workplace safety and insurance adjudicative system, “quality loop” communication should ensure that the Board and Tribunal continue to review their policies and practices with a view to providing parties with a relatively seamless system. Continued meetings between Board and Tribunal staff on administrative issues should ensure that most potential problems are identified and solutions developed before those problems become a significant obstacle within the adjudicative system.

As always, the quality of the administrative justice system will depend upon the quality of the individuals involved in that system. 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. Successful businesses, sports teams and justice systems find ways to retain their best people on a long-term basis. Successful businesses utilize such devices as “top hat” pension plans, deferred profit sharing plans and stock options to ensure that the best people remain with the operation. Sports teams utilize long-term contracts and options on future services to achieve the same result. If the quality of the administrative justice system in Canada is to improve, creative measures are required to ensure that quality individuals remain within the system and continue to make a contribution towards improving Canadian administrative justice.

In last year’s Annual Report, I referred to our “journey of a thousand miles” and some of the initial steps which were taken to launch the Tribunal on that journey. As the first stage of the journey nears completion, there should be some satisfaction in the overall performance of the Tribunal and the workplace safety and insurance adjudicative system. There are indeed miles to go; however, the remainder of the journey should be easier by virtue of a successful beginning. In many ways, that beginning has laid a foundation for continuing improvements to the WSI adjudicative system and, with the ongoing contributions of quality individuals, the “end of the beginning” should ultimately be viewed as a Canadian administrative justice success.

HIGHLIGHTS OF THE 2001 CASE ISSUES

This section highlights some of the legal, factual and medical issues considered by the Tribunal in decisions that were summarized during 2001.

The *Workplace Safety and Insurance Act, 1997* (WSIA), came into force on January 1, 1998. It creates a system of workplace insurance for accidents occurring after December 31, 1997, and amends and continues the pre-1985, pre-1989 and pre-1997 *Workers’ Compensation Acts* for prior injuries. During 2001, the Tribunal adjudicated cases under all four Acts. For convenience, cases dealing with the WSIA are reviewed first.

Appeals Under the WSIA

The WSIA amalgamated the previous temporary and long-term disability benefit schemes into a single loss of earnings concept, with flexible review points based on material change in circumstance. In 2001, there was an increasing number of appeals under the new loss of earnings (LOE) provisions. *Decision No. 2938/00* (2001), 57 W.S.I.A.T.R. 180, held that the WSIA reflects a legislative intention to create two distinct periods of entitlement to LOE benefits. The first is the early and safe return to work (ESRTW) phase, where the worker and employer co-operate in the worker's early and safe return to work. Loss of earnings is determined by what the worker earned or is able to earn in suitable employment after the injury. The second phase, which is directed to labour market re-entry (LMR), follows if ESRTW is unsuccessful. During LMR the Board determines whether the worker can be assisted to return to work, and additional factors are considered in determining benefit entitlement.

Co-operation in ESRTW involves interaction between the worker and employer. The Functional Abilities Form for Timely Return to Work is an important ESRTW tool under Board policy because it provides the employer with information to structure suitable work. The worker will not be entitled to benefits where he failed to pick up an FA form and the employer would likely have been able to supply suitable work (*Decision No. 638/01* (2001), 57 W.S.I.A.T.R. 283). Co-operation for the employer involves more than offering essentially the same job and telling the worker to be careful about lifting (*Decision No. 2107/00* (December 11, 2000)). For the worker, Board policy requires that all reasonable steps be taken to get information from third parties to assist in ESRTW; however, the worker will not be penalized where he has taken reasonable steps but there is delay on the part of health care practitioners. See *Decision No. 710/01* (March 23, 2001). Benefits will also not be reduced where the worker reasonably relies on medical advice. For example, the Tribunal set aside a finding that a worker could return to work wearing gloves as protection against paint solvents (*Decision No. 810/01* (2001), 57 W.S.I.A.T.R. 308).

Adjudicative issues have arisen where the Board has not been involved in the ESRTW or LMR phase. For example, Board policy requires Board notice of the worker's obligation to co-operate before benefits are discontinued. *Decision No. 2474/00I* (2000), 55 W.S.I.A.T.R. 296, sought submissions from TCO and the Board on this. Submissions were received during 2001 although a final decision has not yet issued. Meanwhile, Tribunal decisions have generally found that lack of notice does not affect the Tribunal's adjudicative finding that the worker has not co-operated. See, for example, *Decisions No. 1900/00* (2001), 57 W.S.I.A.T.R. 139, and *1662/01* (August 28, 2001), where the worker's decision to quit work voluntarily despite the employer's attempts to accommodate him at no wage loss meant that he had taken himself out of the statutory scheme and was not entitled to notice or benefits. In *Decision No. 1646/01* (August 29, 2001), the worker failed to co-operate but could not have performed work at no wage loss. The Tribunal exercised the statutory discretion to reduce benefits for non-co-operation and awarded 25% benefits.

Different adjudicative issues arise when an LMR program was not offered at the appropriate time. The Tribunal has found that the Board adjudicative practice guidelines, while not binding, are reasonable to apply in this situation and has awarded full LOE benefits where the worker is making reasonable efforts to secure suitable employment or improve employability. See *Decision No. 2222/01* (September 18, 2001). *Decision No. 2981/00* (2000), 56 W.S.I.A.T.R. 203, applied the Board's practice guidelines to award 50% LOE where the worker was involved in physiotherapy but could also have worked part-time if he had made an effort.

Several cases have considered the Board's new policies on short-term and long-term wage loss calculations. *Decision No. 186/01* (October 15, 2001), found that the underlying consideration under the WSIA and Board policy is fairness, as it was under the earlier legislation and policy. *Decision No. 1389/01* (May 31, 2001) interpreted Board policy on "regular overtime" as referring to the worker's mandatory 55.5 hour work week, rather than the typical 44 hour work week.

Time Extensions Under the WSIA

The WSIA introduced a time limit of six months or "such longer period as the Tribunal may permit" for appealing Board decisions.

In October 2000, the Tribunal adopted its Practice Direction on *Time Extension Applications* (2000), 54 W.S.I.A.T.R. 313, to provide guidance on the Tribunal's caselaw and procedures. This Practice Direction has been distributed and applied in 2001. See, for example, *Decision No. 1544/00ER* (2001), 57 W.S.I.A.T.R. 114, and *Decision No. 634/01E* (2001), 57 W.S.I.A.T.R. 279, which clarify how different periods of delay are to be analyzed for the purposes of the Practice Direction.

The Tribunal has also had to consider situations where the effect of the Board's decision was not apparent at the time of the decision. Generally, time will not run until the effect is clear or a time extension will be granted. For example, where the effect of the Board's decision was not known until the decision was implemented, time ran from the date of implementation (*Decision No. 3203/00E* (2000), 56 W.S.I.A.T.R. 249). Similarly, where one party appeals just before the expiry of the time limit, the other has been granted an extension of time to cross-appeal (*Decision No. 1968/00* (March 12, 2001)).

Is a time extension necessary where a party has previously appealed to the Tribunal but then withdrew the appeal? If the appeal was withdrawn on a without prejudice basis, especially if this occurred before 1998, a time extension has generally been held not to be necessary or has been granted. See *Decisions No. 3551/00E* (2001), 56 W.S.I.A.T.R. 279, *1088/00ER* (2001), 57 W.S.I.A.T.R. 59, and *2456/01E* (September 27, 2001). If the withdrawal was granted after the introduction of time limits and the party was advised of the time limits, a time extension has been refused (*Decision No. 2521/01E* (October 2, 2001)).

There is a similar six-month time limit for internal Board appeals. *Decision No. 1790/011* (August 23, 2001), held that the Tribunal had jurisdiction over the Board's refusal to grant a time extension since the denial had a substantive effect on the party's rights.

Board Policy Under the WSIA

While the Tribunal previously considered Board policy, the WSIA expressly states that, if there is applicable Board policy, the Appeals Tribunal shall apply it when making a decision. This requirement also applies to appeals under the earlier Acts.

Section 126 of the WSIA sets out a process for the Board to identify an applicable policy and for the Tribunal to refer policy to the Board if the Tribunal concludes that the policy is inapplicable, unauthorized or inconsistent with the Act. The referral is to be in writing and state the reasons for the Tribunal's conclusions. The Board then has 60 days to provide the parties with an opportunity to make submissions and issue a written direction with reasons.

As noted in the last Annual Report, in a few cases the Board has asked the Tribunal to reconsider a decision when the Board disagrees with the Tribunal's interpretation or application of policy. The Tribunal's cases continue to hold that the Tribunal has jurisdiction to consider such a request; however, the Board does not have special status and must meet the usual threshold test. See *Decisions No. 624/98R* (2001), 57 W.S.I.A.T.R. 16, *1796/99R* (2001), 57 W.S.I.A.T.R. 35, and *112/99R* (October 29, 2001).

Tribunal decisions have also dealt with the question of what it means to apply policy, in light of the statutory direction to decide on the merits and justice. As in other administrative settings, policies are generally developed to create consistency and fairness in the application of legislation, but cannot fetter discretion (*Decision No. 652/93R* (December 15, 2000)). Exceptional circumstances may justify an exception to Board policy on the merits and justice of the case (*Decision No. 2226/00* (February 19, 2001)); however, the merits and justice provision cannot be relied on to reach a result which is inconsistent with the Act (*Decision No. 2531/00* (2000), 56 W.S.I.A.T.R. 129). What constitutes exceptional circumstances will vary depending on the nature of the policy. For example, where the issue is the Board's policy on employer interest, exceptional circumstances must be determined by considering the position of the employer relative to similarly situated employers who have also not been allowed retroactive interest. See *Decision No. 777/01* (2001), 57 W.S.I.A.T.R. 290.

The last Annual Report noted that *Decision No. 1943/98A* (2000), 55 W.S.I.A.T.R. 45, had made a section 126(4) referral of the Board's policy classifying municipally-run homes for the aged as Schedule 1 employers. The Board responded that there was a basis for classifying such homes under either Schedule 1 or Schedule 2, and made submissions on the start date for a transfer back to Schedule 2. In *Decision No. 1943/98F* (November 23, 2001), the Panel noted that the Board had put

forth a new analysis but that it was not necessary to consider the effect of this since the result was the same. While the Panel considered the Board's request regarding the start date of the transfer, it concluded that the potential prejudice to the employers outweighed other concerns.

Again as noted in the last Annual Report, there is a question about when a Board policy is established by a formal enough process to be considered "policy" for the purposes of section 126. *Decision No. 381/00* (February 28, 2001), found that Board Document No. 4.1 on average earnings constituted "policy" under section 126 even though it had not been minuted or approved by the Board of Directors. Document No. 4.1 was not just a practice, as it had been released as a written statement of official Board policy and made available to the public. Although Board policy in the area had been amended, Document No. 4.1 was not inconsistent with the Act. More recently, the Board has adopted a policy on what constitutes policy, which will be considered in future Tribunal cases.

In another interesting decision, the Tribunal upheld the Board's policy on rating hearing loss. Although there were potential flaws with the rating schedule, eight out of 10 provinces used a similar approach and there was insufficient evidence to establish that the schedule was inconsistent with the Act (*Decision No. 2620/00* (November 29, 2000)).

Benefits Under the Earlier Acts

During 2001, the Tribunal continued to adjudicate claims under the earlier workers' compensation legislation. The pre-1985 and pre-1989 Acts provide pensions for permanent disabilities and temporary benefits for short-term disabilities. Beginning in 1989, transitional supplements became available for workers receiving pensions. The pre-1997 Act introduced a dual award system of non-economic loss (NEL) awards and future economic loss (FEL) awards for permanent impairment, and retained temporary benefits for temporary disabilities. As originally enacted, the FEL scheme was based on an initial determination (D1), with a review after two years (R1) and a final review after five years (R2). As of January 1, 1998, the R1 and R2 reviews have been replaced by review on material change of circumstances and final review after five years.

Interesting cases under the earlier pension scheme include *Decision No. 203/95* (December 19, 2000), which considered pension ratings for hand/arm vibration syndrome in the absence of Board policy, and *Decision No. 194/01* (June 29, 2001), which reviewed the legal basis for the Board's 1965 policy recognition of a pension award for loss of kidney function.

A number of cases considered the Board's policies under the pre-1997 Act on calculation of future loss of earnings at R1 and R2. The R2 statutory provisions have been found to require that a non-variable projected wage be selected at the R2 date. Board policy identifies four situations at R2: workers who return to work but not in a Board-identified suitable employment or business (SEB);

workers who have never returned to work; workers who are not currently working; and workers who return to work at a Board-identified SEB. The Tribunal has applied the policy in situations where the Board adjudicator failed to do so and the policy reasonably applied. See, for example, *Decision No. 1242/01* (July 9, 2001), where it was found the Board erred in projecting a wage increase at R2 when Board policy required use of actual wages since the worker was employed in a SEB-identified job. If it is clear that the worker would not have received sufficient upgrading or retraining to have any reasonable likelihood of demanding the wages indicated by Board policy, the Tribunal has considered the circumstances of the case and reached a decision on the merits and justice (*Decision No. 1328/01* (July 13, 2001)). When a worker's situation was not specifically covered by the policy, the Tribunal has selected the best approximation (*Decision No. 558/01* (July 31, 2001)).

Decision No. 2457/00 (2000), 56 W.S.I.A.T.R. 114, examined the interaction between the Board's R2 policy, which indicated that earnings of fully experienced workers should be used in the circumstances of that case, and the Board's policy to use entry level wages after completion of an LMR plan involving a new skill set. While entry level wages were appropriate for the initial FEL, which is time limited, it is not reasonable to assume only entry level wages over the entire R2 period unless the worker is close to retirement.

A few cases have considered the new statutory provision enabling FEL to be reviewed after a material change in circumstance (*Decisions No. 839/01* (April 30, 2001), and *2058/00* (February 26, 2001)) and Board policy implementing the transitional WSIA provisions on ESRTW (*Decision No. 847/01* (July 30, 2001)).

The Board's policy on CPP disability pension benefits and partial FEL awards has also been considered. While the Board initially did not deduct CPP benefits from partial FELs, this practice changed in 1996. Cases have noted the underlying policy intent to avoid over-compensation and the statutory direction to consider CPP benefits. See, for example, *Decisions No. 199/00* (2001), 57 W.S.I.A.T.R. 47, and *2792/00* (2001), 57 W.S.I.A.T.R. 155.

Employer Issues

In 2001, the Tribunal heard a number of appeals involving issues of particular interest to employers, including appeals on classifications, penalties and interest. The last Annual Report noted that the Board had asked the Tribunal to reconsider several Tribunal decisions which had awarded retroactive interest on the grounds that the Board did not have a pre-1997 policy on employer interest. *Decision No. 585/98R* (2000), 54 W.S.I.A.T.R. 51, accepted the Board's submissions that there was a general policy not to award interest before January 1, 1997, but found there was a discretion to do so in exceptional circumstances.

Cases released in 2001 have generally applied this analysis and have not awarded pre-1997 interest merely on the basis of a Board error, as all retroactive interest appeals involve a Board error. There must be exceptional circumstances when the employer's situation is compared to other employers who have also been denied

retroactive interest. See, for example, *Decisions No. 652/93R* (2000), 56 W.S.I.A.T.R. 1, and *2596/00* (2000), 56 W.S.I.A.T.R. 150. *Decision No. 777/01* (2001), 57 W.S.I.A.T.R. 290, clarified that even if it were found that the Board did not have a pre-1997 employer interest policy, retroactive interest would still be awarded on a discretionary basis where there were exceptional circumstances. *Decision No. 652/93R* found that there were sufficiently exceptional circumstances when the magnitude of the sum (\$4 million) and the size of the employer were considered, since there would be a loss of symmetry within the business arena in which the employer competed and shared a rate.

The Tribunal upheld Board policy on supplementary premiums when an employer opts out of voluntary coverage (*Decision No. 20/01* (2001), 57 W.S.I.A.T.R. 232) and Board policy on allocation of costs for NEER experience rating purposes (*Decision No. 721/01* (March 14, 2001)); however, the Tribunal found the Board's practice of dealing with owner/operators went beyond the requirements of Board policy (*Decision No. 3133/00I* (March 19, 2001)). Several cases considered the regulatory definition of "associated companies" for classification purposes and applied the legal principle that the corporate veil should not be set aside lightly. See *Decisions No. 2879/00* (December 12, 2000), and *1539/00* (June 29, 2001).

Decision No. 499/00I (May 28, 2001), contains a useful discussion of reclassifications. It found that the standard of review on a reclassification appeal is correctness, not reasonableness, and that the "best fit" test applies. In its submissions, the Board had distinguished between amendments to policy, which are generally given prospective effect, and policy clarifications, which are applied retrospectively. The Tribunal found that where a "clarification" has the effect of substantively changing the employer's classification, it should be applied prospectively.

Decision No. 1796/99R (2001), 57 W.S.I.A.T.R. 35, allowed the Board's reconsideration request regarding the calculation of the three-year NEER window for SIEF relief

Right to Sue Applications

The workplace safety and insurance scheme and earlier workers' compensation statutes are based on a "historic trade-off" in which workers gave up the right to sue in exchange for statutory no-fault benefits. Right to sue applications often raise complicated legal issues which have a significant impact on the parties.

The Tribunal was called on to adjudicate a number of unusual fact situations, including: whether a worker has the right to sue a restaurant whose employees improperly served alcohol to a defendant driver (*Decision No. 3010/00* (2001), 57 W.S.I.A.T.R. 193); whether a movie extra was entitled to sue a motion picture company which had applied for voluntary coverage but only for its film crew (*Decision No. 213/99* (June 15, 2001)); and whether a worker could sue a

nursing college, doctor, nurse and hospital for injuries resulting from surgery necessitated by a compensable knee condition (*Decision No. 1902/01* (November 6, 2001)). *Decision No. 215/00R* (October 17, 2001), considered an insurer's right to bring an application under the pre-1997 Act where the court action had settled but the insurer was not a party to the settlement.

The structure of the WSIA and the interaction between Tribunal and court proceedings were in issue in *Decisions No. 1122/00R* (November 14, 2001), and *1755/01* (November 16, 2001). The Tribunal found that the Legislature did not intend to change the general principle that third parties are not liable for damages attributable to parties covered by the Act. This had been the consistent analysis under the earlier legislation and, although the wording was somewhat different, the same reasoning applied to the WSIA. The Tribunal also held that the deemed undertaking provision in the *Ontario Rules of Civil Procedure* did not preclude use of an examination for discovery. The purpose of the Rule is to protect a party's privacy interest and limit use of information to the purposes of the court proceeding. The Tribunal's hearing goes to the heart of the court proceeding since it determines whether the proceeding can continue.

Miscellaneous

Other interesting 2001 issues included: the effect of various statutory amendments on dependency benefits for common-law widows and foster mothers (see, for example, *Decision No. 1434/00I* (2001), 57 W.S.I.A.T.R. 90); the apportionment of dependency benefits where a deceased worker left an ex-wife with a child and a common-law spouse (*Decision No. 2835/00* (May 30, 2001)); and whether intervenor status should be granted in a constitutional challenge by a federally regulated inter-provincial busing company to the Workwell program (*Decision No. 1005/01I* (May 7, 2001)). The Tribunal also had to decide a number of complex occupational disease claims including: the effect of dusty mining exposure on a worker's respiratory failure and fatal myocardial infarction (*Decision No. 178/98* (December 21, 2000)); a nurse's workplace exposure to the Cocksackie virus (*Decision No. 490/99* (August 7, 2001)); the effect of workplace exposure to aluminum and chemical solvents (*Decision No. 1574/99* (June 26, 2001)); and whether noise induced hearing loss can progress after removal from noise (*Decision No. 580/00* (March 12, 2001)). A number of cases also considered the statutory and policy provisions governing transfer of an employer's costs for long latency occupational disease. See, for example, *Decisions No. 2100/01* (September 25, 2001), and *1835/99* (October 22, 2001).

APPLICATIONS FOR JUDICIAL REVIEW

A number of applications for judicial review of Tribunal decisions were commenced or concluded in the year 2001.

In 1998, an application for judicial review of Tribunal *Decisions No. 800/95I* (November 3, 1995), *800/95* (1998), 46 W.S.I.A.T.R. 1, and *800/95R* (December 24, 1999), was filed in Divisional Court. The worker's appeal was for entitlement for multiple chemical sensitivity, which he alleged arose from exposure to fumes at work. In the interim decision, the Panel decided to obtain a report from a medical assessor. In *Decision No. 800/95*, the Panel ruled that the worker's condition did not result from his employment. An application to reconsider was dismissed.

This application for judicial review was never served on the Tribunal. On January 18 2000, the application was dismissed by the Divisional Court Registrar for delay.

As recorded in the last Annual Report, a judicial review application of Tribunal *Decisions No. 1101/97* (March 9, 1998), and *1101/97R* (February 16, 1999), was dismissed by the Divisional Court in March 2000. At issue was the appropriate method of calculating a supplement pursuant to section 147(4) of the pre-1997 *Workers' Compensation Act*. An application for leave to appeal was dismissed by the Court of Appeal in July 2000. The applicant, who was self-represented, then sought leave from the Supreme Court of Canada. The application for leave was dismissed by the Supreme Court of Canada on January 25, 2001.

In March, the Tribunal was served with an application for judicial review of Tribunal *Decision No. 1105/99* (November 30, 1999). The Vice-Chair denied the worker's appeal of a sustainability award based on the worker's earnings potential. The Tribunal entered an Appearance and served its Record of Proceedings. At the end of the year, the Tribunal was still awaiting service of the applicant's factum.

In April, the Tribunal was served with an application for judicial review of Tribunal *Decision No. 934/98* (November 30, 2000). The Panel in that case found that a taxi driver was a "worker" within the meaning of the Act. There was a dispute about the appropriateness of some of the materials filed in Divisional Court by counsel for the applicant employer. At the end of the review period, discussions were underway to see if the matter could be resolved, or whether interlocutory proceedings will be required.

In August, the Tribunal was served with an application for judicial review in a case involving an application under section 17 of the pre-1997 *Workers' Compensation Act*. This proceeding was unusual in that the Tribunal had not released a decision at the time it was served with the application for judicial review. The Tribunal subsequently released *Decision No. 1902/01* (November 6, 2001). At the end of the review period, the Tribunal had entered an appearance, filed its Record of Proceeding, and was preparing its factum.

Finally, a lawyer representing an injured worker served a Notice of Appeal of Tribunal *Decision No. 2476/01* (October 16, 2001). As there is no provision in

the governing legislation or the Ontario Rules of Practice authorizing such an appeal from a Tribunal decision, at the end of the review period the applicant's lawyer was considering a withdrawal of what appears to be an improper proceeding.

OMBUDSMAN REVIEWS

In 2001, the Ombudsman's Office notified the Tribunal of 42 case-related complaints. This compares to 30 notifications in 2000. Notifications can relate to any decision issued at any time, not necessarily decisions released in the current year. The increase in notifications in 2001 came after a number of years of significantly increased Tribunal dispositions.

The Ombudsman's Office thoroughly investigates case-related complaints and considers the reasonableness of the Tribunal's analysis. The Tribunal will be notified if the Ombudsman requires further information or if issues arise which suggest the need for formal investigation. While an Ombudsman investigation may result in a recommendation to reconsider, most investigations result in the Ombudsman concluding that there is no reason to question the Tribunal's decision.

During 2001, 14 Ombudsman notifications were closed. Of these, 13 were closed by a letter from an investigator stating that the investigation was being discontinued. One was closed by an Ombudsman report that mentioned a concern, but did not recommend a reconsideration. There were no cases in 2001 in which the Ombudsman made a recommendation that the Tribunal reconsider its decision.

The 1999 Annual Report noted that the Ombudsman had undertaken a review of the timeliness of the Tribunal's appeal process and released a final report in April 1999. The Ombudsman's report recommended "that the Tribunal take all necessary steps, including requesting additional resources, to ensure that it is able to process appeals in a timely manner." The Ombudsman also made a related recommendation that the Ministry of Labour address this situation and "take all necessary steps to ensure that the Workplace Safety and Insurance Appeals Tribunal has the capability and resources to fulfil its mandate effectively." The Appeals Tribunal undertook a backlog reduction plan in response to this report, with the aim of eliminating any backlog by the end of March 2002. The Tribunal successfully met its 2001 inventory reduction targets and is well-positioned to meet the 2002 commitments.

Tribunal Report

REPORT OF THE EXECUTIVE DIRECTOR

During 2001, the Tribunal once again went through a year of change and significant achievement. Within this 12-month period, the level of activity was quite phenomenal, as the Tribunal continued with its primary project of reducing the appeal inventory in accordance with the Action Plan, introduced a new case management system, introduced new pre-hearing process, and renovated part of its offices. Despite the very real workload that all this activity created, the Tribunal succeeded in meeting its targets, and implementing its projects. I am pleased to be able to provide a brief summary of the Tribunal's year 2001 activities in this report. More detailed information can be found about the various projects in our departmental reports which follow.

The Quality of Pre-hearing process, Hearings and Decisions:

The Tribunal's foremost goal during 2001 was to do all that is possible to maintain the quality of pre-hearing and hearing process, and a high standard of decision-making. In order to ensure that we accomplished this goal, it was necessary to hold regular training sessions for staff, vice-chairs and members, and to provide adequate support, including research and expert and trained resources. The key indicators on which we rely to advise us as to the outcomes on quality, namely the number of judicial review applications, complaints to the Ombudsman, and other complaints to the Tribunal or the Ministry of Labour, indicate to us that the Tribunal continues to provide a high quality of adjudication in the workplace safety and insurance field, and its decisions are generally accepted as final and persuasive.

Inventory reduction: The Appeals Tribunal Production Plan for 2001 projected the numbers of cases the Tribunal expected to resolve at the end of each quarter in the year. By year-end, the Tribunal projected an inventory of 4,330. By December 31, it achieved an inventory of 4,272 appeals. It is important to note that in the second year of inventory reduction in 2001, the majority of dispositions were achieved by decision, as the high numbers of accumulated cases which did not resolve prior to hearing, moved through the hearing and decision process.

Timely case processing: The Tribunal and the WSIB have both made commitments to reduce the time it takes to resolve or decide an appeal. The Tribunal committed to resolving 75% of cases within nine months, and 90% within one year. Clearly, timeliness is a difficult objective to meet during a period of backlog reduction, when a large number of cases in the inventory have aged while on a waiting list. Nevertheless, the Tribunal improved its ability to process cases faster. In 1999, only 38% of cases were completed within nine months. In 2001, this rose to 54%. More encouraging, the portion of cases completed within 12 months rose from 52% in 1999 to 64% in 2001. The reported trends show that as the number of cases in the Tribunal's process reduces, parties will be able to complete appeals within reasonable time periods, and the Tribunal hopes to achieve its targets by the end of 2002.

The implementation of the Notice of Appeal (NOA) process: In April 1999, the Tribunal made a commitment to the Ombudsman, that it would provide a hearing date to parties within four months of a certification by the appellant that he or she was ready to proceed. In order to implement this commitment, the Tribunal redesigned its case intake system. With the implementation of the NOA process, the appellant is permitted to provide a notice of appeal and then allowed a period of up to two years to proceed with the case. Once the appellant has completed the Confirmation of Appeal (COA), the Tribunal will undertake to offer a hearing date within four months. The implementation of this new process required consultations with representatives and members of the employer and injured worker communities. The Tribunal's draft proposals were amended prior to implementation based on the feedback received during those consultations. The resulting process was a compromise which addressed concerns of both the injured worker and employer groups consulted. The new process was implemented on March 15, 2001, and at the time of writing, has been in place for nearly a year. Our experience to date is that most appellants are spending time at this stage to prepare or assess their cases. There are also a significant number of appeals in which the appellant brings the appeal in order to preserve the right to appeal, however there are ongoing issues at the WSIB which still require resolution, before the appeal can proceed. The best estimate, based on monitoring of cases on the NOA list, is that at least 25% of these cases will never proceed to hearing once the parties have had a chance to assess their case, or once other issues have been completed at the WSIB level. The Tribunal is now able to provide hearing dates within four months of a confirmation by the appellant that he or she is ready to proceed.

Introduction of a new Web site, and tracIT: Since its inception in 1985, the Tribunal has worked with a rapidly aging IT system for tracking its cases. The system was based on DOS, and although over the years, it provided the Tribunal with good service, with time it became outdated, and not capable of continued improvement in the current software environment. In 1999, the Tribunal launched its tracIT project, to implement a new, comprehensive and interactive case management system, which would track cases, report results, and provide communications vehicles. After intensive planning and development during 2000 and part of 2001, the Tribunal launched tracIT with the introduction of the new web site in April 2001. This site provides access to necessary Tribunal materials, including Practice

Directions, and most importantly, provides search capability and access to all Tribunal decisions. The web site has met with great success, and it has become a centre piece of the Tribunal's communications for the future. In 2002, the Tribunal will work toward providing case status information, and the filing of appeal applications electronically through the web site.

The case management component of tracIT was introduced in July 2001. This was a major shift in Tribunal process, requiring adjustment and training for all staff to learn to work within the new system. This system enables the Tribunal to work in an imaged environment, and all Tribunal materials in appeals made after July 2001 are maintained in imaged format in the database for the purposes of internal case process. The next step in the evolution of this system, is to receive the Board's claim and employer files in imaged format, once the Board's case management systems projects are ready. The introduction of tracIT provides tremendous opportunities for the Tribunal to improve the services it provides to the public, and we look forward to working with this system to realize this potential.

Renovations of Tribunal Offices: The Appeals Tribunal has been in its current offices at 505 University Avenue since 1986. Its space was in great need of renovations, and an additional partial floor acquired to permit faster case process, required major renovations. In addition to inconvenience and poor fit, the state of the accommodations gave rise to health and safety concerns. As a result, the Tribunal undertook the renovation of all of its floors in 2000 and 2001. Given the other pressures on the Tribunal during this period to process a backlog of appeals, this project had to be carried out incrementally. Floors 8 and 9 were renovated in 2000, and floor 6 was completed in 2001. The renovations to the Tribunal's public floor housing its hearing rooms and library started in 2001 and is expected to complete early in 2002. While the periods of construction have been disruptive, the staff, vice-chairs and members endured the discomfort in order to achieve the resulting improvement in the work environment, which was significant.

Mould and Bacterial Infestations: The Tribunal's accommodations at 505 University Avenue included 6,500 square feet in the basement, housing its records, mail and reproduction services. In May 2001, on investigating staff complaints, the Tribunal was notified that there was a mould and bacterial infestation in this work area, and all staff had to be removed immediately. The Tribunal's hearing rooms were shut down in order to accommodate the basement functions, and continue with these support operations, which were critical to the agency's ability to meet its production targets. During the following months, temporary quarters were established for the records, mail and reproduction functions on the 7th and other floors. The staff demonstrated great creativity, initiative and flexibility during this period to ensure that this problem did not cause a major disruption in our case process. Since May 2001, The Tribunal has remained without adequate space to effectively operate its records, reproduction and mail functions. The Tribunal has worked with the Ministry of Labour, the Ontario Realty Corporation (which holds the lease), Profac (the government

manager of leaseholds) and the landlord to find additional space in the building. The lack of space has resulted in inefficiencies in Tribunal operations, requiring much additional staff time to retrieve, reproduce and close files, a critical operation in a backlog reduction environment. At the time of writing this report, the Tribunal continues to pursue additional space to meet its requirements, and currently plans to have an additional floor in the building in 2002.

Staffing: In 2000, the Tribunal was granted a budget which permitted the temporary increase of its staffing strength to address the Action Plan activity. The 2001 budget included a graduated staffing step down reduction to shadow the reduction in costs. As a result, toward the end of 2001, the Tribunal's staff reduced in numbers, and this required an additional set of adjustments in work distribution.

Communications: The Tribunal continued with its communications plan which includes a public newsletter, a quarterly report, its web site and periodic public information meetings in Toronto and in regional hearing sites, to ensure constructive ongoing contact with representatives, injured workers and employers. These meetings have met with great success, with participants indicating that it was an opportunity to find out about Tribunal processes, and to provide feedback about perceived problems.

Relations with the WSIB: The Tribunal's Chair and Senior Staff continue to meet regularly with staff of the WSIB and the Ministry of Labour on 'Quality Loop' issues, including receipt of information required from the Board under section 125 of the WSIA, the timely implementation of Tribunal decisions, and issues such as the need to promote whole person adjudication. The Tribunal reports on these activities publicly in its Quarterly Reports as well as in its other publications.

Looking forward to 2002: The Tribunal expects to meet its inventory reduction target as planned, on March 31, 2002. After this, it will continue to address its production requirements as set out in its production planning which is premised on the WSIB expected numbers of appeals decided. The Tribunal will also continue to focus on improving its appeal services, including its new Notice of Appeal process, and it will implement projects which include the enhancement of its electronic communications. In particular, the Appeals Tribunal will continue to listen to the injured worker and employer communities, and the greater public, to ensure the highest levels of quality in pre-hearing process, hearings and decisions under the *Workplace Safety and Insurance Act*.

ACHIEVEMENTS IN APPEALS PROCESSING

Tribunal Caseload Trends

In Year 2001, the Tribunal's emphasis for caseload management was once again focused on reducing the backlog of cases that remained as a result of the earlier caseload influx. Caseload backlog had accumulated in response to caseload intake increases that started in 1996. The increases were the result of several factors,

including structural changes that affected how cases were handled at the WSIB, as well as changes in the legislation. Of particular importance was the introduction of the time limit to appeal. This resulted in a massive influx, as appellants rushed to appeal, often without being prepared, but aware that a failure to do so would jeopardize their ability to pursue the appeal in the future.

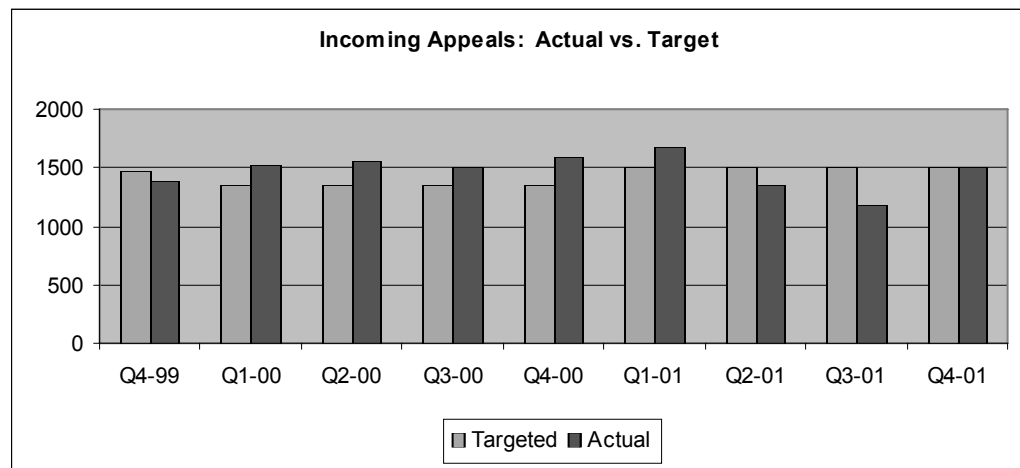
The Tribunal’s caseload reached its peak volume in September 1999, and, beginning in the latter part of 1999, the Tribunal launched an aggressive initiative to address this situation. The result was an Action Plan that targeted 30 consecutive months of inventory reduction.

The Action Plan: The Tribunal’s Response to the Challenges of Caseload Expansion

The Year 2001 marks the second full year of Action Plan implementation. Throughout the year, the Tribunal was successful in remaining on target with its overall caseload reduction requirements. Active Inventory is the key indicator for measuring achievements under this plan, and as demonstrated below, despite fluctuations in both input and output, the Tribunal met its required inventory reduction target.

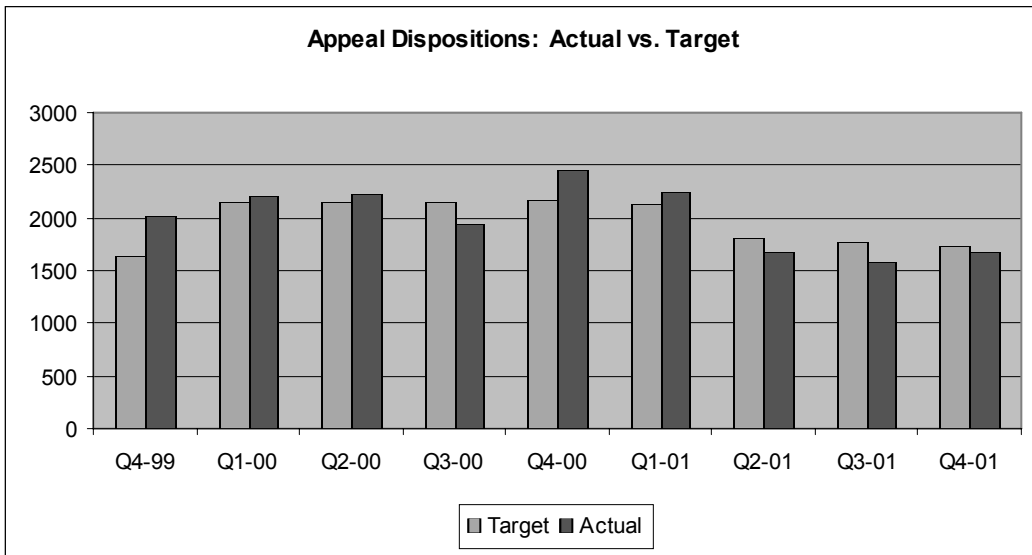
- In Year 2001, incoming appeals averaged 1,424 per quarter, compared with 1,500 anticipated in the Action Plan.

Chart 1



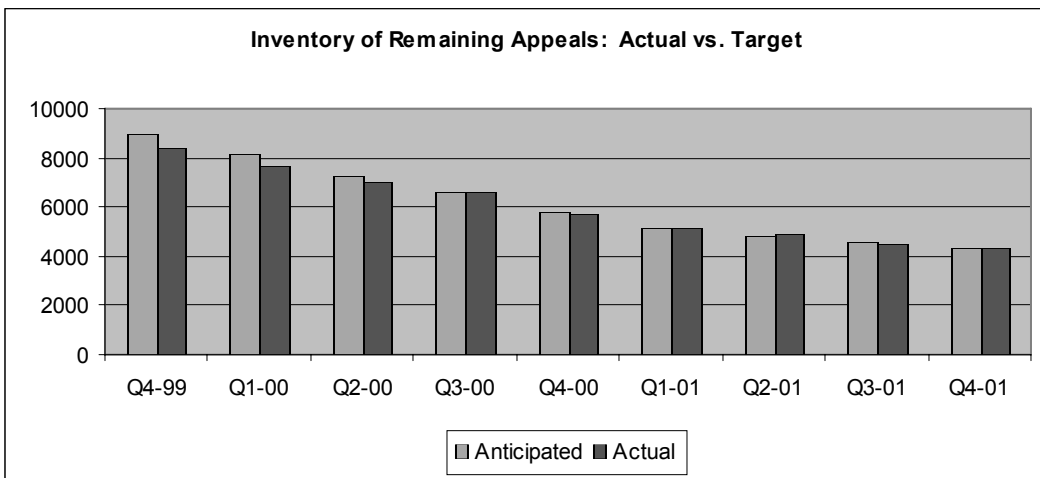
- Dispositions averaged 1,787 per quarter, compared with 1,855 anticipated in the Action Plan.

Chart 2



- At year end, the active appeals inventory reached 4,272; this reduction exceeded target by 58 cases.

Chart 3



Caseload Intake

Year 2001 Trends by Quarter

The Tribunal's Action Plan projected incoming cases at a level of 1,500 throughout each quarter of Year 2001 (see Chart 5, p. 33). At 1,424 per quarter, the actual quarterly intake came within 95% of this predicted level.

Historical Trends by Year

The historical breakdown of cases received by appeal type is shown in Chart 6 (p. 34). Entitlement-related cases constituted the majority of incoming cases (96%) while Special Section cases (Leave, Right to Sue, Medical Exam and Access) accounted for 4% of the total.

Caseload Dispositions

Year 2001 Trends by Quarter

The Tribunal's Action Plan was established using the assumption that dispositions would average 1,855 per quarter. Specific quarterly targets varied, however, such that the highest volume was targeted for first quarter (2,125) and the lowest volume was targeted for fourth quarter (1,730). Chart 7 (p. 35) depicts the caseload dispositions achieved each quarter as against these individual quarterly targets.

Historical Trends by Year

Between 1995 to 2001, case dispositions have increased by an average annual rate of approximately 40%. This excludes the approximately 3,300 bookmarked appeals registered at the Tribunal in 1998.

The historical breakdown of case dispositions by appeal type is shown in Chart 8 (p. 36). The mix of appeal types in Year 2001 is similar to the historical trend observed. Entitlement-related cases accounted for 96% of cases disposed by the Tribunal while Special Section cases contributed to 4% of the total.

Chart 9 (p. 37) shows case dispositions by processing stage. Historically, a few trends can be observed regarding the various types of appeal dispositions. At the pre-hearing stage, the proportion of appeals that have been Made Inactive has increased. It peaked in 1998 due mainly to the numerous letters of intent received by the Tribunal during the first six months of 1998. These letters of intent were sent to preserve the right to appeal in light of the limitation periods imposed by the *Workplace Safety and Insurance Act, 1997*. Since appellants were not ready to proceed at that time, the Tribunal placed these appeals in inactive status. Appeals Made Inactive (or identified as dormant at the notice stage for new process cases) continued to make up the greater proportion of appeal dispositions in the pre-hearing stage during 2001. This is mainly the result of the

early screening of cases. Cases that are not ready to proceed are identified early in the appeal process and placed in inactive (or dormant) status until they are ready to proceed. As the number of appeals in this category increased, the proportion of Appeals Withdrawn by Appellant substantially declined.¹ At the hearing stage, the majority of appeal dispositions consisted of Decisions Issued. In 1994, 812 decisions were issued at the hearing stage. By comparison, the total for Year 2001 was 3,499.

Chart 10 (p. 38) provides a further level of detail of case dispositions by showing the data by processing stage as well as appeal category for Year 2001. Most dispositions (53%) were achieved following a hearing, and indeed hearing dispositions dominated all of the major appeal categories; the exceptions were to be found primarily in the Access, Medical Exam and Leave to Appeal categories.

Chart 11 (p. 39) shows case dispositions distributed by completion time. Approximately one-third of all case dispositions were made within six months from the start date of the appeal. Ninety-seven per cent of Medical Exam and Access cases were resolved in that time frame. Twenty-six per cent of cases were resolved within six to 12 months. This included over 1,600 Entitlement and Leave cases.

Remaining Caseload Inventory

Year 2001 Trends by Quarter

The Action Plan set out an aggressive inventory reduction schedule for the Tribunal. The Tribunal's active caseload inventory peaked at over 9,000 cases in September 1999. The caseload reduction process began in October 1999, and caseload reductions were achieved from that point as targeted.

On December 31, 2000, 5,725 cases remained in inventory. In Year 2001, the Tribunal remained within the target set by the caseload reduction process. According to the Plan, the Tribunal's active caseload inventory would be reduced to 4,330 cases by the end of Year 2001. With an active appeals inventory of 4,272 cases on December 31, 2001, the Tribunal exceeded its target for the year.

Historical Trends by Year

The 4,272 active cases remaining in inventory at the end of Year 2001 represent a 25% decline from the Year 2000 year-end level of 5,725 cases and a 53% decline from the peak level experienced in 1999.

¹ In the past, when workers were not ready to proceed (for instance because further medical evidence was needed to proceed, or there was a change in the medical condition) they normally withdrew the appeal without fear of losing the right to return and pursue the case. With the introduction of the WSIA, the limitation periods required a person to "file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the tribunal may permit." To keep the worker's right to appeal even after the set limitation period, appeals were placed in inactive status until they are appeal-ready.

The distribution of active cases, as at December 31, 2001, is displayed in Chart 12 (p. 40). Thirty-five per cent of cases were in the pre-hearing process stage, 40% were proceeding through the pre-hearing resolution stages, and 24% were at the post-hearing stages (meaning that they were undergoing decision-writing, re-scheduling or other hearing follow-up processes).

Comparative Statistics for 2001 Hearings and Decision Productivity

Chart 13 (p. 41) depicts the Tribunal's workload with respect to the Scheduling of Hearings, number of Hearings Conducted, Cases Heard, Decisions Issued and Dispositions by Decision for the years 1995 to 2001.

As shown in the column labeled "Change from prior year," except for the three pre-decision categories in 1995, the Tribunal made productivity gains each year up to 2000. (Cases 'bookmarked' in 1998 are not a factor in these production figures because they were made Inactive well before the Scheduling process.) In Year 2001, the rate of scheduling dropped off by approximately 13% from its Year 2000 peak level, and by the latter part of Year 2001, this was reflected in a slightly lower rate of hearing as well. In total, there were 3,499 appeal cases resolved by Tribunal decisions in Year 2001.

A breakdown of the Cases Heard category (but not shown on the chart), indicates that single adjudicators were used in approximately 66% of hearings in 2001 and tri-partite panels in approximately 34%. Hearing type breakdown reveals that formal Oral hearings continued to be the most common hearing type at 80%. The Written hearing type was used in 17% of hearings, the remaining 3% of all hearings in 2001 involved Teleconferences, the Vice-Chair Registrar, or Motions Day.

Chart 14 (p. 42) shows the breakdown of decision types. Final Decisions represent the largest decision type (86%), followed by Interim Decisions (7%) and finally Reconsideration Decisions (7%).

Party Representation

This section briefly summarizes party representation information gathered from the representation profiles for cases that underwent any form of active processing in Year 2001.

The caseload for the year showed that for injured workers: 44% were represented by consultants; 20% by lawyers; 16% by the Office of the Worker Adviser; and 15% by union representatives. The remaining 5% was allocated among various non-categorized representation, for instance, family friend, family member, MPP office, or Legal Aid.

According to this same categorization, employer representation showed: 48% were represented by consultants; 29% by lawyers; 7% by company personnel; and 13% by the Office of the Employer Adviser. The remaining 3% was non-categorized.

TRIBUNAL ORGANIZATION

Vice-Chairs, Members and Staff

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 2001 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Office of Counsel to the Chair

The Office of Counsel to the Chair (OCC) has been in existence since the creation of the Tribunal. It is a legal department separate from the Tribunal Counsel Office and is not involved in the hearing process or in making submissions in cases. The draft review process, which has been described in prior Annual Reports, is the responsibility of Counsel to the Chair and the Associate Counsel to the Chair.

Other OCC responsibilities include: providing advice to the Chair and Chair's Office; training and professional development; current awareness and research; administering the reconsideration process; responding to *Freedom of Information and Protection of Privacy Act* issues and complaints; and assisting with Ombudsman matters. (A summary of FIPPA activity is shown in Chart 18 (p. 44) and a summary of reconsideration activity in Chart 16 (p. 43). Given that the Tribunal now makes decisions under four different Acts and that a number of new adjudicators have been appointed, there was a continued emphasis on training during 2001.

Office of the Vice-Chair Registrar

The staff of the Office of the Vice-Chair Registrar (OVCR) are the primary point of contact for appellants, respondents and representatives with an appeal or application at the Appeals Tribunal.

All initial processing of appeals under the WSIA is completed by the Tribunal's OVCR. On receipt of an appeal under the WSIA, the Appeals Tribunal receives the Appeal Record from the Board. The Tribunal must then process the appeal for hearing by giving notice to the parties, ensuring that the record is complete, ensuring that the case is ready for hearing and that it will not fail to complete.

The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. She may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and issue agenda, on referral by Tribunal staff and the parties to the appeal. The process

may be oral or written. The Vice-Chair Registrar releases a written decision with reasons. Any request to have a matter put to the Vice-Chair Registrar may be raised with OVCR staff.

The Registrar's Office is flexibly separated into three areas.

The Early Review Department

The Early Review Department is responsible for the initial processing of all Tribunal appeals. Staff review all Notices and Confirmations of Appeals to ensure that they are complete and meet legislative requirements, and to resolve jurisdictional issues.

Pre-hearing Screening

Pre-hearing staff review all files to ensure that they are ready for hearing. This step is necessary to reduce the number of cases that result in adjournments and post-hearing investigations due to incomplete issue agenda, outstanding issues at the Board or incomplete evidence.

Registrar Information Centre (RIC)

RIC responds to party correspondence and queries and conveys instructions from the vice-chair or panel in the weeks leading up to a hearing. Staff in this department also provide information to the public regarding the Tribunal's appeals procedures and status inquiries for appeals at the Tribunal.

Tribunal Counsel Office

Under the Tribunal's new case processing model, the Tribunal Counsel Office (TCO) no longer has responsibility for processing the majority of appeals. TCO now handles only the most complicated appeals which involve novel or complex medical, legal or policy issues. These appeals are streamed to TCO from the Intake Department, or are assigned to TCO for post-hearing work at the direction of a panel or vice-chair.

TCO consists of three groups, each reporting to the General Counsel: the Medical Liaison Office, the legal workers, and the lawyers.

Pre-hearing Work

Once a complex appeal is received by TCO, a legal worker prepares the case record for the appeal. When it is completed, the case record is sent to the parties and a date is set by the Scheduling department. The appeal is assigned to a legal worker or lawyer depending upon its complexity. The case is handled by the legal worker or lawyer until the final decision is released. They deal with matters that arise prior to the hearing, and provide assistance to the parties if there are questions concerning preparation for the appeal.

Post-hearing Work

If a Tribunal vice-chair or panel concludes that additional information or submissions are required following a hearing, a request for assistance is made to Tribunal Counsel Office. The appeal is assigned to a legal worker or a lawyer. The legal worker or lawyer assigned to the case carries out the directions of the panel or vice-chair, and co-ordinates any necessary input from the parties to the appeal.

Lawyers

TCO has a small group of lawyers who handle the most complex appeals involving legal or medical issues. TCO lawyers also provide technical case-related advice to the legal workers, the Early Resolution Stream, and the Vice-Chair Registrar Team. In addition, the lawyers provide non-appeal related advice to other departments of the Tribunal.

A senior TCO lawyer is assigned on a part-time basis to assist the Early Resolution Team, in addition to handling a caseload of occupational disease appeals. One lawyer acts as group leader for the legal workers, as well as handling a number of complex appeals. Workplace stress appeals, other complex entitlement issues and human resource matters are assigned to a designated TCO lawyer. Another lawyer handles the employer assessment, classification and French language appeals.

TCO lawyers and the General Counsel also represent the Tribunal on applications for judicial review of Tribunal decisions, and other Tribunal-related court matters.

Medical Liaison Office

The Tribunal must frequently decide appeals which raise complex medical issues, or require further medical investigation. The Tribunal therefore has an interest in ensuring that panels and vice-chairs have sufficient and appropriate medical evidence to reach the correct decision. One function of Medical Liaison Office (MLO) is to assist in the medical investigation and understanding of particularly complex or medically novel cases. Medical counsellors also assist MLO by providing a senior medical viewpoint on these cases, to help direct investigation and proper comprehension of the medical issues.

The Tribunal's relationship with the medical community is particularly important, because the quality of Tribunal decisions on medical issues is dependent upon that relationship. The relationship is a positive one, as evidenced by the Tribunal's continuing ability to enlist leading members of the profession as counsellors and assessors.

The Medical Counsellors are a group of eminent medical specialists who serve as consultants to WSIAT. They play a critical role in assisting MLO to carry out its mandate and in ensuring the overall medical quality of Tribunal decision-making. The Medical Counsellors' Chair is Dr. Ross Fleming. A list of the Medical Counsellors is provided in Appendix A.

The Medical Counsellors review the cases identified by MLO prior to the hearing to verify that the medical evidence is complete and that the record contains any essential opinions from appropriate experts. They also ensure that questions or concerns about the medical issues which may need clarification for the panel or vice-chair are identified. Medical Counsellors may recommend that a panel or vice-chair consider obtaining a medical assessor's opinion if the diagnosis of the worker's condition is unclear, if there is a complex medical problem that requires explanation or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, panels or vice-chairs requiring further medical investigation may request the assistance of MLO in preparing specific questions that may be helpful in resolving medical issues. Medical Counsellors also assist MLO in providing questions for the consideration of the panels or vice-chairs and recommending the most suitable Medical Assessor.

Medical Assessors

The Tribunal has the power to initiate medical investigations if it believes it necessary in order to determine any medical question on an appeal. Section 134 of the *Workplace Safety and Insurance Act* allows for "health professionals" to assist the Tribunal in determining matters of fact. The Tribunal's authorized list of health professionals is known as the Tribunal's "roster" of Medical Assessors.

Medical Assessors on the roster may be asked to assist the Tribunal in a number of ways. Typically, they are asked to give their opinions on specific medical questions; this may involve examining a worker and/or studying the medical reports of other practitioners. Medical Assessors specializing in a particular field may be requested to assist in educating Tribunal staff in a general way about some medical theory or procedure. They may be asked for an opinion on the validity of a particular theory which a hearing panel or vice-chair has been asked to accept. They may also be asked to comment on the nature, quality or relevancy of medical literature.

The opinions of Medical Assessors are normally sought in the form of written reports. Copies of the reports are made available to the worker, employer, the panel or vice-chair, and the Board. Occasionally, a panel or vice-chair will want to question the Medical Assessor at the hearing to clarify the opinion. In those cases, the Medical Assessor will be asked to testify at the hearing. The parties participating in the appeal, as well as the panel or vice-chair, have the opportunity to question and discuss the opinion of the Medical Assessor.

Although references are typically made to the report of the Medical Assessor in the Tribunal decision, the Medical Assessor does not make the decision. The actual decision to allow or deny an appeal is the sole preserve of the Tribunal panel or vice-chair.

The Listing Process for Medical Assessors

Highly qualified health care professionals eligible to be listed on the Tribunal's roster are identified by a Medical Counsellor. Those candidates who agree to be nominated have their qualifications circulated to all the Medical Counsellors and to members of the Advisory Group. The Tribunal has the benefit of the views of the Medical Counsellors and the Advisory Group when it determines the selection for the roster from the available candidates. Selected professionals serve for a three-year term, and may be renewed.

Library

MLO places medical articles, medical discussion papers, and anonymized appeal transcripts of expert evidence on medical or scientific issues in the Ontario Workplace Tribunals Library. This collection of medical information specific to issues that arise in the workers' compensation field is unique within the Ontario WSIB system and is accessible to the public.

Alternative Dispute Resolution

The Tribunal relies on a variety of alternative dispute resolution (ADR) techniques to resolve appeals at the pre-hearing stages. The Tribunal deals with a wide range of training and expertise levels among representatives and unrepresented parties and with complexities created by four pieces of legislation, varying policies and complex medical issues. The ADR techniques used by all pre-hearing staff at different case stages and areas, are essential for clarifying, narrowing and resolving issues in advance of the hearing.

The Tribunal relies on different ADR strategies at different stages of the appeal process. For example, resolutions at the very early stages of the process rely on negotiations with the appellant and usually focus on issues of jurisdiction and alternate remedies. Where a case is suitable for an early and summary resolution, but requires specialized attention, it may be referred to the Early Intervention staff to facilitate a resolution.

The Tribunal offers mediation services for appropriate appeals. At the time of completing the application form, the parties are offered the opportunity to participate in the mediation process. Where a party has indicated an interest in participating, the case is streamed to the ADR Unit, where trained mediators work with the parties, in a neutral and confidential setting, to arrive at a jointly acceptable resolution to an appeal. When the parties reach an agreement, a vice-chair must review it and, if the vice-chair approves of the resolution, a decision is issued to ensure that the Board implements the resolution. In addition to staff mediators, the Tribunal relies on teams of co-mediators consisting of one OIC member representative of workers and one OIC member representative of employers.

Mediations are typically conducted as face-to-face meetings. Since many of the cases at the Board level are dealt with in written format, this may be the first

opportunity for the parties to speak with one another face-to-face. The opportunity to work together to arrive at a mutually agreeable resolution is especially important where the employment situation continues.

Although appeals are typically streamed for mediation at the case streaming stage, mediation services are available at all stages of an appeal and may even be called upon at a hearing.

Not all appeals are suitable for the mediation processes. For example, the participation of a single party, where job suitability is at issue, may require an oral hearing. Where the case involves an occupational disease it may be referred to the Tribunal's Counsel Office (TCO). ADR efforts in the TCO stream include discussions with parties in order to narrow issues, medical investigation to complete evidentiary gaps, and scheduling pre-hearing conferences with the hearing panel in order to organize the hearing and dispose of facts or issues, on consent.

Appeals, which are not streamed to a formal mediation or to TCO for the complex case process, are managed by teams of legal workers within the Office of the Vice-Chair Registrar (OVCR). ADR efforts at this stage include reviewing appeals for completeness to ensure that the case is ready for hearing. A second objective for the legal workers is to find pre-hearing resolutions. Cases may also close at this level based on the availability of other options, and the need to obtain additional medical or other evidence.

At all stages of case processes, Tribunal staff may use the services of the Tribunal's medical investigation resources, including the Medical Liaison Office, for the reviews of medical evidence, its completeness, and objective views by medical assessors.

The ADR work performed by pre-hearing staff often allows the parties an opportunity to better assess the merits of the appeal and the advisability of proceeding to a hearing.

Resource Department

In June 2000, A.F. Church and Associates conducted a review of library and publications services at the Workplace Safety and Insurance Appeals Tribunal. The review recommended changes to the structure, staffing and services. The majority of the recommendations were implemented in 2001, with the result that the Ontario Workplace Tribunals Library, publications and translation services were integrated into a single Resource Department under the direction of one manager. The various work units of the Resource Department provide information and communications services to the Tribunal.

Ontario Workplace Tribunals Library

During 2001, the Ontario Workplace Tribunals Library continued to undergo reorganization to assist with service improvements, and to increase its integration with the Resource Department. The library staff share responsibility for the WSIAT subscription service, the processing of document requests, the electronic processing of WSIAT decisions for the Quicklaw database, as well as research support for the Tribunal's web site.

Single point access to the library was improved with the addition of a dedicated library telephone number and e-mail address, owtl@wst.gov.on.ca. An updated library brochure and guidebook was designed and produced for distribution in 2002. In 2001, a more regularized liaison structure was initiated among the sponsoring agencies of the library.

The implementation of a new automated system for the library's databases was investigated in 2001 and is anticipated to take place in 2002.

In late 2001, the library moved to temporary space while extensive renovations were being carried out to its permanent location. Core service has been maintained during this period with a reduced collection. The library is scheduled to move to its new space in the spring of 2002.

Ontario Workplace Tribunals Library Statistical Summary 2001

Inquiries		Notes
Reference:	2519	
Directional:	2630	
Total:	5149	
 Document Delivery		
OLRB:	2826	Includes electronic document delivery to MOL. WSIAT decisions available online in April.
WSIAT:	658	
PEHT/BOI:	46	
Total:	3530	
Collection Use:	4212	Includes both materials used in Library and signed out.
Acquisitions:	3060	Includes all items entered in AQUIS plus electronically obtained materials and photocopied material.
Inter-Library Loan:	21	Books borrowed from other libraries.
Items sent to QL:	10399	
 Records Added to Databases		
Books	140	
Library	421	
Juris	19	
Total:	580	

Web Site

In March 2001, the Tribunal launched a new and updated version of its web site at www.wsiat.on.ca, which offered users service enhancements including access to online decision research, online “fillable” forms, and increased access to information about the Tribunal and its appeal processes.

In September 2001, the Tribunal also launched its own intranet, offering staff and OICs browser-based access to extensive electronic resources and communications tools.

Training sessions in the use of the WSIAT web site’s decision search feature were held in various centres throughout Ontario in 2001 as part of the Tribunal’s public information sessions, and continue to be offered by the Ontario Workplace Tribunals Library.

Publications

Decision Summary Search Service

The Tribunal’s new case management system, tracIT, went into service in July 2000. However, even before that, in April 2000, the *Decision Summary Search* module of tracIT was made available to the public through the Tribunal’s web site.

The *Decision Summary Search* is a major advance in research capability for the public and representatives, as well as Tribunal members and staff. The service, which is available free of charge at the Tribunal’s web site, allows users to search the database of summaries of all of the Tribunal’s decisions through keywords, reference material and a number of other fields. The *Decision Summary Search* service has a user-friendly, intuitive interface. In addition to granting access to all the summaries, it also has links to the full text of all of the Tribunal’s decisions in pdf format.

Other Service Changes

The *Decision Summary Search* service replaced the *DDS On Disk*, which was a paid subscription service with a searchable database of the Tribunal’s decisions.

WSIAT Decisions On CD-ROM, our subscription service containing all of the Tribunal’s released decisions, was maintained in 2001 and will be maintained again in 2002. Users may still find this a useful tool for off-line use and may also prefer the Microsoft Word format of the decisions.

The looseleaf *Decision Digest Service* was discontinued at the end of 2000. However, consolidated indexes for insertion in the Cumulative Index binder of the *Decision Digest Service* were completed and sent to subscribers in 2001.

Revised Publications

The practice direction on *Reconsiderations* was revised and re-issued on October 10, 2001. All the practice directions are published in the *WSIAT Reporter*. In addition, the practice directions, as well as other documents and forms, are posted on the Tribunal's website at www.wsiat.on.ca.

Production

Beginning in December 2000, the Publications Department no longer provided summaries of all released decisions. This process continued in 2001. Decisions of a routine nature on well-established issues were not summarized, but keywords were assigned to all decisions. This allowed the Publications Department to process more than 4,600 decisions in 2001, an increase of 1,400 over 2000, and bring the currency of the processed decisions to within three weeks.

Looking Ahead

During 2001, a number of improvements have already been made to the Decision Summary Search service regarding search procedure and display. It is anticipated that further enhancements will be implemented in 2002.

Case Management Systems

Case Management Systems is responsible for the case management functions of the Tribunal, as well as the management of the Systems department. The projects undertaken by this group in Year 2001 were numerous, a reflection of the increasingly important role which information technology plays in Tribunal processes. In Year 2001, the projects undertaken built on the groundwork laid in the previous year to move the Tribunal to a new level of information technology and services.

This year's highlight was the successful launching of the Tribunal's new case management system called tracIT. This system combines case management business transformations with the latest in browser technologies to improve and automate the entire case management process, allowing for more efficient processing, tracking and reporting of cases. A key component of tracIT was the development of a new decision search engine to allow staff to search all released Tribunal decisions within tracIT. The decision search function was also added to a revised public web site, allowing members of the public to also search all released Tribunal decisions.

The launch of tracIT was preceded by information technology upgrades. The server and desktop operating systems were harmonized and IT training was provided.

Year 2001 also saw the Tribunal move the Systems Department and its equipment to new quarters designed to provide better and more comprehensive customer service. The Tribunal's dial-in capacity and services were also enhanced to meet growing remote access requirements.

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2001, (Chart 20, p. 45) is included in this report.

The accounting firm of Deloitte & Touche has completed a financial audit on the Tribunal's financial statements for the period ending December 31, 2001. The audit reports are included in this report as Appendix B.

Chart 4
Relationship of WSIAT Caseload to WSIB Process

	1996	1997	1998	1999	2000	2001
<u>WSIB</u>						
Total Claims ¹	345,606	341,178	345,832	367,400	382,518	390,900
Total Decisions	na	na	na	731,433	742,127	758,454
<u>WSIB Appeals Branch</u>						
Internal Appeals	11,219	10,869	11,501	11,678	9,961	9,300
Appeals Resolved	13,415	13,236	12,562	10,913	10,264	9,600
Appealable Outcomes ²	10,875	11,957	10,208	8,654	7,714	7,200
- Prevention and SIB					298 ³	300
- WSIB Access department					7,900 ⁴	7,500
Appeals Inventory	7,695	5,328	4,267	5,032	4,742	4,400
<u>WSIAT</u>						
Incoming	3,420	4,916	9,901	4,761	4,469	3,899
Reactivated	n/a	n/a	865	1,447	1,709	1,796
Dispositions ⁵	2,326	2,908	7,727	6,327	8,810	7,148
Active Inventory ⁶	3,429	5,437	8,476	8,357	5,725	4,272

NOTES:

1 The figures for 2001 are estimates only and are not adopted by the WSIB Board of Directors.

2 Appeals Branch appealable outcomes are estimated at 75% of appeals resolved.

3 The Prevention Branch made 210 decisions that were appealable to the Tribunal; the Special Investigations Branch (SIB) made 88.

4 Based on numbers from the WSIB Access Department, with a projected reduction in appeals.

5 WSIAT dispositions and inventory exclude post-decision cases (reconsideration, ombudsman complaints and judicial review s).

6 WSIAT Active Inventory excludes new process cases that were identified as dormant at the notice stage.

Chart 5
Caseload Intake Trends 2001

		New Appeals*	Re-Activated Appeals **	Total
First Quarter	Anticipated	1100	400	1500
	<u>Actual</u>	<u>1090</u>	<u>578</u>	<u>1668</u>
	Variance	-10	178	168
Second Quarter	Anticipated	1100	400	1500
	<u>Actual</u>	<u>946</u>	<u>412</u>	<u>1358</u>
	Variance	-154	12	-142
Third Quarter	Anticipated	1100	400	1500
	<u>Actual</u>	<u>840</u>	<u>333</u>	<u>1173</u>
	Variance	-260	-67	-327
Fourth Quarter	Anticipated	1100	400	1500
	<u>Actual</u>	<u>1023</u>	<u>473</u>	<u>1496</u>
	Variance	-77	73	-4
Total 2001	Anticipated	4400	1600	6000
	<u>Actual</u>	<u>3899</u>	<u>1796</u>	<u>5695</u>
	Variance	-501	196	-305

* New Appeals refers to Entitlement and Special Section Appeals filed at the Tribunal. This measure excludes Re-activated appeals, Reconsideration requests, Ombudsman investigations and applications for judicial review.

** Re-Activated Appeals refers to Entitlement and Special Section appeals that returned to the Tribunal following earlier 'de-activations' as defined under the Tribunal's Practice Direction (1997).

NOTE: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16, and 17.

Chart 6
Breakdown of Incoming Cases by Appeal Type
for the years 1994 - 2001

INPUT BY TYPE	1994		1995		1996		1997		1998		1999		2000		2001	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	17	1	17	1	12	0	18	0	7	0	2	0	2	0	3	0
Right to Sue	49	2	45	2	49	1	46	1	39	0	35	1	41	1	50	1
Medical Exam	41	2	26	1	23	1	26	1	0	0	1	0	0	0	1	0
Access	506	24	467	21	450	13	330	7	276	3	209	3	199	3	199	3
Total Special Section	613	29	555	25	534	16	420	9	322	3	247	4	242	4	253	4
Preliminary (not yet specified)	0	0	0	0	0	0	75	2	2523	23	956	15	798	13	409	7
Pension	32	2	12	1	33	1	35	1	35	0	29	0	68	1	40	1
N.E.L./F.E.L.*	34	2	66	3	257	8	253	5	446	4	373	6	302	5	252	4
Commutation	35	2	33	2	42	1	49	1	37	0	9	0	4	0	13	0
Employer Assessment	58	3	77	4	170	5	893	18	888	8	562	9	527	9	531	9
Entitlement **	1103	53	1255	57	2133	62	2967	60	5835	54	3402	55	3766	61	3732	66
Ext post WSIB dec deadline	0	0	0	0	0	0	0	0	314	3	465	7	373	6	306	5
Jurisdiction Time Limit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	143	3
Reinstatement	56	3	63	3	32	1	40	1	15	0	6	0	5	0	4	0
Vocational Rehabilitation ***	80	4	79	4	121	4	107	2	110	1	41	1	21	0	11	0
Total Entitlement-related	1398	67	1585	72	2788	82	4419	90	10203	95	5843	94	5864	95	5441	96
Jurisdiction	73	4	48	2	98	3	77	2	241	2	118	2	72	1	1	0
Total	2084		2188		3420		4916		10766		6208		6178		5695	

NOTE: This chart excludes post-decision figures. The post-decision components of workload requests for Reconsiderations, Ombudsman investigations and Judicial reviews are summarized in Charts 15, 16 and 17.

* NEL/FEL represents appeals related to the non-economic and future economic-loss pension criteria introduced by Bill 162.

** Entitlement includes appeals classified as: Entitlement, Other, Classification and Interest NEER

*** This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

**Chart 7
Caseload Disposition Trends 2001**

		Intake and Early Review Processes	Screening and Other Prehearing	Hearing Process	Total
First Quarter	Anticipated	500	575	1050	2125
	<u>Actual</u>	<u>3</u>	<u>1251</u>	<u>984</u>	<u>2238</u>
	Variance	-497	676	-66	113
Second Quarter	Anticipated	375	370	1055	1800
	<u>Actual</u>	<u>12</u>	<u>640</u>	<u>1010</u>	<u>1662</u>
	Variance	-363	270	-45	-138
Third Quarter	Anticipated	370	340	1055	1765
	<u>Actual</u>	<u>299</u>	<u>371</u>	<u>911</u>	<u>1581</u>
	Variance	-71	31	-144	-184
Fourth Quarter	Anticipated	350	325	1055	1730
	<u>Actual</u>	<u>397</u>	<u>418</u>	<u>852</u>	<u>1667</u>
	Variance	47	93	-203	-63
Total 2001	Anticipated	1595	1610	4215	7420
	<u>Actual</u>	<u>711</u>	<u>2680</u>	<u>3757</u>	<u>7148</u>
	Variance	-884	1070	-458	-272

NOTE: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.

**Chart 8
Breakdown of Case Dispositions by Appeal Type
for the years 1994 - 2001**

OUTPUT BY TYPE	1994		1995		1996		1997		1998		1999		2000		2001****	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	15	1%	15	1%	16	1%	11	0%	12	0%	6	0%	8	0%	4	0%
Right to Sue	84	5%	57	3%	49	2%	74	3%	39	1%	41	1%	42	0%	38	1%
Medical Exam	40	2%	29	1%	26	1%	25	1%	11	0%	3	0%	0	0%	1	0%
Access	499	30%	475	24%	469	20%	359	12%	262	3%	249	4%	199	2%	196	3%
Total Special Section	638	38%	576	29%	560	24%	469	16%	324	4%	299	5%	249	3%	239	3%
Preliminary (not yet specified)	0	0%	0	0%	0	0%	55	2%	2239	29%	963	15%	862	10%	942	13%
Pension	49	3%	54	3%	28	1%	26	1%	27	0%	30	0%	66	1%	57	1%
N.E.L./F.E.L.*	12	1%	31	2%	58	2%	171	6%	251	3%	329	5%	561	6%	333	5%
Commutation	34	2%	29	1%	41	2%	31	1%	40	1%	35	1%	26	0%	7	0%
Employer Assessment	22	1%	41	2%	85	4%	211	7%	370	5%	1014	16%	1039	12%	542	8%
Entitlement**	771	46%	1112	55%	1306	56%	1690	58%	4116	53%	3269	52%	5144	58%	4396	61%
Ext post WSIB dec. deadline	0	0%	0	0%	0	0%	0	0%	11	0%	144	2%	684	8%	510	7%
Jurisdiction Time Limit	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	81	1%
Reinstatement	28	2%	57	3%	55	2%	45	2%	36	0%	17	0%	20	0%	7	0%
Vocational Rehabilitation***	52	3%	65	3%	82	4%	102	4%	94	1%	106	2%	78	1%	33	0%
Total Entitlement-related	968	57%	1389	69%	1655	71%	2331	80%	7184	93%	5907	93%	8480	96%	6908	97%
Jurisdiction	79	5%	43	2%	111	5%	108	4%	219	3%	121	2%	81	1%	1	0%
TOTAL	1685		2008		2326		2908		7727		6327		8810		7148	

NOTE: This chart excludes post-decision figures. The post-decision components of workload requests for Reconsiderations, Ombudsman investigations and Judicial reviews are summarized in Charts 15, 16 and 17.

* NEL/FEL represents appeals related to the non-economic and future economic-loss pension criteria introduced by Bill 162.

** Entitlement includes appeals classified as: Entitlement, Other, Classification and Interest NEER

*** This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

**** In 2001, cases identified as dormant at the notice stage replaced dispositions that under the previous processing model would have been classified in the de-activation category.

Chart 9
Appeal Dispositions by Disposition Type, 1996 - 2001

	1996	%	1997	%	1998	%	1999	%	2000	%	2001	%
Pre Hearing												
Withdrawn by appellant	742	31.9	717	24.7	1111	14.4	620	9.8	724	8.2	331	4.6
Settled at Tribunal	9	0.4	12	0.4	23	0.3	5	0.1	3	0.0	3	0.0
Made Inactive/dormant	0	0.0	430	14.8	4150	53.7	2954	46.7	3832	43.5	2815	39.4
No Reply	183	7.9	139	4.8	1	0.0	83	1.3	62	0.7	43	0.6
Other	158	6.8	135	4.6	631	8.2	335	5.3	250	2.8	199	2.8
Subtotal	1092		1433		5916		3997		4871		3391	
After Hearing												
Withdrawn by appellant	16	0.7	19	0.7	0	0.0	16	0.3	9	0.1	14	0.2
Made Inactive	0	0.0	26	0.9	130	1.7	196	3.1	253	2.9	243	3.4
Decision Issued	1215	52.2	1429	49.1	1673	21.7	2098	33.2	3676	41.7	3499	49.0
Other	3	0.1	1	0.0	8	0.1	20	0.3	1	0.0	1	0.0
Subtotal	1234		1475		1811		2330		3939		3757	
Total Dispositions	2326		2908		7727		6327		8810		7148	

NOTES:

- 1) This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.
- 2) In terms of 'Decisions Issued', it should be noted that approximately 37 closures for Year 2000 were not recorded as disposed of until Year 2001.

Chart 10
Cases Disposed of in 2001
by Processing Stage and Appeal Category

	Access, Medical Exam and Leave	Right To Sue	Entitlement and Other	Total
DISPOSITION STAGE				
Before Hearing				
Withdrawn by appellant	161	5	165	331
Settled at Tribunal	0	3	0	3
Made Inactive, No Reply or Dormant	2	3	2853	2858
Found Non Jurisdictional	0	0	95	95
Other	22	2	80	104
Subtotal	185	13	3193	3391
Per cent of Appeal Total	92%	34%	46%	47%
After Hearing				
Withdrawn by appellant without decision	1	2	11	14
Made Inactive or No Reply	0	0	243	243
Disposed following Tribunal Decision	15	23	3461	3499
Other	0	0	1	1
Subtotal	16	25	3716	3757
Per cent of Appeal Total	8%	66%	54%	53%
TOTAL	201	38	6909	7148

NOTE: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.

Chart 11
Case Disposition by Age, 2001
From Date Appeal Started to Disposition Date *

Appeal Type	Within 6 months		Between 6 and 12 months		Between 12 and 18 months		More than 18 months		Appeal Type Total
	Count	% of Appeal total	Count	% of Appeal total	Count	% of Appeal total	Count	% of Appeal total	
Medical Exam and Access	191	97%	6	3%	0	0%	0	0%	197
Right to Sue	8	21%	19	50%	7	18%	4	11%	38
Entitlement **	<u>1937</u>	31%	<u>1633</u>	26%	<u>1033</u>	17%	<u>1625</u>	26%	<u>6228</u>
Total ***	2136	33%	1658	26%	1040	16%	1629	25%	6463

* Disposition date is date appeal made Inactive or Closed, whichever was first.

** Entitlement Appeal category also includes Leave applications, Reinstatement appeals, Vocational Rehabilitation appeals, Employer Assessments, Pension appeals, Commutation appeals, Wage Loss appeals, Interest NEER, Jurisdictional Time Limit and appeals deemed to be Jurisdiction issues

*** Cases identified as dormant at the notice stage are excluded from this analysis.

NOTE: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.

Chart 12
Distribution of Active Cases in Inventory
As at December 31, 2001

		Per Cent of total
Notice of Appeal stage	1501	35%
Cases at Initial Preparation Stage*	1501	35%
Active Cases - Resolution Stream	1702	40%
Early Review	449	11%
Substantive Review	425	10%
Hearing Ready	828	19%
Post Hearing stage	1042	24%
TCO, Scheduling or OCC Follow-up **	322	8%
WSIAT Decision-writing	720	17%
<u>Closing Process stage</u>	<u>27</u>	1%
Subtotal		
TOTAL	<u>4272</u>	
* This excludes cases identified as 'dormant' at the notice stage.		
** TCO refers to Tribunal Counsel Office; OCC refers to Office of Counsel to the Chair.		

NOTE: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.

Chart 13
Scheduling, Hearings and Decisions for 2001

	1995		1996		1997		1998	
		% Change from prior year		% Change from prior year		% Change from prior year		% Change from prior year
Scheduling Dates Arranged	1487	-12%	1935	30%	2312	19%	3012	30%
Hearings Conducted	1228	-13%	1471	20%	1978	34%	2446	24%
Cases Heard	1133	-13%	1361	20%	1866	37%	2306	24%
Decisions Issued	1319	28%	1360	3%	1653	22%	2248	36%
Cases Disposed of by Decision	1076	25%	1212	13%	1426	18%	1673	17%

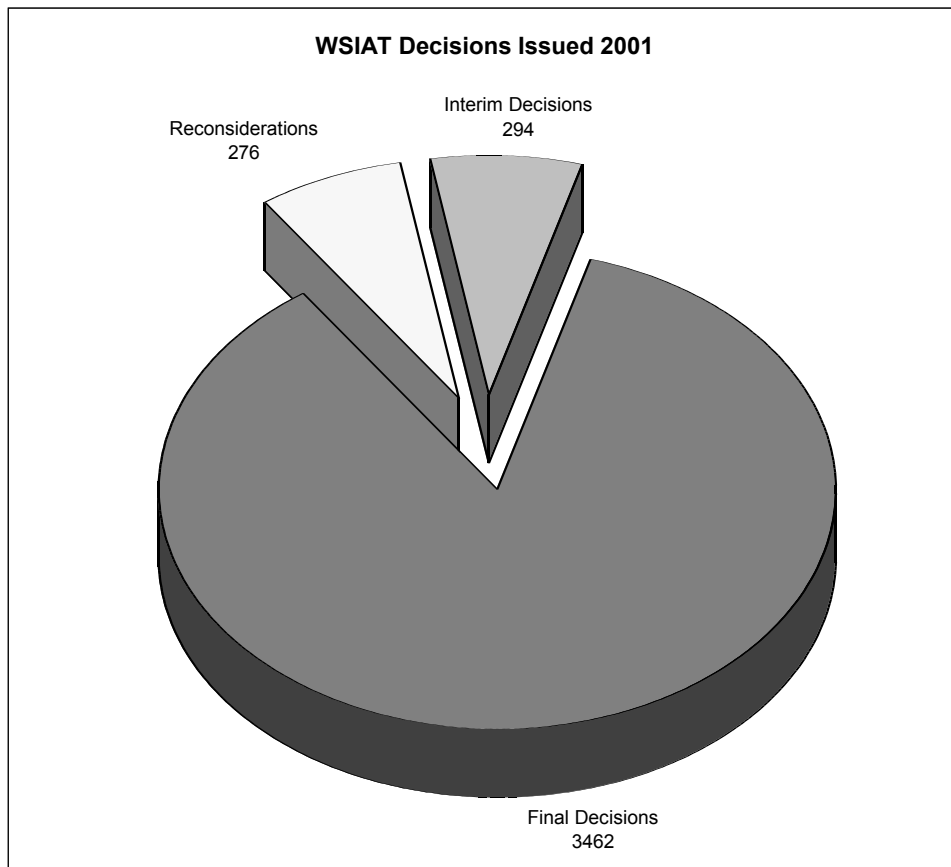
	1999		2000		2001	
		% Change from prior year		% Change from prior year		% Change from prior year
Scheduling Dates Arranged	3184	6%	5169	62%	4505	-13%
Hearings Conducted	2843	16%	4088	44%	3645	-11%
Cases Heard	2690	17%	3900	45%	3388	-13%
Decisions Issued	2673	19%	3692	38%	3756	2%
Cases Disposed of by Decision	2096	25%	3675	75%	3499	-5%

NOTES:

- 1) This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 15, 16 and 17.
- 2) In terms of 'Decisions Issued', it should be noted that approximately 37 closures for Year 2000 were not recorded as disposed of until Year 2001.

Chart 14
Decisions Issued in 2001

Interim Decisions	294
Final Decisions	3462
<u>Reconsiderations</u>	<u>276</u>
TOTAL	4032



Note: Reconsideration Decisions include rulings at the threshold level as well as rulings at the merits level. Cases receiving Final Decisions may not yet have been disposed at year end 2001.

Chart 15
Ombudsman Complaints, Activity and Inventory Summary for 2001

	Year end 2001
New Complaint Notifications Received	42
Complaints Resolved	14
Complaints Remaining	48

Chart 16
Reconsiderations, Activity and Inventory Summary for 2001

	Year end 2001
Reconsideration Requests Received	338
Reconsideration Requests Resolved	203
Reconsiderations Remaining	412

Chart 17
Judicial Reviews, Activity and Inventory Summary for 2001

	Year end 2001
Judicial Reviews Received	3
Judicial Reviews Resolved	1
Judicial Reviews Remaining	3

Chart 18
FIPPA, Activity and Inventory Summary for 2001

	Year end 2001
FIPPA Requests Received	2
FIPPA Requests Resolved	2
Information Sent/Disclosed	1
Transfers	0
Appeals	0

Chart 19
MLO Referrals, Activity Summary for 2001

	Year end 2001
<u>MLO Referrals Completed</u>	
In support of pre-hearing activities	233
In support of post-hearing activities	118

Chart 20
Statement of Expenditures and Variances

Workplace Safety and Insurance Appeals Tribunal
Statement of Expenditures and Variances
Year ended December 31, 2001 (In \$000's)

	2001 BUDGET	2001 ACTUAL	2001 VARIANCE	
			\$	%
Salaries & Wages	9,061	9,042	19	0.2
Employee Benefits	1,704	1,461	243	14.3
Transportation & Communication	1,195	1,203	(8)	(0.7)
Services	7,262	7,931	(669)	(9.2)
Supplies & Equipment	618	861	(243)	(39.3)
TOTAL - W.S.I.A.T.	19,840	20,498	(658)	(3.3)
Services W.S.I.B.	660	650	10	1.5
Interest Revenue	-	(88)	88	-
Pension Contributions Adjustment	-	(562)	562	-
TOTAL OPERATING EXPENDITURES	20,500	20,498	2	0.0
Leasehold Improvements (see note below)	1,300	825	475	36.5
TOTAL Expenditures	21,800	21,323	477	2.2

Note: The Leasehold Improvements budget of \$1,300,000 was approved for the specific purpose of renovating and upgrading the Tribunal's accommodation. While \$825,000 was spent to December 31, 2001, the balance of \$475,000 has been committed and the work will be completed by March 31, 2002.

Appendix A

VICE-CHAIRS AND MEMBERS IN 2001

This is a list of Vice-Chairs and Members whose Order-in-Council appointments were active at the end of the reporting period.

Initial appointment

Full-time

Chair

Strachan, Ian J October 1, 1985
(appointed Chair, July 2, 1997)

Vice-Chairs

Ballam, Dianne June 25, 1997
Dechert, Ken June 25, 1997
Gehrke, Linda May 27, 1998
Keil, Martha February 16, 1994
Martel, Sophie October 6, 1999
McCombie, Nick October 1, 1985
McCutcheon, Rosemarie October 6, 1999
Moore, John July 16, 1986
Smith, Eleanor January 7, 2000
Sutherland, Sara September 6, 1991

Members representative of workers

Crocker, Jame August 1, 1991
Grande, Angela January 7, 2000
Tzaferis, Mary April 29, 1999

Members representative of employers

Barbeau, Pauline January 15, 1990
Cremisio, Angelo May 3, 2000
Wheeler, Brian January 7, 2000

Part-time

Vice-Chairs

Alexander, Bruce	May 3, 2000
Alexander, Judith	January 31, 1996
Baltman, Deena	February 16, 2000
Bayefsky, Eban	April 29, 1999
Bigras, Jean Guy	May 14, 1986
Bortolussi, Lorraine	March 21, 2001
Bowles, Patrick	May 3, 2000
Butler, Michael	May 6, 1999
Caddigan, Beverley	February 16, 2000
Carroll, Tom	May 27, 1998
Cook, Brian	September 6, 1991
Crystal, Melvin	May 3, 2000
Eagan, Michael	April 29, 1999
Farrer, Jennifer Bradley	January 31, 1996
Faubert, Marsha	December 10, 1987
Ferdinand, Ulrich	April 29, 1999
Flanagan, William	June 1, 1991
Fleming, David	January 7, 2000
Hartman, Ruth	October 6, 1999
Henderson, Loretta	January 13, 1999
Jordan, Leo	October 8, 1999
Josefo, Jay	January 13, 1999
Kenny, Maureen	July 29, 1987
Koutoulakis, John	October 4, 2000
Kroeker, Lawrence	June 18, 1997
Libman, Peter	February 14, 1996
Loewen, Brian	May 6, 1999
MacKenzie, Cameron	August 21, 2001
Makepeace, Nancy	April 29, 1999
Marafioti, Victor	March 11, 1987
McGrath, Joy	December 10, 1987
McIntosh-Janis, Faye	May 14, 1986
McMahon, Gary	May 3, 2000
Mole, Ellen	January 31, 1996
Morrison, Gail	October 6, 1999
Nairn, Rob	April 29, 1999
Newman, Elaine	July 9, 1986
Onen, Zeynep	October 1, 1988
Purdy, David	October 4, 2000
Renault, Audrey	January 31, 1996
Robeson, Virginia	March 15, 1990
Ross, Norman	February 21, 2001

Ryan, Sean	October 6, 1999
Sajtos, Joanne	May 27, 1998
Signoroni, Antonio	October 1, 1985
Silipo, Tony	December 2, 1999
Weir, Gordon	September 19, 2001
Zimmerman, Geoffrey	April 29, 1999

Members representative of workers

Anderson, James	May 4, 1995
Beattie, David	December 11, 1985
Besner, Diane	January 13, 1995
Black, Brenda	December 12, 2001
Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Felice, Douglas	May 14, 1986
Hodgkiss, Pauline	October 17, 2001
Jackson, Faith	December 11, 1985
Klym, Peter	May 14, 1986
Lebert, Ray	June 1, 1988
Rao, Fortunato	February 11, 1988
Robillard, Maurice	March 11, 1987
Timms, David	May 4, 1995

Members representative of employers

Bullivant, Mardi	April 29, 1999
Christie, Mary	May 2, 2001
Copeland, Susan	June 17, 1993
Jago, Douglas	October 1, 1985
McLachlan, Dennis	March 5, 2001
Meslin, Martin	December 11, 1985
Robb, C. James	June 2, 1993
Sanscartier, Robert	June 29, 1998
Séguin, Jacques	July 1, 1986
Sherwood, Robert	May 3, 2000
Stewart, Gordon	March 5, 2001
Young, Barbara	February 17, 1995

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS IN 2001

Effective

Judith Alexander	January 31, 2001
James Anderson	May 4, 2001

Pauline Barbeau	January 1, 2001
Diane Besner	January 13, 2001
Jean Guy Bigras	July 1, 2001
Tom Carroll	June 1, 2001
Susan Copeland	June 15, 2001
James Crocker	January 1, 2001
Jennifer Bradley Farrer	January 31, 2001
Douglas Felice	May 14, 2001
Linda Gehrke	June 1, 2001
Faith Jackson	January 1, 2001
Peter Klym	May 14, 2001
Ray Lebert	January 1, 2001
Peter Libman	February 14, 2001
Faye McIntosh-Janis	May 14, 2001
Martin Meslin	January 1, 2001
Ellen Mole	January 31, 2001
Elaine Newman	March 16, 2001
Fortunato Rao	February 11, 2001
Audrey Renault	January 13, 2001
Robert Sanscartier	June 29, 2001
Jacques Séguin	July 1, 2001
David Timms	May 4, 2001
Brian Wheeler	June 15, 2001 ¹
Barbara Young	February 17, 2001

NEW APPOINTMENTS DURING 2001

Effective

Part-time

Vice-Chairs

Lorraine Bortolussi	March 21, 2001
Cameron MacKenzie	August 21, 2001
Norman Ross	February 21, 2001
Gordon Weir	September 19, 2001

¹ Conversion of existing appointment from part-time to full-time.

Members representative of workers

Brenda Black	December 12, 2001
Richard Briggs	August 21, 2001
Dave Broadbent	April 18, 2001
Pauline Hodgkiss	October 17, 2001

Members representative of employers

Mary Christie	May 2, 2001
Dennis McLachlan	March 5, 2001
Gordon Stewart	March 5, 2001

SENIOR STAFF

David Bestvater	Director, Case Management Systems
Debra Dileo Registrar	Assistant Registrar, Office of the Vice-Chair
Noel Fernandes	Manager, Finance
Martha Keil Registrar	Vice-Chair Registrar, Office of the Vice-Chair
Zeynep Onen	Executive Director
Janet Oulton	Appeals Administrator
Carole Prest	Counsel to the Tribunal Chair
Brenda Rantz	Manager, Human Resources ²
Dan Revington	Tribunal General Counsel
Bob Rowe	Director of Finance and Administration ³
Miriam Weinfeld	Manager, Alternative Dispute Resolution

MEDICAL COUNSELLORS

Dr. Derek Birt	Otolaryngology
Dr. John Duff	General Surgery
Dr. Ross Fleming	Neurosurgery
Dr. Gordon Hunter	Orthopaedic Surgery
Dr. Emmanuel Persad	Psychiatry
Dr. John Speakman	Ophthalmology
Dr. Anthony Weinberg	Internal Medicine

² Brenda Rantz replaced Janet Geisberger in this position in May 2001.

³ Bob Rowe took on this position in February 2001, replacing Bob Glass.

Appendix B

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL REPORT AND FINANCIAL STATEMENTS December 31, 2001

Auditors' Report

To the Chair of
Workplace Safety and Insurance Appeals Tribunal

We have audited the balance sheet of the Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") as at December 31, 2001 and the statements of operations and cash flows for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 2001 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

(signed) *Deloitte & Touche LLP*

Chartered Accountants

Toronto, Ontario
February 25, 2002

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL
Balance Sheet
December 31, 2001**

	<u>2001</u>	<u>2000</u>
ASSETS		
Cash	\$ 1,002,349	\$ 2,141,337
Receivable from Workplace Safety and Insurance Board	2,496,634	1,444,658
Recoverable expenses (Note 3)	144,958	349,002
Advances	18,117	9,699
	\$ 3,662,058	\$ 3,944,696
LIABILITIES		
Accounts payable and accrued liabilities	\$ 1,787,080	\$ 2,544,696
Advances from Workplace Safety and Insurance Board (Note 4)		
For operations	1,400,000	1,400,000
For leasehold improvements	474,978	-
	\$ 3,662,058	\$ 3,944,696

APPROVED ON BEHALF OF THE WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

(signed) *I.J. Strachan, Chairman*

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2001**

	<u>2001</u>	<u>2000</u>
OPERATING EXPENSES		
Salaries and wages	\$ 9,041,582	\$ 9,172,792
Employee benefits	1,460,750	1,689,031
Transportation and communication	1,202,614	1,110,871
Services	7,932,120	7,140,349
Supplies and equipment	860,956	857,922
	<u>20,498,022</u>	19,970,965
Services - Workplace Safety and Insurance Board (Note 5)	650,285	776,728
TOTAL OPERATING EXPENSES	<u>21,148,307</u>	20,747,693
Leasehold Improvements	825,022	1,322,350
TOTAL EXPENSES	<u>21,973,329</u>	22,070,043
Bank Interest Income	(88,128)	(55,385)
Pension contributions adjustment (Note 6)	(561,717)	-
NET RECOVERABLE EXPENDITURES	<u>21,323,484</u>	22,014,658
FUNDING REVENUE	<u>21,323,484</u>	22,014,658
NET RESULT FOR THE YEAR	<u>\$ -</u>	<u>\$ -</u>

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL
Statement of Cash Flows
Year ended December 31, 2001**

	<u>2001</u>	<u>2000</u>
NET INFLOW (OUTFLOW) OF CASH RELATED TO OPERATING ACTIVITIES		
Funding revenue received from Workplace Safety and Insurance Board	\$ 20,271,508	\$ 24,293,765
Cash receipts for recovery of shared services	341,226	440,900
Bank interest received	88,128	55,385
Expenses and net advances	(21,839,850)	(22,294,275)
NET CASH FLOW FROM OPERATING ACTIVITIES DURING THE YEAR	(1,138,988)	2,495,775
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	2,141,337	(354,438)
CASH AND CASH EQUIVALENTS, END OF YEAR	\$ 1,002,349	\$ 2,141,337

NOTES TO THE FINANCIAL STATEMENTS

December 31, 2001

1. GENERAL

The Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") was originally created by the Workers' Compensation Amendment Act S.O. 1984, Chapter 58 – Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers in connection with decisions, orders or rulings of the Workplace Safety and Insurance Board (formerly Workers' Compensation Board), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. SIGNIFICANT ACCOUNTING POLICIES

The Tribunal's financial statements are prepared in accordance with Canadian generally accepted accounting principles.

Leasehold Improvements, Supplies and Equipment

Leasehold Improvements and Supplies and Equipment are expensed on a cash basis to match the recovery of the costs (funding revenue).

Revenue and expenses

Revenue and expenses are recognized on an accrual basis.

3. RECOVERABLE EXPENSES

Recoverable expenses consist of amounts recoverable from Pay Equity Hearing Tribunal, Ontario Labour Relations Board and Board of Inquiry for shared services such as reception, library, mailing, courier and photocopy expenses.

4. ADVANCES FROM WORKPLACE SAFETY AND INSURANCE BOARD

The operating advance is interest-free with no specific terms of repayment. The advance for leasehold improvements is for the specific purpose of renovating and upgrading the Tribunal's leaseholds.

5. SERVICES – WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

The expense represents administrative costs for processing claim files of the WSIB, which are under appeal at the Tribunal.

6. PENSION CONTRIBUTIONS ADJUSTMENT

This amount represents the Tribunal's share of contributions for an unfunded pension liability to the Ontario Public Service Employees Union pension trust. This amount was accrued in previous years according to instructions from the Management Board Secretariat. No payments to the trust were required as subsequent actuarial valuations resulted in pension surpluses as opposed to unfunded liabilities. As such, the contributions accrued in previous years have been reversed in the current year.