

# WSIAT

Workplace Safety and Insurance Appeals Tribunal

# 2003

## Annual Report



Workplace Safety and Insurance Appeals Tribunal

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

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# Annual Report 2003

Workplace Safety and  
Insurance Appeals Tribunal  
505 University Avenue, 7th Floor  
Toronto, Ontario M5G 2P2  
ISSN: 1480-5707  
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# TABLE OF CONTENTS

<b>INTRODUCTION</b>	v
<b>CHAIR'S REPORT</b>	
<b>A NEW BEGINNING</b>	1
<b>HIGHLIGHTS OF THE 2003 CASE STUDIES</b>	3
Appeals Under the WSIA	3
Board Policy Under the WSIA	4
Appeals Under the Earlier Acts	6
Right To Sue Applications	7
Employer Issues	8
Occupational Disease	9
Miscellaneous	9
<b>APPLICATIONS FOR JUDICIAL REVIEW</b>	10
<b>OMBUDSMAN REVIEWS</b>	16
<b>TRIBUNAL REPORT</b>	
<b>REPORT OF THE TRIBUNAL DIRECTOR</b>	17
<b>CASELOAD PROCESSING</b>	18
Introduction	18
Caseload	19
Active Inventory	19
Incoming Appeals	20
Case Resolutions	21
Timelines of Appeal Processing	22
Hearing Activity	23
Hearing Type	24
Representation	24
Caseload by General Issue Type	25
Inactive Inventory Projects	28
Post-decision Workload	28

<b>TRIBUNAL ORGANIZATION</b>	29
Vice-Chairs, Members and Staff	29
Office of Counsel to the Chair	29
Office of the Vice-Chair Registrar	30
The Vice-Chair Registrar	30
Tribunal Counsel Office	31
Hearing Work	31
Pre-hearing Work	32
Post-hearing Work	32
Lawyers	32
Legal Workers	33
Medical Liaison Office	33
Support Staff	35
Alternative Dispute Resolution	35
Early Review Unit	35
ADR Unit	35
Two Party Appeals	36
Single Party Appeals	36
Resource Department	37
Ontario Workplace Tribunals Library	37
Web Site	38
Publications	38
Case Management Systems	39
<b>FINANCIAL MATTERS</b>	40
<b>APPENDIX A</b>	
<b>VICE-CHAIRS AND MEMBERS IN 2003</b>	43
<b>VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS IN 2003</b>	45
<b>NEW APPOINTMENTS DURING 2003</b>	46
<b>SENIOR STAFF</b>	46
<b>MEDICAL COUNSELLORS</b>	46
<b>APPENDIX B</b>	
<b>AUDITORS' REPORT AND FINANCIAL STATEMENTS</b>	47

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# Introduction

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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 2003 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.



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# Chair's Report

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## A NEW BEGINNING

The arrival of a new Minister in November of 2003 managed to rekindle some of the lost enthusiasm in the Appeals Tribunal environment and gave both the injured worker and employer communities reason for cautious optimism. It was a positive end to a less than positive year.

There is little doubt that 2003 was a challenging year for the Appeals Tribunal. It was a year in which the Workplace Safety and Insurance system and the Tribunal should have reaped the benefits of Tribunal accomplishments over the previous years, while renewing a commitment to quality adjudication and the integrity of the administrative justice system. With the elimination of the large backlog of cases, 2003 should have been a year in which our “steady state” process was gradually fine-tuned to serve as a model for quality service in an appeals system. Unfortunately, early in the year the Tribunal was faced with new challenges which, to most informed people within the workers’ compensation community, could have been avoided. Understandably, the rationale for these counterproductive developments was a mystery to experienced observers of the Ontario administrative justice system.

At the end of 2002, the Tribunal was in a “steady state” mode in which incoming appeals were approximately equal to appeal dispositions. The Tribunal enjoyed a core roster of knowledgeable and experienced vice-chairs and members (OICs), which was poised to focus on quality decision making and improved turnaround time for appeals. In January 2003, there was some cause for optimism; however, there quickly emerged a feeling of apprehension among Tribunal constituents who sensed that many of the most experienced and knowledgeable OICs might not be reappointed. This apprehension soon turned a positive outlook into a negative one for much of the year. As concerns spread among supporters of a quality administrative justice system, organizations such as the Ontario Bar Association, Ontario Federation of Labour, Ontario Mining Association and Canadian Auto Workers, together with numerous smaller groups and concerned individuals made their concerns known to the Premier’s Office. They were dedicated and resolute, and ultimately their views

prevailed, resulting in Cabinet reappointments for a number of experienced vice-chairs and members.

Just when some sense of relief was forming as a result of these OIC reappointments, the Tribunal received notice of a significant budget reduction halfway through its fiscal year. This caused the Tribunal to postpone projects; move regional hearings to Toronto (which increased travel costs for injured workers and employers, while saving money for the Tribunal); leave staff positions vacant; and defer expenditures until 2004 wherever possible. Earlier Tribunal financial forecasts had been extremely accurate in assessing annual budget requirements and the rationale for the reduction was unclear. In retrospect, it may have been a recognition that the outgoing Minister would not recommend a sufficient number of OIC appointments and reappointments to deal with the Tribunal's incoming caseload, thereby reducing the funding needed for the requisite number of OICs. Not all knowledgeable OICs had been reappointed and the Tribunal's OIC roster, which had peaked at 65 full-time and part-time vice-chairs plus 30 members, continued to erode to 50 (30 vice-chairs and 20 members) by the end of 2003. This short-term, and arguably short-sighted, financial gain for the Insurance Fund would create long-term consequences for injured workers and employers in Ontario, as a new appeal backlog began to develop.

By year-end, the lack of adjudicative resources meant that a sufficient number of hearings could not be scheduled. The Tribunal's steady state model which existed at the beginning of 2003, had once again developed a backlog with the caseload approximately 16% above the production target of 4,000 active appeals. This trend will continue in the first part of 2004 and, as a result, the Appeals Tribunal must now develop a new two-year business plan to eliminate the new and growing backlog. The production plan will require a significant increase in the number of knowledgeable vice-chairs in 2004; it will also require approval of sufficient resources to eliminate the new backlog and fulfill an earlier undertaking given by the Ministry of Labour and the Tribunal to the Ombudsman to offer timely hearing dates to appellants and respondents. In the words of Yogi Berra: "It's déjà vu all over again."

With the appointment of a new Minister of Labour in November and a new government which espouses the principle of competency-based appointments, the Tribunal environment has again taken on an air of cautious optimism. Since its inception in 1985, the Tribunal had sought to retain the services of its most skilled and competent adjudicators and employees – a characteristic which has caused the Divisional Court and Ontario Court of Appeal, when dealing with judicial reviews, to recognize the Appeals Tribunal as a highly specialized or "expert" administrative law tribunal. This internal commitment to a competency-based operation, combined with a growing Canadian awareness of the significance of its administrative justice system and the underlying appointment/reappointment process, will hopefully allow the cautious optimism which existed at year-end to evolve into a well-founded

conclusion that the integrity of the Appeals Tribunal and the appeal process will prevail in Ontario.

In a sense, the events of 2003 have given the Tribunal and its constituents a stronger sense of purpose and a renewed commitment to a quality system. It may have been a year of trial by fire, but the flames did not consume the organization or its committed supporters; rather, the adversity has generated an increased sense of duty and decency which should auger well for the workers' compensation community and the Ontario administrative justice system in 2004.

## HIGHLIGHTS OF THE 2003 CASE STUDIES

This section highlights some of the legal, factual and medical issues considered by the Tribunal in decisions which were summarized during 2003.

The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes 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. Effective November 26, 2002, the *Government Efficiency Act, 2002* (GEA) amended certain benefit provisions in the WSIA and pre-1997 WCA. During 2003, the Tribunal adjudicated cases under all four Acts. For convenience, cases dealing with the WSIA are reviewed first.

### Appeals Under the WSIA

The WSIA continued non-economic loss (NEL) awards and introduced a single loss of earnings (LOE) benefit with discretionary annual reviews and review based on material change of circumstance. LOE benefits can be reviewed up to 72 months after the accident. The WSIA requires the workplace parties to co-operate in early and safe return to work (ESRTW). If ESRTW is not possible, the Board may offer a labour market re-entry (LMR) plan to the worker, to assist in identifying a suitable employment or business (SEB). The worker's LOE benefits are assessed in light of this SEB.

There are a number of decisions providing guidance on what level of co-operation will be required from the workplace parties, particularly in situations where the worker is able to return to work before the Board has an opportunity to become involved in the claim. *Decision No. 47/03* (2003), 63 W.S.I.A.T.R. 306, noted that while Board policy states that the Board is to provide notice of failure to co-operate to the worker before denying LOE benefits, this is not practical for relatively short absences. The obligation to co-operate should not be diminished because the Board did not have the opportunity to provide notice where the worker is

aware that work is available and could reasonably be satisfied that it is suitable. See *Decision No. 1835/02* (2002), 63 W.S.I.A.T.R. 286. Where a worker reasonably relies on his doctor's advice, however, he will not be disentitled to LOE benefits for non-co-operation. See, for example, *Decision No. 2398/01* (January 15, 2003).

Appeals during 2003 continued to explore the role of non-compensable conditions in assessing a worker's entitlement to LOE benefits. Where the non-compensable condition develops after the workplace accident, it is not considered in assessing LOE benefits. See *Decision No. 1590/02* (December 19, 2002).

The WSIA excludes benefits for mental stress except where the stress condition is an acute reaction to a sudden and unexpected traumatic workplace event. *Decision No. 708/02* (2003), 63 W.S.I.A.T.R. 189, clarified that this provision prevents claims for mental disabilities, but not physical conditions. A claim that chronic stress contributed to the worker's heart attack was not prohibited by the WSIA, although there was not sufficient evidence to establish causation.

The WSIA also introduced a six-month time limit for appealing decisions, unless the Tribunal is satisfied that a time extension should be granted. An issue of continuing interest is the extent to which a representative's actions affect time extensions. Prior decisions have held that a representative's carelessness is not a sufficient reason to grant a time extension. However, *Decision No. 1013/02ER* (October 8, 2003) noted a party's conduct must also be assessed.

## 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 decisions. This requirement also applies to appeals and policy under the earlier Acts. Section 126 sets out a process for the Board to identify 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 Board then has 60 days to provide the parties with an opportunity to make submissions and issue a written direction with reasons.

There were no section 126 referrals to the Board in this reporting period. *Decision No. 1306/02I* (2002), 63 W.S.I.A.T.R. 235, requested submissions from the Board on whether policy which sets off Canada Pension Plan (CPP) benefits against partial FEL awards, is consistent with the Act. After considering the Board's submissions, *Decision No. 1306/02I2* (October 16, 2003) concluded that the policy appropriately treated CPP benefits as likely future earnings as contemplated by section 43(7) of the pre-1997 Act.

In cases which do not raise section 126 referral issues, it is the Tribunal's role to interpret and apply Board policy. Board documents which are not subject to a

sufficiently formal process to be policy under section 126, may still be considered by the Tribunal as guidelines in interpreting the legislation. See *Decision No. 878/03* (2003), 65 W.S.I.A.T.R. 126. Similarly, where there is policy under an earlier Act but no policy under the applicable Act, the earlier policy may be considered as a guideline if the legislative provisions are similar. See *Decision No. 985/03* (2003), 65 W.S.I.A.T.R. 153. A Board policy review and a Board discussion paper were considered in interpreting Board policy on CPP benefits and partial FEL awards in *Decision No. 1821/03* (October 30, 2003). While the Board had not yet updated its policy, the Vice Chair was satisfied that CPP disability benefits should be treated as post-accident earnings so that the combined value of CPP benefits and the FEL award did not exceed pre-injury earnings. Board policy may also provide guidance in weighing evidence where there are evidentiary difficulties. For example, *Decision No. 1863/03* (October 30, 2003) found that Board policy that a psychotraumatic disability should be manifest within five years of a workplace accident was a guideline, and would not prevent entitlement if the evidence established that the condition arose later.

The WSIA and the prior Acts provide that decisions are to be reached on the merits and justice. In situations where the application of Board policy would lead to an unjust or absurd result, the Tribunal may consider varying it. See, for example, *Decision No. 1139/02* (2002), 63 W.S.I.A.T.R. 205, which found that the technical application of policy governing the earnings basis of a volunteer fire fighter led to an absurd and unfair result and awarded benefits based on the fire fighter's actual wage loss.

Finally, the effective date of Board policy was considered in a number of cases. Statements in Board policy that the policy is applicable to decisions on or after a certain date, have generally been interpreted to refer to Board decisions. See, for example, *Decisions No. 1426/02* (2003), 64 W.S.I.A.T.R. 175, and *560/03* (2003), 64 W.S.I.A.T.R. 308. The strong presumption against retroactivity of regulatory offences was noted in *Decision No. 878/03* in the context of Board policy on late filing penalties. *Decision No. 1738/02* (2003), 63 W.S.I.A.T.R. 259, considered Board policy on retroactivity of employer classifications. Classification changes take effect from January 1 of the year in which the employer receives notification. Where the classification was changed by a Board minute which was later included in the *Employer Classification Manual*, the earliest date of notification would be publication in the *Employer Classification Manual*. *Decision No. 884/01* (August 28, 2003) held that whether a Board Administrative Minute was described as a clarification or an amendment was unimportant; where the Minute had a substantive effect on the employer's classification, the changes should be implemented prospectively.

## Appeals Under the Earlier Acts

During 2003, most decisions considered claims under the earlier workers' compensation legislation. The pre-1985 and pre-1989 Acts provided 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 24 months (R1) and a final review after 60 months (R2). As of January 1, 1998, the WSIA replaced the R1 and R2 reviews with discretionary annual reviews and review on material change in circumstances. Amendments in the *Government Efficiency Act, 2002*, now provide for review of a final FEL after 60 months if the worker suffers a significant deterioration in his or her condition which results in a NEL redetermination, or a labour market re-entry plan is not completed within the 60 months.

For an interesting summary of the GEA amendments, see *Decision No. 852/03* (September 26, 2003), which finds that review of a final FEL is not authorized by the amendments where the NEL redetermination occurred in August 2002. Where there is no evidence of deterioration and vocational rehabilitation was terminated prior to November 26, 2002, there is no mechanism to change the R2 award after the R2 date, although the correctness of the award can be appealed to the Tribunal. See *Decision No. 716/03* (2003), 65 W.S.I.A.T.R. 98, and *Decision No. 1106/03* (July 18, 2003). In situations where review of a final FEL award is not permitted, the Tribunal can consider subsequent evidence if it sheds light on the worker's circumstances as they existed at the final FEL review. See *Decision No. 1532/02* (2003), 64 W.S.I.A.T.R. 185.

With respect to the WSIA amendments which introduced review based on material change in circumstance, Tribunal cases continued to apply the analysis outlined in the last Annual Report. It now appears to be accepted that FEL benefits accruing subsequent to January 1, 1998, can be reviewed where a material change in circumstance occurred before 1998 but continues after January 1, 1998.

*Decision No. 2035/00* (2003), 63 W.S.I.A.T.R. 60, found that where a worker was dismissed for just cause from suitable modified work at no wage loss, she must be deemed to have taken herself out of the workplace through her own actions. Any loss of earnings is not due to the compensable accident in the absence of other relevant circumstances. In *Decision No. 1873/02* (2003), 64 W.S.I.A.T.R. 218, the worker accepted a severance package and his compensable condition subsequently deteriorated. It was held that any wage loss prior to the deterioration was not compensable but that since the worker could no longer perform his pre-injury job or equivalent work, he was entitled to FEL benefits for subsequent wage loss.

Several cases considered Board policy on the use of National Occupational Classification (NOC) codes in determining suitable employment or business. While it is not necessary to identify a particular job, Board policy requires determination of a major group (skill type and skill level) and a minor group (types of jobs with the identified skill type and level). The majority of specific jobs within the minor group must be suitable. See *Decision No. 2414/01* (January 30, 2003). A Board finding that work was suitable was reversed where the worker did not have the education or experience required by the NOC codes. See *Decision No. 957/03* (June 13, 2003). Other interesting FEL decisions included: how a change in the worker's Revenue Canada net exemption code due to marital status should be treated (*Decision No. 1/02* (2003), 64 W.S.I.A.T.R. 108); the effect of non-compensable conditions (*Decisions No. 427/01* (2003), 65 W.S.I.A.T.R. 1, *1151/03* (2003), 65 W.S.I.A.T.R. 177, and *259/03* (2003), 64 W.S.I.A.T.R. 298); and how a migrant worker's FEL should be calculated when he returns to his home country (*Decision No. 334/03* (October 30, 2003)).

*Decision No. 715/02* (October 2, 2003) noted that the pre-1997 Act did not deal with mental stress and there was no pre-1997 Board policy on stress. A stress claim based on termination of employment was denied as the employer had not acted wrongly or maliciously and the average worker would not have been at risk of a disabling mental condition. *Decision No. 715/02* agreed with other Tribunal decisions that it was questionable whether the pre-1997 Act covered an emotional reaction to downsizing or termination.

## Right To Sue Applications

The WSIA and earlier workers' compensation statutes are based on an "historic trade-off" in which workers gave up the right to sue in exchange for statutory no-fault benefits. Right to sue applications may raise complicated legal issues, often in tragic circumstances.

*Decision No. 608/02* (2003), 63 W.S.I.A.T.R. 155, considered the constitutional question posed by the interaction of federal maritime law and provincial workers' compensation law. Applying the Supreme Court of Canada decision in *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, the Tribunal determined that the worker's action for serious injuries suffered while unloading cargo at a marine terminal facility was a workplace accident within provincial jurisdiction.

Several decisions considered the relationship between the *Family Law Act*, *Insurance Act* and the WSIA. See, for example, *Decision No. 234/03* (August 29, 2003). *Decision No. 11/02* (2003), 65 W.S.I.A.T.R. 31, addressed the Tribunal's jurisdiction where a worker was electrocuted at work and actions were brought by his non-dependent parents, grandparents and brothers. While the WSIA, section 27, gives the Tribunal jurisdiction to remove the *Family Law Act* actions of dependants, there is no jurisdiction to remove an action where the parties are not dependants.

Other interesting right to sue cases include: *Decision No. 237/03* (2003), 64 W.S.I.A.T.R. 276 (whether the Tribunal has jurisdiction to remove an action for wrongful dismissal); *Decision No. 2969/00* (2003), 64 W.S.I.A.T.R. 69 (whether a worker's right to sue a hospital and doctor for negligent treatment of a workplace injury was subrogated to the Board); *Decision No. 2652/01* (April 4, 2003) (the application of the Act to "products liability" situations); and *Decision No. 977/03* (July 14, 2003) (where a worker was assaulted by an executive officer, director and shareholder of the employer).

## Employer Issues

In 2003, the Tribunal continued to hear a significant number of employer appeals on issues such as classifications, penalties, cost relief, cost transfers and interest.

*Decision No. 3198/001* (2003), 64 W.S.I.A.T.R. 78, was the first case to consider the Tribunal's jurisdiction to hear appeals from departure fees levied when a Schedule 1 application industry exits from Schedule 1. It held that a departure fee falls under section 123(1)(b) of the WSIA as a penalty or premium. While the Tribunal does not have the jurisdiction to consider the design of the departure fee system, it can decide whether a departure fee is properly calculated, whether all the factors in Board policy have been considered and whether there are exceptional circumstances which justify varying or waiving the fee. And see *Decision No. 1354/02* (2002), 63 W.S.I.A.T.R. 244, which rejected the Board's argument that the Tribunal did not have jurisdiction to decide an employer's appeal for access to a prior claim file on the grounds that the Tribunal could not review Board findings on relevance.

Several cases considered the difference between interest on payroll reconciliations and interest on reclassifications under Board policy. It now appears to be accepted that Board policy appropriately distinguishes between the two situations and that interest before January 1, 1997, is only paid on payroll reconciliations. See *Decision No. 1748/99* (January 23, 2003) and *Decision No. 1221/03* (August 8, 2003).

A series of cases considered an employer's obligation to report under the new definition of health care in the WSIA and new Board policy. Under the pre-1997 Act, the Board excluded some *de minimus* situations. *Decision No. 878/03* (2003), 65 W.S.I.A.T.R. 126, found that Bill 99 policies, like Document No. 3.1, have not been the subject of a sufficiently formal process to be section 126 policies under the WSIA. There was also a strong presumption against retroactivity with respect to a regulatory offence. The Panel concluded that Document No. 3.1 should be considered as a guideline and should be interpreted as subject to an exception for *de minimus* situations that do not require reporting. And see *Decisions No. 1912/03* (November 6, 2003), *1915/03* (November 6, 2003), and *1916/03* (November 6, 2003).

There were also a number of interesting employer classification appeals, including: *Decision No. 1166/01* (2003), 63 W.S.I.A.T.R. 99 (which held that the Board and employer share responsibility for ensuring the accuracy of the industry classification); *Decision No. 64/03* (2003), 63 W.S.I.A.T.R. 322 (which held that the “best fit” test continues to apply); and *Decision No. 1192/03* (2003), 65 W.S.I.A.T.R. 222 (which held that, while the *Employer Classification Manual*, including its minuted introduction, as it read on July 1, 2001, is valid Board policy, an earlier version which was in effect at the time of the initial Board decision applied.)

## Occupational Disease

Occupational disease cases raise some of the most medically complicated issues, as they involve workplace exposure to harmful processes or substances. Occupational diseases are compensable if they fall under the statutory provisions governing “occupational disease” or “disablement.” In disablement cases, the Tribunal examines the evidence relating to an individual worker to see if it supports a causal relationship as well as general medical and scientific evidence. The Board has developed policies for a number of occupational diseases, and the Tribunal also applies these in reaching its conclusions.

*Decision No. 600/97* (September 30, 2003) is an interesting example of an occupational disease case. It considered an appeal by a worker’s estate for dependency benefits where an underground miner developed colorectal cancer and lung cancer. The Panel discusses Julian and Muir’s report, “A Study of Cancer Incidence in Ontario Nickel Miners” (January 15, 1996). This study focused on cancer of the larynx but considered cancer at other sites. It noted an elevated risk of colorectal cancer in underground miners but was not able to draw any definitive conclusions. Entitlement was denied as the epidemiological evidence indicated that it was more probable than not that the worker’s cancer would have developed when it did in any event, and there was nothing particular about the worker’s risk that was distinguishable from the group risk.

*Decision No. 801/01* (December 20, 2002) found entitlement for lung cancer based on the worker’s combined exposure in gold mining and uranium mining. *Decision No. 303/02* (2003), 64 W.S.I.A.T.R. 118, raised the question of how the Tribunal’s significant contribution test should be applied to cases where a worker developed COLD and was exposed to smoking and dusty underground mining.

## Miscellaneous

Other interesting decisions on medical issues released during 2003 include: *Decision No. 1514/02* (September 4, 2003) (whether there was a connection between the worker’s heart attack and chronic mental stress arising from a workplace explosion which caused multiple burns and fractures); *Decision No. 3036/01*

(September 5, 2003) (whether there was a causal connection between workplace exposure to dust and mould and the worker's respiratory condition and dermatitis); *Decision No. 216/02* (September 6, 2003) (whether a hospital worker's exposure to infection resulted in his death due to hemophagocytic syndrome caused by infection following a heart transplant); and *Decision No. 1348/03* (October 28, 2003) (whether prolonged standing caused or aggravated plantar fasciitis).

The Tribunal revisited the doctrine of issue estoppel in *Decision No. 1000/001* (2003), 64 W.S.I.A.T.R. 1, in light of recent developments in the case law, including *Danyluk v. Ainsworth Technologies Inc.* (2001), 201 D.L.R. (4th) 193 (S.C.C.). It was found that estoppel did not apply where an arbitrator had previously found the worker was not co-operating in return to work but was entitled to one more chance at the workplace. It was not established that the standards of co-operation and work suitability under the collective agreement were the same as those contained in the pre-1997 Act and Board policy. *Decision No. 1846/02* (2003), 64 W.S.I.A.T.R. 208, applied the two-step test in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, in deciding whether to exercise the Tribunal's discretion to decide a matter which had become moot. The decision sets out various factors which are relevant in the workplace safety and insurance setting.

Interesting procedural issues included: the Tribunal's mediation process and consideration of a mediation agreement where the party waived confidentiality (*Decision No. 50/02* (December 23, 2002)); the Tribunal's authority to require a representative to produce correspondence requesting a medical-legal evaluation of a worker from a doctor (*Decision No. 1319/011* (February 13, 2003)); the prohibition in the *Regulated Health Professions Act, 1991*, on use of records of proceedings and decisions under that Act (*Decision No. 669/02* (March 27, 2003)); whether the Board's provision of vocational rehabilitation services to a pregnant worker was discriminatory on the basis of family status under the Ontario *Human Rights Code* (*Decision No. 2371/00* (May 2, 2003)); and the Tribunal's procedure for closing cases on the inactive case list (*Decisions No. 1070/031* (2003), 65 W.S.I.A.T.R. 159, and *1071/03* (2003), 65 W.S.I.A.T.R. 163).

## APPLICATIONS FOR JUDICIAL REVIEW

The year 2003 was the busiest ever for judicial review activity at the Tribunal. Lawyers from the Tribunal Counsel Office co-ordinate all responses to judicial review applications, and represent the Tribunal in most instances.

The Courts again ruled no Tribunal decisions required judicial intervention for those applications heard in 2003. After 19 years, the Courts have never found a decision of the Tribunal demonstrated reviewable error.

The following is a list of the applications for judicial review of Tribunal decisions, and their current status at the end of 2003.

### **1. Decision No. 1902/01**

In August 2001, the Tribunal was served with an application for judicial review in an application under section 17 of the pre-1997 *Workers' Compensation Act*. The issue was whether a worker's right to sue had been taken away. The worker had a compensable knee injury. He alleged that a knee operation subsequent to his injury caused further disability. The Tribunal's decision took away the worker's right to sue as against the hospital, the nurse and a student nurse, but not against the doctor or the college where the student nurse was attending. The worker commenced an application for judicial review.

This application was unusual in that the Tribunal had not released a decision at the time it was served with the judicial review. The Tribunal subsequently released *Decision No. 1902/01 (2001)*, 59 W.S.I.A.T.R. 257.

Following service of the Tribunal's factum, counsel for the doctor brought a counter-application for judicial review. It was the doctor's position that the right of action against the doctor should have been extinguished.

The application and counter-application were heard together on November 26, 2002. The Divisional Court released its decision on November 29, unanimously dismissing both the application and counter-application.

Counsel for the doctor served a notice of motion for leave to appeal to the Court of Appeal. In February 2003, this leave application was abandoned.

### **2. Code of Conduct Suspension**

A paralegal consultant who represents injured workers at the Tribunal was suspended from representing clients on new appeals at the Tribunal. The decision to suspend was made by the Tribunal Chair, acting pursuant to the Act, the Tribunal's Code of Conduct for Representatives and a related practice direction. The consultant brought an application for judicial review of the Chair's decision to suspend. The Workplace Safety and Insurance Board, which had also suspended this consultant from representing parties in its appeal process, was a co-respondent in the application.

The Tribunal filed responding materials, including a lengthy affidavit detailing the consultant's conduct. Counsel for the consultant removed himself from the record. In November 2003, the Divisional Court dismissed the application for judicial review for failure to perfect.

### 3. Decisions No. 1095/01 and 1095/01R

*Decisions No. 1095/01* (April 30, 2001) and *1095/01R* (April 19, 2002) upheld the Board's denial of a worker's appeal for entitlement for bilateral carpal tunnel syndrome.

The worker's application for judicial review was heard on April 4, 2003. The Divisional Court unanimously dismissed the application. The Court held that the Tribunal correctly assessed the requirements of the legislation, that its finding of fact was available to it on the evidence before it, and its conclusion was not patently unreasonable.

After obtaining an order to extend the time for leave to appeal, counsel for the worker filed an application for leave to appeal the Divisional Court decision. The Court of Appeal granted leave to appeal. The appeal is scheduled to be heard on February 12, 2004.

### 4. Decision No. 1105/99

In 2001, the Tribunal was served with an application for judicial review of *Decision No. 1105/99* (November 30, 1999). The worker was a co-owner of a trucking company, who had taken out personal coverage. The Vice-Chair denied the worker's appeal of a FEL sustainability award, finding the worker was still capable of earning the amount for which he had taken out personal coverage based on the worker's earnings potential.

The judicial review was scheduled to be heard in London on May 5, 2003. On May 2, 2003, counsel for the worker advised the application had been abandoned.

### 5. Decisions No. 1480/98 and 1480/98I

The WSIB granted entitlement to a letter carrier for a rare form of skin cancer, which resulted from exposure to sunlight during the course of her employment. An appeal by the employer was denied in *Decision No. 1480/98I* (July 27, 2001) as the Tribunal found that the worker's skin cancer was a "disablement" under the WSIA. The employer then argued that the worker was not entitled to benefits because she was a federal worker, and this type of accident or industrial disease was not covered by the *Government Employees Compensation Act* (GECA). In *Decision No. 1480/98* (2002), 62 W.S.I.A.T.R. 59, the Tribunal held that this "disablement" was an accident under the Ontario Act, and was incorporated under GECA.

The employer brought an application for judicial review. The employer is not challenging the finding that the cancer was work-related, only that this type of accident is incorporated by GECA. The application was heard on November 28, in Ottawa. At the end of 2003 the decision was still outstanding.

**6. Decisions No. 2185/01 and 2185/01R**

An employer's appeal that its operations were controlled by and ancillary to another firm, and thus should be classified in the same rate group as that other firm, was denied by the Tribunal in *Decisions No. 2185/01* (October 29, 2001) and *2185/01R* (August 2, 2002). The employer brought an application for judicial review.

The application was heard on November 10, 2003. The Divisional Court unanimously dismissed the judicial review, holding that the Tribunal's decision was not patently unreasonable.

**7. Decisions No. 255/02 and 255/02R**

In *Decision No. 255/02* (August 30, 2002) both the worker and employer appealed issues relating to entitlement. The employer's appeal of the worker's entitlement for a NEL award and wage loss benefits after March 1994, was dismissed. The worker's appeal for a further period of supplement was granted for six months. However, the worker was not allowed a FEL award at the final review, based on the Vice-Chair's finding the applicable wage loss should be calculated on what the average worker could have made, rather than the worker's actual wage loss.

The worker's request for reconsideration was dismissed in *Decision No. 255/02R* (February 28, 2003).

The worker brought an application for judicial review of the Tribunal's decisions. It is expected this application will be heard in Hamilton in January or February 2004.

**8. Decision No. 770/98IR**

*Decision No. 770/98IR* (February 5, 2002) denied a worker entitlement for traumatic vertebrobasilar ischemia. The applicant and the Tribunal have exchanged factums. The judicial review is scheduled to be heard on April 19, 2004.

**9. Decisions No. 18/88I and 18/88**

The worker brought an application for judicial review to quash *Decisions No. 18/88I* and *18/88*, made March 22, 1988, and October 27, 1988, respectively. The worker alleged the WSIB had improperly released his claim file to the employer. The worker argued that because of the WSIB's action, the Tribunal had lost jurisdiction to hear his appeal. The Tribunal did not agree, and held it had jurisdiction. Fifteen years later, the applicant commenced his judicial review application.

The worker brought a motion to add the WSIB and the employer as parties to the application, which the Tribunal did not oppose. The worker also alleged that the Tribunal was refusing to disclose information in his case, but this part of the motion was dismissed.

At the end of 2003 the Tribunal was waiting for the worker to amend his materials and serve the other respondents.

#### **10. Decisions No. 28/02 and 28/02R**

*Decision No. 28/02* (February 11, 2002) found that a worker had entitlement to compensation for a disc herniation on the basis that it arose as a disablement from work. The employer's application for judicial review of the decision was adjourned on consent of the parties, to permit the employer to pursue a reconsideration application at the Tribunal.

*Decision No. 28/02R* (July 22, 2003) denied the application for reconsideration. The employer then elected to proceed with the judicial review. The employer filed its factum in late December 2003. The Tribunal will be preparing its materials early in the new year.

#### **11. Decision No. 1504/01**

*Decision No. 1504/01* (February 28, 2002) allowed an appeal of the employer's classification of its business activity. When the Board did not immediately implement the Tribunal decision, the employer brought an application to compel the Board to implement the Tribunal's decision. Although the Tribunal was not a party, it was served with the application.

The employer's application was adjourned on consent pending the Board's application to reconsider *Decision No. 1504/01*, and the subsequent implementation of *Decision No. 1504/01R* (October 16, 2002). The Tribunal's decision was implemented to the employer's satisfaction, and the court application was abandoned.

#### **12. Decision No. 981/02**

Similar to *Decision No. 1504/01*, as the Board had not implemented Tribunal *Decision No. 981/02* (April 8, 2003) reclassifying an employer, the employer brought an application for an order to compel the WSIB to implement the Tribunal's decision.

Following receipt of the court application, the WSIB filed an application to reconsider the Tribunal decision. The court application has been adjourned pending the outcome of the application to reconsider.

#### **13. Decision No. 2476/01**

*Decision No. 2476/01* (October 16, 2001) denied the worker entitlement for chest wall pain. In 2001, the worker's counsel erroneously served a notice of appeal, which was subsequently withdrawn. Then the application for judicial review required amendment. The worker has now filed her factum, the Tribunal has filed its factum, and the respondent employer has filed a factum. The parties are currently awaiting a date for the hearing of the judicial review.

**14. Decision No. 398/02**

The same counsel as noted above filed an application for judicial review of *Decision No. 398/02* (March 26, 2002). In that decision, the Vice-Chair found a worker's compensable accident was not a significant causal factor in subsequent periods of alleged disability. The same procedural issues as above arose in this case. All parties have filed their materials, and a date is expected in Divisional Court in the new year.

**15. Decisions No. 201/02 and 201/02R**

*Decisions No. 201/02* (April 15, 2002) and *201/02R* (August 6, 2002) denied entitlement to a worker for chronic pain. Counsel for the worker commenced an application for judicial review. After filing a factum, the worker then elected to adjourn the application to pursue a further application for reconsideration at the Tribunal.

**16. Decisions No. 466/01 and 466/01R**

The Tribunal has received an application for judicial review of *Decisions No. 466/01* (February 26, 2001) and *466/01R* (October 30, 2001). The worker withdrew her appeal at the Tribunal on the advice of her former representative. She retained new counsel, and when her application to reconsider the withdrawal was denied, she brought a judicial review application. The Tribunal filed its record, but counsel for the worker has decided to pursue a further reconsideration. The application for judicial review has been adjourned pending the result of the reconsideration.

**17. Decisions No. 866/97 and 866/97R**

*Decision No. 866/97* (December 6, 1999) denied a Schedule 2 employer's appeal of a Board decision to pay a worker benefits for a specified period of time. However, the Panel also found that in the circumstances it was unfair for the employer to be fully liable for the cost of the benefits. The Panel directed the WSIB to credit the employer for the cost of some of the benefits.

The WSIB requested the Tribunal reconsider *Decision No. 866/97*. In *Decision No. 866/97R* (2002), 62 W.S.I.A.T.R. 33, a differently constituted Panel found the Tribunal had no jurisdiction to direct the Board to provide the Schedule 2 employer with relief from the costs of the claim.

The employer brought an application for judicial review of *Decision No. 866/97R*. However, the employer did not file further materials, and in November 2003, the Divisional Court dismissed the application for failure to perfect.

**18. Decision No. 1858/98**

*Decision No. 1858/98* (July 15, 1999) denied a worker entitlement to a supplement under section 147(4) of the pre-1997 Act. The worker's application for judicial

review was served in March 2003. The Tribunal filed its record. However, counsel for the worker sought to adjourn the judicial review to pursue an application for reconsideration at the Tribunal. The Tribunal consented to this adjournment.

#### **19. Decision No. 606/95**

This application for judicial review of *Decision No. 606/95* (June 23, 1997) was served on the Tribunal late in 2003. It appears to involve a number of complex factual issues involving entitlement for a worker. The Tribunal will be preparing its Record, once counsel for the worker amends his materials to add two employers as respondents.

#### **20. Decisions No. 433/99 and 433/99R**

The worker served the Tribunal with an application for judicial review of *Decisions No. 433/99* (June 24, 1999) and *433/99R* (May 30, 2000). These decisions found that a worker's low back disability was not caused by a 1979 work injury. Counsel for the worker has agreed to amend the materials, following which the Tribunal will file an appearance. At the end of 2003, the Tribunal was still awaiting the amended materials.

## **OMBUDSMAN REVIEWS**

The Ombudsman's Office has the responsibility for investigating complaints about the Ontario government and its agencies, including the Tribunal. The Ombudsman thoroughly investigates complaints about Tribunal decisions and considers the reasonableness of the Tribunal's analysis. The Tribunal will be notified of the Ombudsman's intent to investigate if the Ombudsman requires further information or if issues arise which suggest the need for a formal investigation. While an Ombudsman's 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.

In 2003, the Ombudsman notified the Tribunal of its intention to investigate three appeals. This compares favourably to 18 case-related notifications in 2002. Notifications can relate to any decision issued at any time, not necessarily decisions released in the current year.

During 2003, 32 Ombudsman notifications were closed. Of these, nine were current closures and 23 were closed on a housekeeping basis after confirmation that the files had been closed at the Ombudsman's Office.

At the end of the reporting period, there were no open intent to investigate files at the Tribunal.

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# Tribunal Report

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## REPORT OF THE TRIBUNAL DIRECTOR

After the completion of the backlog reduction project, the Tribunal looked forward to a period of relative calm and stability, as we contemplated a “steady state” of incoming appeals and dispositions. Instead, in 2003 we found ourselves in the position of attempting to keep pace with unanticipated caseload developments while relying upon declining resources and fewer adjudicators. The Tribunal’s performance against these odds has been impressive, but in the end, insufficient to maintain the desired state of equilibrium that we anticipated.

In the last several years, the Tribunal has worked with the WSIB to derive information concerning the likely number of appeals that will result from the Board’s decision processes; and of all the variables that affect our caseload, this has proven to be the most stable and predictable. We expected to receive 950 new cases per quarter in 2003, consisting primarily of appeals from final WSIB decisions. We received, on average, 980.5 new cases per quarter, an excess of 122 cases over estimates for the year.

After introducing the Notice of Appeal process in 2001, the Tribunal monitored its appeals inventory in an effort to determine how many of the appeals filed under the new process would proceed to hearing. As we reached the two-year anniversary of the new process, we made two significant observations: appellants took longer than expected to confirm their readiness to appeal, but when they did, they did so at a greater rate than the Tribunal expected based upon its past experience. This meant that 690 more appeals were confirmed as ready to proceed in 2003 than the Tribunal expected.

On its own, this increase in hearing ready cases need not have presented any exceptional challenges for the Tribunal, as our staff and processes underwent a number of changes in 2002 and 2003 to support a steady and high number of appeals proceeding through the process. Unfortunately, our ability to respond to this increase in hearing ready appeals was hampered by a significant reduction in the number of adjudicators available to hear these appeals. Although the Tribunal’s staff worked

diligently in 2003 to prepare cases for hearing, by the end of the year our scheduling department found itself with a surplus of appeals awaiting scheduling. In late 2002 and 2003, a number of adjudicators resigned from the Tribunal or did not have their appointments renewed; and sadly, one of our vice-chairs, Nick McCombie, passed away in the midst of his illustrious and productive career with the Tribunal. During the same period, only one new vice-chair was appointed. The Tribunal has also been hampered in scheduling appeals before full panels due to significant attrition in its complement of full-time and part-time members. The remaining adjudicators have provided exceptional service to the community by continuing to be available for scheduled hearings while attempting to cope with a heavy and steadily increasing load of decisions to write.

To place this in context, at the peak of the backlog reduction project the Tribunal had 65 vice-chairs, and in 2001 it released 3,499 final decisions. By the end of 2003, the Tribunal had only 30 vice-chairs, but was still able to release 2,408 final decisions that year. The commitment and dedication of our adjudicators has been outstanding in the face of these events.

As a result, as we enter 2004, the Tribunal's active inventory has increased beyond targeted levels, and the parties are again encountering delays in the scheduling of hearings and the release of decisions in completed appeals. The Tribunal is anxious to prevent the repetition of the difficult period we experienced between 1998 and 2001; but we must again ask the patience of our stakeholders as we work towards normalizing our workload. Assuming that a sufficient number of adjudicators are appointed early in 2004, we expect to begin making inroads in our backlog of appeals ready for hearing by the end of 2004. However, delays in scheduling and decision release, as well as the number of appeals in our active inventory, may increase during the first part of 2004, and we do not anticipate reaching our inventory targets until 2006. In the meantime, we continue to be dedicated to the same level and quality of service that the community has come to expect of us.

## CASELOAD PROCESSING

### Introduction

In 2001, the Appeals Tribunal introduced a two-part appeal application process to improve caseload management and to enable appellants to choose how quickly to move forward with their appeal. To start an appeal and meet the time limits in the legislation, an appellant files a Notice of Appeal form (NOA). When an appellant is ready to proceed, an appellant files the Confirmation of Appeal form (COA).

## Caseload

At the end of Year 2003, the Tribunal's active caseload totaled 4,639 cases. The active caseload includes cases where appellants confirmed their readiness to proceed, and includes some cases at the Notice of Appeal stage. Chart 1 shows the distribution of the Tribunal's active inventory.

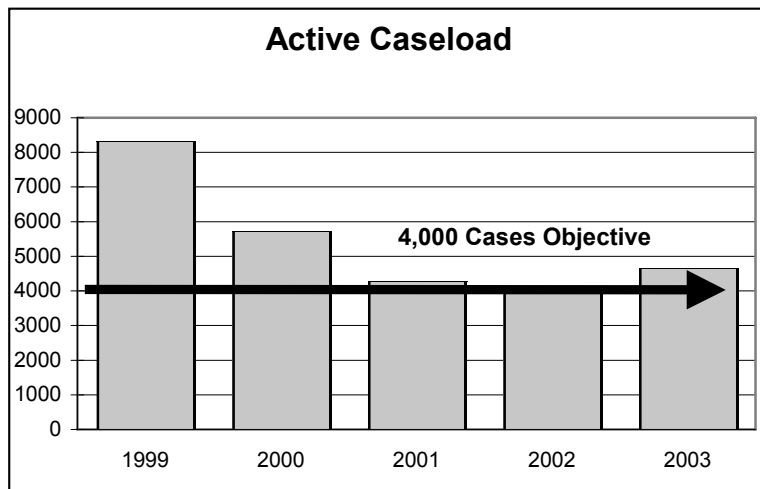
**Chart 1**

<b>Inventory of Active Cases on 31-Dec-2003</b>	
<b>Notice Process</b>	
Cases active in Notice stage processing	<u>1969</u>
	1969
<b>Resolution Process</b>	
Early Review stage	144
Substantive Review	640
Hearing Ready	86
Scheduling and Post-hearing	1192
WSIAT Decision Writing	<u>608</u>
	2670
<b>Total Active Cases</b>	<b>4639</b>

## Active Inventory

The Tribunal's caseload was higher than anticipated by the end of Year 2003 due to higher than expected number of appellants confirming their readiness to proceed to hearing and attrition in the number of adjudicators available to hear these appeals. Incoming estimates were made for the year without extensive experience with the Notice of Appeal process. At March 31, 2002, the Tribunal achieved the steady state target for the active inventory of 4,000 appeals. Year-end figures were 16% higher than the steady state objective. Chart 2 shows the active inventory in comparison to previous years.

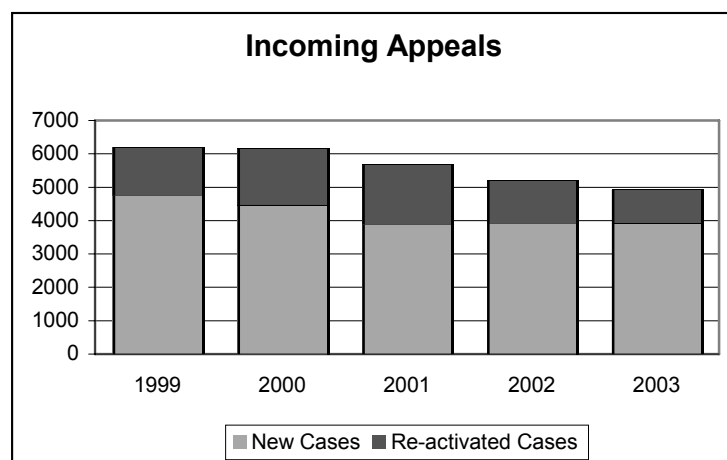
**Chart 2**



### Incoming Appeals

The Tribunal communicates with the Board’s Appeals Branch to receive up to date caseload information. The Appeals Branch is the largest single source of final decisions that are appealed to the Tribunal and past experience with this volume of work has proved to be a good indicator of future incoming appeals. In addition to new appeals, the Tribunal has a smaller number of appellants who wish to proceed with their appeal following an inactive period during which they may have acquired new medical evidence, received another final decision from the Board or sought new representation. The incoming caseload trend is shown in Chart 3.

**Chart 3**



## Case Resolutions

The Appeals Tribunal achieves case resolutions or dispositions in a number of different ways. The most frequent source of case resolution is through a written Tribunal decision following an oral or written hearing process. The WSIA requires written reasons. Also, the Board requires written reasons to implement a decision. Other methods of dispute resolution, used primarily in the pre-hearing areas, are telephone discussions regarding issue agenda and evidence; file reviews for jurisdiction issues or compliance with time limits; and, where two parties are participating, staff mediation.

At 3,833, the number of dispositions also exceeded the case management planning assumptions, however the increased intake nonetheless outpaced production, and as noted above, the net result was an increase in the total active caseload. Chart 4 provides summary statistics for dispositions achieved through pre-hearing dispute resolution and through hearing resolution.

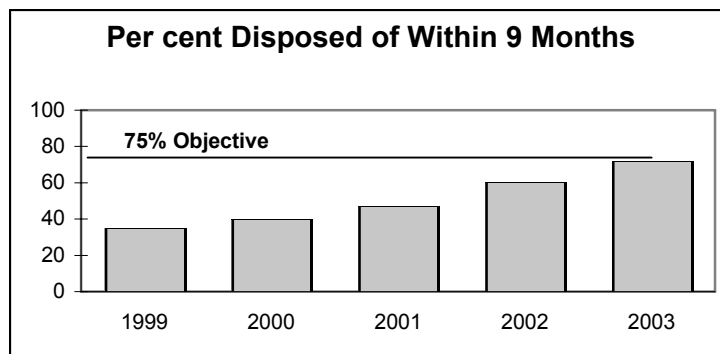
**Chart 4**

<b>Cases Disposed of in 2003 (Resolution Cases)</b>	
<b><u>Resolved Through Pre-Hearing Processes</u></b>	
Withdrawn or Abandoned	323
Made Inactive or No Reply	820
Found Non Jurisdictional	19
Other	<u>130</u>
<b>Subtotal</b>	<b>1292</b>
Per cent of Appeal Total	33.7%
<b><u>Resolved Through Hearing Processes</u></b>	
Withdrawn	6
Made Inactive or No Reply	124
Disposed following Tribunal Decision	2408
Other	<u>3</u>
<b>Subtotal</b>	<b>2541</b>
Per cent of Appeal Total	66.3%
<b>TOTAL</b>	<b>3833</b>
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 13, 14 and 15.	

## Timeliness of Appeal Processing

The Appeals Tribunal has achieved steady gains in reducing the time to appeals resolution. Measuring from the time an appellant confirms readiness to proceed to case disposition, the Tribunal finds that 73% of cases were resolved within nine months. Chart 5 illustrates performance in terms of time frame for completing cases.

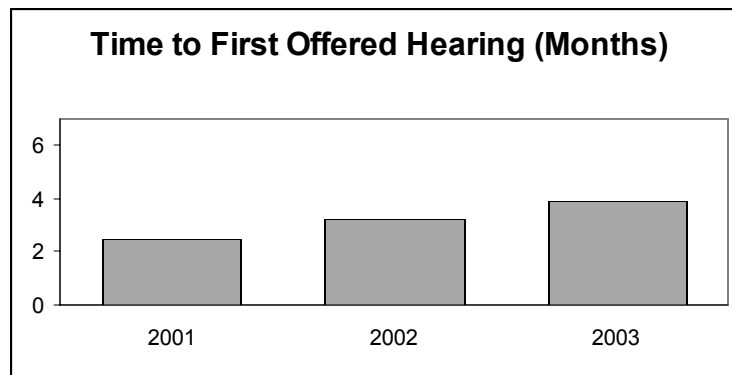
**Chart 5**



Although the Appeals Tribunal has made gains improving timeliness for hearing ready appellants by the end of 2003, an increase in the active inventory together with the loss of experienced and knowledgeable adjudicators has led to the development of a backlog and an increase in the time to schedule a hearing.

The Tribunal measures the median interval from the date on which cases are confirmed ready to proceed to the future date that was offered to the parties as the proposed hearing date. The median time to first offered hearing date began to rise, and by year-end, the interval had grown by nearly one month. The increased interval is a result of requiring parties to wait for adjudicators to hear their appeals. It is anticipated that the time frame for resolving cases will begin to grow significantly as a result. Chart 6 depicts median time to the first offered hearing date.

Chart 6



## Hearing Activity

In 2003, the levels of activity in scheduling, hearing and decision writing increased in relation to the levels observed in the previous year. In Year 2003, the Tribunal conducted 2,750 hearings (for 2,609 cases), and in this same period, the Tribunal issued 2,675 decisions. Chart 7 depicts the Tribunal's productivity with respect to Scheduling, Hearings and Decisions.

Chart 7

<b>Hearings and Decision Production Figures for the Years 1996 - 2003</b>								
Year	Hearings Conducted		Cases Heard		Decisions Issued		Cases Disposed of By Decision	
	No.	% Change from Previous	No.	% Change from Previous	No.	% Change from Previous	No.	% Change from Previous
<b>1996</b>	1471	20%	1361	20%	1360	3%	1212	13%
<b>1997</b>	1978	34%	1866	37%	1653	22%	1426	18%
<b>1998</b>	2446	24%	2306	24%	2248	36%	1673	17%
<b>1999</b>	2843	16%	2690	17%	2673	19%	2096	25%
<b>2000</b>	4088	44%	3900	45%	3692	38%	3675	75%
<b>2001</b>	3979	-3%	3530	-9%	3768	2%	3499	-5%
<b>2002</b>	2322	-42%	2149	-39%	2571	-32%	2373	-32%
<b>2003</b>	2750	18%	2609	21%	2675	4%	2408	1%

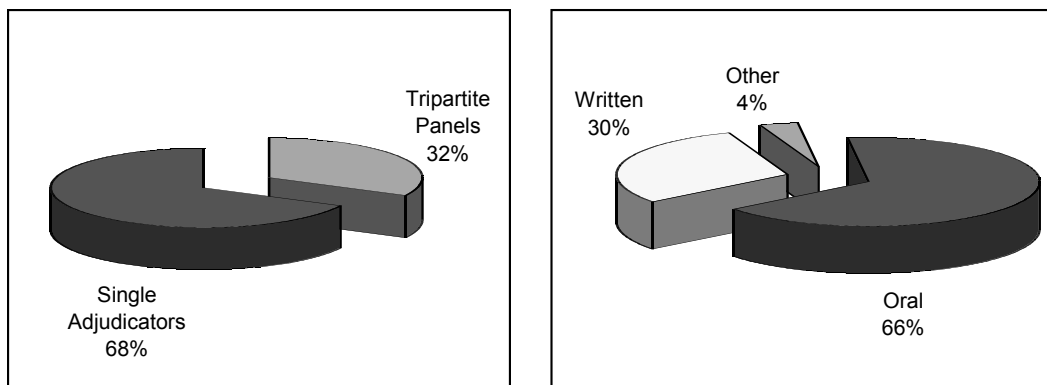
Note: This chart excludes decisions for Reconsideration cases (223 in total for 2003), and it excludes decisions issued by the Vice Chair Registrar (31 in total for 2003) during Notice Stage processing.

## Hearing Type

Oral hearings continued to be the most common hearing type at 66%. The Written hearing type was used in 30% of hearings, including time extension applications and many types of employer appeals where the injured worker does not participate. The remaining 4% of all hearings in 2003 involved Teleconferences, the Vice-Chair Registrar, or Motions Day.

Single adjudicators were used in approximately 68% of cases heard and tripartite panels in approximately 32%. Chart 8 presents these hearing characteristics.

**Chart 8**



## Representation

Tribunal statistics indicate that for injured workers, 38% were represented by consultants; 20% by lawyers; 15% by the Office of the Worker Adviser; and 13% by union representatives. The remaining 14% is allocated among various non-categorized representation, for instance, family friend, family member, MPP office, or Legal Aid. Employers are represented before the Tribunal as follows: 74% were represented by consultants; 15% by lawyers; and 2% by the Office of the Employer Adviser. The remaining 9% is non-categorized. Chart 9 provides a detailed breakdown of hearing representation.

**Chart 9**

### Representation Profiles for Hearings Conducted in Year 2003

#### Worker Representation

##### A) In Worker Appeals

None Recorded	<u>12%</u>
<b>Subtotal</b>	<b>12%</b>
Consultant	38%
Lawyer	20%
OWA	15%
Union	13%
Others	<u>2%</u>
<b>Subtotal</b>	<b>88%</b>

##### B) In Employer Appeals

None Recorded	<u>83%</u>
<b>Subtotal</b>	<b>83%</b>
Consultant	5%
Lawyer	3%
OWA	2%
Union	4%
Others	<u>3%</u>
<b>Subtotal</b>	<b>17%</b>

#### Employer Representation

##### A) In Worker Appeals

None Recorded	<u>66%</u>
<b>Subtotal</b>	<b>66%</b>
Firm personnel	15%
Consultant	9%
Lawyer	7%
OEA	2%
Others	<u>1%</u>
<b>Subtotal</b>	<b>34%</b>

##### B) In Employer Appeals

None Recorded	<u>8%</u>
<b>Subtotal</b>	<b>8%</b>
Firm personnel	0%
Consultant	74%
Lawyer	15%
OEA	2%
Others	<u>1%</u>
<b>Subtotal</b>	<b>92%</b>

### Caseload by General Issue Type

These breakdowns show that the types of cases dealt with in Year 2003 were similar to the typical mix received in most years. Entitlement-related cases constituted the majority of cases (95%). Special Section cases (Leave, Right to Sue, Medical Exam and Access) comprised typically small portions (5%). Charts 10 and 11 provide historical comparisons of intake and dispositions.

Chart 10

Breakdown of Incoming Cases by Appeal Type  
for the years 1996 - 2003

<b>INPUT BY TYPE</b>	<b>1996 (%)</b>	<b>1997 (%)</b>	<b>1998 (%)</b>	<b>1999 (%)</b>	<b>2000 (%)</b>	<b>2001 (%)</b>	<b>2002 (%)</b>	<b>2003 (%)</b>
Leave	0.4%	0.4%	0.1%	0.0%	0.0%	0.1%	0.0%	0.0%
Right to Sue	1.4%	0.9%	0.4%	0.6%	0.7%	0.9%	1.0%	1.2%
Medical Exam	0.7%	0.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Access	13.2%	6.7%	2.6%	3.4%	3.2%	3.5%	5.6%	4.1%
<b>Total Special Section</b>	<b>15.6%</b>	<b>8.5%</b>	<b>3.0%</b>	<b>4.0%</b>	<b>3.9%</b>	<b>4.4%</b>	<b>6.6%</b>	<b>5.4%</b>
Preliminary (not yet specified)	0.0%	1.5%	23.4%	15.4%	12.9%	7.2%	0.8%	2.1%
Pension	1.0%	0.7%	0.3%	0.5%	1.1%	0.7%	0.5%	0.6%
N.E.L./F.E.L. *	7.5%	5.1%	4.1%	6.0%	4.9%	4.4%	5.8%	7.2%
Commutation	1.2%	1.0%	0.3%	0.1%	0.1%	0.2%	0.2%	0.1%
Employer Assessment	5.0%	18.2%	8.2%	9.1%	8.5%	9.3%	7.8%	6.9%
Entitlement **	62.4%	60.4%	54.2%	54.8%	61.0%	65.5%	69.2%	68.2%
Ext post WSIB dec deadline	0.0%	0.0%	2.9%	7.5%	6.0%	5.4%	6.7%	7.8%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	0.0%	0.0%	2.5%	1.1%	0.3%
Reinstatement	0.9%	0.8%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Vocational Rehabilitation ***	3.5%	2.2%	1.0%	0.7%	0.3%	0.2%	0.2%	0.1%
Classification	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.8%	0.8%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%	0.5%
<b>Total Entitlement-related</b>	<b>81.5%</b>	<b>89.9%</b>	<b>94.8%</b>	<b>94.1%</b>	<b>94.9%</b>	<b>95.5%</b>	<b>93.3%</b>	<b>94.6%</b>
<b>Jurisdiction</b>	<b>2.9%</b>	<b>1.6%</b>	<b>2.2%</b>	<b>1.9%</b>	<b>1.2%</b>	<b>0.0%</b>	<b>0.1%</b>	<b>0.0%</b>

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 13, 14 and 15.

\* The NEL/FEL category 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 11

Breakdown of Case Dispositions by Appeal Type  
for the years 1996 - 2003

<b>OUTPUT BY TYPE</b>	<b>1996 (%)</b>	<b>1997 (%)</b>	<b>1998 (%)</b>	<b>1999 (%)</b>	<b>2000 (%)</b>	<b>2001 (%)</b>	<b>2002 (%)</b>	<b>2003 (%)</b>
Leave	0.7%	0.4%	0.2%	0.1%	0.1%	0.1%	0.1%	0.0%
Right to Sue	2.1%	2.5%	0.5%	0.6%	0.5%	0.6%	0.9%	1.4%
Medical Exam	1.1%	0.9%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
Access	20.2%	12.3%	3.4%	3.9%	2.3%	3.0%	6.0%	5.2%
<b>Total Special Section</b>	<b>24.1%</b>	<b>16.1%</b>	<b>4.2%</b>	<b>4.7%</b>	<b>2.8%</b>	<b>3.7%</b>	<b>7.0%</b>	<b>6.6%</b>
Preliminary (not yet specified)	0.0%	1.9%	29.0%	15.2%	9.8%	4.0%	2.1%	2.2%
Pension	1.2%	0.9%	0.3%	0.5%	0.7%	0.9%	0.8%	0.6%
N.E.L./F.E.L. *	2.5%	5.9%	3.2%	5.2%	6.4%	5.2%	5.3%	5.7%
Commutation	1.8%	1.1%	0.5%	0.6%	0.3%	0.1%	0.3%	0.1%
Employer Assessment	3.7%	7.3%	4.8%	16.0%	11.8%	8.4%	8.5%	11.0%
Entitlement	56.1%	58.1%	53.3%	51.7%	58.4%	68.0%	63.8%	62.4%
Ext post WSIB dec. deadline	0.0%	0.0%	0.1%	2.3%	7.8%	7.9%	8.5%	9.6%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	0.0%	0.0%	1.3%	2.7%	0.5%
Reinstatement	2.4%	1.5%	0.5%	0.3%	0.2%	0.1%	0.2%	0.1%
Vocational Rehabilitation **	3.5%	3.5%	1.2%	1.7%	0.9%	0.5%	0.4%	0.3%
Classification	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%
<b>Total Entitlement-related</b>	<b>71.2%</b>	<b>80.2%</b>	<b>93.0%</b>	<b>93.4%</b>	<b>96.3%</b>	<b>96.3%</b>	<b>92.8%</b>	<b>93.3%</b>
<b>Jurisdiction</b>	<b>4.8%</b>	<b>3.7%</b>	<b>2.8%</b>	<b>1.9%</b>	<b>0.9%</b>	<b>0.0%</b>	<b>0.2%</b>	<b>0.1%</b>

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 13, 14 and 15.

\* This category represents appeals related to the non-economic loss and future economic loss pension criteria introduced by Bill 162.

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

## Inactive Inventory Projects

In Year 2003, the Tribunal continued work on a number of special projects that had been started the previous year with the aim of reducing the caseload residing in the inactive inventory. As the inventory decreased, the amount of work on the project decreased correspondingly. Chart 12 shows the Tribunal's inventory reduction achievements during 2003.

**Chart 12**

<b>INACTIVE INVENTORY REDUCTION 2003</b>					
	<b>First Qtr</b>	<b>Second Qtr</b>	<b>Third Qtr</b>	<b>Fourth Qtr</b>	<b>Average Qtr</b>
Actual	624	615	197	94	382.5
<u>Anticipated</u>	<u>600</u>	<u>250</u>	<u>120</u>	<u>120</u>	<u>272.5</u>
Variance	24	365	77	-26	110

The actual inventory reductions exceeded these targets and in total, 1,530 cases were cleared from this inventory. This total reduction exceeded the full-year target by 440 cases.

## Post-Decision Workload

In year 2003 as in previous years, the Tribunal received and resolved a number of post-decision issues. These included requests to reconsider earlier Tribunal decisions as well as activities undertaken as the result of judicial review applications and Ombudsman's complaints. The following charts (Charts 13, 14 and 15) summarize the activities in these areas for Year 2003.

**Chart 13**

<b><u>Ombudsman Complaints, Activity and Inventory Summary</u></b>	
New Complaint Notifications Received	3
Complaints Resolved	32
Complaints Remaining	0

**Chart 14**

<b><u>Reconsideration Requests, Activity and Inventory Summary</u></b>	
Inquiries (Pre-reconsideration)	80
Reconsideration Requests Received	337
Reconsideration Requests Resolved	347
Reconsiderations Remaining	197

**Chart 15**

<b><u>Judicial Reviews, Activity and Inventory Summary</u></b>	
Judicial Reviews Received	8
Judicial Reviews Resolved	7
Judicial Reviews Remaining	13

## 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 2003 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 existed since the creation of the Tribunal in 1985. It is a separate legal department from the Tribunal Counsel Office and is not involved in making submissions in hearings. 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; ensuring compliance with the *Freedom of Information and Protection and Privacy Act* (FIPPA); responding to FIPPA issues and complaints; and assisting with Ombudsman matters. There was a continued emphasis on training in 2003, as the Tribunal must make decisions under four Acts and consider and apply extensive Board policy under the different legislative schemes.

During this reporting period, OCC reviewed the electronic processing of reconsiderations requests. The Tribunal's reconsideration statistics are now based on completed reconsideration request forms rather than inquiries about the reconsideration process.

A summary of FIPPA activity is shown in Chart 16, a summary of reconsideration activity in Chart 14 (p. 29) and a summary of Ombudsman activity in Chart 13 (p. 28).

**Chart 16**

<b>FIPPA Activity Summary</b>	
	Year end 2003
FIPPA Requests Received	4
FIPPA Requests Resolved	4
Information Sent/Disclosed	4
Transfers	0
Appeals	0

## 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. They also identify those appeals that can be heard by way of an expedited written process.

### **Vice-Chair Registrar Teams**

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

### **The Call Centre**

In September 2003, the Tribunal introduced a call centre, which provides the public and parties with "one window" access to information on Tribunal procedures, processes information changes (such as changes of address) and responds to basic information requests.

## **Tribunal Counsel Office**

The Tribunal Counsel Office (TCO) is a centre of legal expertise at the Tribunal. In addition to administrative support staff, TCO consists of three groups, each reporting to the General Counsel: the lawyers, the legal workers and the Medical Liaison Office.

### **Hearing Work**

Under the Tribunal's new case processing model, TCO no longer has responsibility for processing the majority of appeals. TCO now handles only appeals which raise complex or novel medical, legal or policy issues. These appeals are streamed to TCO from the Early Review Department, or are assigned to TCO for post-hearing work at the direction of a Panel or Vice-Chair.

## Pre-hearing Work

When a complex appeal is received by TCO prior to a hearing, the case is assigned to a lawyer and is handled by that lawyer until the final decision is released. The pre-hearing work that a lawyer may do includes dealing with issues that arise prior to the hearing, providing assistance to the parties if there are questions concerning the appeal, and attending at the hearing to question witnesses and make submissions on points of law, policy, procedure and evidence.

## 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 the Tribunal Counsel Office. The appeal is assigned to a lawyer or TCO legal worker, depending on the complexity of the case. 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.

Typical post-hearing directions would include instructions to obtain important evidence found to be missing at the appeal, request a report from a Tribunal medical assessor, or arrange for written submissions from the parties and Tribunal counsel.

## Lawyers

TCO has a small group of lawyers who, as noted above, handle the most complex appeals involving legal or medical issues. TCO lawyers also provide technical case-related advice to legal workers in TCO and the Office of the Vice-Chair Registrar.

One senior TCO lawyer acted as group leader for the legal workers, as well as handling a number of complex appeals herself. Workplace stress appeals and other complex entitlement issues are assigned to one designated TCO lawyer. Another lawyer handles the employer assessment, classification and French language appeals. Finally, one lawyer is assigned to a caseload of appeals involving difficult procedural issues and complex occupational disease appeals.

A large component of TCO work involves providing non-appeal related advice to other departments of the Tribunal. Matters such as negotiating contracts, human resource issues, security, training and liaison with organizations outside the Tribunal all require input from TCO.

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

## Legal Workers

TCO legal workers now handle exclusively post-hearing appeal work. They are a small, highly trained group who work diligently to ensure Panel and Vice-Chair directions on complex appeals are completed quickly, thoroughly and efficiently. In mid-2003 a post-hearing group leader position was added to TCO. The group leader assists with the supervision of and assignment of work to the legal workers, as well as analysis of the post-hearing caseload.

## Medical Liaison Office

The Tribunal must frequently decide appeals that raise complex medical issues, or require further medical investigation. The Tribunal thus has an interest in ensuring that Panels and Vice-Chairs have sufficient and appropriate medical evidence on which to base their decisions. The Medical Liaison Office (MLO) plays a major role in identifying and investigating medical issues and obtaining medical evidence and information to assist the decision-making process. To allow MLO to carry out its mandate, the Tribunal ensures that MLO has access to outside medical expertise and resources.

The Tribunal's relationship with the medical community is viewed as particularly important. Ultimately, the quality of the Tribunal's decisions on medical issues is dependent on that relationship. MLO co-ordinates and oversees all the Tribunal's interactions with the medical community. That relationship remains positive and is evidenced by the Tribunal's continuing ability to readily enlist leading members of the profession to its service.

MLO identifies those cases where the medical issues are particularly complex or novel to the Tribunal. Once the issues are identified, MLO may refer the appeal materials to a Medical Counsellor.

## Medical Counsellors

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 Chair of the Medical Counsellors 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 necessary opinions from appropriate experts. They also ensure that questions or concerns about the medical issues that 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 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, 1997*, 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 opinion on some specific medical question, which 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. On occasion, a Hearing Panel or Vice-Chair will want the opportunity to question the Medical Assessor at the hearing to clarify the opinion. In those cases, the Medical Assessor will be asked to appear at the hearing and give oral evidence.

Although the report of a Medical Assessor will be cited in the Tribunal decision, the Medical Assessor does not make the decision on appeal. The actual decision to allow or deny an appeal is the sole preserve of the Tribunal Panel or Vice-Chair.

### **The Appointment Process for Medical Assessors**

The Medical Counsellors identify highly qualified health care professionals eligible to be appointed to the Tribunal's roster of Medical Assessors. Those health care professionals who agree to be nominated as candidates 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. Appointments are 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 workplace insurance system and is accessible to the public.

### **Database**

MLO uses its Tribunal-designed database to help track medical issues, information and appeals at the Tribunal. The database provides an easily accessible way to determine what information already exists within WSIAT that may be useful in appeals with similar medical fact situations.

### **Support Staff**

TCO and MLO share a small group of dedicated support staff. Working under the direction of the supervisor of administrative services, the support staff assist the lawyers, nurses and legal workers with case tracking input, file management and general support duties.

## **Alternative Dispute Resolution**

The Tribunal's pre-hearing staff rely on a variety of Alternative Dispute Resolution (ADR) techniques to resolve appeals prior to the hearing. Staff have received communication and conflict resolution training to assist them in dealing with a wide range of expertise among representatives and unrepresented parties. A resolution achieved at the pre-hearing stage of an appeal is faster and less costly for the parties and the Tribunal.

### **Early Review Unit**

Staff in the Early Review Unit review appeals to determine whether there are any jurisdictional or evidentiary issues that would prevent the Tribunal from deciding an appeal. On occasion, appeals may be withdrawn while the parties pursue more appropriate alternatives.

### **ADR Unit**

More specialized ADR services are provided by the ADR Unit. Upon filing of the Confirmation of Appeal (COA), the appellant is required to indicate willingness

to participate in the ADR process. Where the appellant does so, the file is referred to the Manager of the ADR Unit to determine its suitability for the process. Since formal ADR services are offered on a voluntary basis only, consent of all parties is required. Therefore, willingness to address a resolution through the ADR process is the first criteria to determine suitability. Where the respondent is not interested in participating in the mediation process, the appeal is streamed to the Office of the Vice-Chair Registrar (OVCR) for pre-hearing preparation and referral to a hearing in the ordinary course. Where credibility may be at issue and oral testimony is required, the appeal is not suitable for the ADR process and will be referred for hearing preparation. Complicated appeals involving novel or complex medical, legal or policy issues are referred to the Tribunal Counsel Office to prepare for hearing.

## Two Party Appeals

Where both parties express a willingness to participate in mediation and the appeal is suitable for the process, the appeal is assigned to a Tribunal ADR Officer for substantive review. ADR Officers are specially trained mediators who work with the parties in a neutral and confidential setting, to arrive at a jointly acceptable resolution to an appeal. Mediations are typically conducted as face-to-face meetings but teleconferences are used, where appropriate. The mediator may contact the parties in advance of the mediation date to discuss options for resolving the appeal, to clarify issues or to identify outstanding information.

## Single Party Appeals

Where the appellant has indicated an interest in the ADR process, but the respondent is not participating in the appeal, the appeal is referred to the Unit's Early Intervention Officer to determine whether an early resolution is possible. Discussions with the appellant's representative may result in a resolution of the appeal at this stage.

On occasion, Early Review Officers refer an appeal to the Early Intervention Officer, prior to receipt of the COA, where it is believed that a discussion with the parties may result in an expeditious resolution of the appeal.

The objective of the ADR process is to work with the parties to achieve a resolution of the appeal, without the need for a formal hearing. If the parties reach a resolution, the agreement is formalized in writing and submitted to the parties for their signatures. The executed agreement is then submitted to a Vice-Chair for review and, if the Vice-Chair is satisfied that the resolution is consistent with law, policy and is reasonable based on the facts of the case, the Vice-Chair will render a decision incorporating the terms of the agreement.

Where an appeal is not resolved through the ADR process, the appeal is prepared for hearing by an ADR legal worker in accordance with the practices and procedures used by the OVCR legal workers.

Although appeals are typically streamed to the ADR Unit upon receipt of the completed Confirmation of Appeal, ADR services are available at all stages of an appeal and may even be called upon at a hearing.

## Resource Department

The Resource Department includes the Ontario Workplace Tribunals Library, as well as the Tribunal's publications, translation, reception and web site development and support services. The various work units of the Resource Department provide information and communications services to the Tribunal. The department also provides management and support for the Tribunal's public information and orientation program.

### Ontario Workplace Tribunals Library

The Ontario Workplace Tribunals Library provides library services to the Workplace Safety and Insurance Appeals Tribunal, Ontario Labour Relations Board, Pay Equity Hearings Tribunal and Human Rights Tribunal of Ontario. 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.

In 2003, the library experienced an increase in reference questions, requests for document delivery and general collection use. During this period its capacity to make information available electronically was expanded. A new library software system "Inmagic" was acquired in 2003 and will be introduced into use in early 2004.

### Ontario Workplace Tribunals Library Statistical Summary 2003

<b>Inquiries</b>		<b>Notes</b>
Reference	2597	
Directional	<u>2266</u>	
Total	<b>4863</b>	
<b>Document Delivery</b>		
OLRB	7084	Includes electronic document delivery to MOL.
WSIAT	152	
PEHT/HRTO	<u>63</u>	
Total	<b>7299</b>	
<b>Collection Use</b>	<b>3250</b>	Includes both materials used in Library and signed out.

**Acquisitions**            **2947**            Includes all items entered in AQUIS plus electronically obtained materials and photocopied material.

**Items sent to QL**    **9519**

**Records Added to Databases**

Books	96
Library	471
Juris	<u>18</u>
<b>Total</b>	<b>585</b>

## Web Site

The Tribunal's web site continues to provide a valuable communications link, offering information about services, procedures and policies, as well as a portal for feedback from stakeholders. In 2003, expanded and improved information resources were introduced to the web site, including answers to frequently asked questions about the Tribunal, information on French language services, hearing related fees and expenses and additional online forms. The Help Pages of the Decision Summary Search service were revised in 2003 to make various topics easier to find and understand.

Training sessions in the use of the web site's Decision Summary Search service were held in various centres throughout Ontario in 2003 as part of the Tribunal's public information program, and are also offered by the Ontario Workplace Tribunals Library.

## Publications

### Decision Summary Search Service

In 2003, the focus of the decision search capability provided by Publications continued to be with the *Decision Summary Search* service. The service is available both internally at the Tribunal through the Tribunal's tracIT case management system, the Tribunal's intranet site, and externally through the Tribunal's web site. The service is available free of charge, and allows users to search the database of summaries of all Tribunal 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 providing access to all summaries, it also has links to the full text of all of the Tribunal's decisions in pdf format.

In 2003, a number of enhancements were added to the *Decision Summary Search* service. In particular, Boolean search capability was added to the keyword field as well as other fields. This allows users to search using the connectors "and," "or" and "not." In this way, users will be able to perform more sophisticated searches that will return more precise results.

### **WSIAT In Focus**

The Tribunal's newsletter, *WSIAT In Focus*, is published three times per year. In the last issue of 2003, one of the items in the newsletter included search tips when using the *Decision Summary Search* service. It is anticipated that search tips will become a feature in future issues of *WSIAT In Focus*.

### **WSIAT Reporter**

Publications continues to produce the *WSIAT Reporter*. This is a quarterly, bound publication containing the full text of selected Tribunal decisions, together with headnotes, reference material, keyword index and subject matter index. Decisions for the Reporter are selected by an Editorial Board consisting of members from Publications, Office of Counsel to the Chair and the Tribunal Counsel Office.

Every fifth volume of the Reporter contains a cumulative index covering the last five volumes. In 2002, Volume 60 of the Reporter was published with the cumulative index covering Volumes 56-60. The cumulative index is published in English and French and includes a table of cases, subject matter index, keyword index and proceedings related to published decisions. In 2003, work commenced on the next cumulative index, which will be contained in Volume 65, to be published in 2004.

### **Production**

Beginning in December 2000, Publications no longer provided summaries of all released decisions. Decisions of a routine nature on well-established issues are no longer summarized, but keywords are assigned to all decisions. In 2003, Publications processed more than 2,770 decisions.

## **Case Management Systems**

The Case Management Systems Department is responsible for the case management functions of the Tribunal, as well as the management of the information technology systems. Two types of projects were undertaken by this department in fiscal year 2003 including, Information Technology (IT) infrastructure upgrades and case management system enhancements.

The three major infrastructure initiatives included the server equipment replacement, the server operating system migration, and the network equipment upgrade. The Tribunal's existing file servers were returned and nine new servers were acquired and installed. The server operating systems were migrated to the Windows® 2000 environment. The network equipment was also upgraded, increasing the network speed by a factor of 10 to 100 Mbps (Megabit per second) at the desktop and to 1 Gbps (Gigabit per second) for the servers and network backbone.

Numerous enhancements were made to the Tribunal's electronic case management system (tracIT<sup>®</sup>), including new reporting features for summarizing caseload movements, and for managing caseloads and tasks by time frame and aging.

## FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2003, (Chart 17) 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, 2003. The audit reports are included in this report as Appendix B.

Chart 17

<b>Statement of Expenditures and Variances</b> Year ended December 31, 2003 (In \$000's)				
	<b>2003</b>	<b>2003</b>	<b>2003</b>	
	<b>BUDGET</b>	<b>ACTUAL</b>	<b>VARIANCE</b>	
			<b>\$</b>	<b>%</b>
<b>OPERATING EXPENSES</b>				
Salaries & Wages	9,058	8,391	667	7.4
Employee Benefits	1,699	1,587	112	6.6
Transportation & Communication	822	937	(115)	(14.0)
Services	5,670	5,648	22	0.4
Supplies & Equipment	495	620	(125)	(25.3)
<b>TOTAL - W.S.I.A.T.</b>	<b>17,744</b>	<b>17,183</b>	<b>561</b>	<b>3.2</b>
Services - W.S.I.B.	475	445	30	6.3
Interest Revenue	-	(29)	29	-
<b>TOTAL OPERATING EXPENSES</b>	<b>18,219</b>	<b>17,599</b>	<b>620</b>	<b>3.4</b>
<b>ONE TIME EXPENSES</b>				
Severance Payments	200	168	32	16.0
Leasehold Improvements	142	142	-	-
<b>TOTAL EXPENDITURES</b>	<b>18,561</b>	<b>17,909</b>	<b>652</b>	<b>3.5</b>

Note: The above 2003 actuals are presented on the same basis as the approved budget.



# APPENDIX A

## VICE-CHAIRS AND MEMBERS IN 2003

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. . . . . July 2, 1997

##### Vice-Chairs

Dimovski, Jim . . . . . July 1, 2003  
 Gehrke, Linda . . . . . May 27, 1998  
 Keil, Martha . . . . . February 16, 1994  
 Martel, Sophie . . . . . October 6, 1999  
 McClellan, Ross . . . . . September 4, 2002  
 McCombie, Nick . . . . . January 22, 1991  
 McCutcheon, Rosemarie . . . . . October 6, 1999  
 Moore, John . . . . . July 16, 1986  
 Smith, Eleanor . . . . . January 7, 2000  
 Sutherland, Sara . . . . . September 6, 1991

Nick McCombie, an Order-In-Council at the Tribunal since its inception and a full-time Vice-Chair since 1991, passed away on July 31, 2003.

#### Members representative of workers

Crocker, James . . . . . August 1, 1991  
 Grande, Angela . . . . . January 7, 2000

#### Members representative of employers

Wheeler, Brian . . . . . April 19, 2000

## Part-time

### Vice-Chairs

Alexander, Bruce	May 3, 2000
Bigras, Jean Guy	May 14, 1986
Bortolussi, Lorraine	March 21, 2001
Butler, Michael	May 6, 1999
Carroll, Tom	May 27, 1998
Cook, Brian	September 6, 1991
Crystal, Melvin	May 3, 2000
Faubert, Marsha	December 10, 1987
Ferdinand, Ulrich	April 29, 1999
Hartman, Ruth	October 6, 1999
Josefo, Jay	January 13, 1999
Kenny, Maureen	July 29, 1987
Loewen, Brian	May 6, 1999
MacKenzie, Cameron	August 21, 2001
Marafioti, Victor	March 11, 1987
McGrath, Joy	December 10, 1987
Nairn, Rob	April 29, 1999
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

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

Gillies, David	October 30, 2002
Hodgkiss, Pauline	October 17, 2001
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988
Rao, Fortunato	February 11, 1988
Timms, David	May 4, 1995

### Members representative of employers

Barbeau, Pauline	January 15, 1990
Christie, Mary	May 2, 2001
Henderson, Loretta	May 1, 2003
Jago, Douglas	October 1, 1985
McLachlan, Dennis	March 5, 2001
Meslin, Martin	December 11, 1985
Robb, C. James	June 2, 1993
Robertson, Peter	July 24, 2003
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 2003

	Effective
Bruce Alexander	May 3, 2003
Melvin Crystal	May 3, 2003
Marsha Faubert	July 1, 2003
Linda Gehrke	June 1, 2003
Loretta Henderson	May 1, 2003 <sup>1</sup>
Douglas Jago	January 7, 2003
Maureen Kenny	July 1, 2003
Nick McCombie	July 1, 2003
Joy McGrath	July 1, 2003
John Moore	May 1, 2003
Fortunato Rao	February 11, 2003

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<sup>1</sup> Part-time Vice-Chair Order, effective March 1, 2002, converted to that of part-time Member.

C. James Robb	July 1, 2003
Virginia Robeson	July 1, 2003
Joanne Sajtos	May 8, 2003
Jacques Séguin	July 1, 2003
Robert Sherwood	May 3, 2003
Eleanor Smith	February 1, 2003
Ian J. Strachan	July 1, 2003
Brian Wheeler	January 7, 2003

## NEW APPOINTMENTS DURING 2003

### Effective

Jim Dimovski, full-time Vice-Chair	July 1, 2003
Peter Robertson, part-time Member representative of employers	July 24, 2003

## SENIOR STAFF

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

## MEDICAL COUNSELLORS

The following is a list of the Tribunal's Medical Counsellors.

Dr. John Duff	General Surgery
Dr. Ross Fleming	Neurosurgery
Dr. David Hastings	Orthopaedic Surgery
Dr. Emmanuel Persad	Psychiatry
Dr. Anthony Weinberg	Internal Medicine

# APPENDIX B

## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL REPORT AND FINANCIAL STATEMENTS December 31, 2003

### Auditors' Report

We have audited the balance sheet of Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") as at December 31, 2003 and the statements of operations and of 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, 2003 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 14, 2004

## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

### Balance Sheet

December 31, 2003

	<u>2003</u>	<u>2002</u>
<b>ASSETS</b>		
<b>CURRENT</b>		
Cash	\$ 1,231,519	\$ 1,529,460
Receivable from Workplace Safety and Insurance Board	1,165,934	1,892,913
Recoverable expenses (Note 5)	111,636	158,361
Advances	7,714	8,136
	<b>2,516,803</b>	<b>3,588,870</b>
<b>CAPITAL ASSETS (Note 4)</b>	<b>1,070,543</b>	<b>1,755,739</b>
	<b>\$ 3,587,346</b>	<b>\$ 5,344,609</b>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable and accrued liabilities	\$ 1,116,803	\$ 2,188,870
Operating advance from Workplace Safety and Insurance Board (Note 6)	1,400,000	1,400,000
	<b>2,516,803</b>	<b>3,588,870</b>
<b>CAPITAL FUND (Notes 3 &amp; 7)</b>	<b>1,070,543</b>	<b>1,755,739</b>
	<b>\$ 3,587,346</b>	<b>\$ 5,344,609</b>

APPROVED ON BEHALF OF THE WORKPLACE  
SAFETY AND INSURANCE APPEALS TRIBUNAL

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

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL  
Statement of Operations  
Year ended December 31, 2003**

	<u>2003</u>	<u>2002</u>
OPERATING EXPENSES		
Salaries and wages	\$ 8,390,753	\$ 8,773,321
Employee benefits	1,587,259	1,379,374
Transportation and communication	936,616	932,458
Services and supplies	6,023,970	6,561,752
Amortization (Notes 3 & 4)	1,071,004	974,552
	<b>18,009,602</b>	18,621,457
Services - Workplace Safety and Insurance Board (Note 8)	444,990	447,815
TOTAL OPERATING EXPENSES	<b>18,454,592</b>	19,069,272
NON OPERATING EXPENSES		
Severance payments	168,142	77,713
Business solutions initiatives	-	137,000
TOTAL EXPENSES	<b>18,622,734</b>	19,283,985
BANK INTEREST INCOME	<b>(28,915)</b>	(23,055)
NET RECOVERABLE EXPENDITURES	<b>18,593,819</b>	19,260,930
FUNDS RECEIVED FROM WSIB	<b>(17,908,623)</b>	(19,206,891)
	<b>685,196</b>	54,039
TRANSFER FROM CAPITAL FUND (Note 7)	<b>(685,196)</b>	(54,039)
NET RESULT FOR THE YEAR	<b>\$ -</b>	<b>\$ -</b>

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL**  
**Statement of Cash Flows**  
**Year ended December 31, 2003**

	<u>2003</u>	<u>2002</u>
<b>NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES</b>		
<b>OPERATING</b>		
Funding revenue received from Workplace Safety and Insurance Board	\$ 18,635,602	\$ 19,335,634
Cash receipts for recovery of shared services	487,187	332,885
Bank interest received	28,915	23,055
Expenses, recoverable expenses and advances, net of amortization of \$1,071,004 (2002 - \$974,552)	<b>(19,063,837)</b>	<b>(18,243,950)</b>
	<b>87,867</b>	<b>1,447,624</b>
<b>INVESTING</b>		
Acquisition of capital assets	<b>(385,808)</b>	<b>(920,513)</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>(297,941)</b>	<b>527,111</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<b>1,529,460</b>	<b>1,002,349</b>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<b>\$ 1,231,519</b>	<b>\$ 1,529,460</b>

# NOTES TO THE FINANCIAL STATEMENTS

## December 31, 2003

### 1. GENERAL

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 following summarizes the significant accounting policies used in preparing the accompanying financial statements:

The financial statements presentation has been changed in 2003 in order to conform with the accounting standards for Not-for-Profit organizations published by the Canadian Institute of Chartered Accountants using the restricted method of reporting revenue.

Revenue and expenses are recognized on an accrual basis.

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. Due to the inherent uncertainty in making estimates, actual results could differ from these estimates.

Capital assets are recorded at cost and are amortized on a straight-line basis over their estimated useful life of 4 years or the remaining term of the lease.

Funding for capital assets is provided by Workplace Safety and Insurance Board and reported as capital funds. The fund is reduced each year by an amount equal to the amortization of capital assets.

### 3. CHANGE IN ACCOUNTING POLICY

Effective 2003, in order to conform with the accounting standards for Not-for Profit organizations, the Tribunal changed its policy with respect to capital assets. Previously capital assets were expensed in the year of acquisition. Under the new policy, such assets are capitalized and amortized over their estimated useful lives. The net book value of capital assets as at January 1, 2002 was determined to be \$1,809,778. A corresponding amount has been set up in the Capital Fund account. The revised accounting policy has been implemented retroactively and the comparative financial amounts for 2002 have been restated.

### 4. CAPITAL ASSETS

	2003			2002
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Leasehold improvements	\$ 2,977,473	\$ 2,320,668	\$ 656,805	\$ 1,259,174
Furniture and equipment	855,819	631,700	224,119	358,534
Computer equipment and software	450,725	261,106	189,619	138,031
	<b>\$ 4,284,017</b>	<b>\$ 3,213,474</b>	<b>\$ 1,070,543</b>	<b>\$ 1,755,739</b>

Cost includes capital assets acquired from January 1, 2000 to the year ended December 31, 2003. Additions for the year amounted to \$385,808 (2002 - \$920,513).

### 5. RECOVERABLE EXPENSES

Recoverable expenses consist of amounts recoverable from Pay Equity Hearing Tribunal, Ontario Labour Relations Board and Human Rights Tribunal of Ontario for shared services such as reception, library, mailing and courier and photocopy expenses. Also included in recoverable expenses are recoveries for salaries and benefits of employees on secondment to other organizations.

### 6. OPERATING ADVANCE FROM WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

The operating advance is interest-free with no specific terms of repayment.

**7. CAPITAL FUND**

	<u>2003</u>	<u>2002</u>
Balance, beginning of year	<b>\$ 1,755,739</b>	\$ 1,809,778
Transfer to (from) capital fund		
Additions to capital assets	<b>385,808</b>	920,513
Amortization for the year	<b>(1,071,004)</b>	(974,552)
	<b>(685,196)</b>	(54,039)
Balance, end of year	<b>\$ 1,070,543</b>	\$ 1,755,739

**8. SERVICES – WSIB**

The expense represents administrative costs for processing claim files of the WSIB, which are under appeal at the Tribunal, pursuant to section 125 (4) of The Workplace Safety and Insurance Act, 1997.

**9. COMPARATIVE FIGURES**

Certain of the comparative figures have been reclassified to conform to the current year's presentation.