

# WSIAT

## ANNUAL REPORT **2004**

Workplace Safety and  
Insurance Appeals Tribunal  
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Toronto Ontario M5G 2P2

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# INTRODUCTION

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

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2004 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

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



# CHAIR'S REPORT

## A RAY OF LIGHT

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

Since the quality of the adjudicative product obviously depends upon the quality of the people involved in decision-making, the need for a "merit-based" system for appointing people to the administrative justice system was apparent. At the end of 2004, there emerged a "ray of light" for quality appointments to Ontario's administrative justice system, as the Ontario government announced an agency review and a renewed focus on the appointment process. The Divisional Court and the Ontario Court of Appeal had made it clear that they regarded the Appeals Tribunal as an "expert" tribunal which provides an informal, but informed, alternative to the courts. It is the quality of key OIC appointees which allowed the Tribunal to develop this reputation within the judicial system and to ultimately serve as a model for the new British Columbia Workers' Compensation Appeals Tribunal. Both British Columbia and Quebec have begun significant reforms in the public appointments process designed to improve the integrity of their administrative justice systems. The Ontario

government's agency review, together with the focus on a reformed appointment process, signals a renewed commitment to a quality Administrative Justice system for Ontario and to the development of more expert tribunals.

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

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

As the Appeals Tribunal enters 2005, it maintains its ongoing commitment to provide effective delivery of services within the workplace safety and insurance system; however, provision of this effective delivery can only take place if and when the Tribunal receives adequate tools to do the job. A roster of knowledgeable and competent adjudicators, together with sufficient budget resources, is the foundation for any effective appeals system. Fortunately, many of the current OICs have shown remarkable dedication and professionalism by continuing to provide a quality adjudicative product in spite of the eroding remuneration levels. System-wide co-operation in the use of early intervention, improved training, knowledge management and ADR techniques, will allow the Board and Tribunal to build upon this foundation.

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

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

## HIGHLIGHTS OF THE 2004 CASES

This section highlights some of the legal, factual and medical issues considered by the Tribunal in decisions summarized in 2004.

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 provisions in the WSIA and pre-1997 Act. During 2004, the Tribunal adjudicated cases under all four Acts. For convenience, cases dealing with WSIA appeals 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 circumstances. LOE benefits generally become final 72 months after the date of accident. While the Board is still involved in labour market re-entry (LMR), the WSIA places a new emphasis on the workplace parties to co-operate in early and safe return to work (ESRTW). If ESRTW is not possible, the Board will do an LMR assessment and may offer an LMR plan to the worker to assist in identifying a suitable employment or business (SEB). The worker's LOE benefits are based on the SEB.

Previous Annual Reports have discussed Tribunal decisions that question the Board's policy requiring notice to a worker before his LOE benefits are reduced or suspended for non-co-operation. *Decision No. 2474/00* (2004), 69 W.S.I.A.T.R. 57 (discussed in more detail below) found that it is within the Board's discretion under section 43(7) to decide that notice will generally be required before exercising the discretion to reduce or suspend payments for non-co-operation.

Decisions during 2004 confirmed previous Tribunal case law that assessed the duty to co-operate in light of what is reasonable in the circumstances. For example, an appeal was allowed where the worker had asked for LMR to be placed on hold due to non-compensable problems. While he might not be eligible for LOE benefits while the LMR was on hold, this did not affect his entitlement to future LMR and LOE benefits. See *Decision No. 1546/03R* (2004), 70 W.S.I.A.T.R. 51. Similarly, a self-directed LMR

plan will be judged by what is reasonable to expect workers to undertake on their own initiative. See, for example, *Decision No. 377/03* (December 5, 2003). *Decision No. 1414/03* (2003), 67 W.S.I.A.T.R. 171, considered the situation of an older worker who was unable to obtain work at the age of 64 after co-operating with an LMR plan. The fact that a worker agrees to LMR does not necessarily mean that he can achieve the job goal.

Turning to the employer's obligation to co-operate, *Decision No. 866/04* (2004), 70 W.S.I.A.T.R. 91, discussed the difference between the statutory obligation to offer "comparable" employment where the worker was medically able to perform essential duties, as opposed to the obligation to offer "suitable" work in other situations.

While the WSIA does not include a temporary benefit provision, the Board has adopted policy that distinguishes between short-term and long-term earnings. A number of Tribunal decisions considered issues arising under this policy, for example, when a change in an employment situation is significant enough to qualify as a "break" in the employment pattern. See *Decisions No. 1142/04* (November 5, 2004) and *1305/04* (2004), 70 W.S.I.A.T.R. 223. Given the variety of employment situations, Board policy may need to be modified to deal with unanticipated circumstances. See *Decision No. 831/04* (September 29, 2004).

The WSIA introduced a six-month time limit for appealing Board decisions, unless the Tribunal is satisfied that a time extension should be granted. Tribunal case law has established that parties are subject to the statutory time limit if they obtain a Tribunal decision granting a withdrawal. Since the withdrawal terminates the original proceedings, a time extension must be obtained for the matter to be pursued at a later date. *Decision No. 1253/98R* (2004), 69 W.S.I.A.T.R. 30.

## Board Policy Under the WSIA

While the Tribunal previously considered Board policy, the WSIA expressly states that, if there is applicable Board policy, the Tribunal shall apply it when making decisions. 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 policy is inapplicable, unauthorized or inconsistent with the Act. The Board then has 60 days to provide parties with an opportunity to make submissions and issue a written decision with reasons. Section 126 applies retroactively to appeals under the earlier Acts.

The proceedings under section 126 which were commenced in *Decision No. 2474/0012* (2002), 60 W.S.I.A.T.R. 137, were completed during this reporting period. *Decision No. 2474/0012* had found that *Operational Policy Manual (OPM) Documents No. 11-01-07* and *19-02-03* were inconsistent with the WSIA to the extent that they required written notice prior to reduction or suspension of LOE benefits, and referred this issue to the Board. The Board responded with a Written Decision with Reasons

which distinguished between situations under section 43(2)(b) where benefits are reduced because a worker refuses suitable and available employment, and the Board's discretion under section 43(7) to reduce or suspend benefits otherwise payable where the worker fails to co-operate under section 40(2). *Decision No. 2474/0013* (2003), 64 W.S.I.A.T.R. 58, directed submissions from the Office of the Employer Adviser, Office of the Worker Adviser and Tribunal Counsel Office on the Board's decision.

After considering the submissions, *Decision No. 2474/00* (2004), 69 W.S.I.A.T.R. 57, found the Board's policy was consistent with the WSIA. The Vice-Chair noted that a refusal to accept work is not necessarily evidence of non-co-operation. For example, a worker may want to return to school for personal reasons, rather than accept ESRTW. Entitlement to benefits would then be the simple result of the application of the WSIA to the choices made by the workplace parties. Accordingly, *Decision No. 2474/00* accepted the Board's view that a refusal of suitable work is not necessarily non-co-operation. The Vice-Chair also agreed that section 43(2), when read with section 43(1), provides a basis for reducing benefits separate from the discretion under section 43(7) to reduce benefits otherwise payable for non-co-operation. It was within the Board's discretion to decide that notice should be given before benefits are reduced or suspended under section 43(7).

Some Board policies, for example, Board policies on mental stress and on earnings basis, state that they apply to a date prior to approval by the Board's board of directors. Questions have arisen about whether this results in retroactive application of policy and whether the Board has authority to adopt policy retroactively. *Decision No. 2828/01* (2003), 67 W.S.I.A.T.R. 81, considered different versions of OPM Document No. 05-02-02 on earnings basis and found that the Board did not have the statutory authority to adopt retroactive policy. While policy guidelines are not generally binding on an administrative agency, section 126 requires the Tribunal to apply Board policy. Accordingly, the Panel considered the retroactivity rules applicable to legislation and *Skyline Roofing Ltd. v. Alberta (Workers' Compensation Board)* (2001), 34 Admin. L.R. (3d) 289 (Alta. Q.B.) which analyzed similar provisions in the Alberta workers' compensation legislation. The Panel concluded that there was a presumption against the retroactive application of section 126 policy. In order to rebut this presumption, there must be something in the governing legislation authorizing retroactive application either explicitly or by necessary implication. While section 183(6) provided for limited retroactivity of regulations, there was nothing in the WSIA, either explicitly or implicitly, indicating Board policy should be given retroactive effect.

*Decision No. 633/01* (2004), 68 W.S.I.A.T.R. 29, and *Decision No. 970/03* (2004), 68 W.S.I.A.T.R. 106, also question the Board's authority to enact retroactive policy in appeals involving OPM Document No. 15-02-02 on mental stress; however, as the outcome in those decisions was the same whether Document No. 15-02-02 applied or not, the Tribunal did not need to decide the retroactivity issue. The effect of Document No. 15-02-02 was also considered in *Decision No. 1928/03* (2004), 68 W.S.I.A.T.R. 184, where the worker, after having lost at the Tribunal, obtained a new decision from the

Board under the new stress policy. The Panel found that the adoption of new policy does not create a new issue that can be litigated as of right at the Board or Tribunal. The only means of reopening the matter would be if the Tribunal granted a reconsideration of its decision.

*Decision No. 794/97* (2004), 69 W.S.I.A.T.R. 1, considered a Charter challenge to pre-1989 statutory provisions on pension commutations which distinguish between pensions above and below 10%, and Board policy under those provisions. Applying the Supreme Court of Canada decision in *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504, the Panel found that the Tribunal has jurisdiction to consider Charter challenges. The Panel noted that the requirement to apply Board policy did not rebut the presumption that an administrative tribunal with jurisdiction to decide questions of law under legislative provisions is presumed to have jurisdiction to decide the constitutional validity of those provisions.

In analyzing whether there was a violation of section 15 of the Charter of Rights, *Decision No. 794/97* applied the test used in *Martin* of whether the Act or Board policy results in differential treatment on an enumerated or analogous ground resulting in substantive discrimination. Assuming that there was discrimination on an analogous ground, the Panel found that there was no substantive discrimination as neither the Act nor Board policy demeaned essential human dignity. It was a broadly accepted goal of income replacement schemes that benefits should be paid on a periodic basis. The anomaly was the ability to pay a pension of 10% or less as a lump sum; however, this recognized the small amount of the pension and the administrative nuisance of paying it over a worker's lifetime.

## Appeals Under the Earlier Acts

During 2004, the Tribunal continued to hear appeals under the pre-1985, pre-1989 and pre-1997 Acts. The two earlier Acts provide pensions for permanent disabilities and temporary benefits for short-term disabilities.

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 final review after 60 months (R2). As of January 1, 1998, the WSIA replaced the mandatory reviews with discretionary annual reviews and review on material change in circumstance. Effective November 26, 2002, amendments in the *Government Efficiency Act, 2002* (GEA) provide for review of a final FEL award after 60 months if the worker suffers a significant deterioration which results in a NEL re-determination or a labour market re-entry plan is not completed within the 60 months. Of particular interest this reporting period, are the number of decisions to consider FEL entitlement on or after the 60-month point.

*Decision No. 30/04* (February 18, 2004) found that the GEA amendments only allow review of a final FEL award where the deterioration occurred after November 26, 2002, the date the amendments came into force. More recent cases, such as *Decision No. 1608/03* (2004), 68 W.S.I.A.T.R. 159, have approved and applied Board policy that a final FEL may be reviewed where the NEL award was reassessed after November 26, 2002, even though the deterioration occurred earlier.

In *Decision No. 1306/02* (2004), 68 W.S.I.A.T.R. 89, a worker's final FEL award had been reduced to reflect Canada Pension Plan (CPP) disability benefits; subsequently, CPP benefits were terminated. Tribunal decisions have generally held that a final FEL award should not be altered to reflect a subsequent change in circumstances but may be varied if subsequent events cast light on the circumstances that exist at the time of the final FEL review. The Vice-Chair found that this analysis applied; the FEL award should be adjusted as the initial estimate of CPP benefits was shown to be in error.

A number of decisions also considered Board policy on the earnings basis used at the final FEL review. Under Board policy, actual earnings do not form part of the calculation if the worker is not working at an approved SEB. *Decision No. 1143/04* (2004), 70 W.S.I.A.T.R. 168, found, however, that actual wages may be of some relevance in determining earning capacity in the broad sense. Board policy should be interpreted in a way flexible enough to accommodate rationally circumstances that were not expressly contemplated by the policy. Since the final FEL award was intended to reflect earnings over a long period of time, earning capacity should be addressed in a broad sense. It was not consistent with the merits and justice to give excessive weight to short-term anomalous earnings. *Decision No. 1417/04* (October 15, 2004) considered the Board policy of basing the final FEL award for an unemployed worker on the wages of a fully experienced worker in the Board-identified SEB. While the SEB and National Occupational Classification (NOC) code used by the Board were appropriate, the NOC code included earnings for workers with formal training. Since the worker did not have formal training, earnings were reduced to entry-level wages plus an additional small amount to recognize increased experience.

Under the pre-1997 Act, a FEL award is payable until the worker reaches 65, at which time a retirement pension is payable based on contributions made during the FEL period. Ontario Regulation 715/94 provides a default payment scheme if the worker and the spousal partner have not made an election before the worker's 65th birthday. *Decision No. 56/04* (September 30, 2004) denied a worker's appeal to make a different election where the Board had notified the worker two months before he turned 65 and no election was made in the following year.

Decisions of particular interest under the earlier pension scheme include *Decision No. 1010/04* (2004), 70 W.S.I.A.T.R. 133 (which found that the Combined Values Chart, which is contained in the American Medical Association (AMA) Guides and is mandated for use in NEL awards under the pre-1997 Act, does not apply to pensions) and *Decision*

*No. 779/04* (September 30, 2004) (which considered how the \$200 per month supplement payable under section 147(14) should be calculated and whether it can be reduced if a worker's earnings increase after the review date for the section 147(4) supplement).

## 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. 2273/03I* (2004), 68 W.S.I.A.T.R. 197, considered conflict of law principles and whether Utah law or Ontario law governed a right to sue application in Ontario where a trucking accident occurred in Utah and injured the plaintiff and a co-worker of an Ontario employer. The cause of action would not be removed by the laws of Utah but would be barred by the Ontario WSIA. The Vice-Chair considered *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 S.C.R. 1022, which established the general rule that the *lex loci delicti* (in this case the law of Utah) applied to an action commenced in Ontario; however, there were compelling reasons why there should be an exception to the general rule. All the parties had a real and substantial connection to Ontario; the only reason the plaintiff sought to apply the law of Utah was to bypass the WSIA and potentially violate Ontario public policy; and the WSIA set out a comprehensive code to cover workplace accidents involving Ontario workers and employers regardless of where an accident occurred.

In *Decision No. 2273/03* (October 26, 2004) the Vice-Chair considered further arguments involving the application of the WSIA and found that the WSIA was not superseded by section 192(1) of the *Highway Traffic Act*, which provides that the owner or operator of a vehicle is liable for damage sustained due to negligence in operation of the motor vehicle. Since the worker was entitled to benefits under the WSIA, he could not claim statutory accident benefits under the *Insurance Act*.

Another example of an interesting right to sue application is *Decision No. 1707/03I* (2003), 66 W.S.I.A.T.R. 239, which reviews Tribunal case law on the relationship between workers' compensation and "products liability" law.

## Employer Issues

The 2003 Annual Report noted that the Tribunal had received appeals on two new employer issues: departure fees levied when a Schedule 1 application industry exits from the Schedule and the obligation to report accidents under the new definition of "health care." Several decisions on these new issues were released in 2004. The Tribunal

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

A series of appeals on penalties for late filing has helped clarify when an employer is obliged to report an accident because the worker received “health care” as defined in the WSIA and Board policy, and what level of penalty is appropriate. These decisions have considered whether the service provided was in the nature of first aid, rather than health care, or was so minimal that it did not come within the definition of “health care.” See *Decisions No. 1916/03* (2003), 66 W.S.I.A.T.R. 297, *1915/03* (2003), 66 W.S.I.A.T.R. 282, *873/03* (2004), 70 W.S.I.A.T.R. 33, *754/02* (2004), 70 W.S.I.A.T.R. 15, *874/03* (August 24, 2004) and *1715/02* (October 27, 2004).

The last Annual Report notes the Tribunal’s interim *Decision No. 3198/001* (2003), 64 W.S.I.A.T.R. 78, which found that while the Tribunal does not have the jurisdiction to consider the design of the departure fee system, it can decide whether the departure fee is properly calculated, whether all the factors in Board policy have been considered and whether there are exceptional circumstance. In 2004, *Decision No. 3198/00* (2003), 67 W.S.I.A.T.R. 1, found that the departure fee should be waived due to exceptional circumstances. The timing of notification of various changes had negatively affected the employer, making it virtually impossible to make a timely decision about whether to opt out of Schedule 1, and the employer ran a charitable, non-profit organization with a very tight fixed budget, with funding from churches, the Ministry of Community and Social Services and Children’s Aid Society.

*Decision No. 2341/03* (2004), 67 W.S.I.A.T.R. 240, allowed an appeal in part where an employer left Schedule 1, paid the departure fee, and subsequently rejoined. The Board Appeals Resolution Officer had declined to consider whether the departure fee should be refunded since this was not provided for in Board policy. *Decision No. 2341/03* noted that all decisions must be made on the merits and justice, and reduced the fee by 50% to recognize that the employer was resuming obligations under Schedule 1. *Decision No. 2477/01* (October 22, 2004) further considered the Tribunal’s jurisdiction to hear appeals on exit fees and found that there was no jurisdiction to consider whether the departure fees could be adjusted retroactively when the Board changed the indexing factor for benefits. This went to the design of the departure fee scheme and was excluded from the Tribunal’s jurisdiction by the WSIA, section 123(2).

A number of classification appeals considered the interaction between Board policy and Regulation 175/98. See *Decision No. 2097/03* (December 18, 2003) (involving a complex structure for estate planning and tax purposes), *Decision No. 205/01* (2003), 67 W.S.I.A.T.R. 14 (the correct classifications for a hospital and an affiliated nursing home) and *Decision No. 1060/04* (2004), 70 W.S.I.A.T.R. 144 (the proper allocation of common administrative payroll for head office support for four associated businesses). Where the issue in a classification appeal is governed by mandatory provisions in the Regulation, however, there is no discretion to provide a remedy on the merits and justice. See

*Decision No. 1737/9914* (2004), 68 W.S.I.A.T.R. 1, regarding the need for a segregated payroll.

The timing of an audit is often important for classification purposes. In determining which policy applies in a retroactive classification appeal, it is implicit that an audit must be completed in a reasonable time period. See *Decision No. 1161/0312* (2004), 68 W.S.I.A.T.R. 137, and *1193/041* (2004), 70 W.S.I.A.T.R. 199. *Decision No. 616/04* (2004), 70 W.S.I.A.T.R. 78, on the other hand, found that there was no undue delay where the Board had initially delayed its audit for a year at the employer's request and the process was completed in less than five months.

## Occupational Disease

Occupational disease cases raise some of the most complicated medical and factual issues, since 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."

A number of appeals during this reporting period considered claims by underground miners who developed cancer. Epidemiological evidence is often important in such cases. Tribunal decisions have generally found that a standard mortality ratio (SMR) of 200 is necessary to establish workplace causation, in the absence of evidence that the worker had exposure in excess of other workers in the cohort. Accordingly, *Decision No. 163/04* (2004), 68 W.S.I.A.T.R. 228, denied entitlement for a smelter worker of a nickel mining company where the epidemiological evidence indicated the SMR was 117. *Decision No. 2825/01* (2004), 68 W.S.I.A.T.R. 53, granted entitlement to an underground miner who had 20 years of exposure in Ontario, for the most part as a diamond driller in a gold mine. While the worker did not meet the criteria in Board policy, his overall SMR was 230 when prior exposure outside of Ontario was considered. There was also a possibility of greater Ontario exposure as the worker had been employed in mine development with poor ventilation and had worked in mines with the possibility of higher levels of arsenic and high exposure to drill lubricants. *Decision No. 1382/03* (December 29, 2003) granted compensation to a uranium miner who died of lung cancer at 49. The worker's cumulative exposure should include the special WLMs (working level months) attributable to the particular jobs he had held which involved higher exposure. And see *Decision No. 2244/01* (May 28, 2004) where a custodian's estate was granted entitlement for his death from mesothelioma due to exposure to friable asbestos.

*Decision No. 1537/02* (2003), 66 W.S.I.A.T.R. 110, considered a claim for chronic obstructive lung disease (COLD) by an asbestos miner who smoked. The Vice-Chair considered the Board's new Adjudicative Advice document on COLD and found that while smoking was significant, the worker's condition was due, at least in part, to his mining exposure. At the request of the worker's estate, the matter was referred back to the Board to apply the Adjudicative Advice document and consider the apportionment of

benefits, if any, between the smoking and workplace exposure. The Adjudicative Advice document was new and extremely comprehensive and the Board had not yet considered it in relation to this appeal.

*Decision No. 713/01* (October 20, 2004) considered an estate's claim for retroactive interest when a worker died of lung cancer in 1959 and was denied entitlement at the time, but subsequently granted entitlement under new Board policy on gold mining. The Board's interest policy provides for interest where an earlier adjudicative decision is overturned because Board policy is found to be contrary to law by the Board's board of directors. Since Board policy on gold mining had been revised because of advances in scientific information, interest was not payable.

## Miscellaneous

The year 2004 saw a number of decisions on the Tribunal's jurisdiction. *Decision No. 794/97* (2004), 69 W.S.I.A.T.R. 1 (discussed above) found the Tribunal has jurisdiction to hear Charter challenges. *Decision No. 719/04* (2004), 69 W.S.I.A.T.R. 213, held that the Tribunal has no jurisdiction under the WSIA to consider whether the Board's failure to pay first aid allowances to employers who provide first aid training is lawful. *Decision No. 418/99IR* (September 24, 2004) considered a Board request to reconsider a Tribunal decision on the grounds that the Tribunal did not have the jurisdiction to direct the Board to reconsider. The Vice-Chair noted that pursuant section 123(3) of the WSIA, the Tribunal may confirm, vary or reverse the Board's decision. The Tribunal could also adjourn to allow a party to request a reconsideration; however, the Tribunal did not have the jurisdiction to direct the Board to reconsider. *Decision No. 3079/01R* (2003), 67 W.S.I.A.T.R. 100, considered the Tribunal's authority to adopt different fee schedules for professional witnesses called by parties and by the Tribunal. *Decision No. 1688/03* (2004), 67 W.S.I.A.T.R. 190, held that recent Supreme Court of Canada jurisprudence requires administrative tribunals to give full effect to criminal convictions. A criminal conviction for assault should not be re-litigated in Tribunal proceedings.

During 2004, the Tribunal also considered a number of unique fact situations including an appeal for dependency benefits where a worker died of complications of Hepatitis C and cirrhosis of the liver following surgery for a workplace injury which required a blood transfusion (*Decision No. 1621/03* (2003), 67 W.S.I.A.T.R. 177); an appeal for dependency benefits by a sister whose twin was killed in a workplace accident and the sisters, who both had the same non-compensable disability, had lived together in a mutually dependent relationship (*Decision No. 774/04* (May 28, 2004)); calculation of LOE benefits for a 75-year-old farmer whose farm was not consistently profitable (*Decision No. 1681/03* (July 26, 2004)); whether a police officer in uniform and subject to expectations regarding his conduct was in the course of employment while travelling to work (*Decision No. 1290/98* (2004), 69 W.S.I.A.T.R. 35); and whether a mining

engineer who developed histoplasmosis from workplace exposure was entitled to benefits where medication for his compensable accident and medication for a pre-existing condition resulted in renal failure (*Decision No. 123/03* (2004), 68 W.S.I.A.T.R. 100).

## APPLICATIONS FOR JUDICIAL REVIEW AND OTHER PROCEEDINGS

In 2004, there were a number of interesting developments in applications for judicial review of Tribunal decisions. As noted below, for the first time in the nearly 20-year history of the Tribunal, the Divisional Court quashed a decision of the Tribunal on judicial review (*Decisions No. 770/98I* (October 27, 1999), *770/98IR* (February 5, 2002)). Interestingly, the Court of Appeal granted leave to appeal the Divisional Court's decision. The Court of Appeal is scheduled to hear the appeal in March 2005.

All other applications for judicial review of Tribunal decisions heard in 2004 were dismissed.

The following is a list of the applications for judicial review of Tribunal decisions, and court actions involving the Tribunal, and their current status at the end of 2004. Lawyers from the Tribunal Counsel Office co-ordinate all responses to judicial review applications and other court applications, and represent the Tribunal in court in most instances.

### Judicial Review

#### 1. **Decisions No. 255/02 (August 30, 2002) and 255/02R (February 8, 2003)**

In *Decision No. 255/02*, both the worker and employer appealed issues relating to entitlement. The employer's appeal was dismissed. The worker's appeal was granted in part. However, the worker was not granted a FEL award at the final review. The worker was now self-employed. The Vice-Chair found 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 by the same Vice-Chair in *Decision No. 255/02R*.

The worker brought an application for judicial review of the Tribunal's decisions. The Tribunal brought a motion, heard at the same time as the judicial review, to strike affidavit material filed by the worker. The judicial review was heard in Hamilton before Justices Cunningham, Stayshyn and Thomson on January 29, 2004.

At the commencement of the judicial review the Court unanimously granted the Tribunal's motion to strike the materials in question. The Court then heard argument on the judicial review. The Court reserved.

The Divisional Court decision was released on March 5, 2004. The Divisional Court unanimously dismissed the judicial review. The Court carefully reviewed the merits of the Tribunal's decisions and concluded that the Vice-Chair's decision on wage loss was not patently unreasonable. The Court also held that having a Vice-Chair reconsider her own decision was not a breach of natural justice. This latter point had not been considered by a court before, and affirms the Tribunal's practice to assign reconsiderations in many instances to the original vice-chair or panel is appropriate.

**2. Decisions No. 1095/01 (April 30, 2001) and 1095/01R (April 19, 2002)**

*Decisions No. 1095/01* and *1095/01R* denied a worker's appeal for entitlement for bilateral carpal tunnel syndrome. The worker brought an application for judicial review alleging the Tribunal has not properly considered the medical evidence.

The worker's application for judicial review was heard on April 4, 2003. The Divisional Court unanimously dismissed the application. Justices Lane, Cameron and Brockenshire held that the Tribunal correctly assessed the issues and the relevant sections of the WSIA, and the Tribunal's decision was not patently unreasonable.

The Court of Appeal granted leave to appeal. The appeal was heard on February 12, 2004, by Justices McMurtry, Catzman and Abella. The Court reserved.

The judgment, released February 16, 2004, unanimously dismissed the appeal. The Court of Appeal agreed with the Divisional Court that the Tribunal's decision was not patently unreasonable.

**3. Decisions No. 1480/98 (2002), 62 W.S.I.A.T.R. 59, and 1480/98I (July 27, 2001)**

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* as the Tribunal found that the worker's skin cancer was a "disablement" under the Act. 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* 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 did not challenge the finding that the cancer was work-related, only that this type of accident was not incorporated by GECA. The application was heard in Ottawa by a Divisional Court panel of McWilliam, McCartney and Ratushny. The Court reserved.

The Divisional Court unanimously dismissed the application for judicial review. The judgment, written by Justice Ratushny, was strongly supportive of the Tribunal's decision. The Divisional Court held that the decision that GECA incorporated this disablement type of accident was not only not patently unreasonable, it was correct.

The employer brought a notice of motion for leave to appeal the decision of the Divisional Court to the Court of Appeal. The Court of Appeal (Abella, Cronk and Juriensz, JJ.A.) denied leave on May 26, 2004.

#### **4. Decisions No. 770/98I (October 27, 1999) and 770/98IR (February 5, 2002)**

This case marked the first time a decision of the Tribunal has been quashed on judicial review.

A worker was granted chronic pain entitlement by the Board, but was awarded no future economic loss. She appealed this to the Tribunal, alleging she did not have chronic pain, but instead had an organic condition known as traumatic vertebrobasilar ischemia (TVBI). The Tribunal dismissed the appeal, and confirmed the worker had chronic pain. In coming to this finding, the Panel concluded the worker had hit her head once at the time of her accident.

The worker then requested the Tribunal reconsider the finding in *Decision No. 770/98I* that she had a non-organic condition. She also argued in the alternative, as a new issue, that she had a somatoform disorder. In support of her reconsideration, the worker submitted an affidavit from a co-worker. The affidavit said the co-worker could now recall that in 1991 the worker had struck her head twice at the time of the accident. In *Decision No. 770/98IR*, the Panel denied the reconsideration, and confirmed the worker did not have TVBI. However, the Panel found that the worker had a somatoform disorder, rather than chronic pain.

The worker applied for judicial review of the decision that she did not have an organic condition.

The judicial review was heard in Divisional Court on April 19, 2004. The Court found the Tribunal's decision was patently unreasonable. The Divisional Court's decision, which is not long, focused on two paragraphs of the reconsideration decision. The Court was not satisfied about the way the Panel had dealt with the co-worker's affidavit on the reconsideration in regards to the number of times the worker had struck her head. The Divisional Court decision also stated that the Tribunal had not satisfactorily dealt with the conflict in the medical evidence.

The Tribunal filed a notice of motion for leave to appeal the Divisional Court decision to the Court of Appeal. On September 29, 2004, the Court of Appeal granted leave to appeal. The Court of Appeal is scheduled to hear the appeal on March 15, 2005.

**5. Decisions No. 28/02 (February 11, 2002) and 28/02R (July 22, 2003)**

A hospital sonographer had a herniated disc. The Panel in *Decision No. 28/02* applied the statutory benefit of doubt provision in favour of the worker, and found on the evidence that the disc herniation arose as a disablement from his 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* denied the application for reconsideration. The employer then elected to proceed with the judicial review. The judicial review was heard on June 10, 2004, in Ottawa.

The Divisional Court unanimously dismissed the application for judicial review. The Court found that the Tribunal had the authority to weigh evidence and apply the benefit of doubt. As the Tribunal is entitled to deference in its decisions, the Court held the Tribunal's decision was not patently unreasonable.

**6. Decision No. 1384/03 (December 30, 2003)**

The worker and her sister were suspended for smoking at work. The sister reported an accident later that day, before the suspension took effect. The worker reported an accident within a few hours of returning after her suspension. The Panel reviewed the medical evidence and the testimony of the witnesses and denied initial entitlement to the worker. Both the worker and her sister (see *Decision No. 1509/02*, below) commenced separate applications for judicial review.

The Tribunal has filed its factum. The judicial review is scheduled to be heard in Divisional Court on April 6, 2005.

**7. Decision No. 1509/02 (February 2, 2004)**

This judicial review was received at the same time as the one for *Decision No. 1384/03* (above). The two workers are sisters, and are represented by the same law firm. In this instance the Panel allowed the employer appeal, and reversed initial entitlement which had been granted for the worker.

The Tribunal has filed its record and is awaiting a factum from counsel for the worker in this application.

**8. Decisions No. 18/88I (March 22, 1988) and 18/88 (October 27, 1988)**

This is an application for judicial review to quash decisions made in 1988. The worker alleged the Board had improperly released his claim file to the employer. The worker argued that because of the Board's error, the Tribunal had lost jurisdiction to hear his appeal. The Tribunal Panel did not agree. Fifteen years later, the worker served an application for judicial review on the Tribunal and the WSIB.

Subsequently the worker, who was self-represented, served nine Notices of Constitutional Question.

The WSIB retained outside counsel, and commenced a motion to quash the application. The Tribunal supported the motion. The worker then attempted to file further documents in Divisional Court, to in effect quash the Board's motion. At this point, staff in Divisional Court realized that the worker had been found to be a vexatious litigant by Lissaman J. in another action, pursuant to section 140 of the *Courts of Justice Act*. The Divisional Court refused to accept his materials unless he first obtained leave under section 140.

The Board and Tribunal then filed materials to request an order that the judicial review should not proceed due to the section 140 order. Campell J. ordered that the judicial review be stayed until such time as the worker successfully appeals the section 140 order.

On November 26, 2004, the worker's motion for leave to appeal Justice Lissaman's order under section 140 was refused by Justice Horkin.

**9. Decision No. 1584/02 (July 15, 2003)**

The worker, a car salesman, had a congenital lesion in his brain which was asymptomatic until 1993. In 1991, he suffered a head injury when the rear door on a van was accidentally shut on his head. The worker did not seek any medical attention for this injury. Eighteen months later the worker had a seizure, and alleged it was caused by the head injury. The Panel denied the worker's appeal, finding there was no entitlement for the seizures.

The worker has brought an application for judicial review. At the end of the year the Tribunal was preparing its factum. It is anticipated that this judicial review will be heard in 2005.

**10. Decision No. 117/04 (September 27, 2004)**

This right to sue application found the injured party was a worker, rather than an independent operator, and that the right of action was therefore taken away. Counsel for the worker has commenced an application for judicial review. The Tribunal has filed an appearance, and is waiting for the applicant to order the transcripts so the Record may be filed.

**11. Decision No. 2476/01 (October 16, 2001)**

Decision No. 2476/01 denied the worker entitlement for chest wall pain. The worker's counsel erroneously served a notice of appeal, which was subsequently withdrawn and replaced with an application for judicial review. Then the application for judicial review required amendment. The worker's factum was served, the Tribunal has filed its factum, and the respondent employer filed a factum. The

parties are currently awaiting a date for the hearing of the judicial review. However, counsel for the worker has indicated that he intends to get off the record.

**12. Decision No. 398/02 (March 26, 2002)**

The same counsel as in *Decision No. 2476/01* above filed an application for judicial review of *Decision No. 398/02*. 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. As in the case above, counsel for the worker has advised that he will be getting off the record.

**13. Decisions No. 201/02 (April 15, 2002) and 201/02R (August 16, 2002)**

These Tribunal decisions found that the worker had chronic pain, but that it was non-compensable. Counsel for the applicant filed an application for judicial review, and then decided to pursue a reconsideration. The Tribunal consented to adjourn the judicial review pending the reconsideration application. The reconsideration has been commenced, and the new Vice-Chair has requested a report from a medical assessor before deciding the threshold question.

**14. Decisions No. 466/01 (February 26, 2001) and 466/01R (October 30, 2001)**

The worker withdrew her appeal at the Tribunal hearing on the advice of her representative. After consulting new counsel, she regretted her decision. As her application to reconsider the withdrawal was denied, new counsel commenced an application for judicial review. Counsel for the worker then decided to pursue a further reconsideration. The application for judicial review was adjourned pending the result of the reconsideration.

Tribunal *Decision No. 466/01R2* (April 30, 2004) granted the reconsideration. It is expected the judicial review will be withdrawn.

**15. Decision No. 1858/98 (July 15, 1999)**

Tribunal *Decision No. 1858/98* 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. The application for reconsideration has been commenced.

**16. Decision No. 606/95 (June 23, 1997)**

This application for judicial review included a number of complex factual issues involving entitlement for a worker. The Tribunal prepared a draft Record which was

over 9,000 pages. However, counsel for the worker failed to perfect the application within the time set out in the Rules, and the application was dismissed by the Divisional Court. The applicant now seems to have retained new counsel, who is considering whether to proceed with the judicial review.

**17. Decision No. 433/99 (June 24, 1999)**

The Vice-Chair denied entitlement to a worker for a back disability. Counsel for the worker served an application for judicial review. However, the materials were not properly drafted. After a delay, counsel for the worker served amended materials. The Tribunal has filed the Record and is awaiting service of the worker's factum.

**18. Decisions No. 3536/00 (January 8, 2001), 3536/00R (August 14, 2001) and 3536/00R2 (May 5, 2003)**

The worker's paralegal representative failed to file an appeal in time. The worker's application to extend the time limit on the basis of the representative's negligence was denied. Two applications for reconsideration were dismissed.

The worker retained counsel, who brought an application for judicial review. Factums were exchanged, but counsel for the worker then sought to adjourn the judicial review in order to commence a further reconsideration application. The Tribunal consented to the adjournment, pending the result of the reconsideration.

**19. Decisions No. 1022/02 (December 9, 2003) and 1022/02R (August 18, 2004)**

The worker's appeal for entitlement for a shoulder and elbow was denied. The worker retained new counsel who brought an application for reconsideration. The reconsideration was denied. The worker then brought an application for judicial review.

Counsel for the worker elected to place the judicial review on hold pending a further application for reconsideration.

**20. Decisions No. 981/02 (April 8, 2003) and 981/02R (2004), 68 W.S.I.A.T.R. 69**

The Tribunal was not named as a party to this application, though it has an interest in the outcome. As the Board had not implemented Tribunal *Decision No. 981/02* reclassifying an employer, the employer brought an application in Divisional Court 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. In *Decision No. 981/02R* the reconsideration application was denied. A further decision by the Tribunal on the calculation of the classification change may be required. The court application has been adjourned pending the resolution of the implementation of the Tribunal's decision.

## Lawsuits Involving the Tribunal

### 1. Kohlhammer v. WSIAT, WSIB and MOL

The Tribunal, the Ministry of Labour, and the WSIB were sued by a worker for \$500,000 in damages. The worker was self represented. The reasons for the suit were not clear, but seemed related to the denial of his appeal. The Attorney General agreed to represent the Tribunal and the MOL, and brought a motion to strike the action.

The motion was heard on December 4, 2004. Backhouse J.'s decision dismissed the worker's action. The endorsement stated: "The plaintiff's claim for damages for 'wage loss', 'character assassination' and 'intimidation' are not torts known to law. The statement of claim lacks the necessary elements for pleading fraud and false imprisonment as required under R.25.06(8) of the *Rules of Civil Procedure*. The statement of claim does not contain the material facts relied upon as required under Rule 25.16(1) of the *Rules*."

### 2. Stabryla v. Valli, Josefo, and Placer Dome

The worker had some slurry spilled on him at work in 1988. The worker subsequently claimed entitlement for psychotraumatic disability, which was denied by the WSIB. His appeal to the Tribunal was denied by a Panel of Josefo, Sherwood and Briggs in *Decision No. 583/02* (May 31, 2002).

The worker then commenced an action in Kirkland Lake Small Claims Court against an adjudicator of the WSIB in Sudbury, his employer, and Tribunal Vice-Chair Josefo. It appears the reason for the action is the worker's unhappiness with the denial of his WSIB appeal. The Tribunal and the Board have filed statements of defence, and it is anticipated that a motion to strike the claim will be brought by the Tribunal, and perhaps by the Board.

### 3. WSIAT v. Beretta and City Centre Liquidations

The Tribunal sold its used office furniture to a furniture liquidator. The liquidator failed to pay for the furniture. The Tribunal commenced an action in small claims court against the company. The Tribunal was granted judgment for the entire amount of the claim plus interest and costs. The Tribunal then undertook measures to collect the debt. In July 2004, the entire amount owing was collected.

## OMBUDSMAN REVIEWS

The Ombudsman's Office has the responsibility for investigating complaints about the Ontario government and its agencies, including the Tribunal. The Ombudsman conducts a thorough investigation of complaints 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 information from the Tribunal or if issues arise which indicate the need for formal investigation. While an Ombudsman investigation may result in a recommendation to reconsider, most investigations result in the Ombudsman concluding that there is no reason to question the Tribunal's decision.

In 2004, the Ombudsman notified the Tribunal of its intention to investigate 12 matters. This is generally consistent with the number of notifications received in the last two years: 18 case-related notifications were received in 2002 and three in 2003. Notifications can relate to any decision issued at any time, not necessarily decisions released in the current year.

During 2004, four Ombudsman notifications were closed. Two of these notifications involved complaints about delay in release of decisions. The Ombudsman's Office closed its files after being advised by the Tribunal Chair that production problems were caused by the limited number of Vice-Chairs. Vice-Chairs who were expected to continue working at the Tribunal did not have their appointments renewed by the former Minister of Labour. A backlog of appeals and written decisions developed as the remaining Vice-Chairs took on more hearings in an attempt to compensate for reduced numbers. Given the reappointment of a number of experienced adjudicators by the current Minister of Labour and his support of quality appointees, the Ombudsman was advised that it was anticipated that the Tribunal would begin to recover from the current situation in September 2004. This would depend, in part, on budget approval to accommodate an increased adjudicator roster and increased caseload. The Tribunal Chair undertook to keep the Ombudsman informed and the Ombudsman is continuing to monitor the situation over the next year.

# TRIBUNAL REPORT

## 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 2004 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 the Counsel to the Chair and 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 of Privacy Act* (FIPPA); responding to FIPPA complaints and appeals; and assisting with Ombudsman matters.

Professional development continued to be important in 2004, given the four different legislative schemes, recent statutory amendments and extensive Board policy. OCC also provided orientation training to a number of Vice-Chairs who joined the Tribunal in 2004.

During this reporting period, the Tribunal continued to review the reconsideration process. As noted in the last Annual Report, the Tribunal’s reconsideration statistics are now based on receipt of a completed reconsideration request form, rather than an inquiry about the reconsideration process.

A summary of FIPPA activity is shown below.

**FIPPA Activity Summary 2004**

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

A summary of Reconsideration activity is shown in Chart 14 (p. 43) and a summary of Ombudsman activity is shown in Chart 13 (p. 43).

**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 Tribunal.

All initial processing of appeals is completed by the Tribunal’s OVCR. On receipt of an appeal, the 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 and that the case is ready for hearing.

The Tribunal’s pre-hearing staff also utilize a variety of Alternative Dispute Resolution (ADR) techniques to resolve appeals prior to the hearing. Staff trained in communication and conflict resolution work with both represented and unrepresented parties.

**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 separated into a number of 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.

Early Review staff 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.

### **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.

### **Alternate Dispute Resolution Services**

ADR services are offered to parties to resolve appeals 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.

If an appeal is not resolved through the ADR process, it is prepared for hearing.

### **Mediation Services**

More specialized ADR services are provided by the Tribunal's mediators. If an appellant requests mediation, the Tribunal reviews the appeal to determine its suitability for mediation and contacts the responding party to determine if the respondent is also willing to explore a mediated resolution of the appeal.

If the Tribunal's review indicates that credibility may be at issue or that oral testimony is required, the appeal is deemed unsuitable for the ADR process. In such instances, the appeal is re-streamed for pre-hearing preparation and referred to a hearing in the ordinary course. This also happens when the respondent does not want to participate in a mediation.

Where both parties are amenable to mediation and the appeal is suitable for the process, the appeal is assigned to a mediator for substantive review. The mediator works 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.

## **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 case processing model, TCO now handles only those 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 legal, policy and evidentiary 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 directed to the Post-hearing Group Leader in TCO. The request is assigned to a TCO legal worker or lawyer, depending on the complexity of the case. The legal worker or lawyer 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, to request a report from a Tribunal medical assessor, or to arrange for written submissions from the parties and Tribunal counsel.

## **Lawyers**

TCO has a small group of lawyers with considerable expertise on workplace safety and insurance law and administrative law matters. As noted above, lawyers in TCO 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.

Examples of appeals handled by TCO lawyers include complex occupational disease appeals, employer assessment appeals, appeals involving difficult procedural issues, and appeals raising constitutional and Charter of Rights and Freedoms issues. A bilingual TCO lawyer is available to assist with French language appeals.

A large component of TCO lawyer 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 lawyers.

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. Working under the direction of General Counsel, the TCO Post-hearing Group Leader assists with the supervision of, and assignment of work to, the legal workers. The Group Leader also reviews and analyzes the types of post-hearing requests, and monitors the progression of the post-hearing caseload.

## **Medical Liaison Office**

The Tribunal must frequently decide appeals that raise complex medical issues, or require further medical investigation. Thus the Tribunal 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 Medical Counsellors' Chair is Dr. John Duff. 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 a Panel or Vice-Chair consider obtaining a Medical Assessor's opinion if the diagnosis of the worker's condition is unclear, or 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 authorised 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 references are typically made to the report of the Medical Assessor 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**

Highly qualified health care professionals eligible to be appointed to the Tribunal’s roster are identified by a Medical Counsellor. Those candidates who agree to be nominated have their qualifications circulated to all the Medical Counsellors and to members of the Advisory Group. The Tribunal has the benefit of the views of the Medical Counsellors and the Advisory Group when it determines the selection for the roster from the available candidates. 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 a 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, TCO support staff assist the lawyers, nurses and legal workers with case tracking input, file management and general support duties.

## **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 is also open to the public. 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 2004, a new library software system "Inmagic" was introduced into use, improving the OWTL's capacity to deliver information and services electronically.

## Ontario Workplace Tribunals Library Statistical Summary 2004

<b>Inquiries</b>		<b>Notes</b>
Reference	2585	
Directional	<u>2091</u>	
Total:	<b>4676</b>	
<b>Document Delivery</b>		
OLRB	2769	Includes electronic document delivery to MOL of selected OLRB Documents.
WSIAT	137	
PEHT/HRTO	<u>29</u>	
Total:	<b>2935</b>	
<b>Collection Use</b>	<b>3085</b>	Includes both materials used in the Library and signed out.
<b>Acquisitions</b>	<b>9932*</b>	Includes all items entered in AQUIS plus electronically obtained materials and photocopied material. * Beginning in 2004 this number includes all OLRB, HRTO and PEHT decisions received and filed.
<b>Items sent to Quicklaw</b>	<b>14380</b>	Includes 5,000 ESC cases on disc.
<b>Records Added to Catalogue</b>	<b>575</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 2004, additional information resources were made available on the web site, including an online feedback form, the availability of casebooks for the written appeals process and a new Notice of Appeal for Employers form.

Training sessions in the use of the web site's Decision Summary Search service were held in various centres throughout Ontario in 2004 as part of the Tribunal's public information program, and are also offered by the Ontario Workplace Tribunals Library.

## Publications

### Decision Summary Search Service

The focus of the decision search capability provided by Publications continued to be with the *Decision Summary Search* service in 2004. The service is available free of charge through the Tribunal's web site, and allows users to search the database of summaries of all Tribunal decisions through keywords, reference material and a number of other fields. In addition to providing access to all decision summaries, it also has links to the full text of all of the Tribunal's decisions in pdf format.

In 2004, Publications improved access to and display of material in the Decision Summary Search service with two small but useful enhancements:

- A means of limiting the number of search results is to use filters. One of the filters is for "Noteworthy Decisions Only." These are decisions which users may find of particular interest, and includes a broader selection of decisions than those selected for inclusion in the WCAT/WSIAT Reporter. The noteworthy designation was added to selected decisions starting in December 2000. During 2004, Publications added the noteworthy designation to decisions in the WCAT/WSIAT Reporter that were published prior to December 2000.
- When using the Keyword Directory to find appropriate keyword phrases, the display of results sometimes extends beyond the right edge of the search screen. The longest entries in the Keyword Directory are often cross-references. In 2004, Publications separated multiple cross-references into individual entries. This improves the readability of the cross-references and greatly reduces the instances in which the entries extend beyond the edge of the screen.

### Other Publications

In 2004, Publications continued to produce the Tribunal's newsletter, *WSIAT In Focus*, and the *WSIAT Reporter*. The Reporter 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. Volume 65 of the Reporter, published in 2004, contained a cumulative index covering Volumes 61-65. Work also commenced on the next cumulative index, which will be contained in Volume 70, to be published in 2005.

## **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 2004, Publications processed more than 2,780 decisions.

## **Case Management Systems**

The Case Management Systems Department (CMS) is responsible for the case management functions of the Tribunal as well as the management of information technology systems. This department in fiscal year 2004 contributed to information security and accountability initiatives, undertook information technology (IT) infrastructure upgrades and introduced case management system enhancements. Highlights of the CMS department's accomplishments in 2004 are as follows.

### **Information Technology Policy**

In keeping with IT practices used throughout the Ontario public sector, the Tribunal published an Information Technology Usage Policy document. The IT Usage document prescribes the scope and permitted use of the information technology used at the Tribunal, as well as the potential consequences in the event of a policy breach.

### **Information Technology Projects**

The major IT projects in 2004 included the rollout of new desktop computers and monitors for all workstations within the Tribunal, and the installation of digital copiers in place of photocopying equipment in the reproduction centre.

In terms of software upgrades, several enhancements to the Tribunal's customized case management system (tracIT©) were introduced. This included the development and implementation of a new module for merging documents in order to create case materials. The function automatically consolidates several tasks, including the merging together of electronic documents into a contiguous, paginated and date-stamped case record or addendum. This results in significant savings in staff time and copying costs. The module streamlines the process of issuing tasks to the reproduction centre to facilitate the printing of these documents and their distribution to parties who will attend the WSIAT hearings.

Another project of note was the introduction of a new patch management system for the efficient deployment of security upgrades for the operating systems on the Tribunal's workstation computers. This patch management system automates the update process and

ensures that the security patches for each workstation are deployed in a seamless and timely manner.

The Case Management Systems Department also participated in joint programs, consulting initiatives and pilot projects within the Tribunal. The department was instrumental in facilitating the evaluation of digital recordings as an alternative to the existing tape recording methodology used to record hearings, and the director participated as a member of the steering committee for the RIM (Records and Information Management) consulting effort. The Systems Manager played an instrumental role in deploying the new browser-based Library Catalogue database in the Ontario Workplace Tribunals Library.

## **CASELOAD PROCESSING**

### **Introduction**

At the Tribunal, appeals proceed through a two-part appeal application process. To start an appeal and meet the time limits in the legislation, an appellant files a Notice of Appeal form (NOA). Appeals remain at this “notice” stage while preliminary information is gathered and until the appellant indicates readiness to proceed toward an appeal hearing. The appellant indicates readiness by filing the Confirmation of Appeal form (COA). Once the COA is received at the Tribunal, the appeal enters the second, or “resolution” processing stage.

### **Caseload**

At the end of Year 2004, there were 5,194 active cases within these two process stages. Chart 1 shows the distribution in more detail.

**Chart 1**

<b>Inventory of Active Cases on 31-Dec-2004</b>	
<b>Notice Process</b>	
Cases active in Notice stage processing	<u>1,577</u>
	1,577
<b>Resolution Process</b>	
Early Review stage	109
Substantive Review	1468
Hearing Ready	82
Scheduling and Post-hearing	1,393
WSIAT Decision Writing	<u>565</u>
	3,617
<b>Total Active Cases</b>	<b>5,194</b>

### Active Inventory

The level of the Tribunal’s active inventory is affected by three factors: the number of incoming appeals in a year, the number of appeals that are confirmed as ready to proceed in that year, and the number of hearing and other appeal dispositions that are achieved in the year. The first factor, the number of incoming appeals and applications, has remained relatively constant since 2002.

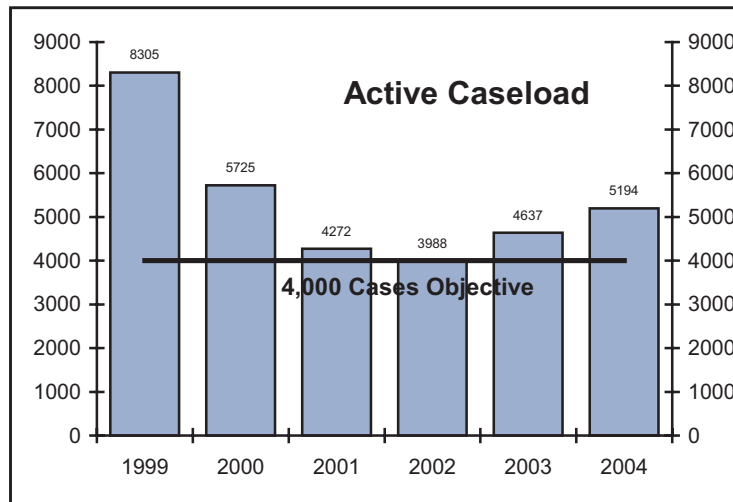
The second factor, the number of appeals confirmed as ready to proceed, has been subject to some variability since the introduction of the Tribunal’s Notice of Appeal process in 2001. Initially, parties were slow to indicate their readiness to proceed, resulting in lower than expected numbers of appeals in the Tribunal’s resolution inventory in the early stages. Over the past two years, however, the Tribunal has experienced a reverse trend, with rates of confirmation exceeding the rates that would be considered normal in light of the intake of new appeals into the Notice of Appeal stage. This factor appears to be stabilizing and the Tribunal now estimates that it will be necessary to generate hearing dispositions in 75-80% of matters filed with the Tribunal; the remainder of incoming appeals are disposed of using a variety of other processes. At current levels of incoming appeals, this means that approximately 3,000 final decisions must be issued each year in order to sustain the active inventory level of 4,000 appeals.

Compared with current decision levels, this target level of 3,000 final decisions represents a 25% increase.

The final factor affecting the Tribunal’s active inventory is the number of decisions made in the year. This in turn depends upon the availability of knowledgeable and experienced decision-makers. Since the conclusion of the backlog reduction period, the Tribunal has experienced significant attrition in its complement of OIC appointees, most significantly among part-time vice-chairs. The Tribunal has not had sufficient adjudicators to achieve the required number of hearing dispositions. The active inventory has increased accordingly, and the Tribunal has been unable to meet its performance targets for timely decision-making.

The appointment, training and support of capable adjudicators and the reduction of the active inventory to the 4,000 target level are the Tribunal’s priorities for the next three years. Chart 2 shows the active inventory in comparison to previous years.

**Chart 2**

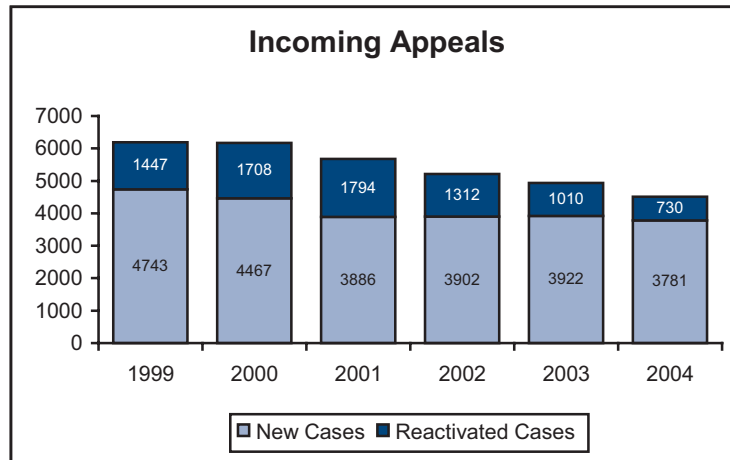


### Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2004, incoming appeals were slightly lower than in 2003. The rate of new appeals appeared relatively constant as compared with rates noted for the past three years, however, the number of cases that “reactivated” from the Tribunal’s Inactive Inventory was reduced. “Reactivations” are appeals in which the appellant has indicated a readiness to proceed with an appeal following an inactive period during which the appellant may have acquired new medical

evidence, received another final decision from the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions at the Board’s Appeals Branch.

**Chart 3**



### Case Resolutions

The Tribunal achieves case resolutions (also known as case 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.

In 2004, the Tribunal disposed of 4,212 cases. Chart 4 provides summary statistics for dispositions achieved. Dispositions following from Tribunal hearing processes (2,394) were the largest source of disposition. Additionally, there were dispositions achieved because of failure of appellants to complete their applications and to confirm appeal readiness (670) and through pre-hearing dispute resolution (1,148).

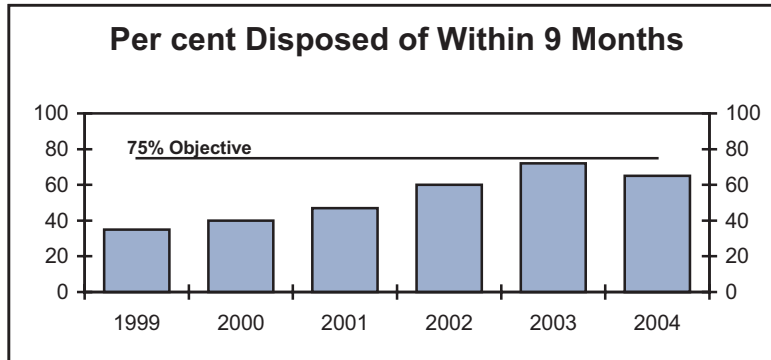
Chart 4

<b>Cases Disposed of in 2004</b>	
<b><u>Notice Stage</u></b>	
Failed to confirm readiness	670
<b><u>Resolution Stage</u></b>	
<b>Pre-Hearing</b>	
Withdrawn or Abandoned	355
Made Inactive or No Reply	749
Found Non Jurisdictional	8
Other	36
<b>Subtotal</b>	<b>1148</b>
<b>After Hearing</b>	
Withdrawn	9
Made Inactive or No Reply	104
Disposed following Tribunal Decision	2279
Other	2
<b>Subtotal</b>	<b>2394</b>
<b>TOTAL</b>	<b>4212</b>
<small>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.</small>	

### Timeliness of Appeal Processing

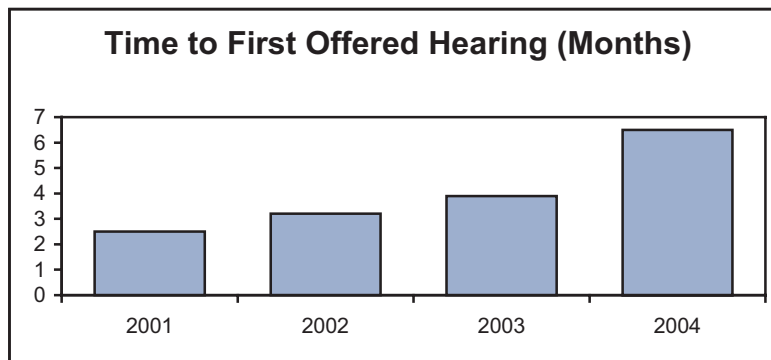
Chart 5 illustrates performance in terms of time frame for completing cases. Measuring from the time an appellant confirms readiness to proceed to a hearing to the case disposition, the Tribunal finds that 65% of cases were resolved within nine months. The Tribunal has an objective of completing 75% of cases within nine months, and as shown below, the Tribunal had been making steady progress toward this goal. In 2004, however, some of these previous gains were erased as a significant portion of the caseload was held in the growing backlog of cases awaiting assignment to adjudicators.

**Chart 5**



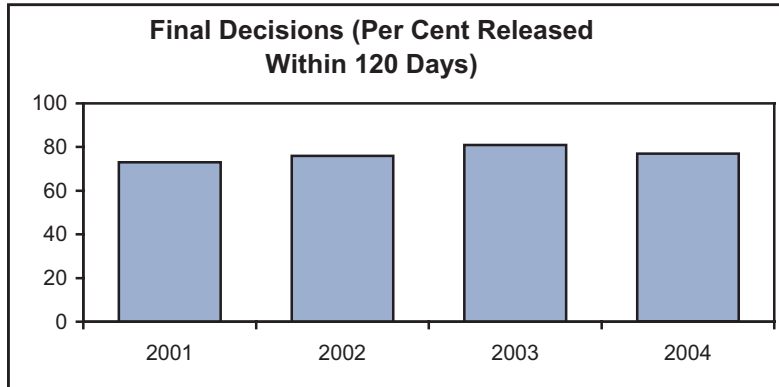
The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Throughout 2004, the median time interval of these proposed hearing dates increased. As noted above, the increased interval is a result of requiring parties to wait for adjudicators to hear their appeals. Chart 6 depicts median time to the first offered hearing date.

**Chart 6**



An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 7, in 2004 this target was achieved 77% of the time.

Chart 7



### Hearing Activity

In 2004, the levels of activity in scheduling, hearing and decision-writing decreased modestly in relation to 2003. In Year 2004, the Tribunal conducted 2,598 hearings (for 2,450 cases), and in this same period, the Tribunal issued 2,391 decisions. Chart 8 depicts the Tribunal’s productivity with respect to Scheduling, Hearings and Decisions.

Chart 8

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
1996	1471	20%	1361	20%	1360	3%	1212	13%
1997	1978	34%	1866	37%	1653	22%	1426	18%
1998	2446	24%	2306	24%	2248	36%	1673	17%
1999	2843	16%	2690	17%	2673	19%	2096	25%
2000	4088	44%	3900	45%	3692	38%	3675	75%
2001	3979	-3%	3530	-9%	3768	2%	3499	-5%
2002	2322	-42%	2149	-39%	2571	-32%	2373	-32%
2003	2750	18%	2609	21%	2675	4%	2408	1%
2004	2598	-6%	2450	-6%	2391	-11%	2320	-4%

Note: This chart excludes decisions for Reconsideration cases (333 in total for 2004), and it excludes decisions issued by the Vice Chair Registrar (63 in total for 2004) during Notice Stage processing.

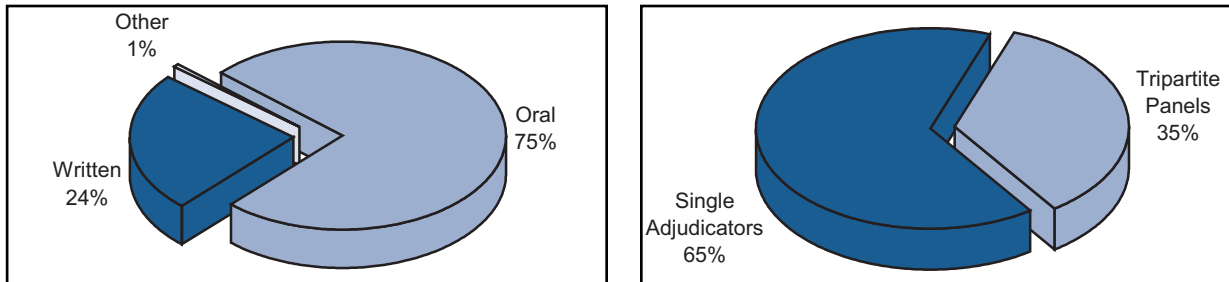
## Hearing Type

Oral hearings continued to be the most common hearing type at 75%. The Written hearing type was used in 24% of hearings, including time extension applications and many types of employer appeals where the injured worker does not participate. The remaining 1% of all hearings in 2004 involved Teleconferences, the Vice-Chair Registrar, or Motions Day.

Single adjudicators were used in approximately 65% of case heard and tri-partite panels in approximately 35%.

Chart 9 presents these hearing characteristics.

**Chart 9**



## Representation at Hearing

Tribunal statistics show that for injured workers, 38% were represented by consultants; 23% by lawyers; 13% by the Office of the Worker Adviser; and 13% by union representatives. The remaining 13% is allocated among various non-categorized representation, for instance, family friend, family member, MPP office, or Legal Aid. Employers were represented before the Tribunal as follows: 57% were represented by consultants; 18% by lawyers; 5% by the Office of the Employer Adviser and 3% by employer personnel. The remaining 17% are non-categorized.

Chart 10 provides a breakdown of hearing representation.

**Chart 10**

<b>Representation Profiles for Hearings Conducted in Year 2004</b>			
<b>Worker Representation</b>			
<b><u>A) In Worker Appeals</u></b>		<b><u>B) In Employer Appeals</u></b>	
None Recorded	11%	None Recorded	68%
<b>Subtotal</b>	<b>11%</b>	<b>Subtotal</b>	<b>68%</b>
Consultant	38%	Consultant	8%
Lawyer	23%	Lawyer	5%
OWA	13%	OWA	3%
Union	13%	Union	6%
Others	2%	Others	10%
<b>Subtotal</b>	<b>89%</b>	<b>Subtotal</b>	<b>32%</b>
<b>Employer Representation</b>			
<b><u>A) In Worker Appeals</u></b>		<b><u>B) In Employer Appeals</u></b>	
None Recorded	63%	None Recorded	16%
<b>Subtotal</b>	<b>63%</b>	<b>Subtotal</b>	<b>16%</b>
Firm personnel	17%	Firm personnel	3%
Consultant	8%	Consultant	57%
Lawyer	8%	Lawyer	18%
OEA	3%	OEA	5%
Others	1%	Others	1%
<b>Subtotal</b>	<b>37%</b>	<b>Subtotal</b>	<b>84%</b>

### Caseload by General Appeal Issue Type

The appeal type categorization of incoming cases and dispositions has been consistent over the years. In 2004, as in past years, Entitlement-related cases constituted the majority of cases (94%). Special Section cases (Right to Sue and Access) comprised typically small portions (6%). Charts 11 and 12 provide historical comparisons of intake and dispositions.

Chart 11

**Breakdown of Incoming Cases by Appeal Type  
for the years 1996 - 2004**

<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>	<b>2004</b>
	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>
Leave	0.4%	0.4%	0.1%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%
Right to Sue	1.4%	0.9%	0.4%	0.6%	0.7%	0.9%	1.0%	1.2%	1.4%
Medical Exam	0.7%	0.5%	0.0%	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%	4.7%
<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>	<b>6.1%</b>
Preliminary (not yet specified)	0.0%	1.5%	23.4%	15.4%	12.9%	7.2%	0.8%	2.1%	0.6%
Pension	1.0%	0.7%	0.3%	0.5%	1.1%	0.7%	0.5%	0.6%	0.2%
N.E.L./F.E.L. *	7.5%	5.1%	4.1%	6.0%	4.9%	4.4%	5.8%	7.2%	1.6%
Commutation	1.2%	1.0%	0.3%	0.1%	0.1%	0.2%	0.2%	0.1%	0.1%
Employer Assessment	5.0%	18.2%	8.2%	9.1%	8.5%	9.3%	7.8%	6.9%	4.3%
Entitlement	62.4%	60.4%	54.2%	54.8%	61.0%	65.5%	69.2%	68.2%	79.3%
Ext post WSIB dec deadline	0.0%	0.0%	2.9%	7.5%	6.0%	5.4%	6.7%	7.8%	6.4%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	0.0%	0.0%	2.5%	1.1%	0.3%	0.1%
Reinstatement	0.9%	0.8%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%
Vocational Rehabilitation **	3.5%	2.2%	1.0%	0.7%	0.3%	0.2%	0.2%	0.1%	0.0%
Classification	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.8%	0.8%	1.0%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%	0.5%	0.2%
<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>93.8%</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>	<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.

\* The NEL/FEL category represents appeals related to the non-economic 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.

Chart 12

<b>Breakdown of Case Dispositions by Appeal Type for the years 1996 - 2004</b>									
<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>	<b>2004</b>
	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>
Leave	0.7%	0.4%	0.2%	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%
Right to Sue	2.1%	2.5%	0.5%	0.6%	0.5%	0.6%	0.9%	1.4%	1.5%
Medical Exam	1.1%	0.9%	0.1%	0.0%	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%	5.0%
<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>	<b>6.5%</b>
Preliminary (not yet specified)	0.0%	1.9%	29.0%	15.2%	9.8%	4.0%	2.1%	2.2%	1.6%
Pension	1.2%	0.9%	0.3%	0.5%	0.7%	0.9%	0.8%	0.6%	0.5%
N.E.L./F.E.L. *	2.5%	5.9%	3.2%	5.2%	6.4%	5.2%	5.3%	5.7%	6.4%
Commutation	1.8%	1.1%	0.5%	0.6%	0.3%	0.1%	0.3%	0.1%	0.1%
Employer Assessment	3.7%	7.3%	4.8%	16.0%	11.8%	8.4%	8.5%	11.0%	5.5%
Entitlement	56.1%	58.1%	53.3%	51.7%	58.4%	68.0%	63.8%	62.4%	69.7%
Ext post WSIB dec. deadline	0.0%	0.0%	0.1%	2.3%	7.8%	7.9%	8.5%	9.6%	8.2%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	0.0%	0.0%	1.3%	2.7%	0.5%	0.1%
Reinstatement	2.4%	1.5%	0.5%	0.3%	0.2%	0.1%	0.2%	0.1%	0.0%
Vocational Rehabilitation **	3.5%	3.5%	1.2%	1.7%	0.9%	0.5%	0.4%	0.3%	0.0%
Classification	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	1.1%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	0.1%
<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>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>	<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- 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

In 2004, the Tribunal experienced a modest overall reduction in the number of cases in the Inactive Inventory. At the beginning of the year, there had been 4,210 Inactive cases. Over the course of the year, 847 cases were made inactive while 919 Inactive

cases were either closed or reactivated. At year-end, therefore, the Inventory of Inactive cases rested at a level of 4,138 cases.

## Post-decision Workload

In year 2004 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 2004.

**Chart 13**

<b><u>Ombudsman Complaints, Activity and Inventory Summary</u></b>	
New Complaint Notifications Received	12
Complaints Resolved	4
Complaints Remaining	8

**Chart 14**

<b><u>Reconsideration Requests, Activity and Inventory Summary</u></b>	
Inquiries (Pre-reconsideration) Remaining	32
Reconsideration Requests Received	351
Reconsideration Requests Resolved	352
Reconsiderations Remaining	192

**Chart 15**

<b><u>Judicial Reviews, Activity and Inventory Summary</u></b>	
Judicial Reviews Received	6
Judicial Reviews Resolved	8
Judicial Reviews Remaining	11

## FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2004, (Chart 16) 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, 2004. The audit reports are included in this report as Appendix B.

Chart 16

<b>Statement of Expenditures and Variances</b>				
<b>Year ended December 31, 2004 (In \$000's)</b>				
	<b>2004</b>	<b>2004</b>	<b>2004</b>	
	<b>BUDGET</b>	<b>ACTUAL</b>	<b>\$</b>	<b>%</b>
<b>OPERATING EXPENSES</b>				
Salaries & Wages	9,292	8,781	511	5.5
Employee Benefits	1,743	1,594	149	8.5
Transportation & Communication	915	954	(39)	(4.3)
Services	5,672	5,210	462	8.1
Supplies & Equipment	400	431	(31)	(7.8)
<b>TOTAL - W.S.I.A.T.</b>	<b>18,022</b>	<b>16,970</b>	<b>1,052</b>	<b>5.8</b>
Services W.S.I.B.	475	447	28	5.9
Interest Revenue	(25)	(19)	(6)	24.0
<b>TOTAL OPERATING EXPENSES</b>	<b>18,472</b>	<b>17,398</b>	<b>1,074</b>	<b>5.8</b>
<b>ONE TIME EXPENSES</b>				
Severance Payments	100	247	(147)	(147.0)
IT Business Solutions Initiatives	40	40	-	-
Per Diem Costs - one time	100	-	100	100.0
<b>TOTAL EXPENDITURES</b>	<b>18,712</b>	<b>17,685</b>	<b>1,027</b>	<b>5.5</b>
<b>Note:</b> The above 2004 actuals are presented on the same basis as the approved budget and differ from the year-end audited Financial Statements presentation (see note 2 to the Financial Statements). The difference of \$713 is comprised of:				
<b>Capital Fund</b>				
Amortization	\$ 665			
Fixed assets acquired	(71)	594		
<b>Operating Fund</b>				
Accrued severance & vacation benefits	\$ 136			
Prepaid expenses	(17)	119		
		<u>\$ 713</u>		



# APPENDIX A

## VICE-CHAIRS AND MEMBERS IN 2004

This is a list of Vice-Chairs and Members whose Order-in-Council appointments were active or pending 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  
 McCutcheon, Rosemarie . . . . . October 6, 1999  
 Moore, John . . . . . July 16, 1986  
 Robeson, Virginia . . . . . March 15, 1990  
 Ryan, Sean . . . . . October 6, 1999  
 Smith, Eleanor . . . . . January 7, 2000  
 Sutherland, Sara . . . . . September 6, 1991

#### 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
Doyle, Maureen	October 20, 2004
Faubert, Marsha	December 10, 1987
Ferdinand, Urich	April 29, 1999
Flanagan, William	July 5, 2004
Gale, Robert	October 20, 2004
Hartman, Ruth	October 6, 1999
Josefo, Jay	January 13, 1999
Kalvin, Bernard	October 20, 2004
Kenny, Maureen	July 29, 1987
Levy, Alan	October 20, 2004
Loewen, Brian	May 6, 1999
Marafioti, Victor	March 11, 1987
Mullan, David	July 5, 2004
Nairn, Rob	April 29, 1999
Noble, Julia	October 20, 2004
Peckover, Susan	October 20, 2004
Signoroni, Antonio	October 1, 1985
Silipo, Tony	December 2, 1999
Smith, Marilyn	February 18, 2004
Suissa, Albert	October 20, 2004
Zimmerman, Geoffrey	April 29, 1999

### Members representative of workers

Beattie, David	December 11, 1985
Besner, Diane	January 13, 1995
Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Felice, Douglas	May 14, 1986
Gillies, David	October 30, 2002
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988

Rao, Fortunato . . . . .	February 11, 1988
Timms, David . . . . .	May 4, 1995

**Members representative of employers**

Christie, Mary . . . . .	May 2, 2001
Donaldson, Joseph . . . . .	October 20, 2004
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
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 EFFECTIVE 2004**

**Effective**

Bigras, Jean Guy . . . . .	July 1, 2004
Bortolussi, Lorraine . . . . .	March 21, 2004
Briggs, Richard . . . . .	August 22, 2004
Broadbent, Dave . . . . .	April 18, 2004
Carroll, Tom . . . . .	June 1, 2004
Felice, Douglas . . . . .	February 18, 2004
Grande, Angela . . . . .	February 18, 2004
Keil, Martha . . . . .	February 18, 2004
Marafioti, Victor . . . . .	February 18, 2004
McLachlan, Dennis . . . . .	March 5, 2004
Rao, Fortunato . . . . .	February 11, 2004
Robeson, Virginia . . . . .	February 4, 2004 <sup>1</sup>
Ryan, Sean . . . . .	February 4, 2004 <sup>2</sup>

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1 Part-time Vice-Chair Order made June 4, 2003, converted to full-time.

2 Part-time Vice-Chair Order made November 6, 2002, converted to full-time.

Stewart, Gordon	March 5, 2004
Timms, David	May 4, 2004
Young, Barbara	February 17, 2004

## NEW APPOINTMENTS DURING 2004

### Effective

Joseph Donaldson, part-time Member representative of employers	October 20, 2004
Maureen Doyle, part-time Vice-Chair	October 20, 2004
William Flanagan, part-time Vice-Chair	July 5, 2004
Robert Gale, part-time Vice-Chair	October 20, 2004
Bernard Kalvin, part-time Vice-Chair	October 20, 2004
Alan Levy, part-time Vice-Chair	October 20, 2004
David Mullan, part-time Vice-Chair	July 5, 2004
Julia Noble, part-time Vice-Chair	October 20, 2004
Susan Peckover, part-time Vice-Chair	October 20, 2004
Marilyn Smith, part-time Vice-Chair	February 18, 2004
Albert Suissa, part-time Vice-Chair	October 20, 2004

## SENIOR STAFF

David Bestvater	Director, Case Management Systems
Debra Dileo	Assistant Registrar, Office of the Vice-Chair Registrar
Marsha Faubert	Executive 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

## MEDICAL COUNSELLORS

Dr. John Duff	General Surgery, Chair of Medical Counsellors
Dr. Ross Fleming	Neurosurgery
Dr. Marvin Tile	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, 2004

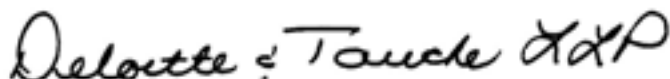
### Auditors' Report

To the Chair of  
Workplace Safety and Insurance Appeals Tribunal

We have audited the balance sheet of Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") as at December 31, 2004 and the statements of operations, changes in fund balances and cash flows for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 2004 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.



Deloitte & Touche LLP  
Chartered Accountants

Toronto, Ontario  
February 18, 2005

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL**

**Balance Sheet**

**December 31, 2004**

	<b>2004</b>	<b>2003</b> (Note 4)
<b>ASSETS</b>		
<b>CURRENT</b>		
Cash	\$ 1,326,980	\$ 1,231,519
Receivable from Workplace Safety and Insurance Board	1,075,307	1,165,934
Prepaid expenses and advances	333,277	317,492
Recoverable expenses (Note 5)	137,903	111,636
	<b>2,873,467</b>	<b>2,826,581</b>
<b>CAPITAL ASSETS (Note 6)</b>	<b>475,993</b>	<b>1,070,543</b>
	<b>\$ 3,349,460</b>	<b>\$ 3,897,124</b>
 <b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable and accrued liabilities	\$ 1,146,595	\$ 1,116,803
Accrued severance benefits and vacation credits	1,809,107	1,673,258
Operating advance from Workplace Safety and Insurance Board (Note 7)	1,400,000	1,400,000
	<b>4,355,702</b>	<b>4,190,061</b>
 <b>FUND BALANCES</b>		
<b>OPERATING FUND (Notes 4 and 8)</b>	<b>(1,482,235)</b>	<b>(1,363,480)</b>
<b>CAPITAL FUND</b>	<b>475,993</b>	<b>1,070,543</b>
	<b>(1,006,242)</b>	<b>(292,937)</b>
	<b>\$ 3,349,460</b>	<b>\$ 3,897,124</b>

APPROVED ON BEHALF OF THE WORKPLACE  
SAFETY AND INSURANCE APPEALS TRIBUNAL



Ian J. Strachan, Chair

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL  
Statement of Operations  
Year ended December 31, 2004**

	<u>2004</u>	<u>2003</u> (Note 4)
<b>OPERATING EXPENSES</b>		
Salaries and wages	\$ 8,781,368	\$ 8,390,753
Employee benefits	1,729,432	1,670,952
Transportation and communication	954,255	936,616
Services and supplies	5,553,457	5,934,629
Amortization	665,164	1,071,004
	<b>17,683,676</b>	<b>18,003,954</b>
Services - Workplace Safety and Insurance Board (Note 10)	447,107	444,990
<b>TOTAL OPERATING EXPENSES</b>	<b>18,130,783</b>	<b>18,448,944</b>
<b>NON OPERATING EXPENSES</b>		
Severance payments	246,572	168,142
Business solutions initiatives	40,000	-
<b>TOTAL EXPENSES</b>	<b>18,417,355</b>	<b>18,617,086</b>
<b>BANK INTEREST INCOME</b>	<b>(18,865)</b>	<b>(28,915)</b>
<b>NET OPERATING EXPENSES</b>	<b>18,398,490</b>	<b>18,588,171</b>
<b>FUNDS RECEIVED FROM WSIB</b>	<b>(17,685,185)</b>	<b>(17,908,623)</b>
<b>NET UNFUNDED OPERATING EXPENSES</b>	<b>\$ 713,305</b>	<b>\$ 679,548</b>
<b>ALLOCATED TO</b>		
CAPITAL FUND	\$ (594,550)	(685,196)
OPERATING FUND	(118,755)	5,648
	<b>\$ (713,305)</b>	<b>\$ (679,548)</b>

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL  
Statement of Changes in Fund Balances  
Year ended December 31, 2004**

	<u>Capital</u>	<u>Operating</u>	<u>Total</u>
BALANCE (DEFICIT) - JANUARY 1, 2003			
As previously reported	\$ 1,755,739	\$ -	\$ 1,755,739
Prior period adjustment (Note 4)			
Severance benefits and vacation credits (Note a)	-	(1,589,565)	(1,589,565)
Prepaid expenses (Note b)	-	220,437	220,437
As restated	1,755,739	(1,369,128)	386,611
Additions to capital assets	385,808	-	385,808
Amortization of capital assets	(1,071,004)	-	(1,071,004)
Severance benefits and vacation credits (Note a)	-	(83,693)	(83,693)
Prepaid expenses (Note b)	-	89,341	89,341
Net unfunded expenses - 2003	(685,196)	5,648	(679,548)
BALANCE (DEFICIT) - DECEMBER 31, 2003	1,070,543	(1,363,480)	(292,937)
Additions to capital assets	70,614	-	70,614
Amortization of capital assets	(665,164)	-	(665,164)
Severance benefits and vacation credits (Note a)	-	(135,849)	(135,849)
Prepaid expenses (Note b)	-	17,094	17,094
Net unfunded expenses - 2004	(594,550)	(118,755)	(713,305)
<b>BALANCE (DEFICIT) - DECEMBER 31, 2004</b>	<b>\$ 475,993</b>	<b>\$ (1,482,235)</b>	<b>\$ (1,006,242)</b>

Note a) Severance benefits and vacation credits are not funded by WSIB until they are paid.

Note b) Prepaid expenses are funded by WSIB when paid and not when expensed.

**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL  
Statement of Cash Flows  
Year ended December 31, 2004**

	<b>2004</b>	<b>2003</b>
<b>NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES</b>		
<b>OPERATING</b>		
Funding revenue received from Workplace Safety and Insurance Board	\$ 17,775,812	\$ 18,635,602
Cash receipts for recovery of shared services	527,981	487,187
Bank interest received	18,865	28,915
Expenses, recoverable expenses and advances, net of amortization of \$665,164 (2003 - \$1,071,004)	(18,156,583)	(19,063,837)
	<b>166,075</b>	<b>87,867</b>
<b>INVESTING</b>		
Acquisition of capital assets	(70,614)	(385,808)
	<b>95,461</b>	<b>(297,941)</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>95,461</b>	<b>(297,941)</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<b>1,231,519</b>	<b>1,529,460</b>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<b>\$ 1,326,980</b>	<b>\$ 1,231,519</b>

## NOTES TO THE FINANCIAL STATEMENTS

### December 31, 2004

#### 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 Workplace Safety and Insurance Act replaced the Workers' Compensation Act in 1997 and came into force January 1, 1998. The Workplace Safety and Insurance Board (WSIB), (formerly Workers' Compensation Board) is required to fund the cost of the Tribunal from the Insurance Fund. These reimbursements and funding amounts are determined and approved by the Ontario Minister of Labour.

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 WSIB 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:

##### *Basis of presentation*

The financial statements have been prepared in accordance 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 recognition*

WSIB funds expenses as incurred except for severance benefits and vacation credits, which are funded when paid, and prepaid expenses which are funded when paid not when expensed.

##### *Capital assets*

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, in the case of leasehold improvements.

Funding for capital assets provided by the WSIB is reported in the Capital Fund. The Fund is reduced each year by an amount equal to the amortization of capital assets.

*Employee benefits*

(a) Pension benefits

The Tribunal provides pension benefits for all its permanent employees (and to non-permanent employees who elect to participate) through the Public Service Pension Fund (PSPF) and the Ontario Public Service Employees' Union Pension Fund (OPSEU Pension Fund) which are both multi-employer plans established by the Province of Ontario. The plans are defined benefit plans, which specify the amount of retirement benefit to be received by employees based on their length of service and rates of pay.

The Tribunal, however, accounts for these plans as defined contributions plans since the Tribunal is not provided with sufficient information to apply defined benefit plan accounting rules.

(b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The severance benefit is recorded once an employee has worked for the Tribunal for a minimum term (of five years), at which time the severance benefit vests.

(c) Vacation credits

Vacation entitlements are accrued in the year when vacation credits are earned. Employees may accumulate vacation credits to a maximum of one year's vacation entitlement at December 31 of each year. Employees are paid for any earned and unused vacation credits at the date they cease to be an employee.

(d) Non-pension future benefits

The Tribunal also provides for dental, basic life insurance, supplementary health and hospital benefits to retired employees through a self-insured, unfunded defined benefit plan established by the Province of Ontario.

The Tribunal does not accrue for non-pension future benefits liability since the information is not readily available.

**3. ACCOUNTING ESTIMATES**

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

**4. CHANGE IN ACCOUNTING POLICY**

Commencing in 2004, the Tribunal has changed its policy with respect to severance benefits, vacation credits and prepaid expenses. Previously, severance benefits, vacation credits and prepaid expenses (for computer leases, maintenance agreements and software licensing) were expensed in the year when the amounts were paid. Under the new policy, the amounts are expensed in the year when they are incurred. The revised accounting policy has been implemented retroactively and the comparative financial amounts for 2003 have been restated.

The operating fund deficit as at December 31, 2003 amounted to \$1,363,480, of which \$1,369,128 related to the fiscal 2002 and prior years. Accordingly, the Operating Fund deficit as at January 1, 2003 has been restated at \$1,369,128.

**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. CAPITAL ASSETS**

	<b>2004</b>			<b>2003</b>
	<b>Cost</b>	<b>Accumulated Amortization</b>	<b>Net Book Value</b>	<b>Net Book Value</b>
Leasehold improvements	\$ 2,977,473	\$ 2,734,449	\$ 243,024	\$ 656,805
Furniture and equipment	918,645	795,903	122,742	224,119
Computer equipment and software	458,513	348,286	110,227	189,619
	<b>\$ 4,354,631</b>	<b>\$ 3,878,638</b>	<b>\$ 475,993</b>	<b>\$ 1,070,543</b>

**7. OPERATING ADVANCE FROM WSIB**

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

**8. OPERATING FUND**

The operating fund deficit of \$1,482,235 as of December 31, 2004 represents future obligations to employees for severance and vacation credits less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

**9. EMPLOYEE BENEFITS OBLIGATIONS**

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$593,362 (2003 - \$581,574) and are included in employee benefits in the statement of operations.

b) Severance benefits

As referred to in Note 4, severance benefits are now recognized and accrued over the years in which employees earn the benefits. The cost of severance benefits accrued in 2004 amounted to \$119,520 (2003 - \$79,566) and is included in employee benefits in the statement of operations.

c) Vacation credit entitlement

As referred to in Note 4, vacation entitlements are now accrued in the year when vacation credits are earned. The cost of vacation credits accrued in 2004 amounted to \$16,329 (2003 - \$4,127) and is included in employee benefits in the statement of operations.

d) Non-pension future benefits

The Tribunal does not accrue for non-pension future benefits since the information is not readily available.

**10. 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.

## 11. LEASE COMMITMENTS

The Tribunal has several operating lease contracts for computer and office equipment and software license fees, with terms from 1-5 years. The minimum payments under these leases are as follows:

2005	\$ 476,256
2006	263,107
2007	67,805
2008	63,722
2009	36,464
<b>Minimum operating lease payments</b>	<b>\$ 907,354</b>

The Tribunal is committed to minimum lease payments for premises, including building operating costs, as follows:

2005	\$ 1,008,627
2006	1,052,820
2007	1,052,820
2008	1,052,820
2009	1,052,820
Thereafter	877,350
<b>Minimum operating lease payments</b>	<b>\$ 6,097,257</b>

The lease expires on October 31, 2010, with the option for a further renewal of five years.

## 12. GUARANTEES

Effective January 1, 2004, the Tribunal adopted the new Canadian accounting guideline AcG-14, which requires certain disclosures of guarantees.

In the normal course of business, the Tribunal enters into agreements that meet the definition of a guarantee. The Tribunal's primary guarantees subject to the disclosure requirements of AcG-14 are as follows:

- a) Indemnities have been provided under a lease agreement for the use of premises. Under the terms of the agreement, the landlord is to be indemnified for various items including, but not limited to, all liabilities, losses, suits, and damages arising during the term of the agreement. The maximum amount of any potential future payment cannot be reasonably estimated.

- b) In the normal course of business, the Tribunal has entered into agreements that include indemnities in favour of third parties, such as confidentiality agreements, engagement letters with advisors and consultants, outsourcing agreements, leasing contracts, information technology agreements and service agreements. These indemnification agreements may require the Tribunal to compensate counterparties for losses incurred by the counterparties as a result of breaches in representation and regulations or as a result of litigation claims or statutory sanctions that may be suffered by the counterparty as a consequence of the transaction. The terms of these indemnities are not explicitly defined and the maximum amount of any potential reimbursement cannot be reasonably estimated.

The nature of these indemnifications prevents the Tribunal from making a reasonable estimate of the maximum exposure due to the difficulties in assessing the amount of liability that stems from the unpredictability of future events and the coverage offered to counterparties. Historically the Tribunal has not been obligated to make any significant payment under these indemnification clauses.

The Tribunal also follows the policy of self-insurance for its leased computer/office equipment as well as the leasehold premises. Any costs incurred as a result of self-insurance are recorded as expenses in the year in which the costs are incurred.

### **13. COMPARATIVE FIGURES**

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

