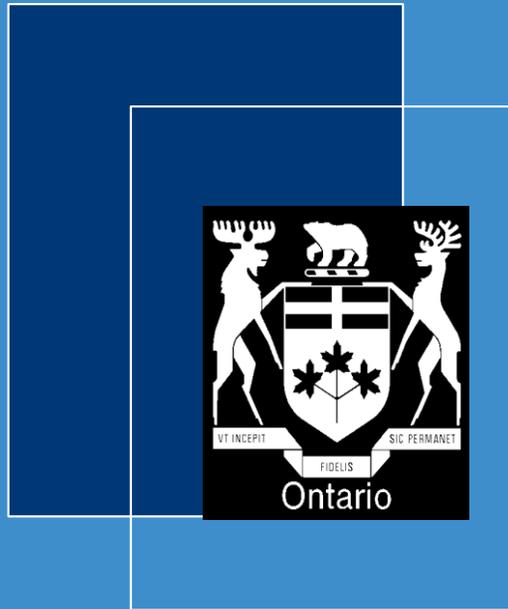


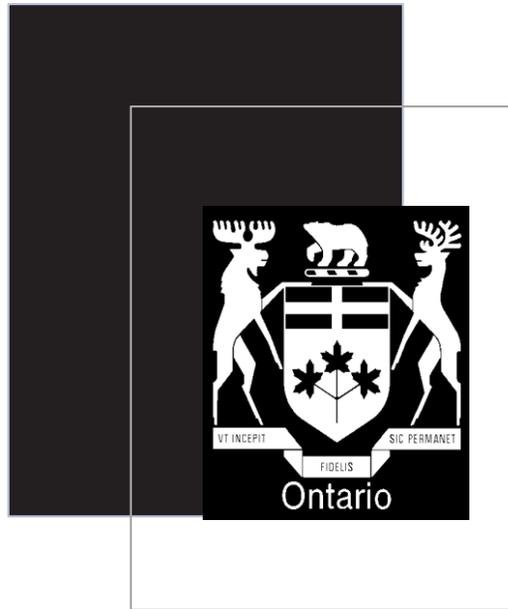
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Annual Report 2002

Workplace Safety and Insurance Appeals Tribunal

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



Annual Report

2002

Workplace Safety and
Insurance Appeals Tribunal
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Introduction

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

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2002 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.

The logo for the Chair's Report features the words "Chair's" and "Report" in a large, bold, sans-serif font. "Chair's" is positioned above "Report". The text is white and is set against a black rectangular background. This black background is partially overlaid by a white rectangular background, creating a layered effect.

Chair's Report

BACK TO THE FUTURE

When the Appeals Tribunal was established in 1985, it was designed to provide a quality analysis of legal issues within the workers' compensation system in a relatively small number of appeals. The organization was designed to handle approximately 1,000 - 1,500 appeals per year and, for the first nine years, the inflow of appeals usually fell within that range. This number of cases allowed the Tribunal to pursue, as its primary focus, quality decision-making. In 1995, the number of incoming appeals climbed over the 2,000 level.

As the appeal numbers grew to 5,000 in 1997 and 11,000 in 1998, the greatly increased volume required a new focus on quantity, as well as quality, in decision-making. In addition, the Tribunal required a fundamental restructuring to cope with a 500% increase in the inflow of appeals from 1995. As reported in last year's Annual Report, the Tribunal was successful in achieving its objectives and it has now eliminated the massive caseload which had accumulated. With the co-operation of the Workplace Safety and Insurance Board (WSIB) and the Ministry of Labour (MOL), the inflow of appeals was reduced from the peak in 1998 to fewer than 4,000 new appeals in 2002. At the moment, the Workplace Safety and Insurance (WSI) system is operating on the basis of a "steady state" case flow for the Appeals Tribunal, i.e., approximately 4,000 new appeals per year and 4,000 dispositions per year.

With a reduced quantity of cases, there is a renewed focus on the quality of decisions. While the injured worker and employer communities were extremely supportive of the Tribunal as it coped with the dramatic increase in its caseload, both communities continued to remind the Tribunal that they were monitoring the outflow for any significant erosion in the quality of the product. While extensive Tribunal training programs and quality control measures were implemented to address quality concerns, there was a degree of tolerance in the two communities which recognized the realistic focus on quantity and production. With the advent of a steady state mode, community stakeholders will return, in 2003, to a primary focus on the quality of the Tribunal process.

The Appeals Tribunal currently operates as an informal, but informed, alternative to the Courts. It is a component of the Ontario administrative justice system which is recognized as an “expert” or “informed” administrative law tribunal. The comments of the Divisional Court in a number of judicial reviews of Tribunal decisions indicate that the Courts regard the Appeals Tribunal as having a high degree of expertise. Those conclusions have been based on the quality of Tribunal decisions under review. As any effective Chief Executive Officer knows, the quality of the product ultimately depends upon the quality of the people involved. As mentioned in the last Annual Report, the quality of Ontario’s entire administrative justice system will depend upon the quality of the individuals appointed to that system. 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.” 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 ongoing services of those quality individuals through a variety of employment inducements. Although not mandated by legislation, WSIB made an effort to retain knowledgeable and experienced adjudicators within its Appeals Branch and many of those individuals are now long-term employees of the WSIB.

Unlike the judicial system which carries a lifetime appointment, the administrative justice system has the opportunity to periodically review the competency of adjudicators within the system. In theory, this practice should ensure that only the best adjudicators can remain within the administrative justice system. Recently, the Ontario government has signaled an intention to review the level of remuneration for adjudicators within the administrative justice system. Hopefully this signals a renewed focus on the need to recruit and retain the best adjudicators.

In 2002, the province of British Columbia restructured its workers’ compensation system and created an external Appeals Tribunal similar to our Ontario Tribunal. Recognizing the need for expertise and quality adjudication in its Appeals Tribunal, the BC government enacted legislation which contains some cutting-edge appointment provisions. Vice-Chairs and Members are not eligible for appointment unless they have successfully completed a competency-based selection process, established or approved by the Chair of the Tribunal. Once appointed, those adjudicators may be re-appointed for one or more successive terms of up to four years each. In addition, the legislation makes the Chair of the Tribunal responsible for establishing quality adjudication, performance and productivity standards for members of the Appeals Tribunal and for regularly evaluating the members according to those standards. While the BC Appeals Tribunal is the first adjudicative agency to incorporate these provisions in its legislation, the BC Attorney General has indicated that this competency-based appointment process will be applied to other provincial agencies, boards and commissions. Given the nature of discussions at various administrative law conferences in Canada, it would appear that this concept of merit-based appointments and reviews is gradually becoming a focal point within the Canadian administrative justice system.

During 2002, our Tribunal continued to refine its IT systems. With the assistance of the Ministry of Labour and WSIB, the Tribunal laid the groundwork for a trial project involving the electronic transfer of appeal records from the Board to the Tribunal. The actual testing should take place in 2003 and could create a framework for a significant reduction in processing and storage of paper records. The Tribunal also continued to refine its user friendly website: www.wsiat.on.ca. The feature which allows viewers to access Tribunal decisions is now particularly popular with parties to the various types of appeals.

The Tribunal also continued to enhance its communication with the WSIB on administrative issues. While the primary form of communication involved the Tribunal Counsel Office (TCO) and the WSIB's Legal Branch, the "Quality Loop" group also met regularly to review administrative processes and streamline adjudication. The Tribunal maintained its focus on cost-effective adjudication and again reduced its total expenses in 2002. The annual budget has been reduced from approximately 24 million dollars in 2000 to 22 million in 2001 and then 19.2 million in 2002. Part of the Tribunal's success in reducing its caseload on a cost-effective basis has been the adoption of small business techniques which emphasize timely and flexible responses to changes in the Tribunal operation. Of course, that flexibility depends in turn on knowledgeable staff and skilled adjudicators. Within the administrative justice system, similar timely and flexible responses to adjudicative issues are leading observers to view parts of the administrative justice system as a system of "nimble justice."

As we look back on 2002 and the previous three years, Ontario can be proud of the performance of the Appeals Tribunal and its image as an adjudicative model for other parts of Canada. British Columbia has essentially adopted the Ontario model and the renewed focus on quality decision-making and a competency-based appointment system is a signpost for the direction of the Canadian administrative justice system in future years.

HIGHLIGHTS OF THE 2002 CASE STUDIES

This section highlights some of the legal, factual and medical issues considered by the Tribunal in decisions which were summarized during 2002.

The *Workplace Safety and Insurance Act, 1997* (WSIA), came into force on January 1, 1998. It creates a system of workplace insurance for accidents occurring after December 31, 1997, and amends and continues the pre-1995, pre-1989 and pre-1997 *Workers' Compensation Acts* for prior injuries. During 2002, the Tribunal adjudicated cases under all four Acts. For convenience, cases dealing with the WSIA are reviewed first.

Appeals Under the WSIA

During this reporting period, the Tribunal heard an increasing number of appeals involving benefits under the WSIA. The WSIA created a new single loss of earnings (LOE) benefit, with discretionary annual reviews and review based on material change in circumstances. LOE benefits can be reviewed up to 72 months after the accident. The WSIA also placed a new emphasis on self-reliance and the co-operation of the workplace parties in early and safe return to work (ESRTW). If ESRTW is not possible, the Board may offer a labour market re-entry (LMR) plan to the worker, to assist in identifying a suitable employment or business (SEB). The worker's LOE benefits are assessed in light of this SEB. The WSIA continued non-economic loss (NEL) awards but streamlined the assessment process originally provided in the pre-1997 Act.

Decision No. 349/02 (April 12, 2002) explored the interaction between entitlement under the WSIA and co-operation. After entitlement for a compensable injury has been granted, co-operation becomes relevant to the level of benefits or whether benefits may be suspended or reduced under section 43(7). Co-operation in medical rehabilitation and early and safe return to work are not, however, conditions precedent to entitlement under the WSIA. A Board decision that the worker was not entitled to benefits because he was not participating in LMR or ESRTW was not supported by the Act or Board policy, since the worker had suffered a compensable impairment and was co-operating under section 40(2) by maintaining communications with the employer. This analysis is consistent with the board of directors' direction in *Decision No. 2474/0012* (2002), 60 W.S.I.A.T.R. 137, discussed below.

Other interesting appeals to consider co-operation included *Decision No. 886/01* (February 7, 2002) (which found that the usual co-operation requirements do not apply to workers and employers in the construction industry pursuant to section 40(3) of the WSIA) and *Decision No. 333/02* (August 8, 2002) (which reduced LOE benefits to 50% where the injured worker delayed several months in arranging health care).

Decision No. 784/02I (July 3, 2002) considered an appeal from a Board decision to change a worker's SEB because it was based on an LMR program that would not be completed until after the 72-month review point. The hearing was adjourned for submissions from the Board and TCO on the LOE review provisions in the WSIA. Subsequently, the WSIA was amended to allow reviews after the 72 months when an LMR plan is completed after 72 months. This amendment may be considered in the next reporting period.

Decision No. 2599/01 (December 27, 2001) was the first stress appeal under the new WSIA provisions. Although there was an incident which amounted to a sudden and unexpected traumatic event as required by section 13(5), entitlement was denied as the incident did not result in anything more than a transitory emotional response.

The WSIA introduced a six-month time limit for appealing Board decisions to the Tribunal, as well as a six-month time limit for internal Board appeals. Both the Tribunal and the Board have a statutory discretion to permit time extensions. A series of decisions in 2002 agreed with *Decision No. 1790/011* (2001), 58 W.S.I.A.T.R. 321, that the Tribunal has jurisdiction to hear an appeal from the Board's refusal to grant a time extension. See, in particular, *Decision No. 806/02* (June 27, 2000), which reasons that a decision denying an extension is a final decision of the Board since it has the effect of precluding any further proceedings. The Board has recently revised its handling of time extension applications to provide for an internal appeal at the Board, with a further appeal to the Tribunal.

The combined effect of the WSIA amendments to the pre-1997 Act and the WSIA time limits is to continue the Tribunal's jurisdiction to hear leave applications under the earlier Acts. To appeal an old Appeal Board decision, a party must obtain leave to appeal and a time extension. See *Decision No. 262/02E* (March 25, 2002). *Decision No. 3490/00* (June 13, 2002) found that the WSIA repealed and replaced the future economic loss (FEL) commutation provisions in the pre-1997 Act, removing the Tribunal's jurisdiction to hear FEL commutation appeals. The Panel commented that it appears that there is still jurisdiction to hear appeals from Board decisions on FEL advances.

Board Policy Under the WSIA

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

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

As noted in the last Annual Report, there was a question about when a Board policy is established by a sufficiently formal process to be considered a "policy" for the purposes of section 126. For example, *Bill 99 Operational Policies Manual*, Document No. 4.1, on average earnings has been widely published and distributed, but was not minuted or approved by the board of directors. *Decision No. 2727/01* (2002), 60 W.S.I.A.T.R. 282, disagreed with *Decision No. 381/01* (February 28, 2001), that this was sufficient to constitute Board policy under section 126. Evidence of approval by the board of directors is important to ensure the legitimacy of policy documents and a certain level of scrutiny and accountability. *Decision No. 2727/01* distinguished *Decision No. 381/01*, as the earlier decision had not had the benefit of the additional documents considered by the Board in its consultation on policy. This issue has been clarified by the Board's "policy on policy" as set out in *Operational Policy Manual*, Document No. 11-01-12. A policy for the purposes of section 126, is

any information contained in the *Operational Policy Manual (OPM)* or *Employer Classification Manual* and, if approved after the July 1, 2001, it must be admitted.

There was one section 126(4) referral during 2002. *Decision No. 2474/0012* (2002), 60 W.S.I.A.T.R. 137, referred portions of OPM Documents No. 11-01-07 and 19-02-03, requiring written notice prior to suspension or reduction of benefits for non-co-operation, to the Board. The Board's response is discussed in *Decision No. 609/02* (October 3, 2002). The Board distinguished between reduction of benefits under section 43(2) where suitable employment or business is available, and the Board's discretion under section 43(7) to reduce or suspend benefits for failure to co-operate under section 40(2). Under section 40(2), the worker is required to contact the employer, assist in identifying suitable employment and give the Board any necessary information. The policy requirement for notice prior to reducing benefits is not inconsistent with the Act and introduces an element of procedural fairness in the exercise of the Board's discretion.

Decision No. 609/02 found that the Board's direction was relevant and helpful in analyzing the appeal before it. The Panel first considered whether there was an offer of suitable employment; if not, had the worker co-operated under section 40(2); and, if not, how should the section 43(7) discretion be exercised. The Panel found that there was no offer of suitable work, as the worker had deliberately frustrated the employer's ability to make an offer by not providing information. Benefits were suspended during the period of non-co-operation since it would be manifestly unfair to the employer to apply the notice requirements in the Board's policy strictly.

In cases which do not raise section 126(4) issues, it is the Tribunal's role to interpret and apply Board policy. For example, *Decision No. 308/02* (June 20, 2002) interpreted Board policy deeming wages at the final FEL review to be those of a "experienced worker" as referring to wages that were higher than entry level, but not the highest wages within the job category, since these would depend on more than experience. The Tribunal may also consider Board policy as a guideline in situations where it is relevant and helpful, even though it is not strictly applicable. See, for example, *Decisions No. 2727/01* and *1253/02* (October 30, 2002). Where there is a Board policy consultation, the Tribunal may also consider the consultation documents in interpreting policy. See *Decision No. 2727/01*, with respect to the Board's policy on policy, and *Decision No. 87/02* (August 2, 2002), regarding offset of CPP disability benefits from partial FEL awards.

In *Decision No. 215/98R* (October 23, 2002), an employer requested reconsideration based on the Board's adoption of a retroactive stress policy shortly before *Decision No. 215/98* (January 5, 2002) issued. The Reconsideration Panel found that the original decision was based on a common understanding of the law and policy at that time of the hearing. Reconsideration was denied as the parties had been provided with a full opportunity for a hearing and the finality of the Tribunal's decision would otherwise be undermined. The Tribunal left open the question of whether the new policy might have been considered if the employer had raised the matter before the decision had issued.

Finally, *Decision No. 981/021* (October 7, 2002) clarified that, although section 102 of the WSIA refers to the pre-1997 Act as continuing to apply to pre-1998 injuries, the intent is that the WSIA policy provisions apply to assessment and revenue policies, as well as to policies on compensable injuries.

Appeals Under the Earlier Acts

During 2002, the Tribunal continued to adjudicate claims under the earlier workers' compensation legislation. The pre-1985 and pre-1989 Acts provide pensions for permanent disabilities and temporary benefits for short-term disabilities. Beginning in 1989, transitional supplements became available for workers receiving pensions. The pre-1997 Act introduced a dual award system of non-economic loss (NEL) awards and future economic loss (FEL) awards for permanent impairment, and retained temporary benefits for temporary disabilities. As originally enacted, the FEL scheme was based on an initial determination (D1), with a review after 24 months (R1) and a final review after 60 months (R2). As of January 1, 1998, the WSIA replaced the R1 and R2 reviews with discretionary annual reviews and review on material change in circumstances. FEL awards may not be reviewed over 60 months after the initial FEL determination.

Several cases considered the effect of the WSIA's provision regarding material change in circumstances on FEL awards. It now appears to be accepted that FEL benefits accruing subsequent to January 1, 1998, can be reviewed where a material change in circumstances occurs before 1998 but continues after January 1, 1998. See, for example, *Decision No. 1498/01* (2001), 60 W.S.I.A.T.R. 220. Turning 55 has been held to be a material change in circumstances and, as of January 1, 1998, a 55-year old worker can elect section 43(8) benefits instead of a FEL sustainability award (*Decision No. 94/01* (2002), 60 W.S.I.A.T.R. 189). *Decision No. 498/01R* (July 16, 2002) considered the Tribunal's jurisdiction to make awards at R1 and R2 and found that the effect of the WSIA amendments was to change the issue on appeal. Since R1 and R2 reviews are not available after January 1, 1998, the issue on a FEL appeal becomes ongoing FEL entitlement. Where there is no material change in circumstances during the 60-month period, there is no occasion to refer the FEL back to the Board for a final review.

Other interesting FEL issues include: the effect of bumping and recall rights on a FEL award (*Decision No. 206/96* (December 5, 2002)); whether a prior compensable condition under the pre-1985 Act should affect the FEL award or whether it should be treated as a personal or vocational characteristic (*Decision No. 2703/00* (2002), 60 W.S.I.A.T.R. 160); whether self-employment can be a suitable employment or business for FEL purposes and, if so, how self-employed earnings should be treated (*Decision No. 255/02* (August 30, 2002)); and the use of NOC codes in identifying a SEB (*Decision No. 118/02* (October 31, 2002)).

An issue of continuing interest is the appropriate treatment of CPP disability benefits, particularly when a worker is in receipt of a partial FEL award. See, for example, *Decisions No. 1625/00* (February 15, 2002), *2506/01* (2002), 60 W.S.I.A.T.R. 274, and *87/02* (August 2, 2002). *Decision No. 35/02* (December 4,

2002) held that a full FEL could be retroactively adjusted to offset CPP disability benefits where the CPP award was made after the final FEL review but was retroactive to a period before the final FEL review. The treatment of CPP disability benefits has also been the subject of a Board consultation process, which was considered in *Decision No. 87/02*.

The Tribunal considered and applied Board policy on FEL in a variety of circumstances. *Decision No. 112/02* (2002), 60 W.S.I.A.T.R. 352, considered a gap in Board policy where a worker had not returned to work but the Board had identified the wrong SEB. It was fair to base the worker's earnings on actual earnings in a suitable job which she obtained some months after R2. *Decision No. 737/02* (June 18, 2002) upheld the Board's FEL policy for workers who move out of Canada. *Decision No. 1336/02* (October 23, 2002) held that a FEL supplement cannot be prorated based on the number of hours that the worker was engaged in vocational rehabilitation.

There were also several interesting NEL appeals. *Decision No. 686/02* (October 3, 2002) found that a worker who recovered from a chronic pain disability after six years was not entitled to a NEL award as the disability had proved to be temporary, rather than permanent. *Decision No. 1253/02* (October 30, 2002) considered how to reduce a NEL where a worker had a measurable pre-existing condition. While the policy adopted under the WSIA for NELs was not directly applicable, it was considered, as well as the worker's recovery from surgery and level of functioning. *Decision No. 594/02* (November 28, 2002) considered the use of the combined values chart in assessing a NEL.

Turning to the pre-1985 and pre-1989 Acts, *Decision No. 2074/00I* (2002), 60 W.S.I.A.T.R. 119, found that entitlement to dependency benefits under section 43(7) of the pre-1985 Act was limited to situations where a worker received a 100% pension in a single claim. The 100% pension requirement could not be met by combining pensions under several claims. *Decision No. 1075/00* (July 22, 2002) found that a worker's pension could be reduced where his condition improved after surgery; however, the power to re-determine and reduce should be used sparingly and in a fair and non-arbitrary manner.

Transitional supplements were considered in a significant number of appeals. Entitlement to a section 147 supplement is contingent on suffering a wage loss at the time of the accident. The Act does not authorize consideration of future loss of earnings, employment opportunities and advancements. See *Decision No. 2323/01R2* (September 17, 2002). Board policy allows for multiple section 147 supplements where a worker is in receipt of a supplement and then receives new permanent disability benefits under the same or a new claim. An earlier Tribunal decision, *Decision No. 877/94* (1997), 41 W.C.A.T.R. 46, found that the Act did not permit multiple supplements. However, *Decision 1102/01* (August 6, 2002) noted that *Decision No. 877/94* was decided before the requirement to apply Board policy in the WSIA. While it would be possible to award multiple supplements under the policy, the circumstances in *Decision No. 1102/01* did not meet the policy requirements. Once it is determined that a worker's earning capacity has not been

increased to the necessary extent and a section 147(4) supplement awarded, this is not considered again at the supplement review periods. See *Decisions No. 3004/01* (December 18, 2001) and the *339/01* (2002), 60 W.S.I.A.T.R. 207. On review of a transitional supplement, the Board may only consider earning capacity, not actual earnings (*Decision No. 2213/00* (August 6, 2002)). The Board may, however, consider whether the worker is now likely to benefit from vocational rehabilitation under section 147(2) (*Decision No. 339/01*).

Right To Sue Applications

The workplace safety and insurance scheme 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 often raise complicated legal issues in tragic circumstances. *Decision No. 36/00* (December 6, 2002) considered a murder/suicide where a worker was murdered by her manager after being sexually harassed. The manager then committed suicide. While the pre-1997 Act removed rights of action arising by reason of the worker's death, it was held that family members could maintain an independent action for negligent misstatements made to them after the worker's death. Where the right of action is removed, claims for punitive or special damages arising from that right of action are also removed. Family members could sue for punitive or special damages based on the negligent misstatement. The rights of action of a son-in-law of the worker, who was not covered by the statutory definition of a "family member," were not removed.

Decision No. 2287/01 (2002), 60 W.S.I.A.T.R. 254, considered the WSIA exemption for casual workers not employed for the purposes of an employer's industry in the context of a motor vehicle fatality. This decision also interpreted the new jurisdictional provisions in section 27(2) of the WSIA. The Panel held that they extended the Tribunal's jurisdiction to remove the rights of action of spouses, same-sex partners, children, dependants and survivors under section 61 of the *Family Law Act*.

Decision No. 755/02 (July 21, 2002) noted that while the Tribunal is not required to apply Board policy in right to sue applications, Board policy should be given weight, particularly where the worker first claimed and was denied benefits, so as to avoid conflicting results. *Decision No. 1761/99R2* (December 18, 2001) found that the Tribunal should defer to the Board's classification scheme in right to sue applications. Where an employer was not mandatorily covered by the Act, it could not elect coverage retroactively. The parties' agreement to certain facts or legal conclusions was not determinative, since the workers' compensation system was not purely adversarial. The Tribunal was required to apply the Act and Regulations in making decisions in right to sue applications. Similarly, an estate's right of action is not removed where an employer has not elected personal coverage as a worker and would not be entitled to benefits. See *Decision No. 982/02* (November 14, 2002).

Employer Issues

In 2002, the Tribunal continued to hear a significant number of employer appeals on such issues as classifications, penalties, cost relief, cost transfers and interest.

Decisions No. 900/97R (April 10, 2002) and *866/97R* (September 6, 2002) considered Board requests to reconsider Tribunal decisions which had granted cost relief to Schedule 2 employers. The Board submitted that it had not created a cost relief fund for Schedule 2 employers as it had for Schedule 1 employers and that the Tribunal had no jurisdiction to award discretionary relief. As a preliminary matter, *Decisions No. 866/97R* and *900/97R* considered whether the Tribunal has the jurisdiction to consider Board reconsideration requests. They agreed with previous Tribunal decisions that the Tribunal has the statutory jurisdiction to reconsider whenever it considers it advisable to do so, including circumstances identified by the Board. The usual threshold test applies. It is to be expected that the Board will only ask for reconsideration in exceptional circumstances, given its adjudicative role. *Decisions No. 866/97R* and *900/97R* also contain an interesting discussion of the workers' compensation system as a no-fault disability insurance scheme, providing Schedule 1 employers with mutual insurance and Schedule 2 employers with self-insurance. Certain benefits and burdens attach to both. It is open to Schedule 2 employers to ask for Schedule 1 coverage, if they wish to have cost relief. The Board would have to be satisfied that it had the necessary funding in place to ensure the financial integrity of a Schedule 2 relief fund before it could set up such a fund. Absent a fund, cost relief cannot be granted by the Tribunal on a discretionary basis.

The Tribunal considered late filing penalties for the first time in this reporting period. *Decision No. 428/02* (March 26, 2002) noted that the statutory obligation to notify the Board of an accident within 3 days of learning of it only applies where an accident has occurred. The late filing fee was set aside as the employer was correct in arguing that the stress claim did not amount to a "accident" under the WSIA. However, the employer ran the risk of a penalty and interest if it should be wrong. The penalty was upheld in *Decision No. 427/02* (March 22, 2002) as the delay of one month was excessive, even given the employer's special reporting needs.

Decision No. 1005/01 (March 25, 2002) considered the constitutionality of a Workwell penalty levied against a federal undertaking. The Tribunal applied the constitutional test adopted by the Supreme Court of Canada in *Alltrans Express Ltd. v. British Columbia (Workers' Compensation Board)* (1988), 51 D.L.R. (4th) 253, and *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)* (1988), 51 D.L.R. (4th) 271, of whether the impact of the program adopted under provincial legislation intrudes on the vital and essential operations of a federal undertaking. The Workwell program did have such an impact as it was aimed at affecting the behaviour of senior management and all managers, supervisors, workers and contractors on an ongoing basis. There was no practical way for the Tribunal to consider severing the intrusive elements of the program although it was open to the Board to consider this.

Employer interest remained an issue of concern and the Tribunal continued to apply the analysis discussed in the last Annual Report. The Board's general policy is not to award interest on employer appeals before January 1, 1997. However, there remains a discretion to award interest in exceptional circumstances. Since all retroactive employer interest appeals involve a Board error of some type, an error is not sufficient in itself. There must be something exceptional when the employer's situation is compared to other employers who have also been denied retroactive interest. *Decision No. 140/02* (March 20, 2002) found there were exceptional circumstances when a series of Board errors led to a penalty that was, in essence, outside of the jurisdiction of the program. *Decision No. 283/02* (May 7, 2002) allowed retroactive interest on a retroactive NEER adjustment where the Board's decision to delay the adjustment of cost relief until the worker's permanent disability assessment was completed, effectively frustrated the employer's ability to act within the NEER window.

Board policy providing for removal of costs to the extent of recovery in a subrogated third party action was upheld in *Decision No. 1081/96* (August 29, 2002). The objective of the NEER program was to ensure that, overall, costs were recovered from assessments. There were some provisions in the Act and Board policy which reduced, but did not necessarily eliminate, inequities in the no-fault system. The Board's policy was a reasonable one and there were no exceptional circumstances. The "merits and justice" statutory provision included broader systemic considerations and the principle that like cases be treated alike.

Under the WSIA, section 123(2), the Tribunal does not have jurisdiction to consider the design of the CAD-7 experience rating plan, including the fact that accident frequency is rated more heavily than accident cost. The Tribunal does have jurisdiction to deal with how the plan is applied to individual employers; however, there were no exceptional circumstances and the employer had been treated the same as other employers (*Decision No. 197/01* (May 31, 2002)).

Miscellaneous

Several constitutional issues were considered by the Tribunal in 2002. *Decision No. 1005/01* (March 25, 2002) held that, although the Tribunal had jurisdiction to consider the constitutional argument in the case, there was no jurisdiction to make a declaration of law on a constitutional issue. Constitutional rulings are only binding on the parties to the case. *Decision No. 1480/98* (October 25, 2002) held that a disease which does not fall under the "industrial disease" provisions of the federal *Government Employees' Compensation Act* (GECA) and the Ontario legislation, can be a "disablement" under the provincial legislation and incorporated into GECA.

The Tribunal also decided a number of complex occupational disease claims. *Decision No. 107/96* (2002), 60 W.S.I.A.T.R. 1, discusses the Tribunal's role in deciding individual claims. The Tribunal is not the appropriate forum to resolve, at a general level, scientific and policy issues arising from Occupational Disease Panel reports. A miner's death from lung cancer was found not to be due to his work in a

nickel mine when he did not have significant radon exposure and the risk associated with radon was relatively low in comparison to the risk associated with smoking.

Other occupational disease issues included: lung cancer and a welder's exposure to cadmium (*Decision No. 1308/97* (January 9, 2002)); welding and nasopharyngeal cancer (*Decision No. 41/02* (January 9, 2002)); acute myelomonocytic leukaemia and exposure to electromagnetic fields as an electrician (*Decision No. 1558/98* (2002), 60 W.S.I.A.T.R. 78); laryngeal cancer and exposure to oil mist as an underground miner (*Decision No. 126/02* (2002), 60 W.S.I.A.T.R. 370); laryngeal cancer and nickel mining (*Decision No. 3055/01* (February 5, 2002)); and lung cancer and exposure to hexavalent chromium (*Decision No. 1724/98* (July 18, 2002)). *Decision No. 57/93* (January 31, 2002) discusses the difficulties in distinguishing between asthma and chronic obstructive lung disease (COLD) since over time asthma becomes less reactive to medication and more similar to COLD. *Decision No. 2033/99* (September 3, 2002) upheld the Board's policy which distinguishes between certain long latency occupational diseases and other occupational diseases for experience rating purposes.

Decision No. 2118/01 (2002), 60 W.S.I.A.T.R. 244, found that employer contributions on behalf of workers to an employment benefits fund administered by a union were not earnings for compensation purposes. Under the collective agreement, they did not form part of the workers' wages until the fund was discontinued. *Decision No. 743/02* (October 24, 2002) considered the settlement of a number of labour relations issues and some workers' compensation issues in the context of a grievance. While a Schedule 2 employer, unlike a Schedule 1 employer, may enter a settlement under section 19 of the pre-1997 Act, the statute requires that the agreement be approved by the Board if it is to be binding.

Interesting procedural issues included: the admissibility of videotaped evidence (*Decision No. 3133/01I* (2002), 60 W.S.I.A.T.R. 324); appeals from mediated Board settlements (*Decision No. 21/02* (2002), 60 W.S.I.A.T.R. 332); whether the Board may request a reconsideration of a Tribunal decision (*Decision No. 900/97R* (April 10, 2002)); and a review of the role of Tribunal Counsel Office in making submissions (*Decision No. 1480/98* (October 25, 2002)). *Decision No. 196/02* (November 8, 2002) found that the Tribunal does not have the jurisdiction to review the Board's provision of French language services, although failure to provide a French-speaking assessor may affect the weight given to the assessor's report.

APPLICATIONS FOR JUDICIAL REVIEW

Although the year 2002 demonstrated a marked increase in judicial review activity at the Tribunal, the Courts again found no Tribunal decisions required judicial intervention. After 18 years, the Courts have never found a decision of the Tribunal demonstrated reviewable error.

All judicial review applications in 2002 were handled by General Counsel and other senior lawyers in the Tribunal Counsel Office. The following is a list of the judicial reviews, and the current status at the end of 2002.

1. In April 2001, the Tribunal was served with an application for judicial review of Tribunal *Decision No. 934/98* (November 30, 2000). The Panel in that case found that a taxi driver was a “worker” rather than an independent operator, within the meaning of the *Workplace Safety and Insurance Act, 1997*. The taxi company challenged that finding, and also alleged that section 126 of the WSIA created a new standard of review for Tribunal decisions.

The judicial review was heard on April 30, 2002, in Ottawa. The Divisional Court unanimously dismissed the application.

The taxi company served a notice of motion for leave to appeal the Divisional Court decision to the Court of Appeal. In June, the taxi company formally advised that it would not pursue the application for leave.

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

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

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

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

Counsel for the doctor has served a notice of motion for leave to appeal to the Court of Appeal. At the end of the year the Tribunal was waiting for service of the leave materials.

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

preparing responding materials. It is expected this application will be heard in the spring of 2003, in Sudbury.

4. The application for judicial review of *Decisions No. 1095/01* (April 30, 2001) and *1095/01R* (April 19, 2002) is scheduled to be heard in April 2003. These decisions denied a worker's appeal for entitlement for bilateral carpal tunnel syndrome.
5. In 2001, the Tribunal was served with an application for judicial review of the Tribunal *Decision No. 1105/99* (November 30, 1999). The worker was a co-owner of a trucking company, who had taken out personal coverage. The Vice-Chair denied the worker's appeal of a FEL sustainability award, finding the worker was still capable of earning the amount for which he had taken out personal coverage based on the worker's earnings potential. The Tribunal filed its factum in late September. The Divisional Court is expected to hear the application in London in May 2003.
6. *Decision No. 28/02* (February 11, 2002) found that a worker had entitlement to compensation for a disc herniation on the grounds that it arose as a disablement from the 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.
7. Tribunal *Decision No. 1504/01* (February 28, 2002) allowed an appeal of the employer's classification of its business activity. When the Board did not immediately implement the Tribunal decision, the employer brought an application for mandamus to compel the Board to implement the Tribunal's decision. Although the Tribunal was not a party it was served with the application. The employer's application for mandamus was adjourned pending the Board's application to reconsider *Decision No. 1504/01*, and the implementation of the result of *Decision 1504/01R* (October 16, 2002).
8. The Tribunal has been served with an application for judicial review of *Decision No. 2476/01* (October 16, 2001). This decision denied the worker entitlement for chest wall pain. Initially the worker's counsel had erroneously served a Notice of Appeal, which was subsequently withdrawn. The Tribunal is waiting for counsel for the applicant to amend his materials, before filing its record.
9. The same counsel as noted above filed an application for judicial review of *Decision No. 398/02* (March 26, 2002). In that decision, the Vice-Chair found a worker's compensable accident was not a significant causal factor in subsequent periods of alleged disability. As in the above case, when counsel for the applicant amends the materials, the Tribunal will deliver its record.
10. An application for judicial review of *Decisions No. 201/02* (April 15, 2002) and *201/02R* (August 6, 2002) has been received. These decisions denied entitlement for chronic pain. Once counsel for the applicant orders the transcript and serves the Attorney General, the Tribunal will file its record.
11. The Tribunal has received an application for judicial review of *Decisions No. 466/01* (February 26, 2001) and *466/01R* (October 30, 2001). The worker

withdrew her appeal on the advice of her former representative at the hearing. She retained new counsel, and when her application to reconsider the withdrawal was denied, she brought a judicial review application. The Tribunal has filed its record and at the end of the year was awaiting the applicant's factum.

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

The WSIB requested the Tribunal reconsider *Decision No. 866/97*. In *Decision No. 866/97R* (September 6, 2002), a differently constituted Panel found the Tribunal had no jurisdiction to direct the Board to provide the Schedule 2 employer with relief from the costs of the claim.

The employer has brought an application for judicial review of *Decision No. 866/97R*. The Tribunal has filed an appearance, and when the employer obtains a copy of the transcript, the Tribunal will file its record with the Court.

13. An application for judicial review has been received for Tribunal *Decisions No. 2185/01* (October 29, 2001) and *2185/01R* (August 2, 2002). An employer's appeal that its operations were controlled by and ancillary to another firm, and thus should be classified in the same rate group as that other firm, was denied. The Tribunal has filed an appearance, and will be preparing and filing its record of proceedings in early 2003.
14. The Tribunal has been served with an application for judicial review of *Decision No. 770/98IR* (February 5, 2002), which denied the worker entitlement for traumatic vertebrobasilar ischemia. The Tribunal has entered an appearance and is preparing its record of proceedings.
15. A Tribunal employee who was processing an appeal sent a standard form letter to an injured worker. The worker claimed that the letter constituted harassment, and commenced an action for damages in small claims court against the Tribunal employee. Tribunal Counsel brought a motion to dismiss the claim as disclosing no reasonable cause of action, and also relied on the statutory immunity from such actions as set out in section 179 of the WSIA. The motion was successful, and the action was dismissed with costs on the grounds there was no genuine issue for trial.

OMBUDSMAN REVIEWS

The Ombudsman's Office has the responsibility for investigating complaints about the Ontario government and its agencies, including the Tribunal. The Ombudsman thoroughly investigates complaints about Tribunal decisions and considers the reasonableness of the Tribunal's analysis. The Tribunal will be notified of the Ombudsman's intent to investigate if the Ombudsman requires further

information or if issues arise which suggest the need for a formal investigation. While an Ombudsman's investigation may result in a recommendation to reconsider, most investigations result in the Ombudsman concluding that there is no reason to question the Tribunal's decision.

In 2002, the Ombudsman notified the Tribunal of its intention to investigate 18 appeals. This compares favourably to 42 case-related notifications in 2001 and 30 in 2000. Notifications can relate to any decision issued at any time, not necessarily decisions released in the current year.

During 2002, 40 Ombudsman notifications were closed. There were no cases in 2002 in which the Ombudsman made a recommendation that the Tribunal reconsider a decision.

The 1999 Annual Report recorded that the Ombudsman had undertaken a review of the timeliness of the Tribunal's appeal process and released a final report in April 1999. The Ombudsman's report recommended "that the Tribunal take all necessary steps, including requesting additional resources, to ensure that it is able to process appeals in a timely manner." The Ombudsman also made a related recommendation that the Ministry of Labour address the situation and "take all necessary steps to ensure that the Workplace Safety and Insurance Appeals Tribunal has the capability and resources to fulfil its mandate effectively." The Appeals Tribunal undertook a backlog reduction plan in response to this report and subsequent

Annual Reports have recorded the Tribunal's progress in eliminating its backlog. In 2002, the Tribunal met its commitment to eliminate its backlog by the end of March 2002. The Tribunal is now monitoring its caseload to ensure that decisions continue to be released in a timely fashion.



REPORT OF THE TRIBUNAL DIRECTOR

The year 2002 marked the end of the Tribunal's inventory reduction project, and the beginning of what we hope is a period of relative stability in the Tribunal's activities. During this year, the Tribunal successfully reached its appeal inventory targets identified under its Action Plan by March 31, 2002. The active inventory as of March 31 numbered 3,955 appeals; the number of active appeals has remained relatively constant since then, as we strive to maintain a balance of dispositions and incoming appeals. As of December 31, 2002, the Tribunal's active inventory numbered 3,988 appeals.

We also concluded the majority of renovations to our 7th floor hearing rooms and library, which reopened in July 2002. In late 2002, the Tribunal took over possession of the 5th floor at 505 University Avenue, and began construction on this floor in December. It will house our mailroom, reproduction and records staff, who have been without a permanent location since an environmental contamination of their former premises in May 2001. We look forward to the completion of all renovation work to our premises, including an additional hearing room on the 7th floor, by mid-2003.

Timely appeal processing

Since the Tribunal completed its inventory reduction project, the timeliness and quality of decision-making has been the focus of our efforts. The Tribunal is committed to providing the parties with a hearing date within four months of certification by the appellant that he or she is ready to proceed to hearing. We were successful in meeting this target in 2002, although in some cases, the parties were unable to accept early hearing dates due to their other commitments or those of their representatives.

The Notice of Appeal process, introduced in March 2001, permits the Tribunal to meet this commitment by identifying those appeals that are ready to proceed to hearing, and dedicating its resources to the timely processing of these appeals. Parties who need more time to prepare their appeals are given up to two years after

notifying the Tribunal of their appeal to inform the Tribunal that they are ready to proceed to hearing. Although the Tribunal's estimates of incoming appeals have been accurate, we have found that appellants are not certifying their readiness to proceed as quickly as anticipated. We estimate that a number of appeals filed under the NOA process will not proceed to hearing once the parties have had a chance to assess their case, or once other issues have been completed at the WSIB level.

The Tribunal is also committed to rendering decisions in a timely fashion after the completion of the hearing. In 2002, more than 70% of final decisions issued were rendered within the four-month period required under the Act. The median time to decision release following the completion of an appeal was 39 days in 2002, down from 55 days in 1997. Reasons in complex cases require more preparation, and represent a significant number of the decisions that take longer than 120 days to release.

Looking forward to 2003

The Tribunal expects that the number of hearings held and decisions released in 2003 will be comparable to 2002 levels. In 2002, the Tribunal released 2,370 final decisions, exceeding the number released in any year prior to 2000, when the inventory reduction project began in full force. The Tribunal's objectives in 2003 are to sustain this level of decision-making, to continue to improve on the timely disposition of appeals and to identify ways in which pre-hearing preparation can assist in improving the timeliness of decision-making in more complex cases. We will continue to meet with stakeholders in public information sessions and to consider their feedback in reviewing Tribunal processes that affect them and their clients.

CASELOAD PROCESSING

In Year 2002, caseload processing activities were undertaken in three main areas: appeals processing; inactive inventory projects; and post-decision request resolutions. The following sections summarize the Tribunal's achievements in these areas.

Achievements in Appeals Processing

Year 2002 was the first full year of operations under the Tribunal's two-part appeals processing model. In this model, appeals move into the resolution stream after they have been confirmed ready to proceed by the appellants. Until this confirmation arrives, the appeals remain in what is known as the 'notice' stage.

Caseload Movements in the 'Notice of Appeal' Stage

As shown in the following chart (Chart 1), the Tribunal's production plan had assumed that, on average, 963 cases would be received each quarter into this first

(‘pre-appeal’) processing stage. The Tribunal had projected that, on average, 681 cases would move out of the stage (i.e., move ahead into the resolution stage for appeals processing), and that by the end of Year 2002, the volume of ‘notice’ cases would have risen to 2,575 cases.

Chart 1

		First Qtr	Second Qtr	Third Qtr	Fourth Qtr
Planning Assumptions:					
<u>Notice Stage</u>					
Input to Stage:	Notices Received	1000	975	950	925
Output from Stage:	a) Confirmations	450	650	800	825
	b) <u>Time Expired</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	Total	450	650	800	825
Remaining at Notice Stage (end of Quarter):		2000	2325	2475	2575

The actual caseload movements into the stage (Chart 2) fell within a very close margin as compared with these predicted values.

Chart 2

	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Average Qtr
INPUT: NOTICES					
Actual	1016	948	983	955	975.5
<u>Anticipated</u>	<u>1000</u>	<u>975</u>	<u>950</u>	<u>925</u>	<u>962.5</u>
Variance	16	-27	33	30	13.0

The movements out of the stage were not as closely matched with the predicted values, however (Chart 3).

Chart 3

	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Average Qtr
OUTPUT: CONFIRMATIONS*					
Actual	461	543	663	580	561.8
<u>Anticipated</u>	<u>450</u>	<u>650</u>	<u>800</u>	<u>825</u>	<u>681.3</u>
Variance	11	-107	-137	-245	-119.5
*Note: For purposes of this analysis, 'confirmations' includes all cases that were promoted into the resolution processing stage. It therefore includes cases where COAs (confirmation of appeals) were filed as well as cases for which COAs were not required.					

At the end of the year, 3,630 cases remained in this 'notice' stage, and these cases were classified into categories as noted below (Chart 4).

Chart 4

	End of Fourth Quarter		
	<u>Active</u>	<u>Dormant</u>	<u>Total</u>
CASES REMAINING IN NOTICE STAGE			
Initial Contact Stage	305	461	766
Readiness Form Received	475	1093	1568
Case Record Being Prepared	606	0	606
Awaiting Final Confirmation	194	456	650
<u>Ready for Assignment into Resolution Stage</u>	<u>40</u>	<u>0</u>	<u>40</u>
Total	1620	2010	3630

Caseload Movements in the 'Resolution' Stage

As shown in Chart 5, the Tribunal's production plan had assumed that, on average, each quarter, 1,006 cases would be received into the resolution stage. The Tribunal had targeted 1,063 dispositions from the stage each quarter (on average) and with these assumptions, arrived at 2,909 as the projected end of year resolution caseload inventory.

Chart 5

		First Qtr	Second Qtr	Third Qtr	Fourth Qtr
Planning Assumptions:					
<u>Resolution Stage</u>					
Input to Stage:	a) Advanced from Notice Stage	450	650	800	825
	b) <u>Re-activated</u>	<u>400</u>	<u>350</u>	<u>300</u>	<u>250</u>
	Total	850	1000	1100	1075
Output from Stage:	Closed or Made Inactive	1125	1050	1050	1025
Remaining at Resolution Stage (end of Quarter):		2859	2809	2859	2909

The actual caseload movements into the stage (Chart 6) were somewhat below the expected volumes.

Chart 6

	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Average Qtr
INPUT INTO THE RESOLUTION STAGE					
Actual	773	860	972	948	888.3
<u>Anticipated</u>	<u>850</u>	<u>1000</u>	<u>1100</u>	<u>1075</u>	<u>1006.3</u>
Variance	-77	-140	-128	-127	-118.0

The movements out of the stage were also lower than expected (as shown in Chart 7).

Chart 7

	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Average Qtr
DISPOSITIONS					
Actual	1229	882	822	1240	1043.3
<u>Anticipated</u>	<u>1125</u>	<u>1050</u>	<u>1050</u>	<u>1025</u>	<u>1062.5</u>
Variance	104	-168	-228	215	-19.3

At the end of the year, 2,368 cases remained in this 'resolution' stage, and these cases were classified into categories as noted below (Chart 8).

Chart 8

End of Fourth Quarter	
CASES REMAINING IN RESOLUTION STAGE	
	<u>Active</u>
Early Review	196
Substantive Review	388
Hearing Ready	939
TCO, Scheduling or OCC Follow Up	43
<u>WSIAT Decision Writing</u>	<u>802</u>
Total	2368
*Note: 'TCO' refers to Tribunal Counsel Office; 'OCC' refers to Office of Counsel to the Chair.	

Historical Trends by Year

Historical comparisons of intake and dispositions are provided in Charts 9 and 10. These breakdowns show that the types of cases dealt with in Year 2002 were similar to the typical mix received in most years. Entitlement-related cases constituted the majority of cases (93%). Special Section cases (Leave, Right to Sue, Medical Exam and Access) comprised typically small portions (7%).

Chart 9

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

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 16, 17 and 18.

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

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

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

Chart 10

Breakdown of Case Dispositions by Appeal Type
for the years 1996 - 2002

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

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 16, 17 and 18.

* 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.

In Year 2002, closings by Tribunal decision once again represented the most prevalent type of disposition. Other disposition types included case withdrawals and settlements, as well as cases made inactive.¹ (See Chart 11.)

Chart 11

Cases Disposed of in 2002 (Cases Removed from Active Appeals Inventory)				
	Access, Medical Exam, Leave	Right To Sue	Entitlement and Other	Total
Before Hearing				
Withdrawn by appellant	183	6	224	413
Settled at Tribunal	2	3	2	7
Made Inactive	45	1	813	859
Found Non Jurisdictional	5	0	102	107
Other	<u>12</u>	<u>5</u>	<u>266</u>	<u>283</u>
Subtotal	247	15	1407	1669
Per cent of Appeal Total	97.6%	38.5%	36.3%	40.0%
After Hearing				
Withdrawn by appellant without decision	1	0	5	6
Made Inactive or No Reply	0	0	122	122
Disposed following Tribunal Decision	5	23	2343	2371
Other	<u>0</u>	<u>1</u>	<u>4</u>	<u>5</u>
Subtotal	6	24	2474	2504
Per cent of Appeal Total	2.4%	61.5%	63.7%	60.0%
TOTAL	253	39	3881	4173
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 16, 17 and 18.				

¹ 'Inactive' is a category separate from 'Withdrawal.' The differentiating factor is that in a situation involving 'withdrawal,' the appellant has agreed to withdraw the appeal entirely, whereas in a situation involving 'inactive,' the appellant has agreed only to remove the case from active processing. The latter category is used typically to indicate that although an appellant is unwilling to pursue the appeal at this time (or to permit it to be scheduled for hearing), the appellant is unwilling to forego the right to have the appeal heard at some later date.

Chart 12 shows case dispositions distributed by completion time. Measured from the time the appeals entered the resolution stream, we find that approximately one-third of all dispositions were achieved within a 6-month time frame. Twenty-eight per cent of cases were resolved within 6 to 12 months.

Chart 12

Case Disposition by Age, 2002									
From Date of Confirmation to Date of Disposition*									
Appeal Type	Within 6 months		Between 6 and 12 months		Between 12 and 18 months		More than 18 months		Appeal Type Total
		% of Appeal total		% of Appeal total		% of Appeal total		% of Appeal total	
Medical Exam and Access	246	97%	3	1%	3	1%	1	0%	253
Right to Sue	7	18%	15	38%	11	28%	6	15%	39
Entitlement **	<u>1091</u>	28%	<u>1128</u>	29%	<u>765</u>	20%	<u>897</u>	23%	<u>3881</u>
Total	1344	32.2%	1146	27.5%	779	18.7%	904	21.7%	4173

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 16, 17 and 18.

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

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

Chart 13 depicts the Tribunal's workload with respect to the Scheduling of Hearings, number of Hearings Conducted, Cases Heard, Decisions Issued and Dispositions by Decision for the years 1995 to 2002.

Chart 13

Scheduling, Hearings and Decisions for 2002								
	1995		1996		1997		1998	
		% Change from prior year						
Scheduling Dates Arranged	1487	-12%	1935	30%	2312	19%	3012	30%
Hearings Conducted	1228	-13%	1471	20%	1978	34%	2446	24%
Cases Heard	1133	-13%	1361	20%	1866	37%	2306	24%
Decisions Issued	1319	28%	1360	3%	1653	22%	2248	36%
Cases Disposed of by Decision	1076	25%	1212	13%	1426	18%	1673	17%
	1999		2000		2001		2002	
		% Change from prior year						
Scheduling Dates Arranged	3184	6%	5169	62%	4785	-7%	3263	-32%
Hearings Conducted	2843	16%	4088	44%	4013	-2%	2327	-42%
Cases Heard	2690	17%	3900	45%	3559	-9%	2153	-40%
Decisions Issued	2673	19%	3692	38%	3756	2%	2572	-32%
Cases Disposed of by Decision	2096	25%	3675	75%	3499	-5%	2371	-32%

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 16, 17 and 18.

Although the level of activity dropped off somewhat as compared with the two years immediately preceding, it nonetheless remained quite high in the overall historical context. As shown in the column labeled “% Change from Prior Year,” the Tribunal made productivity gains each year up to Year 2000. In Year 2001, the rates of scheduling and hearing dropped off slightly from their Year 2000 peak levels. In Year 2002, the rate of scheduling dropped off by somewhat more substantial amounts, and the hearing and decision production levels were reduced by margins of between 32 and 42 per cent. In total, there were 2,371 cases disposed of by decision in Year 2002.

Hearing Characteristics

A breakdown of the Cases Heard category indicates that single adjudicators were used in approximately 67 per cent of hearings and tri-partite panels in approximately 33 per cent. Hearing type breakdown reveals that formal Oral hearings continued to be the most common hearing type at 65 per cent. The Written hearing type was used in 26 per cent of hearings, the remaining 9 per cent of all hearings in 2002 involved Teleconferences, the Vice-Chair Registrar, or Motions Day. (These hearing type characteristics are presented graphically in Chart 14.)

Chart 14



The hearing profiles indicated that for injured workers: 40 per cent were represented by consultants; 22 per cent by lawyers; 17 per cent by the Office of the Worker Adviser; and 16 per cent by union representatives. The remaining 5 per cent was allocated among various non-categorized representation, for instance, family friend, family member, MPP office or Legal Aid.

According to this same categorization, employer representation showed: 72 per cent were represented by consultants; 23 per cent by lawyers; and 4 per cent by the Office of the Employer Adviser. The remaining 1 per cent was non-categorized.

Inactive Inventory Projects

In Year 2002, the Tribunal implemented a number of special projects, all with the aim of reducing the caseload residing in the inactive inventory.

As shown in the following chart (Chart 15), the Tribunal had targeted inventory reductions averaging 263 cases per quarter.

Chart 15

	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Average Qtr
INACTIVE INVENTORY REDUCTION					
Actual	87	181	779	940	496.8
<u>Anticipated</u>	<u>0</u>	<u>450</u>	<u>350</u>	<u>250</u>	<u>262.5</u>
Variance	87	-269	429	690	234.3

The actual inventory reductions far exceeded these targets and in total, nearly 2,000 cases were cleared from this inventory. This total reduction exceeded the full-year target by 937 cases.

Post-decision Workload

In year 2002, 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 complaints. The following charts (Charts 16, 17 and 18) summarize the activities in these areas for Year 2002.

Chart 16

Ombudsman Complaints, Activity and Inventory Summary	
	Year 2002
New Complaint Notifications Received	18
Complaints Resolved	40
Complaints Remaining at year-end	26

Chart 17

Reconsideration Requests, Activity and Inventory Summary	
	Year 2002
Reconsideration Requests Received	383
Reconsideration Requests Resolved	444
Reconsiderations Remaining at year-end	296

Chart 18

Judicial Review, Activity and Inventory Summary	
	Year 2002
Judicial Reviews Received	8
Judicial Reviews Resolved	0
Judicial Reviews Remaining at year-end	11

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 2002 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Office of Counsel to the Chair

The Office of Counsel to the Chair (OCC) has been in existence since the creation of the Tribunal. It is a separate legal department from the Tribunal Counsel Office and is not involved in making submissions in hearings. The draft review process, which has been described in prior Annual Reports, is the responsibility of Counsel to the Chair and the Associate Counsel to the Chair. Other OCC responsibilities include: providing advice to the Chair and Chair's Office; training and professional development; current awareness and research; administering the

reconsideration process; responding to *Freedom of Information and Protection of Privacy Act* (FIPPA) issues and complaints; and assisting with Ombudsman matters.

A summary of FIPPA activities is shown in Chart 19, a summary of reconsideration activity in Chart 17 (page 30) and a summary of Ombudsman activity in Chart 16 (page 29). There was a continued emphasis on training in 2002, as the Tribunal must make decisions under four Acts and consider and apply extensive Board policy under the different legislative schemes.

Chart 19

FIPPA, Activity Summary	
	Year 2002
FIPPA Requests Received	1
FIPPA Requests Resolved	1
Information Sent/Disclosed	0
Transfers	0
Appeals	0

Office of the Vice-Chair Registrar

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

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

The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. She may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and issue agenda, on referral by Tribunal staff and the parties to the appeal. The process may be oral or written. The Vice-Chair Registrar releases a written decision with reasons. Any request to have a matter put to the Vice-Chair Registrar may be raised with OVCR staff.

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

The Early Review Department

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

Pre-hearing Screening

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

Registrar Information Centre (RIC)

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

Tribunal Counsel Office

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

Hearing Work

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

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

Post-hearing Work

If a Tribunal vice-chair or panel concludes that additional information or submissions are required following a hearing, a request for assistance is made to the

Tribunal Counsel Office. The appeal is assigned to a lawyer or TCO legal worker, depending on the complexity of the case. The legal worker or lawyer assigned to the case carries out the directions of the panel or vice-chair, and co-ordinates any necessary input from the parties to the appeal.

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

Lawyers

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

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

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

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

Legal Workers

TCO legal workers now handle exclusively post-hearing appeal work. They are a small, highly trained group who work diligently to ensure panel and vice-chair directions on complex appeals are completed quickly, thoroughly and efficiently.

Medical Liaison Office

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

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

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

Medical Counsellors

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

The medical counsellors review the cases identified by MLO prior to the hearing to verify that the medical evidence is complete and that the record contains any 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* allows for "health professionals" to assist the Tribunal in determining matters of fact. The Tribunal's authorized list of health professionals is known as the Tribunal's "roster" of medical assessors.

Medical assessors on the roster may be asked to assist the Tribunal in a number of ways. Typically, they are asked to give their opinion on some specific medical question, which may involve examining a worker and/or studying the medical reports of other practitioners. Medical assessors specializing in a particular field may be requested to assist in educating Tribunal staff in a general way about some

medical theory or procedure. They may be asked for an opinion on the validity of a particular theory which a hearing panel or vice-chair has been asked to accept. They may also be asked to comment on the nature, quality or relevancy of medical literature.

The opinions of medical assessors are normally sought in the form of written reports. Copies of the reports are made available to the worker, employer, the panel or vice-chair, and the Board. On occasion, a hearing panel or vice-chair will want the opportunity to question the medical assessor at the hearing to clarify the opinion. In those cases, the medical assessor will be asked to appear at the hearing and give oral evidence. The parties participating in the appeal, as well as the panel or vice-chair, have the opportunity to question and discuss the opinion of the medical assessor.

Although references are typically made to the report of the medical assessor in the Tribunal decision, the medical assessor does not make the decision 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 WSIB 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 situation.

Medical Review of Tribunal Decisions

In addition to case-specific medical evidence, MLO co-ordinates an annual medical review of Tribunal decisions. The medical review is internal to the Tribunal.

Its purpose is to obtain, from the medical counsellors, a medical professional's perspective on the manner in which medical facts or theories are treated or recorded in WSIAT decisions. The medical review permits the Tribunal to evaluate its processes and practices as they relate to medical issues and medical evidence. The medical review highlights areas for further education of Tribunal vice-chairs, panels and staff through medical education initiatives.

Alternative Dispute Resolution

The Tribunal relies on a variety of alternative dispute resolution (ADR) techniques to resolve appeals at the pre-hearing stage. Pre-hearing resolutions can have the advantage of being less formal, faster and less costly for the parties and the Tribunal. They can assist the Tribunal in dealing with a wide range of training and expertise among representatives and unrepresented parties and with complexities created by four pieces of legislation, varying policies and complex medical issues. The ADR techniques clarify, narrow and resolve issues in advance of the hearing.

The Tribunal has established a specialized ADR Unit, where an ADR process, including mediation, is offered to the parties. Different ADR strategies are used at various stages of the appeal process.

Resolutions at the very early stage of the process rely on negotiations with the appellant and usually focus on issues of jurisdiction and alternate remedies. Where a case is suitable for an early and summary resolution, it may be referred to the ADR Unit's Early Intervention Officer to facilitate a resolution.

When an appeal is ready to proceed to a hearing, the appellant is asked to complete the Confirmation of Appeal (COA). The COA offers the appellant the opportunity to participate in the Tribunal's ADR process. Where the appellant expresses an interest in participating in the process, the appeal is reviewed for ADR suitability. Not all appeals are suitable for the ADR process. For example, the participation of a single party in the appeal often requires an oral hearing and, where the case involves an occupational disease, it may be referred to the Tribunal's Counsel Office (TCO). If one of the parties to the appeal does not wish to participate in the ADR process, the appeal will be referred to the Office of the Vice-Chair Registrar for pre-hearing preparation and referral to a hearing in the ordinary course. ADR efforts in this stream may continue and will include reviewing the appeal for completeness, communicating gaps in the medical evidence to the parties and assessing and discussing other options for resolution.

If the appeal is suitable for the ADR process, the Tribunal's Scheduling Department contacts the parties to arrange a convenient meeting date. Once a date is scheduled, the file is assigned to an ADR Officer.

ADR Officers are specially trained mediators who work with the parties in a neutral and confidential setting, to arrive at a jointly acceptable resolution to an

appeal. Mediations are typically conducted as face-to-face meetings but teleconferences are used, where appropriate. For example, where the issues under appeal are complicated and numerous, a face-to-face meeting is recommended. Where the case was dealt with in written format at the Board, a face-to-face meeting may provide the first opportunity for the parties to speak with one another directly. Where the parties continue to work together, a face-to-face meeting may encourage a better working relationship.

The objective of the ADR process is to work with the parties to achieve a resolution of the appeal, without the need for a formal hearing. Where the parties are able to reach an agreement, the agreement is reduced to writing and signed by the parties. It is 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 the ADR process is not successful in achieving a resolution of the appeal, the case is referred to a hearing.

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

Resource Department

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

Ontario Workplace Tribunals Library

The Ontario Workplace Tribunals Library provides library services to the Workplace Safety and Insurance Appeals Tribunal, Ontario Labour Relations Board, Pay Equity Hearings Tribunal and Human Rights Tribunal of Ontario. The library staff share responsibility for the WSIAT subscription service, the processing of document requests, the electronic processing of WSIAT decisions for the Quicklaw database, as well as research support for the Tribunal's web site.

In April 2002, the library moved to a renovated, permanent location at 505 University Avenue in Toronto. The new and expanded library space provides improved access and facilities for library users.

Ontario Workplace Tribunals Library Statistical Summary 2002

Inquiries		Notes
Reference:	2317	
Directional:	2223	
Total:	4540	
 Document Delivery		
OLRB:	4580	Includes electronic document delivery to MOL
WSIAT:	228	
PEHT/HRTO:	32	
MISC:	14	
Total:	4854	
Collection Use:	2243	Includes both materials used in Library and signed out.
Acquisitions:	2240	Includes all items entered in AQUIS plus electronically obtained materials and photocopied material.
Items sent to QL:	6962	
 Records Added to Databases		
Books	118	
Library	429	
Juris	19	
Total:	566	

Web Site

In 2002, development of the Tribunal's web site continued and included service enhancements to its online decision search feature, and increased access to information about the Tribunal and its appeal processes. In late 2002, the site underwent redevelopment to make it compliant with the *Ontarians with Disabilities Act* and improve its functionality and ease of navigation.

Training sessions on how to use the WSIAT web site's decision search feature were held in various centres throughout Ontario in 2002 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 decision research capability provided by Publications continued to be the focus in 2002 through the *Decision Summary Search* service. The *Decision Summary Search* service is a major advance in research capability for the public and

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

In 2002, a number of enhancements were added to the *Decision Summary Search* service, particularly in the area of search procedures and display. It is anticipated that further enhancements will be implemented in 2003.

WSIAT Reporter

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

In addition to selected decisions, all of the Tribunal's Practice Directions are published in the Reporter. In 2002, the Tribunal issued a new Practice Direction on *Disclosure, Witnesses and the Three Week Rule* and revised its Practice Direction on *Inactive Files*. In addition to publication in the Reporter, the Practice Directions are also posted on the Tribunal's web site, www.wsiat.on.ca.

Every fifth volume of the Reporter contains a cumulative index covering the last five volumes. In 2002, Volume 60 of the Reporter was published with the cumulative index covering Volumes 56-60. The cumulative index is published in English and French and includes a table of cases, subject matter index, keyword index and proceedings related to published decisions.

Production

Beginning in December 2000, Publications no longer provided summaries of all released decisions. This process continued in 2001 and 2002. Decisions of a routine nature on well-established issues were not summarized, but keywords were assigned to all decisions. In 2002, Publications processed more than 2,700 decisions. The currency of the processed decisions is within three weeks.

Case Management Systems

The Case Management Systems department is responsible for the case management functions of the Tribunal, as well as the management of the information technology systems. Three types of projects were undertaken by this group in Year 2002 including Information Technology (IT) infrastructure upgrades, case management system enhancements, and special projects relating to electronic governance.

The two major infrastructure initiatives included the workstation software migration and the printer upgrade project. The operating system and the applications on each workstation were upgraded from the Windows[®] NT product line to the Windows[®] 2000 product line, and printers were upgraded to the HP[®] 4200 series. User training was conducted in tandem with the software rollout.

Numerous enhancements were made to the Tribunal's electronic case management system (tracIT[®]), and these included new reporting features for summarizing caseload movements, and for managing caseloads and tasks by time frame and aging.

In the area of electronic governance, projects included: the VPN (virtual private network) implementation for high-speed remote access (a new feature offered to all interested OICs); the electronic file transfer feasibility study (a research project that delivered a prototype and cost-effectiveness assessment relating to the feasibility of electronic file transfer between WSIB and WSIAT); the web site revision project (a project that reviewed and streamlined the Tribunal's web site, making it easier to use and compliant with ODA guidelines); and, the on-line appeals application development initiative, which resulted in a new gateway to permit representatives to file notices and confirmations of appeal on-line. (This application is now in the initial testing phase.)

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2002, (Chart 20) 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, 2002. The audit reports are included in this report as Appendix B.

Chart 20

**Statement of Expenditures and Variances
Year ended December 31, 2002 (In \$000's)**

	2002 BUDGET	2002 ACTUAL	2002 VARIANCE	
			\$	%
OPERATING EXPENSES				
Salaries & Wages	8,436	8,773	(337)	(4.0)
Employee Benefits	1,897	1,457	440	23.2
Transportation & Communication	852	933	(81)	(9.5)
Services	5,978	5,764	214	3.6
Supplies & Equipment	409	637	(228)	(55.7)
TOTAL - W.S.I.A.T.	17,572	17,564	8	0.0
Services - W.S.I.B.	550	448	102	18.5
Interest Revenue	-	(23)	23	-
TOTAL OPERATING EXPENSES	18,122	17,989	133	0.7
ONE TIME EXPENSES				
Leasehold Improvements (see note below)	473	1,081	(608)	(128.5)
Business Solutions Initiatives	150	137	13	8.7
TOTAL EXPENDITURES	18,745	19,207	(462)	(2.5)

Note: Leasehold improvements of \$1,300,000 were approved by the Ministry of Labour for the year 2001. Of this approved budget, the Tribunal spent \$825,022 during the year 2001 and the balancing amount of \$474,978 was accounted for as an advance from WSIB for leasehold improvements.

In 2002, the Tribunal spent an amount of \$608,451. The excess of \$133,473 over budget has been achieved through savings from 2002 operating expenses. Also, in the 2002 budget, an amount of \$472,650 was approved by the Ministry of Labour to cover relocation costs to acquire additional office space and related cost of leasehold improvements for this space. The additional space was acquired in December 2002.

Appendix A

VICE-CHAIRS AND MEMBERS IN 2002

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

Initial appointment

Full-time

Chair

Strachan, Ian J July 2, 1997

Vice-Chairs

Ballam, Dianne June 25, 1997
Dechert, Ken June 25, 1997
Gehrke, Linda May 27, 1998
Keil, Martha February 16, 1994
Martel, Sophie October 6, 1999
McClellan, Ross September 4, 2002
McCombie, Nick January 22, 1991
McCutcheon, Rosemarie October 6, 1999
Moore, John July 16, 1986
Smith, Eleanor January 7, 2000
Sutherland, Sara September 6, 1991

Members representative of workers

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

Members representative of employers

Barbeau, Pauline January 15, 1990
Wheeler, Brian April 19, 2000

Part-time

Vice-Chairs

Alexander, Bruce	May 3, 2000
Alexander, Judith	January 31, 1996
Baltman, Deena	February 16, 2000
Bigras, Jean Guy	May 14, 1986
Bortolussi, Lorraine	March 21, 2001
Bowles, Patrick	May 3, 2000
Butler, Michael	May 6, 1999
Carroll, Tom	May 27, 1998
Cook, Brian	September 6, 1991
Crystal, Melvin	May 3, 2000
Faubert, Marsha	December 10, 1987
Ferdinand, Ulrich	April 29, 1999
Flanagan, William	June 1, 1991
Fleming, David	January 7, 2000
Hartman, Ruth	October 6, 1999
Henderson, Loretta	January 13, 1999
Josefo, Jay	January 13, 1999
Kenny, Maureen	July 29, 1987
Kroeker, Lawrence	June 18, 1997
Loewen, Brian	May 6, 1999
MacKenzie, Cameron	August 21, 2001
Marafioti, Victor	March 11, 1987
McGrath, Joy	December 10, 1987
McMahon, Gary	May 3, 2000
Nairn, Rob	April 29, 1999
Onen, Zeynep	October 1, 1988
Purdy, David	October 4, 2000
Renault, Audrey	January 31, 1996
Robeson, Virginia	March 15, 1990
Ross, Norman	February 21, 2001
Ryan, Sean	October 6, 1999
Sajtos, Joanne	May 27, 1998
Signoroni, Antonio	October 1, 1985
Silipo, Tony	December 2, 1999
Weir, Gordon	September 19, 2001
Zimmerman, Geoffrey	April 29, 1999

Members representative of workers

Beattie, David	December 11, 1985
Besner, Diane	January 13, 1995
Black, Brenda	December 12, 2001

Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Felice, Douglas	May 14, 1986
Gillies, David	October 30, 2002
Hodgkiss, Pauline	October 17, 2001
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988
Rao, Fortunato	February 11, 1988
Timms, David	May 4, 1995

Members representative of employers

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

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS IN 2002

	Effective
Diane Besner	January 13, 2002
Mardi Bullivant	April 29, 2002
Michael Butler	May 6, 2002
Mary Christie	May 2, 2002
Douglas Felice	May 14, 2002
Urich Ferdinand	April 29, 2002
Linda Gehrke	June 1, 2002
Ruth Hartman	October 6, 2002
Loretta Henderson	March 1, 2002
Jay Josefo	January 14, 2002
Ray Lebert	January 1, 2002
Brian Loewen	May 6, 2002
Sophie Martel	October 6, 2002
Rosemary McCutcheon	October 6, 2002
Rob Nairn	April 29, 2002
Fortunato Rao	February 11, 2002
Audrey Renault	January 31, 2002

Sean RyanOctober 6, 2002
 Jacques SéguinJuly 1, 2002
 Tony SilipoDecember 2, 2002
 Geoffrey ZimmermanApril 29, 2002

NEW APPOINTMENTS DURING 2002

Effective

David Gillies, part-time Member representative of workers. . .October 30, 2002
 Ross McClellan, full-time Vice-ChairSeptember 4, 2002

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
Miriam Weinfeld	Manager, Alternative Dispute Resolution

MEDICAL COUNSELLORS

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

* Marsha Faubert replaced Zeynep Onen in this position on July 1, 2002.

Appendix B

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL REPORT AND FINANCIAL STATEMENTS December 31, 2002

Auditors' Report

To the Chair of the 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, 2002 and the statements of operations and of cash flows for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 2002 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

(signed) *Deloitte & Touche LLP*

Chartered Accountants

Toronto, Ontario
February 14, 2003

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL**

Balance Sheet

December 31, 2002

	<u>2002</u>	<u>2001</u>
ASSETS		
Cash	\$ 1,529,460	\$ 1,002,349
Receivable from Workplace Safety and Insurance Board	1,892,913	2,496,634
Recoverable expenses (Note 3)	158,361	144,958
Advances	8,136	18,117
	\$ 3,588,870	\$ 3,662,058

LIABILITIES

Accounts payable and accrued liabilities	\$ 2,188,870	\$ 1,787,080
Advances from Workplace Safety and Insurance Board		
For operations (Note 4)	1,400,000	1,400,000
For leasehold improvements (Notes 4 and 6)	-	474,978
	\$ 3,588,870	\$ 3,662,058

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

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

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2002**

	<u>2002</u>	<u>2001</u>
OPERATING EXPENSES		
Salaries and wages	\$ 8,773,321	\$ 9,041,582
Employee benefits	1,457,087	1,460,750
Transportation and communication	932,458	1,202,614
Services	5,763,958	7,932,120
Supplies and equipment	637,206	860,956
	17,564,030	20,498,022
Services - Workplace Safety and Insurance Board (Note 5)	447,815	650,285
TOTAL OPERATING EXPENSES	18,011,845	21,148,307
NON OPERATING EXPENSES		
Leasehold improvements (Note 6)	1,081,101	825,022
Business solutions initiatives	137,000	-
TOTAL EXPENSES	19,229,946	21,973,329
Bank interest income	(23,055)	(88,128)
Pension contributions adjustment (Note 7)	-	(561,717)
NET RECOVERABLE EXPENDITURES	19,206,891	21,323,484
FUNDING REVENUE	19,206,891	21,323,484
NET RESULT FOR THE YEAR	\$ -	\$ -

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL**

Statement of Cash Flows

Year ended December 31, 2002

	<u>2002</u>	<u>2001</u>
NET INFLOW (OUTFLOW) OF CASH RELATED TO OPERATING ACTIVITIES		
Funding revenue received from Workplace Safety and Insurance Board	\$ 19,335,634	\$ 20,271,508
Cash receipts for recovery of shared services	332,885	341,226
Bank interest received	23,055	88,128
Expenses and net advances	(19,164,463)	(21,839,850)
NET CASH FLOW FROM OPERATING ACTIVITIES DURING THE YEAR	527,111	(1,138,988)
CASH AND CASHEQUIVALENTS, BEGINNING OF YEAR	1,002,349	2,141,337
CASH AND CASHEQUIVALENTS, END OF YEAR	\$ 1,529,460	\$ 1,002,349

NOTES TO THE FINANCIAL STATEMENTS

December 31, 2002

1. GENERAL

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

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

2. SIGNIFICANT ACCOUNTING POLICIES

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

Leasehold improvements, supplies and equipment

Leasehold improvements, supplies and equipment are expensed on a cash basis to match the recovery of the costs (funding revenue).

Revenue and expenses

Revenue and expenses are recognized on an accrual basis.

3. RECOVERABLE EXPENSES

Recoverable expenses consist of amounts recoverable from Pay Equity Hearing Tribunal, Ontario Labour Relations Board and 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.

4. ADVANCES FROM WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

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

5. 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.

6. LEASEHOLD IMPROVEMENTS

Leasehold improvements of \$1,300,000 were approved by the Ministry of Labour for the year 2001. Of this approved budget, the Tribunal spent \$825,022 during the year 2001 and the balancing amount of \$474,978 was accounted for as an advance from WSIB for leasehold improvements.

In 2002, the Tribunal spent an amount of \$608,451. The excess of \$133,473 over budget has been achieved through savings from 2002 operating expenses. Also, in the 2002 budget, an amount of \$472,650 was approved by the Ministry of Labour to cover relocation costs to acquire additional office space and related cost of leasehold improvements for this space. The additional space was acquired in December 2002.

7. PENSION CONTRIBUTIONS ADJUSTMENT

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