Ontario

Workplace Safety and Insurance
Appeals Tribunal

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

Workplace Safety and Insurance
Appeals Tribunal

Annual Report
2005

20 years of service

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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 2005 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

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

Chair's Report

Twenty Years and Counting

Sometimes the best way to predict the future is to create it. When Paul Weiler prepared his report on Ontario's workers' compensation system and predicted a better adjudicative future, he also recommended the creation of an external appeals tribunal with a view to improving that workers' compensation system. The government followed through on his recommendation, and the Workers' Compensation Appeals Tribunal (WCAT) opened its doors on October 1, 1985. In October, the Appeals Tribunal celebrated its first 20 years with a 20th anniversary symposium. The symposium featured a number of distinguished speakers including the Honourable Justice S. T. Goudge of the Ontario Court of Appeal and David Mullan, Professor Emeritus of the Faculty of Law, Queen's University. The remarks of the various speakers at this symposium suggested that Paul Weiler's prediction of an improved adjudicative future for the workers' compensation system had come true. While there is always room for further improvement, the Tribunal's 35,000 decisions represent a body of caselaw which established adjudicative principles, not only for the Ontario workers' compensation system, but also for systems in other provinces. In due course, other jurisdictions set up external appeal bodies modeled after the Ontario Tribunal.

The 20 years which followed the creation of the new Appeals Tribunal in 1985 were not without problems. Bourgeoning appeal caseloads, complaints about the Tribunal's interpretation of the legislation and Board policy, concerns about adequate funding and the appointment process all created difficulties for the Tribunal from time to time. Fortunately, its dedicated core of adjudicators and Tribunal staff, together with external support groups, were prepared to deal with any obstacles. To their credit, they continue to strive to improve the quality of adjudication within the administrative justice system. This core of dedication survived, notwithstanding limited remuneration and an uncertain employment environment for OICs. For those who look back over the past 20 years, there should be an element of satisfaction in reviewing the Tribunal's performance and its continued survival while attempting to improve its reputation for quality decision-making. The Weiler report had not only predicted the future, it had helped to create it.

Although the year 2005 was a milestone in the Appeals Tribunal history, it was also a challenging year. As the Tribunal attempted to restore its Vice-Chair roster to 2002 levels, the appeal caseload continued to grow. In 2002 the Tribunal had reached a point where it was able to stabilize its active appeal inventory at approximately 4,000 cases. An active inventory of 4,000 appeals proved to be the optimum number and the Tribunal was then in a position to offer parties a hearing date within six to eight weeks of the parties notifying the Tribunal that they were ready to proceed to hearing. Following the reduction in the Vice-Chair roster from 55 Vice-Chairs to fewer than 35 in 2003, the Tribunal began to develop another backlog. In 2005, the active appeal inventory peaked at approximately 5,600 appeals, 40% above the optimum inventory for active appeals and scheduled hearing dates were substantially delayed. The Tribunal continued to test and interview prospective candidates and by year-end had increased the Vice-Chair roster to 47. This competency-based appointment process was made more difficult by the negative effect of the 17-year remuneration freeze for OICs. The

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Tribunal continues to test candidates with a view to increasing that roster to 55 Vice-Chairs in 2006. The active inventory began to decline slightly late in 2005, and a roster of 55 knowledgeable Vice-Chairs should see the reduction in the active inventory accelerate in the second quarter of the next year and timelines for scheduled hearings begin to shrink.

With a larger number of adjudicators, there developed a need for improved training and resources at the Appeals Tribunal. The Tribunal began a new knowledge management project which, when completed, should enable adjudicators to research caselaw and prepare draft decisions in a more expeditious way. Technology which allows the adjudicators to be more productive will ensure that the Appeals Tribunal eliminates its backlog and returns to the active appeal inventory of 4,000 as soon as possible.

Despite the difficulties caused by the increasing appeal caseload and eroding OIC remuneration, the Appeals Tribunal continues to enjoy a reputation for quality decision-making within the administrative justice community. The year 2005 was another year in which the Appeals Tribunal continued its unblemished record in judicial reviews. The decisions and comments of the Divisional Court and Court of Appeal in those judicial review applications reinforced the Tribunal's reputation for quality decision-making. They also provided a further incentive for 2006 to continue and even improve upon the overall quality of our appeal decisions. With a full roster of OICs appointed under a merit-based/competency-based process, the next few years should be positive ones for the Workplace Safety and Insurance Appeals Tribunal and for the appeal system. Twenty years after the implementation of the Weiler report and the creation of the Appeals Tribunal, the future of the appeal system is indeed brighter.

Highlights of the 2005 Cases

This section highlights some of the legal, factual and medical issues considered by the Tribunal in decisions summarized in 2005.

The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes a system of workplace insurance for accidents occurring after December 31, 1997, and amends and continues the pre-1985, pre-1989 and pre-1997 *Workers' Compensation Acts* for prior injuries. Effective November 26, 2002, the *Government Efficiency Act, 2002* (GEA) amended certain provisions in the WSIA and pre-1997 Act. During 2005, the Tribunal adjudicated cases under all four Acts. For convenience, cases dealing with WSIA appeals are reviewed first.

Appeals Under the WSIA

The WSIA made significant changes to the previous workers' compensation scheme, including replacing temporary and FEL benefits with a single loss of earnings (LOE) benefit, modifying the Tribunal's jurisdiction and introducing various time limits. All of these issues were considered during 2005.

The WSIA places a new onus on workplace parties to co-operate in early and safe return to work (ESRTW). If ESRTW is not possible, the Board will do a Labour Market Re-entry (LMR) assessment and may offer an LMR plan to the worker to assist in identifying a suitable employment or business (SEB). The worker's LOE benefits are based on the SEB. For a thorough review of the LOE provisions and how they apply where a worker refuses suitable and available work, see *Decision No. 605/05* (2005), 73 W.S.I.A.T.R. 220. In deciding whether a worker has co-operated with ESRTW, decisions during 2005 confirmed previous Tribunal caselaw that the Tribunal will consider what is reasonable in the circumstances. See, for example, *Decision No. 1607/04* (2005), 72 W.S.I.A.T.R. 210, and *Decision No. 1601/05* (September 12, 2005).

Other interesting LOE appeals considered how benefits should be calculated for a worker who returned to his home country part way through ESRTW (*Decision No. 764/04* (February 11, 2005)) and the calculation of benefits for severely impaired workers. Board policy provides that a severely impaired worker with a 60% NEL award is entitled to no less than 75% of his short-term earnings. *Decision No. 1868/04* (2005), 74 W.S.I.A.T.R. 126, increased a worker's LOE benefits to 75% when he had a 60% NEL award and there were no special circumstances warranting an exception to Board policy.

The WSIA also provides for non-economic Loss (NEL) benefits for permanent impairments. The American Medical Association's *Guides to the Evaluation of Permanent Impairment* 3rd ed. (revised) are prescribed as the schedule for assessing NEL awards. *Decision No. 251/04* (2005), 74 W.S.I.A.T.R. 46, considered a challenge to the use of goniometers by NEL assessors in assessing back conditions under the AMA Guides. While the AMA Guides refer to inclinometers, the Tribunal found that they did not prohibit the use of goniometers and that goniometer measurements could be reviewed in light of other medical evidence on file.

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During this reporting period, the Tribunal considered various time limits imposed by the WSIA. See, for example, *Decision No. 1964/04* (2004), 72 W.S.I.A.T.R. 245, one of the first appeals on the requirement to file a claim within six months of the accident. There were a number of appeals from Board decisions denying a party's request to extend the six-month time limit to appeal a decision. In September 2004, the Board updated its internal guidelines to provide a broad discretion to extend the time for appealing within one year of the date of the accident. Additional criteria apply to longer delays. These guidelines have been considered in several Tribunal appeals even though they where not previously considered by the Board. See, for example, *Decision No. 276/05* (February 17, 2005) and *Decision No. 279/05* (2005), 72 W.S.I.A.T.R. 298. *Decision No. 700/05* (2005), 73 W.S.I.A.T.R. 252, granted a time extension based on the new guideline, but noted that it was open to a party who wished to oppose an extension in a future case to argue that the guidelines in effect at the time should apply, or that exceptional circumstances weighed against extending the time under the new guidelines.

The time to appeal an LMR decision is only 30 days; however, if the original plan is amended, the amendment gives rise to a new time limit (*Decision No. 1219/05* (September 20, 2005)). And see *Decision No. 2199/04* (2005), 72 W.S.I.A.T.R. 277.

The WSIA also enacted a six-month time limit to appeal to the Tribunal. *Decision No. 1705/02ER* (2005), 75 W.S.I.A.T.R. (online), clarified that the Tribunal's Notice of Appeal Form (NOA) is an administrative requirement for processing an appeal. The statutory requirement to file a written notice indicating why the decision is incorrect or why it should be changed can be met by other documents if the NOA form is filed late.

Turning to the Tribunal's jurisdiction, *Decision No. 78/05* (2005), 73 W.S.I.A.T.R. 168, held that WSIA section 123(2) does not affect the Tribunal's jurisdiction with respect to overpayments arising in accidents governed by prior Acts. And see *Decision No. 2105/01* (November 8, 2005) (discussed below).

The Tribunal does not have jurisdiction over a worker's request for information about whether his employer was fined for late filing of accident reports. *Decision No. 619/05* (2005), 74 W.S.I.A.T.R. 200, found that access to such information is not covered by section 57(1) of WSIA and is not relevant to a worker's benefits. While the worker might have a general interest in this information, it is not sufficient to be an interest for the purposes of an appeal under the Act.

Decisions on the Tribunal's jurisdiction in right to sue matters to consider issues raised by insurers are discussed below.

Board Policy Under the WSIA

While the Tribunal previously considered Board policy, the WSIA expressly states that, if there is applicable Board policy, the Tribunal shall apply it when making decisions. Section 126 sets out a process for the Board to identify applicable policy and for the Tribunal to refer policy back 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 parties with an opportunity to make submissions and issue a written decision with reasons. During 2005, there were a number of decisions interpreting Board policy but no section 126 referrals.

The Board has adopted several policies regarding when it will collect overpayments. *Decision No. 2105/01I2* (2004), 71 W.S.I.A.T.R. 40, concluded that the Tribunal retains its jurisdiction under the amended pre-1997 Act for pre-1998 injuries, including its jurisdiction regarding overpayments. The Vice-Chair asked for submissions from the Board on the effect of Operational Policy Manual (OPM) Document No. 05-01-09, which appears to provide that workers only have a right of appeal to the Tribunal for overpayments created before amendments to the Act in December 1995. *Decision No. 2105/01* (November 8, 2005) found that section 126(1) of the WSIA requires the Tribunal to apply Board policy that applies to "the subject matter" of an appeal. The Tribunal's jurisdiction, however, is set out in section 123 of the WSIA. *Decision No. 2105/01* concluded that section 126 does not authorize the Board to limit the Tribunal's jurisdiction by policy; the Tribunal must determine its jurisdiction through the interpretation and application of section 123.

Decision No. 2021/01R (2005), 72 W.S.I.A.T.R. 16, agreed with *Decision No. 2105/01I2* and considered the further questions of when an overpayment occurs and the effect of the WSIA on the Tribunal's jurisdiction over overpayments discovered after 1998. The Vice-Chair concluded that the policy in effect when the mistake is discovered should apply and that the Tribunal continues to have jurisdiction over overpayments relating to pre-1998 accidents even though the overpayments are discovered after 1998. The WSIA, however, limits the Tribunal's jurisdiction over accidents governed by the WSIA.

As noted in the last Annual Report, some Board policies, such as the policy on mental stress, state that they apply to a date prior to their approval by the Board's Board of Directors. Questions have arisen about whether this results in retroactive application of policy and whether the Board has the authority to adopt policy retroactively. *Decision No. 1647/04* (2005), 75 W.S.I.A.T.R. (online), found that the rules of interpretation applicable to legislation should apply to section 126 policy, given the statutory requirement to apply it. Since there is nothing in the WSIA explicitly or implicitly authorizing the retroactivity of Board policy, the Panel agreed with *Decision No. 2828/01* (2003), 67 W.S.I.A.T.R. 81, that the Board did not have the statutory authority to adopt retroactive policy. Accordingly, the Board stress policy that was in force at the time of the accident applied. And see *Decision No. 2685/01* (November 25, 2004) and *Decision No. 1468/05* (2005), 75 W.S.I.A.T.R. (online).

Tribunal cases continue to take the view that informal Board "policy" or "practice" may be considered by the Tribunal where it is relevant and helpful, even though it is not "policy" for the purposes of section 126. See, for example, *Decision No. 710/05* (May 19, 2005) which found that while the Tribunal was not required to apply Bill 99 Operational Policies Manual, Document No. 4.1, on Earning Basis, it could still be used for guidance in deciding consistently with other cases and on the merits and justice of the particular

case. *Decision No. 33/05* (2005), 74 W.S.I.A.T.R. 149, found that policies must be interpreted and applied in light of the applicable provisions in the Act and Regulation. The language in OPM Document No. 18-04-10, "Calculating FEL for Students, Learners and Apprentices" and OPM Document No. 05-02-02, "Calculating Temporary Total Disability Rate" was held to be flexible enough to be read consistently with the governing provisions.

Decision No. 1235/02R2 (2005), 73 W.S.I.A.T.R. 43, discussed OPM Document No. 15-02-03 on recurrences. This is an important policy, as it applies whenever a worker experiences a second incident. Where the second incident occurs at work, a determination must be made whether the incident is a recurrence or a new accident. The answer to this question determines which Act applies, which employer's account is responsible and which earning basis should be used to calculate the worker's benefits. OPM Document No. 15-02-03 considers that a recurrence occurs when there is no new accident or an "insignificant" new accident. *Decision No. 1235/02R2* found this policy to be consistent with common-law principles of causation in *Athey v. Leonati*[1996] 3 S.C.R. 458.

Appeals Under the Earlier Acts

During 2005, the Tribunal continued to hear appeals under the three previous Acts. The pre-1985 and pre-1989 Acts provide pensions for permanent disabilities and temporary benefits for short-term disabilities. The pre-1997 Act introduced a dual award system of non-economic loss (NEL) awards and future economic loss (FEL) awards for permanent impairment and retained temporary benefits for temporary disabilities.

The FEL scheme has been amended several times since its enactment. As of January 1, 1998, the WSIA replaced the mandatory FEL reviews at the R1 and R2 dates with discretionary annual reviews and review on material change in circumstance. Effective November 26, 2002, amendments in the *Government Efficiency Act, 2002* (GEA) provide for review of a final FEL award after 60 months if the worker suffers a significant deterioration which results in a NEL redetermination or an LMR plan is not completed within the 60 months. Given that most FEL awards granted under the pre-1997 Act are either approaching the final FEL review or have a final FEL review, a significant number of Tribunal decisions considered reviews of final FEL awards.

A final FEL remains in place until age 65 and is not affected by subsequent changes in circumstances; however, subsequent developments may be considered to the extent that they shed new light on circumstances at the final FEL review. *Decision No. 1334/03* (January 28, 2005), found that a worker's partial FEL could be adjusted after the final review to consider the subsequent revocation of CPP benefits. The situation at the final FEL was not sustainable; the subsequent revocation of the CPP disability benefits cast new light on the circumstances at the final FEL review.

Several appeals considered issues arising under the GEA amendments, including what constitutes a final FEL award, when the NEL deterioration and redetermination need to

occur, and when an LMR plan terminates. In order for the FEL review provisions to apply, the worker must be receiving FEL benefits. Accordingly, the Tribunal has jurisdiction to consider a 0% "final FEL" after the 60 months has expired, since the worker is not in receipt of FEL benefits. See *Decisions No. 605/04R* (2005), 73 W.S.I.A.T.R. 94, and *2016/04R* (2005), 74 W.S.I.A.T.R. 130.

The 2004 Report noted two approaches to review of a final FEL award where the deterioration occurs after November 26, 2002. *Decision No. 2164/03* (November 26, 2004) confirmed the more recent caselaw that review of a final FEL award is available where there is a NEL redetermination on or after November 26, 2002, even if the condition deteriorated previously. Review of a final FEL award may also be available where the Board incorrectly terminates an LMR program. See *Decision No. 1011/04* (2004), 72 W.S.I.A.T.R. 152, where the Board reduced a three-year program to a two-year program so that it could be completed before the final FEL review. The worker completed the third year on his own. The LMR program was treated as continuing so that the FEL could be reviewed on completion of the program.

Turning to NEL awards, *Decision No. 1321/05* (2005), 75 W.S.I.A.T.R. (online), upheld the Board's decision to stop supplying an Activities of Daily Living (ADL) form in all NEL assessments. For a number of assessments, including lower back conditions, the AMA Guides prescribe specific percentages of impairment with no room for discretion. For other impairments, a range is available and the Board considers the ADL form in those cases

Pension appeals under the pre-1985 and pre-1989 Acts continued to apply established principles. *Decision No. 1033/02I* (June 21, 2005) is of interest as it found that the Board has jurisdiction under the pre-1985 Act to reconsider a "life-long" pension award on the grounds that the worker supplied false information.

Right To Sue Applications

The WSIA and earlier workers' compensation statutes are based on a "historic trade-off" in which workers gave up the right to sue in exchange for statutory no-fault benefits. Right to sue applications may raise complicated legal issues, often in tragic or unusual circumstances. For example, *Decision No. 949/04* (2005), 75 W.S.I.A.T.R. (online), considered whether a right of action was taken away when an executive officer struck a worker with his car in the employer's parking lot following a heated argument. It was held that the historic trade-off was intended to protect workers and employers from recklessness or carelessness, but not to protect parties who formed an intent to harm others.

A number of cases considered the interaction between workers' compensation and other legal entitlements, such as no-fault insurance, products liability, medical malpractice and wrongful dismissal. *Decision No. 137/04* (2004), 71 W.S.I.A.T.R. 134, considered an application by a car manufacturer who was sued by a police officer for injuries sustained in a motor vehicle accident. The police officer had initially claimed benefits, and his

Schedule 2 employer was *dominus litus* under section 30(11) of the WSIA. Accordingly, the Schedule 2 employer had the authority to enter an agreement allowing the worker to withdraw his claim for benefits and sue the car manufacturer. And see *Decision No. 618/05I* (May 18, 2005) which considers the supply of a defective trolley boom.

Decision No. 463/04 (November 5, 2004) found that injuries due to negligent physiotherapy treatment following surgery for a compensable condition were covered by the Act. Accordingly, the right to sue vested in the Board, rather in the worker. *Decision No. 1319/01 2* (November 26, 2004) acknowledged that an action for wrongful dismissal can lie outside workers' compensation legislation but held that a worker cannot avoid the Act by framing his action in contract. The worker's action against the employer was removed because it was linked to the compensable accident; however, the worker could still sue the employer's insurance company for benefits to which he might be entitled under the insurance policy.

Several cases considered the effect of statutory accident benefits (SABs) payable under the *Insurance Act*. *Decision No. 465/05* (September 22, 2005) found that, unlike section 17 of the pre-1997 Act, section 31 of the WSIA does not give the Tribunal jurisdiction to determine whether a driver is entitled to workers' compensation benefits if no court action has been brought. Accordingly, an application by an insurer who had paid SABs was denied. *Decision No. 388/05* (August 11, 2005) similarly found that the Tribunal did not have jurisdiction to consider whether the Board should have paid interest to an insurer who had paid SABs to the worker, rather than the worker. The Tribunal does not have jurisdiction under WSIA to consider an agreement for the reimbursement of benefits paid by an insurer, despite the policy arguments by the insurer. And see *Decision No. 742/04* (2005), 74 W.S.I.A.T.R. 90, and *Decision No. 742/04R* (November 22, 2005), which considered section 10(15) of the pre-1997 Act, which provides that no NEL or FEL benefits shall be paid to a worker who would be entitled to SABs unless the worker confirms his election to claim benefits.

Another interesting right to sue application is *Decision No. 1075/05* (2005), 74 W.S.I.A.T.R. 276, which considered an action by the estate of an apple picker who was killed when he was run over by a tractor. While there was no documentation, the deceased was found to be a worker since the employer controlled the performance of the work. The deceased had provided support to his parents and siblings for religious and cultural reasons and they were found to be "dependants" under the Act, since they were partly dependent on his wages. And see *Decision No. 611/05* (2005), 73 W.S.I.A.T.R. 232, which considered whether a recreational, social and service club was covered by the Act or whether summer students injured in a car accident could sue it.

Employer Issues

The year 2005 saw several decisions on the Board's new Merit Adjusted Premium Plan (MAPP) which was introduced on January 1, 1998, for small employers. The Tribunal continued to hear a significant number of employer appeals on issues such as classifications, penalties, cost relief, cost transfers and interest.

Decision No. 1062/02 (2005), 72 W.S.I.A.T.R. 66, considered whether the discontinuance of the NEER plan and introduction of MAPP had a retroactive effect, which was beyond the authority of the Board. The Panel found that while MAPP relies on an employer's past accident record, this is not for the purpose of increasing previous assessments but to determine the associated cost risk for the purpose of determining increases or decreases in current and future assessments. Accordingly, the MAPP policies did not attract the presumption against retroactive effect. While a different approach was possible and might arguably have been preferable, the MAPP program was within the Board's discretion to adopt and was not inconsistent with the Act.

An employer appealed the denial of a 7% base premium reduction under MAPP. The transitional provisions in OPM Document No. 13-02-04, indicated that employers with a surcharge in the final year in NEER could not receive a rebate in the first year of MAPP. While the OPM Document was not in force at the relevant time, similar provisions were contained in earlier documents, which had been approved and minuted by the Board of Directors. *Decision No. 3/04* (2005), 73 W.S.I.A.T.R. 70, applied *Decision No. 871/99I2* (2000), 53 W.S.I.A.T.R. 101, to find that these earlier documents constituted section 126 policy which the Tribunal was required to apply. *Decision No. 2041/04* (2005), 73 W.S.I.A.T.R. 141, considered the requirement in Board policy that MAPP adjustments are generally only available if the employer is in operation for three years. The premium adjustment earned by a sole proprietorship could not be transferred to a corporation on an asset sale, since the corporation was a separate legal entity.

As mentioned previously, legal principles of causation apply when there is an appeal that accident costs should be apportioned. These principles are particularly important to Schedule 2 employers, since they are not entitled to SIEF relief. *Decision No. 3155/00R* (2005), 73 W.S.I.A.T.R. 11, reviewed the causation principles set out in *Athey v. Leonati* [1996] 3 S.C.R. 458 (especially those governing multiple tortious injuries and divisible injuries and the thin skull rule) and found OPM Document No. 08-01-05 was consistent with these principles. Board policy allows for a reduction in benefits for a pre-existing, non-compensable condition, which is not measurable, but which creates a pre-existing disability that enhances the residual compensable disability. While this is often referred to as "apportionment," "attribution of causation" is more accurate. The principle is that an employer is only liable for the effects of workplace accidents occurring while it employs the worker, and not for the effects of workplace accidents with other employers. And see *Decision No. 604/04R* (June 29, 2005), which held that where there are sequential accidents involving different employers, apportionment or attribution is only possible if specific fact findings on causation are made which support such attribution.

Turning to classification appeals, the Tribunal continues to apply the best-fit test. *Decision No. 1664/02* (June 16, 2005) held that the legal principle of estoppel does not prevent the Board from reclassifying an employer under the new classification scheme, given the significant changes in that scheme. On a classification appeal, the Tribunal must treat information about classification of competitors carefully. There is usually no direct evidence about the competitor's business activities and the fact that some

employers may be incorrectly classified at any given time is not an exceptional circumstance warranting a variation in Board policy. See *Decision No. 1838/04* (2005), 73 W.S.I.A.T.R. 128. *Decision No. 1186/05I* (2005), 74 W.S.I.A.T.R. 306, is also of interest, as it recognized that there is an inherent link between NEER premiums and an employer's rate group, and that the Board is entitled to recalculate all of an employer's premiums when it is directed by the Tribunal to reclassify an employer. An employer who had received a NEER refund under the old classification system based on higher accident cost records in the old rate group was appropriately assessed a NEER surcharge when it was assigned to the new lower rate group.

There were a number of appeals concerning the Board's general policy of making a reclassification retroactive for two years. *Decision No. 902/05* (September 29, 2005) clarified that this is not meant as a penalty but rather is intended to level the playing field by recovering some of the premiums, which an employer should have been paying. The Tribunal will look at the individual circumstances of the employer to see if this period should be varied. Compare *Decision No. 1793/04* (2004), 72 W.S.I.A.T.R. 220, which reduced the period to one year and *Decision No. 1838/04*, which affirmed the two years. OPM Document No. 08-01-09 also provides for some exemptions; in particular, reclassifications can be retroactive for five years if the employer does not provide complete or accurate information or delays or withholds information. *Decision No. 935/05* (2005), 75 W.S.I.A.T.R. (online), found that to justify five years there must be persuasive evidence that the employer was guilty of deliberately misleading the Board.

A late filing penalty of $1,000 for a late annual reconciliation statement was challenged as contravening the *Criminal Code* provisions on rates of interests. *Decision No. 1414/05* (2005), 75 W.S.I.A.T.R. (online), applied the Supreme Court of Canada decision in *Garland v. Consumers' Gas Co.*, [1998] 3 S.C.R. 112, in finding that the charge was properly a penalty for late filing of statements, rather than interest charged for use of money.

For other interesting employer decisions, see *Decision No. 1658/04* (2004), 71 W.S.I.A.T.R. 221 (which allowed 100% cost transfer where a worker was "rear ended" by a third party driver), *Decision No. 1555/04* (2004), 72 W.S.I.A.T.R. 185 (which considered the requirements of segregated payroll for different business activities and whether a warehousing operation was ancillary to a manufacturing operation) and *Decision No. 1201/05* (September 13, 2005) (which found that a file was not active for NEER purposes when a worker was paid temporary benefits while attending a NEER assessment).

Occupational Disease

Occupational disease cases raise some of the most complicated medical and factual issues, since they involve workplace exposure to harmful processes or substances. Occupational diseases are compensable if they fall under the statutory provisions governing "occupational disease" or "disablement." The statutory definition of "occupational disease" includes workers who must be removed from workplace exposure for preventive reasons. See *Decision No. 1693/05* (October 13, 2005), an unusual case concerning preventative removal of a goldsmith from exposure to silica.

As mentioned in the 2004 Annual Report, the Board has adopted an Adjudicative Advice Document on chronic obstructive lung disease (COLD) and dust exposure. This document, while not Board policy, was considered in several Tribunal decisions in 2005. *Decision No. 1164/02* (May 20, 2005), considered COLD and exposure to dust in an Ontario steel foundry, then in New Brunswick mines and, finally, in Ontario mines. *Decision No. 860/03* (2005), 72 W.S.I.A.T.R. 89, found that the worker's prior coal mining experience in England and smoking increased the risk of his developing COLD due to hard rock mining in Ontario over a 20-year period. The Adjudicative Advice was not useful in this context, as it did not address the weight to be given to exposure evidence where Ontario exposure was superimposed on previous exposure and constituted a pre-existing vulnerability.

Decision No. 865/92R3 (2005), 72 W.S.I.A.T.R. 12, directed the Board to assess the worker's pension taking into account the Tribunal's finding that smoking and exposure to dust as a nickel miner were equally significant contributing factors in the development of the COLD. The nature of the worker's entitlement was referred back to the Board after which the Vice-Chair will issue a final decision on pension quantum.

Board policy on lung cancer and asbestos was considered in *Decision No. 1443/04* (2005), 75 W.S.I.A.T.R. (online). The worker's fatal cancer was found to be compensable although the policy requirement of seven years exposure was not met. The policy applied to smokers and people with a family history of cancer. The worker was not a smoker, had no family history and also had exposure to other substances, such as silica. On the evidence, the worker was entitled to the statutory benefit of the doubt. *Decision No. 550/05* (July 25, 2005) found that the worker's stomach cancer was not compensable where the worker was employed in a copper refinery and smelter and had only minimal exposure to asbestos wrap. *Decision No. 380/05* (2005), 73 W.S.I.A.T.R. 196, allowed an appeal in a fatal lung cancer claim where a nickel miner had exposure to sinter plant operations from 1949-1950. As of 1995, Board policy had deleted the requirement of three months exposure to sintering between 1948 to 1951. While the exact number of months was not established, the Tribunal was satisfied that the worker had sinter exposure. This did not prevent the possibility of a successful argument in a different case that evidence of purely minimal exposure did not increase the risk of lung cancer.

Noise-induced hearing loss is also an occupational disease. Several decisions considered how to assess conflicting audiograms. It is Board practice not to rely on company audiograms since the equipment may not be kept up-to-date, testing may not be done in a soundproof booth and the tester may not be adequately qualified. While the practice should not be applied rigidly, there are reasons for it, which should be considered. See *Decisions No. 1104/05* (August 3, 2005) and *1279/05* (August 4, 2005). Another relevant factor is whether the worker has been removed from exposure long enough for test results to be accurate. See *Decision No. 1458/05* (August 26, 2005).

Other interesting occupational disease cases include *Decisions No. 2128/04* (November 17, 2005) and *550/05* on stomach cancer and various mining exposures. *Decision No. 787/99* (2005), 75 W.S.I.A.T.R. (online), agreed with previous Tribunal decisions that the

Occupational Disease Panel's Reports were intended to be used by the Board in developing policy, rather than as evidence in deciding entitlement in individual cases. And see *Decision No. 432/02* (November 9, 2004) and *Decision No. 1764/04* (September 9, 2005) on lung cancer, uranium mining and OPM Document No. 16-02-04, which is based on the BEIR IV [Biological Effects of Ionizing Radiation-IV for Health Risks of Radon and other Internally Deposited a-Emitters, National Academy Press, Washington D.C. (1988)] model.

Miscellaneous

During 2005 there were a number of decisions that considered the Tribunal's jurisdiction and the scope of the Act. The legal doctrine of *functus officio* was applied in *Decision No. 833/05* (2005), 74 W.S.I.A.T.R. 232, to prevent the Board from considering a matter as a fresh claim when the Tribunal had already decided the same issues.

Decision No. 2072/03 (2005), 73 W.S.I.A.T.R. 58, considered the application of the *Bill of Rights* and the *Charter of Rights* to a widow's claim for dependency benefits prior to April 1985, the date on which WSIA amendments restored dependency benefits for spouses who had remarried. *Decision No. 897/02R2* (October 20, 2005) granted the Board's request to reconsider a grant of survivor benefits to a same-sex partner on the basis that legislation in place at the time did not authorize such benefits. The Panel indicated that it would also consider the surviving partner's constitutional argument that the definition of "spouse" is contrary to section 15 of the Charter. The proceedings were adjourned pending the Supreme Court of Canada's review of the Ontario Court of Appeal's decision in *Hislop v. Canada (Attorney General)*(2004), 246 D.L.R. (4th) 644. Just prior to the publication of this Annual Report, the Board advised that it had reviewed the current state of the law in Ontario and was withdrawing its reconsideration request in light of all the surrounding circumstances of the case.

Several decisions considered conduct by paralegals. A reconsideration was granted in *Decision No. 2718/00R* (December 7, 2004) when the representative did not obtain his client's instructions. The Vice-Chair also noted concerns arising under the Tribunal's Code of Conduct for Representatives since the representative made submissions which appeared contrary to the worker's interests. *Decision No. 3536/00ER3* (2005), 74 W.S.I.A.T.R. 20, granted a reconsideration of a time extension where a paralegal was charged with 13 counts of forgery and 13 counts of knowingly making a false promise of employment in immigration matters. The Vice-Chair noted that workers' compensation procedures are non-adversarial and consultants, who are largely unaccountable, represent almost half of workers. The Vice-Chair accepted that the worker had been misled based, in part, on evidence of similar misconduct by the paralegal as an immigration consultant.

At the close of 2005, the Tribunal could reflect with pride that after 20 years, no decision of the Tribunal had been successfully quashed on judicial review. Since the Tribunal has released well in excess of 30,000 decisions in its 20-year history, this remarkable record reflects the excellence of the Tribunal's decisions, and the dedication of the Tribunal's adjudicators and staff.

As noted below, one of the most interesting decisions in 2005 was the Court of Appeal reversing a Divisional Court decision that had quashed Tribunal *Decisions No. 770/98* and *770/98IR*. In a strongly worded decision, the Court of Appeal reaffirmed the standard of review of Tribunal decisions was patent unreasonableness, and stated:

> The Tribunal carefully considered all the evidence and reached, and explained, its decision. In short, the Tribunal did precisely what it was supposed to do.

The matters outlined in this section demonstrate that this past year was a busy one in regards to judicial review activity. General Counsel and lawyers from the Tribunal Counsel Office co-ordinate all responses to judicial review applications and other court applications, and represent the Tribunal in court in most instances.

Judicial Review

1. Decisions No. 770/98I (October 27, 1999) and 770/98IR (February 5, 2002); Roach v. Ontario (Workplace Safety and Insurance Appeals Tribunal), [2005] O.J. No. 1295 (C.A.)

On April 7, 2005, the Court of Appeal unanimously granted the Tribunal's appeal from the only decision of the Divisional Court ever to have quashed a Tribunal decision.

This case involves a worker who was granted chronic pain entitlement by the Board, but was awarded no future economic loss. She appealed this to the Tribunal, alleging she did not have chronic pain, but instead had a rare organic condition known as traumatic vertebrobasilar ischemia (TVBI). In *Decision No. 770/98I*, the Tribunal Panel confirmed the worker had chronic pain and dismissed her appeal. In coming to its finding, the Panel concluded the worker had hit her head only once at the time of her accident.

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

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

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

At the Court of Appeal the Tribunal took the position that the Divisional Court had failed to appreciate the Tribunal's decision was written the way it was because it was a *reconsideration* of its first decision. The test on a reconsideration is whether there was good reason to believe there was a significant defect in the decision that would change the result of the original decision. Further, the Tribunal argued the reasons provided by the Panel in rejecting the affidavit were more than adequate, and the decision was certainly not patently unreasonable.

The Court of Appeal granted the Tribunal's appeal. MacPherson J.A., writing for the Court, reaffirmed the standard of review was patent unreasonableness. He stated that the Divisional Court had erred in its conclusion that the Tribunal decision should be quashed. Contrary to the findings of the Divisional Court, the Court of Appeal found the Tribunal's decision had focused on the correct issue; that it had sufficiently explained the rejection of the affidavit evidence; and the Tribunal had dealt extensively with all the medical evidence and had explicitly resolved the conflicting opinions of the physicians.

The Court of Appeal stated:

> The Tribunal carefully considered all the evidence and reached, and explained, its decision. In short, the Tribunal did precisely what it was supposed to do.

The Court of Appeal set aside the decision of the Divisional Court and reinstated the final decision of the Tribunal.

The Applicant filed an application for leave to appeal to the Supreme Court of Canada. On November 10, 2005, the Supreme Court of Canada dismissed the application for leave to appeal (per Chief Justice McLachlin, Justice Binnie and Justice Charron).

2. Decision No. 1384/03 (December 30, 2003); Vitulano v. Ontario (Workplace Safety and Insurance Appeals Tribunal), [2005] O.J. No. 1525 (Div. Ct.)

Two sisters were suspended at the same time for smoking in a non-smoking area at work. Sister #1 in *Decision No. 1384/03* reported an accident within a few hours of returning after her suspension. Sister #2 (*Decision No. 1509/02* below) reported an accident later that day, before the suspension took effect.

In *Decision No. 1384/03* the Tribunal Panel reviewed the medical evidence and heard the testimony of the witnesses for the worker and the employer. The Tribunal denied initial

entitlement to the worker. The Tribunal did not find the worker to be credible. The worker commenced an application for judicial review.

The judicial review for this worker was heard by the Divisional Court Panel of Justices Lane, Jennings and Swinton on April 6, 2005. The Divisional Court unanimously dismissed the application for judicial review, stating:

> In our view, the Tribunal carefully reviewed the evidence and gave reasons for its decision. The decision it reached on the basis of the evidence was not patently unreasonable.

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

As noted above, Sister #2 was also suspended for smoking at work. However, Sister #2's claim was allowed by the Board. The employer appealed to the Tribunal. A Panel of the Tribunal allowed the employer's appeal, reversing initial entitlement for the worker. Sister #2 then also brought an application for judicial review.

Although Sister #1's judicial review was dismissed, Sister #2 filed a factum to proceed with her own application for judicial review. However, Sister #2 then decided to adjourn the judicial review and file an application for reconsideration with the Tribunal. The Tribunal consented to the adjournment. At the end of 2005 the reconsideration application was still pending at the Tribunal.

4. Decisions No. 1584/02 (July 15, 2003) and 1584/02R (June 16, 2004); Klimczak v. Ontario (Workplace Safety and Insurance Appeals Tribunal), [2005] O.J. No. 5219 (Div. Ct.)

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

The worker's application for judicial review was heard on November 29, 2005. After hearing from counsel for the Applicant and for the Tribunal, the Divisional Court panel of Justices Pardu, Epstein and Lax dismissed the application. The Court stated that, as per the *Roach* decision, the standard of review was patent unreasonableness, and the Tribunal had carefully reviewed the considerable volume of evidence and reached and explained its decision.

5. Decision No. 117/04 (September 27, 2004); Lawrence v. Ontario (Workplace Safety and Insurance Appeals Tribunal), (December 20, 2005) unreported (Div. Ct.)

A courier was injured while making a delivery. He brought an action for damages. The defendants applied to the Tribunal under the Act for a decision on whether the courier's

action could proceed. A Tribunal Panel found the courier was a worker under the Act, rather than an independent operator, and that his right of action was therefore taken away. Counsel for the worker commenced an application for judicial review.

The Divisional Court heard the judicial review in London on November 9, 2005. After hearing from counsel for the Applicant, counsel for the defendant and counsel for the Tribunal, the Panel of Cunningham A.C.J., Platona J. and Pierce J. reserved.

The decision, released on December 20, 2005, dismissed the application for judicial review. The Divisional Court found that the "Tribunal is a specialized body protected by a strong privative clause, and is entitled to curial deference in its interpretation of its constituent statute and assessment of the facts… Even if we might have come to a different conclusion, we are of the view that the Tribunal used the correct approach and applied the correct principles."

6. Decisions No. 18/88I (March 22, 1988) and 18/88 (October 27, 1988); Lopez v. Workplace Safety and Insurance Appeals Tribunal, Workplace Safety and Insurance Board, and Toronto General Hospital (December 14, 2005) unreported (Superior Ct.)

In 1988 a Tribunal Panel heard an appeal from the worker for further benefits as of January 1986. The worker believed that the WSIB had wrongfully released his medical information to his employer. In his view, because the Board had released his information, the Tribunal had no jurisdiction to hear the appeal.

The Panel did not agree and rendered a decision that the Tribunal had jurisdiction to hear his appeal. As the Panel commented, it was not clear what the worker's remedy would be if he could not appeal to the Tribunal.

Fifteen years later, the worker commenced an application for judicial review of the Tribunal's decision. He sought relief under the Charter against the Board and Tribunal, as well as various other novel remedies. While preparing to file a further motion, it was discovered that the Applicant had been declared a vexatious litigant in another proceeding. Under section 140 of the *Courts of Justice Act*, a vexatious litigant can only proceed with a new proceeding if he gets leave of the Court.

The Applicant made numerous unsuccessful attempts in Superior Court and the Court of Appeal to overturn the finding that he was a vexatious litigant. Eventually the Court of Appeal decreed the Applicant could file no further materials with respect to that matter. The Applicant then sought leave to proceed only with the judicial review application.

That motion was heard before Justice Sachs on December 14, 2005. After hearing from the Applicant, Counsel for the Board and Counsel for the Tribunal, Justice Sachs found that the Applicant had not provided any evidence to satisfy her that his judicial review application should be allowed to proceed. She also ordered that no further material

relating to this application is to be accepted by the Court, if such material is inadvertently received the matter will not be listed, and if listed it should be removed from the list without a hearing.

Section 140(4)(e) of the *Courts of Justice Act* states that "no appeal lies from a refusal to grant relief to the applicant".

7. Decisions No. 1858/99 (February 10, 2000), 1858/99R (December 27, 2000), and 1858/99R2 (April 15, 2005)

This Tribunal decision denied a section 147(4) supplement. The Applicant commenced a judicial review, and then asked to adjourn it to pursue an application for reconsideration.

The reconsideration was denied by a different Tribunal Panel. At the end of the year, the Applicant filed a Notice of Abandonment of the judicial review.

8. Decisions No. 3536/00E (January 8, 2001), 3536/00ER (August 14, 2001), 3536/00ER2 (May 5, 2003) and 3536/00ER3 (2005), 74 W.S.I.A.T.R. 20

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

The worker retained Counsel, who commenced an application for judicial review. Materials were filed by the Tribunal and worker. However, Counsel for the worker decided to adjourn the judicial review, and commence a further reconsideration application.

This third reconsideration was successful. *Decision No. 3536/00ER3* granted the time extension. The judicial review application was withdrawn.

9. Decisions No. 433/99 (June 24, 1999) and 433/99R (May 30, 2000)

The Vice-Chair denied entitlement to a worker for a back disability. Counsel for the worker served an application for judicial review. After a significant delay, the Applicant served revised materials. The Tribunal filed its factum. A date has been set to hear the application for judicial review in Sudbury on March 20, 2006.

10. Decisions No. 653/99 (November 15, 1999) and 653/99R (January 21, 2002)

The Tribunal denied the worker's appeal for an increased future economic loss and non economic loss, on the grounds that the worker's medical condition was caused by non-compensable factors. The worker delayed more than three years before bringing the application for judicial review. There were technical problems with the Applicant's materials. In late December the Applicant revised and re-served his materials.

11. Decisions No. 2454/03 (January 20, 2004) and 2454/03R (September 15, 2004)

The Tribunal found that the Applicant's work did not play a significant role in the development of his bilateral carpal tunnel syndrome, and denied him entitlement for benefits. The Applicant commenced an application for judicial review. This judicial review will be heard in Toronto in March 2006.

12. Decisions No. 1022/02 (December 9, 2003), 1022/02R (August 18, 2004) and 1022/02R2 (November 1, 2005)

Decision No. 1022/02 denied the worker entitlement for benefits for a bilateral shoulder and related left elbow condition that the worker claimed resulted from a disablement injury that occurred in the course of his employment. The worker subsequently retained another representative, who requested that the Tribunal reopen *Decision No. 1022/02* on the basis that there were errors in the Tribunal's process.

In *Decision No. 1022/02R*, the original Vice-Chair denied the reconsideration request. Counsel for the Applicant initially commenced an application for judicial review, then decided to adjourn the judicial review to pursue a further reconsideration application at the Tribunal. In the second reconsideration request, a different Vice-Chair decided that *Decision No. 1022/02* should be reopened. The second Vice-Chair found that a defect in the Tribunal's process occurred at the outset of the hearing of the worker's appeal, in that the worker and his previous Counsel were not of one mind on the question of whether the worker required a translator. Notwithstanding the substantial inconvenience to the parties, the second Vice-Chair held the hearing ought to have been adjourned to enable the worker and his Counsel to rectify the lack of communication. As the threshold for reconsideration had been satisfied, the appeal will be reheard.

Other Court Actions

Stabryla v. Valli and Josefo

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

The worker then commenced an action in Kirkland Lake Small Claims Court against an adjudicator of the WSIB in Sudbury and Tribunal Vice-Chair Josefo. It appears the reason for the action was the worker's unhappiness with the denial of his appeal. The Tribunal and the WSIB filed statements of defence. Following receipt of the statements of defence, the worker withdrew his action.

Ombudsman Reviews

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

In 2005, the Ombudsman notified the Tribunal of its intention to investigate six matters. This is generally consistent with the number of notifications received in the last three years: 12 case-related notifications were received in 2004, three in 2003 and 18 in 2002. Notifications can relate to any decision issued at any time, not necessarily decisions released in the current year.

All notifications received in 2005, as well as those outstanding at the end of 2004, were closed in 2005. The Ombudsman's Office did not recommend any further action in any of the 14 case-related matters that were closed.

The 2004 Annual Report recorded that the Ombudsman was continuing to monitor and the Tribunal Chair had undertaken to keep the Ombudsman informed about, production problems which had arisen due to an insufficient number of Vice-Chairs. The Ombudsman also inquired in 2005 regarding delays in the issuance of decisions when the decision-maker is no longer with the Tribunal. The Ombudsman's Office closed this file after receiving the Tribunal Chair's assessment that the current approach is the most flexible and effective. While the Tribunal facilitates the completion of decisions in various ways, the solution to the problem depends on an adequate roster of knowledgeable Vice-Chairs. The Ombudsman's Office indicated it would continue to monitor the situation and the Tribunal Chair has continued to provide updates during this reporting period.

Tribunal Report

Tribunal Organization

Vice-Chairs, Members and Staff

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 2005 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Office of Counsel to the Chair

The Office of Counsel to the Chair (OCC) has existed since the creation of the Tribunal in 1985. It is a separate legal department from the Tribunal Counsel Office and is not involved in making submissions in hearings. The draft review process, which has been described in prior Annual Reports, is the responsibility of OCC, together with providing advice to the Chair and Chair's Office; training and professional development; current awareness and research; ensuring compliance with the *Freedom of Information and Protection of Privacy Act* (FIPPA); responding to FIPPA complaints and appeals; and assisting with Ombudsman matters.

Following a review of the reconsideration process, OCC has focused on providing advice and assistance to the Tribunal Chair and Chair's Office in handling certain reconsideration requests and post-decision inquiries. A review of privacy issues, particularly as they affect processing of appeals, was also undertaken in 2005. This has resulted in ongoing support to other departments in handling privacy matters.

Professional development continued to be important in 2005, given the four different legislative schemes, recent statutory amendments and extensive Board policy. OCC provided orientation training to a number of Vice-Chairs who joined the Tribunal in 2005. OCC also assisted in various knowledge management initiatives aimed at facilitating Vice-Chairs' and Side Members' access to information on law, policy and procedure.

Office of the Vice-Chair Registrar

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

All initial processing of appeals is completed by the Tribunal's OVCR. On receipt of an appeal, the Tribunal requests the Appeal Record from the Board. The Tribunal must then process the appeal for hearing by giving notice to the parties, ensuring that the appeal record is complete and that the case is ready for hearing.

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

Tribunal Report

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 results in a written decision with reasons. Request to have a matter put to the Vice-Chair Registrar are raised with OVCR staff.

The Registrar's Office is divided into a number of areas.

The Early Review Department

The Early Review Department is responsible for the initial processing of all Tribunal appeals. Staff review all Notices and Confirmations of Appeals (COA) to ensure that they are complete and meet legislative requirements. They also identify those appeals which can be heard by way of an expedited written process.

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

Vice-Chair Registrar Teams

Pre-hearing staff review all files to ensure that they are ready for hearing. This step is instrumental in reducing the number of cases that result in adjournments and post-hearing investigations due to incomplete issue agenda, outstanding issues at the Board or incomplete evidence. Staff respond to party correspondence and queries in the weeks leading up to a hearing, including Vice-Chair or Panel instructions.

Alternate Dispute Resolution Services

ADR services are offered to parties to resolve appeals without proceeding to a formal hearing. If the parties reach a resolution, an agreement is formalized in writing and submitted to the parties for their signatures. The executed agreement is then submitted to a Vice-Chair for review. If the Vice-Chair is satisfied that the resolution is consistent with law, Board policy and is reasonable based on the facts of the case, the Vice-Chair will issue a written decision incorporating the terms of the agreement.

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

Mediation Services

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

Where both parties are amenable to mediation and the appeal is suitable for the process, the appeal is assigned to a mediator for substantive review. The mediator works with the parties in a neutral and confidential setting to arrive at a jointly

acceptable resolution to an appeal. Mediations are typically conducted as face-to-face meetings but teleconferences are used where appropriate. The mediator may contact the parties in advance of the mediation date to discuss options for resolving the appeal, to clarify issues or to identify outstanding information.

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

Single Party Appeals

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

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

Tribunal Counsel Office

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

Hearing Work

Under the Tribunal's case processing model, TCO now handles only those appeals which raise complex or novel medical, legal or policy issues. These appeals are streamed to TCO from the Early Review Department, or are assigned to TCO for post-hearing work at the direction of a Panel or Vice-Chair. TCO also handles reconsideration applications on Tribunal decisions.

Pre-hearing Work

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

Tribunal Report

Post-hearing Work

After a hearing a Tribunal Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be rendered. In those circumstances, the Vice-Chair or Panel sends a written request for assistance to the Post-hearing Group Leader in TCO. The request is assigned to a TCO legal worker or lawyer, depending on the complexity of the matters involved. The legal worker or lawyer carries out the directions of the Panel or Vice-Chair, and co-ordinates any necessary input from the parties to the appeal.

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

Lawyers

TCO has a small group of lawyers with considerable expertise on workplace safety and insurance law and administrative law matters. As noted above, lawyers in TCO handle the most complex appeals involving legal or medical issues. TCO lawyers also provide technical case-related advice to legal workers in TCO and the Office of the Vice-Chair Registrar.

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

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

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

Legal Workers

TCO legal workers 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. The TCO Post-hearing Group Leader assists with the direction of, and assignment of work to, the legal workers. The Group Leader also reviews and analyzes the types of post-hearing requests, the reasons for adjournments, and monitors the progression of the post-hearing caseload.

Medical Liaison Office

The Tribunal must frequently decide appeals that raise complex medical issues, or require further medical investigation. 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 of the Tribunal's interactions with the medical community. This positive relationship is demonstrated by the Tribunal's continuing ability to readily enlist leading members of the medical 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 for review and comments.

Medical Counsellors

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

The Medical Counsellors review the cases identified by MLO prior to the hearing to verify that the medical evidence is complete and that the record contains any necessary opinions from appropriate experts. They also ensure that questions or concerns about the medical issues which may need clarification by 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, 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 is 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.

Tribunal Report

Medical Assessors on the roster assist the Tribunal in a number of ways. They primarily provide opinions on specific medical questions which may involve examining a worker and/or studying the medical reports of other practitioners. For those Assessors specializing in a particular field of medicine, they may be asked to assist in educating Tribunal staff about a specific medical theory or procedure, provide an opinion on the validity of a particular theory which a Hearing Panel or Vice-Chair has been asked to accept or 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 these reports are made available to the Panels or Vice-Chairs requesting them as well as to the workers and employers on the appeal and the Board. Occasionally, a Panel or Vice-Chair may wish to question a Medical Assessor at the time of a hearing to clarify an opinion. In these cases, the Medical Assessor is asked to appear at the hearing and provide 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 Medical Assessor reports are cited in Tribunal decisions, the Medical Assessor does not make the decision on appeal. The decision to allow or deny an appeal is the sole responsibility of the Tribunal Panel or Vice-Chair.

The Appointment Process for Medical Assessors

The Medical Counsellors identify highly qualified health care professionals eligible to be appointed to the Tribunal's roster of Medical Assessors. Those health care professionals who agree to be nominated as candidates have their qualifications circulated to all the Medical Counsellors and members of the Tribunal's Advisory Group. In this way, the Tribunal has the benefit of the views of both the Medical Counsellors and the Advisory Group which is composed of representatives from the stakeholder community, when making its selections from the pool of available candidates.

Medical Assessor appointments are for a three-year term, and may be renewed.

Resources by MLO Available to the Public

Medical articles, discussion papers, and anonymized appeal transcripts of expert evidence on medical or scientific issues collected by the Tribunal's Medical Liaison Office are accessible to the public in the Ontario Workplace Tribunals Library. This collection of medical information is specific to issues that arise in the workers' compensation field and is unique within the Ontario WSIB system. New medical information is announced to the public as it becomes available through the WSIAT publication "In Focus" and, is also available on the WSIAT Web site.

Of all the medical information made available by MLO, WSIAT Medical Discussion Papers are the most frequently requested. Medical Discussion Papers are commissioned by the Tribunal to provide general information on medical issues

which may be raised in Tribunal appeals. They are intended to provide a broad and general overview of a topic and are written to be understood by lay individuals. Each Paper is written by a recognized expert in a specific medical field and presents a balanced view of the current medical knowledge on a specific topic.

Medical Discussion Papers are not peer reviewed and do not necessarily represent the views of the Tribunal. A Vice-Chair or Panel may consider and rely on the medical information provided in a Discussion Paper, but the Tribunal is not bound by a Medical Discussion Paper in any particular case. It is always open to parties to an appeal to rely on or distinguish a Medical Discussion Paper, or to challenge it with alternative evidence.

The Medical Discussion Papers are available to the public through the WSIAT Web site

Support Staff
TCO and MLO share a small group of dedicated support staff. Working under the direction of the Supervisor of Administrative Services, TCO support staff assist the lawyers, nurses and legal workers with case tracking input, file management, the preparation and filing of court documents, and general support duties.

Information Services

In 2005 the Tribunal pursued the use of knowledge management/knowledge sharing (KM/KS)* strategies to meet its objectives of ensuring well-reasoned, timely decisions. To this end an "information audit" was completed at the Tribunal. WSIAT staff were interviewed for the purpose of assessing how information is created, used and shared within the Tribunal. The audit identified that the Resource Department would be a key player in providing future knowledge management services to the WSIAT. In the first half of 2005 the group provided outreach sessions throughout Ontario, library services, web development, translation and publication services. In September 2005, the Resource Department became the "Information Services Group" and a Director of Information Services was hired to pursue a knowledge management strategy. At the same time, responsibility for the co-ordination of staff training was assigned to the group.

In the last quarter of 2005, the Information Services Group explored new ways of managing information. An example of this was the decision to make the *WSIAT Reporter* an electronic publication available free on the web. Volume 74 was the last printed volume of the Reporter and volume 75 will appear on the web in 2006. The Reporter began in January 1988 as the first reporting series in Ontario dedicated exclusively to workers' compensation. Volume 7 of the Reporter was dedicated to the pension assessment appeals leading case (*Decisions No. 915* and *915A*) and in 1990 the

* *Knowledge management can be defined as managing the flow of information by capturing, developing and using what people in the organization know. Good KM reinforces an organizational culture and promotes information sharing.*

Tribunal Report

Reporter included bilingual head notes. The Tribunal looks forward to bringing the Reporter to an expanded audience in a new accessible format.

The following are some highlights from 2005:

- Contract signed with CanLII to provide free full-text search access to WSIAT decisions
- Training and Development Policy
- Planning for a web-based information portal
- WSIAT Outreach programs around Ontario
- Archiving procedures introduced for the WSIAT Intranet/Internet
- Enhancements to WSIAT decision summary search
- Plans for an electronic *WSIAT Reporter*
- Published *Annual Report*, *WSIAT Reporter*, *In Focus* and materials for the 20th Anniversary of the WSIAT

During this period the WSIAT began planning for a web-based portal to assist OICs in writing decisions. When completed it will not only streamline access to existing computer services, but will also create opportunities for sharing information in the OIC community and will pull together external and internal information resources. In the coming year, the Tribunal will undertake the first phase in this portal strategy: research, design and IT infrastructure alignment.

Ontario Workplace Tribunals Library

The Ontario Workplace Tribunals Library provides services to the Workplace Safety and Insurance Appeals Tribunal, the Ontario Labour Relations Board, the Human Rights Tribunal of Ontario and the Pay Equity Hearings Tribunal. During this period the library launched a new website www.owtlibrary.on.ca, completed a collection development policy and provided valuable work experiences for students in library techniques courses.

Case Management Systems

The Case Management Systems Department (CMS) is responsible for the case management functions of the Tribunal as well as the management of information technology systems. In fiscal year 2005, this department contributed to information security and accountability initiatives, undertook information technology (IT) infrastructure upgrades and introduced case management system enhancements.

The more prominent IT projects in 2005 included the development of a plan for implementing Active Directory services, the upgrade of the secondary server environment and the renewing of Tribunal printers. Active Directory is a key element in the Tribunal's server management and security enhancement strategy and it is a background requirement for future software upgrades and portal development. The implementation of the service will take effect in 2006. The secondary server

environment project (used for development and testing) entailed eight conventional servers being replaced with new blade servers and a storage area network (SAN).

In addition, the Tribunal made refinements to its remote access gateway to improve connectivity for remote users; evaluated the need for "anti-spam" and "anti-spyware" software systems, and added wireless capability to the laptops in the portable computer lending pool.

A number of software upgrades were also introduced to enhance the Tribunal's customized case management system (tracIT©). This included the expansion of the document merge functionality; the introduction of comprehensive process documentation within the tracIT© "Help" system; and the implementation of a new hearing (and post-hearing) record documentation process.

The Case Management department also contributed to a number of joint information management projects including the enrolment of the Tribunal's decisions in the Canadian Legal Information Institute (CanLII). The department collaborated with the Information Services department and implemented a new curriculum for staff orientation and, assisted the Administration Services department in the procurement of digital hearing recording equipment. The CMS director also presented a paper at the 2005 CCAT conference in Ottawa (Council of Canadian Administrative Tribunals, June 19-21) on the tracIT© system and was an active member of the WSIAT steering committee for the RIM (Records and Information Management) project and the OIC portal development advisory committee.

Caseload Processing

Tribunal Report

Introduction

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

Caseload

At the end of Year 2005, there were 5,304 active cases within these two process stages. Chart 1 shows the distribution in more detail.

Chart 1: Inventory of Active Cases on 31-Dec-2005

Notice Process	
Cases active in Notice stage processing	1438
	1438
Resolution Process	
Early Review stage	110
Substantive Review	693
Hearing Ready	206
Scheduling and Post-hearing	2305
WSIAT Decision Writing	552
	3866
Total Active Cases	**5304**

Active Inventory

The level of the Tribunal's active inventory is affected by three factors: the number of incoming appeals in a year, the number of appeals that are confirmed as ready to proceed in that year, and the number of hearings and other appeal dispositions that are achieved in the year. In 2005, these factors combined to produce a 2% overall increase in active inventory. The most notable caseload increase is evidenced in the process category "Scheduling and Post-hearing." At the beginning of 2005, the shortfall in the number of adjudicators required to hear cases resulted in a growing backlog of hearings scheduled further into the future. The Tribunal was fortunate that several new adjudicators were appointed in 2005 and consequently anticipates a reduction in the hearing ready backlog in 2006 as the new adjudicators assume a full hearing caseload. Chart 2 shows the active inventory in comparison to previous years.

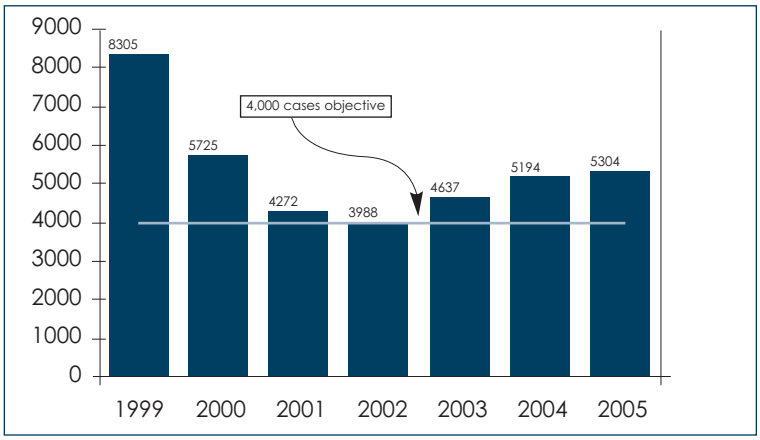


Chart 2:
Active Caseload

Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2005, the rate of intake for new appeals declined very slightly from 2004, and the rate of "reactivations" increased very slightly. In 2005 the Tribunal's overall intake from both sources totaled 4,490 and this represented a slight decrease from the 2004 total (4,504). Reactivations are appeals in which the appellant has indicated a readiness to proceed with an appeal following an inactive period during which the appellant may have acquired new medical evidence, received another final decision from the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions at the Board's Appeals Branch.

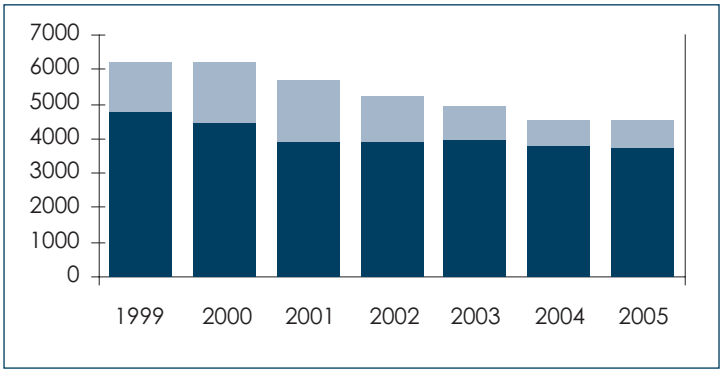


Chart 3:
Incoming Appeals

Case Resolutions

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

As shown in Chart 4, the Tribunal disposed of 4,389 cases in 2005. This included 1,817 "Pre-Hearing" and 2,572 "Hearing" dispositions.

Tribunal Report

Chart 4: Cases Disposed of in 2005

Resolved Through Pre-Hearing Processes	
Failed to confirm readiness	529
Withdrawn or Abandoned	398
Made Inactive or No Reply	890
Subtotal	**1817**
Resolved Through Hearing Processes	
Made Inactive or No Reply	108
Disposed following Tribunal Decision	2458
Withdrawn of Settled	6
Subtotal	**2572**
TOTAL	**4389**

Note: This chart excludes post-decision figures. The post-decision components of the workload (Reconsideration requests, Ombudsman investigations and applications for Judicial review) are summarized in Charts 13, 14 and 15.

Timeliness of Appeal Processing

Chart 5 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2005, a shortage of adjudicators meant that only 50% of cases were resolved within nine months, a decline of 15% from 2004. The Tribunal has an objective of completing 75% of cases within nine months, however, a significant portion of the caseload was held in the growing backlog of cases awaiting assignment to adjudicators throughout 2005.

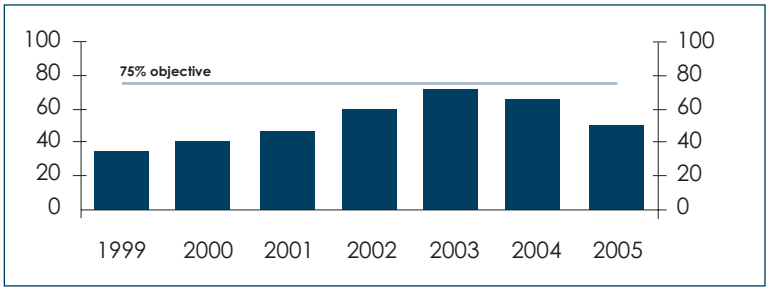


Chart 5: Percent Disposed of Within 9 Months

The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Chart 6 shows that the median time interval of these proposed hearing dates increased significantly in 2005 over 2004. As noted above, the increased interval is a result of requiring parties to wait for adjudicators to hear their appeals.

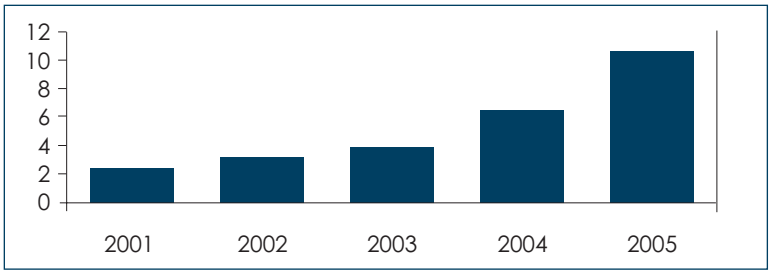


Chart 6:
Time to First Offered Hearing (Months)

An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 7, in 2005 this target was

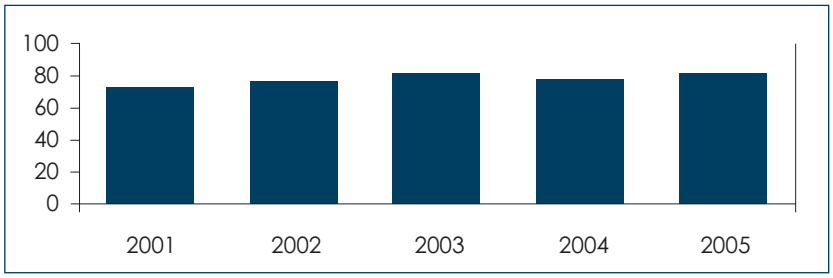


Chart 7:
Final Decisions (Percent Released Within 120 Days)

achieved 81% of the time, an increase of 4% over 2004.

Hearing and Decision Activity

Chart 8 depicts the Tribunal's Hearing and Decision production. In 2005 the Tribunal conducted 2,785 hearings (for 2,639 cases) and in this same period, issued 2,621 decisions. Overall levels of hearing and decision activity were 8-10% higher as compared with Year 2004. The Tribunal strives to achieve decision-readiness following completion of the first hearing. Some cases require post-hearing work following the first hearing, and some hearings are adjourned requiring a subsequent hearing before the same or a different Vice-Chair or Panel. Most cases (approximately 95%) require only a single hearing.

Tribunal Report

Chart 8: Hearings and Decision Production Figures for the Years 1996 - 2005

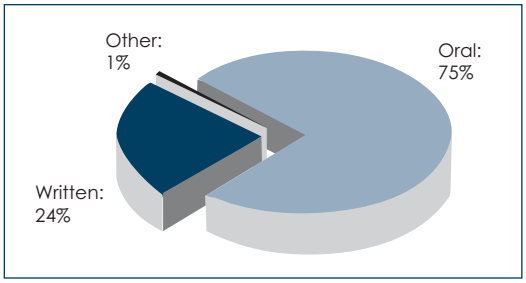
Year	Hearings Conducted		Cases Heard		Decisions Issued		Cases Disposed of By Decision	
	No.	% Change from Previous	No.	% Change from Previous	No.	% Change from Previous	No.	% Change from Previous
1996	1471	20%	1361	20%	1360	3%	1212	13%
1997	1978	34%	1866	37%	1653	22%	1426	18%
1998	2446	24%	2306	24%	2248	36%	1673	17%
1999	2843	16%	2690	17%	2673	19%	2096	25%
2000	4088	44%	3900	45%	3692	38%	3675	75%
2001	3979	-3%	3530	-9%	3768	2%	3499	-5%
2002	2322	-42%	2149	-39%	2571	-32%	2373	-32%
2003	2760	19%	2617	22%	2675	4%	2408	1%
2004	2589	-6%	2442	-7%	2391	-11%	2320	-4%
2005	2785	8%	2639	8%	2621	10%	2505	8%

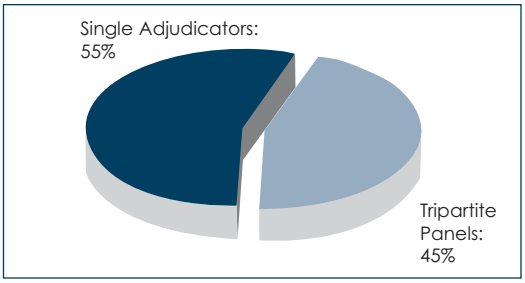
Note: This chart excludes decisions for Reconsideration cases (269 in total for 2005), and it excludes decisions issued by the Vice Chair Registrar (78 in total for 2005) during Notice Stage processing.

Hearing Type

In 2005 the percentage breakdown of hearing types was virtually unchanged from 2004. Oral hearings continued to be the most common hearing type at 75%, followed by written hearings at 24%. The remaining 1% of all hearings in 2005 was comprised of teleconferences, Vice-Chair Registrar and Motions Day case reviews. The percentage of single adjudicators declined in 2005 to 55% (from 65% in 2004); tripartite panels

Chart 9: Hearing Type





increased to 45% of cases heard. Chart 9 presents these hearing characteristics.

Representation at Hearing

Tribunal statistics show that for injured workers, 41% were represented by consultants, 21% by lawyers, 13% by the Office of the Worker Adviser and 12% by union representatives. The remaining 13% is allocated among various non-categorized representation, for instance, family friend, family member or MPP office. Employers were represented before the Tribunal as follows: 47% were represented by consultants, 32% by lawyers, 6% by the Office of the Employer Adviser and 3% by employer personnel. The remaining 12% are non-categorized.

Chart 10: Representation at Hearing

Worker Representation

A) In Worker Appeals		B) In Employer Appeals	
None Recorded	11%	None Recorded*	65%
Subtotal	11%	**Subtotal**	65%
Consultant	41%	Consultant	11%
Lawyer/Legal	21%	Lawyer	3%
OWA	13%	OWA	2%
Union	12%	Union	8%
Others*	2%	Others*	11%
Subtotal	89%	**Subtotal**	35%

Employer Representation

A) In Worker Appeals		B) In Employer Appeals	
None Recorded*	64%	None Recorded	11%
Subtotal	64%	**Subtotal**	11%
Firm personnel	13%	Firm personnel	3%
Consultant	9%	Consultant	47%
Lawyer	9%	Lawyer	32%
OEA	4%	OEA	6%
Others*	1%	Others*	1%
Subtotal	36%	**Subtotal**	89%

* Note: In employer appeals, workers and their representatives are often not present because in many of these cases the issues do not concern the worker. Similarly, there are many worker appeals where employers and their representatives do not attend.

Tribunal Report

Caseload by General Appeal Issue Type

The appeal type categorization of incoming cases and dispositions has been consistent over the years. In 2005, as in past years, Entitlement-related cases constituted the majority of cases (93%). Special Section cases (Right to Sue and Access) comprised typically small portions (7%). Charts 11 and 12 provide historical comparisons of intake

Chart 11: Breakdown of Incoming Cases by Appeal Type for the years 1998 - 2005

INPUT BY TYPE	1998 (%)	1999 (%)	2000 (%)	2001 (%)	2002 (%)	2003 (%)	2004 (%)	2005 (%)
Leave	0.1%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%
Right to Sue	0.4%	0.6%	0.7%	0.9%	1.0%	1.2%	1.4%	1.4%
Medical Exam	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Access	2.6%	3.4%	3.2%	3.5%	5.6%	4.1%	4.7%	5.2%
Total Special Section	**3.0%**	**4.0%**	**3.9%**	**4.4%**	**6.6%**	**5.4%**	**6.1%**	**6.6%**
Preliminary (not yet specified)	23.4%	15.4%	12.9%	7.2%	0.8%	2.1%	0.6%	0.4%
Pension	0.3%	0.5%	1.1%	0.7%	0.5%	0.6%	0.2%	0.1%
N.E.L./F.E.L. *	4.1%	6.0%	4.9%	4.4%	5.8%	7.2%	1.6%	0.8%
Commutation	0.3%	0.1%	0.1%	0.2%	0.2%	0.1%	0.1%	0.0%
Employer Assessment	8.2%	9.1%	8.5%	9.3%	7.8%	6.9%	4.3%	3.4%
Entitlement	54.2%	54.8%	61.0%	65.5%	69.2%	68.2%	79.3%	82.7%
Ext post WSIB dec deadline	2.9%	7.5%	6.0%	5.4%	6.7%	7.8%	6.4%	5.1%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	2.5%	1.1%	0.3%	0.1%	0.2%
Reinstatement	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%
Vocational Rehabilitation **	1.0%	0.7%	0.3%	0.2%	0.2%	0.1%	0.0%	0.1%
Classification	0.0%	0.0%	0.0%	0.0%	0.8%	0.8%	1.0%	0.6%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.2%	0.5%	0.2%	0.0%
Total Entitlement-related	**94.8%**	**94.1%**	**94.9%**	**95.5%**	**93.3%**	**94.6%**	**93.8%**	**93.4%**
Jurisdiction	2.2%	1.9%	1.2%	0.0%	0.1%	0.0%	0.1%	0.0%

Note: This chart excludes post-decision figures. The post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews) are summarized in Charts 13, 14 and 15.

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

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

Chart 12: Breakdown of Case Dispositions by Appeal Type for the years 1998 - 2005

OUTPUT BY TYPE	1998 (%)	1999 (%)	2000 (%)	2001 (%)	2002 (%)	2003 (%)	2004 (%)	2005 (%)
Leave	0.2%	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%	0.0%
Right to Sue	0.5%	0.6%	0.5%	0.6%	0.9%	1.4%	1.5%	1.0%
Medical Exam	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Access	3.4%	3.9%	2.3%	3.0%	6.0%	5.2%	5.0%	5.5%
Total Special Section	**4.2%**	**4.7%**	**2.8%**	**3.7%**	**7.0%**	**6.6%**	**6.5%**	**6.5%**
Preliminary (not yet specified)	29.0%	15.2%	9.8%	4.0%	2.1%	2.2%	1.6%	0.4%
Pension	0.3%	0.5%	0.7%	0.9%	0.8%	0.6%	0.5%	0.5%
N.E.L./F.E.L. *	3.2%	5.2%	6.4%	5.2%	5.3%	5.7%	6.4%	4.4%
Commutation	0.5%	0.6%	0.3%	0.1%	0.3%	0.1%	0.1%	0.0%
Employer Assessment	4.8%	16.0%	11.8%	8.4%	8.5%	11.0%	5.5%	5.5%
Entitlement	53.3%	51.7%	58.4%	68.0%	63.8%	62.4%	69.7%	75.0%
Ext post WSIB dec. deadline	0.1%	2.3%	7.8%	7.9%	8.5%	9.6%	8.2%	6.2%
Jurisdiction Time Limit	0.0%	0.0%	0.0%	1.3%	2.7%	0.5%	0.1%	0.2%
Reinstatement	0.5%	0.3%	0.2%	0.1%	0.2%	0.1%	0.0%	0.0%
Vocational Rehabilitation **	1.2%	1.7%	0.9%	0.5%	0.4%	0.3%	0.0%	0.0%
Classification	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	1.1%	0.8%
Interest NEER	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	0.1%	0.4%
Total Entitlement-related	**93.0%**	**93.4%**	**96.3%**	**96.3%**	**92.8%**	**93.3%**	**93.3%**	**93.5%**
Jurisdiction	2.8%	1.9%	0.9%	0.0%	0.2%	0.1%	0.1%	0.0%

Note: This chart excludes post-decision figures. The post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews) are summarized in Charts 13, 14 and 15.

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

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

and dispositions.

Inactive Inventory

In 2005, the inactive cases inventory grew slightly from 4,141 at the end of 2004 to 4,284 at the end of 2005, an increase of 3%. Cases are placed in the Inactive category by request of the appellant, or by a Tribunal Vice-Chair, without prejudice to the appeal. The most common reasons for placing a file in the Inactive status are to allow an appellant to pursue additional medical reports; obtain a representative or a final ruling from the Workplace Safety and Insurance Board pertaining to an issue raised at the Tribunal hearing.

Post-decision Workload

The Post-decision workload is derived from three sources: Ombudsman follow-ups (Chart 13), Reconsideration requests (Chart 14) and Judicial Reviews (Chart 15). The post-decision workload is predominantly driven by Reconsideration requests. In year 2005, the number of Reconsideration requests declined significantly, from 351 in 2004 to

Chart 13: Ombudsman Complaints, Activity and Inventory Summary

New Complaint Notifications Received	6
Complaints Resolved	14
Complaints Remaining	0

Chart 14: Reconsideration Requests, Activity and Inventory Summary

Inquiries (Pre-reconsideration) Remaining	51
Reconsideration Requests Received	218
Reconsideration Requests Resolved	279
Reconsiderations Remaining	134

Chart 15: Judicial Reviews, Activity and Inventory Summary

Judicial Reviews Received	3
Judicial Reviews Resolved	2
Judicial Reviews Remaining	12

218 in 2005.

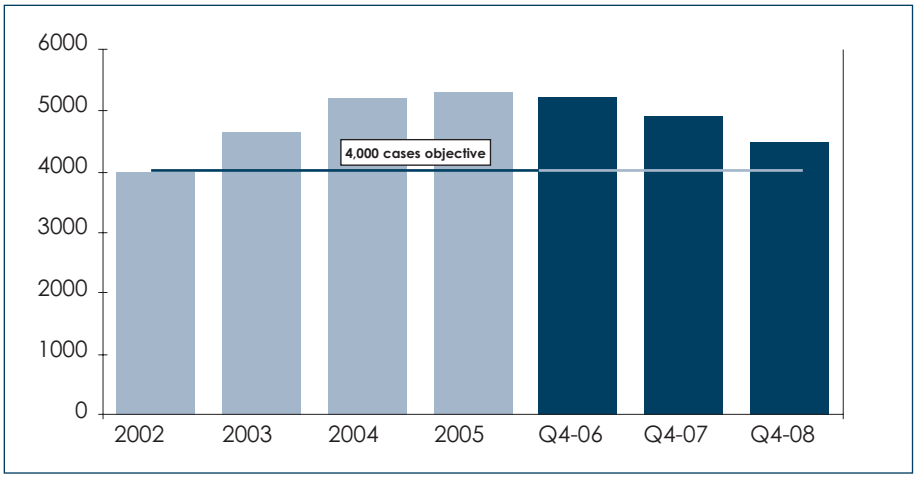
Looking Ahead – Planning for 2006 and Beyond

Since 2003, the Tribunal has experienced significant growth in its active inventory, with corresponding increases in the elapsed time before hearings could be scheduled, due to a shortage of adjudicators. This growth continued in the second and third quarters of 2005, when the active inventory increased by a further 200 cases. The addition of new adjudicators began to contribute positively to production later in 2005, and in the fourth quarter, the Tribunal began to reverse the inventory accrual trend. By the end of the year, the inventory rested at 5,304 cases, down slightly from an earlier peak level of 5,383.

Although the growth in the Tribunal's active caseload has led to unavoidable delays in scheduling hearings, we have been successful in reducing the time taken for the release of a decision once the hearing is complete. In 2005, 81% of decisions were delivered within 120 days of completing the hearing process, an increase of 4% over 2004. The Tribunal is committed to making further improvements in the timeliness of decision release in 2006.

The process of appointment and training of new Vice-Chairs that began in 2004 will continue in 2006. Once the recruitment of new adjudicators is complete, the Tribunal aims to maintain a constant level of OIC appointees, and on that basis, anticipates a continued modest pace of inventory reduction. The Tribunal targets further productivity increases from the adjudication stream (3,000 hearing dispositions each year are required by this case management plan) and anticipates that caseload intake patterns will remain consistent with those observed over the past two years. If these conditions are met, the Tribunal's active inventory is projected to follow the pattern as charted

Chart 16: Projected Pattern of Active Inventory



Financial Matters

Tribunal Report

The Statement of Expenditures and Variances for the year ended December 31, 2005 is reported in Chart 17.

The accounting firm of Deloitte & Touche has completed a financial audit on the Tribunal's financial statements for the period ending December 31, 2005. The audit reports are included in this report as Appendix B.

Chart 17: Statement of Expenditures and Variances
Year ended December 31, 2005 (in $000s)

	2005 BUDGET	2005 ACTUAL	2005 VARIANCE $	2005 VARIANCE %
OPERATING EXPENSES				
Salaries & Wages	9,452	9,052	400	4.2
Employee Benefits	1,777	1,896	(119)	(6.7)
Transportation & Communication	975	935	40	4.1
Services	5,636	5,509	127	2.3
Supplies & Equipment	400	467	(67)	(16.8)
TOTAL -W.S.I.A.T.	18,240	17,859	381	2.1
Services - W.S.I.B.	450	477	(27)	(6.0)
Interest Revenue	(20)	(24)	4	(20.0)
TOTAL OPERATING EXPENSES	**18,670**	**18,312**	**358**	**1.9**
ONE TIME EXPENSES				
Severance Payments	100	94	6	6.0
Active Caseload Resources				
Per Diem Cost	200	-	200	100.0
Hearing Travel & Room Rental Expenses	50	-	50	100.0
TOTAL EXPENDITURES	**19,020**	**18,406**	**614**	**3.2**

Note: The above 2005 actuals are presented on the same basis as the approved budget and differ from the year-end audited Financial Statements presentation (see note 2 to the Financial Statements).The difference of $437 is comprised of:

Capital Fund		
Amortization	363	
Fixed assets acquired	(75)	288
Operating Fund		
Accrued severance & vacation benefits	$ 176	
Prepaid expenses	(27)	149
		$ 437

Appendix A

Vice-Chairs and Members in 2005

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

Full-time	*Initial appointment*
Chair	
Strachan, Ian J.	July 2, 1997
Vice-Chairs	
Dimovski, Jim	July 1, 2003
Gehrke, Linda	May 27, 1998
Keil, Martha	February 16, 1994
Martel, Sophie	October 6, 1999
McClellan, Ross	September 4, 2002
McCutcheon, Rosemarie	October 6, 1999
Moore, John	July 16, 1986
Robeson, Virginia	March 15, 1990
Ryan, Sean	October 6, 1999
Smith, Eleanor	January 7, 2000
Sutherland, Sara	September 6, 1991
Members representative of workers	
Crocker, James	August 1, 1991
Grande, Angela	January 7, 2000
Members representative of employers	
Wheeler, Brian	April 19, 2000

Part-time	*Initial appointment*
Vice-Chairs	
Alexander, Bruce	May 3, 2000
Bigras, Jean Guy	May 14, 1986
Bortolussi, Lorraine	March 21, 2001
Butler, Michael	May 6, 1999
Carroll, Tom	May 27, 1998
Clement, Shirley	September 1, 2005
Cook, Brian	September 6, 1991
Crystal, Melvin	May 3, 2000
Dempsey, Colleen	November 10, 2005
Doyle, Maureen	October 20, 2004
Faubert, Marsha	December 10, 1987
Ferdinand, Urich	April 29, 1999
Flanagan, William	July 5, 2004

Appendix A

Part-time	*Initial appointment*
Vice-Chairs (con'd)	
Gale, Robert	October 20, 2004
Gannage, Mark	November 10, 2005
Hartman, Ruth	October 6, 1999
Josefo, Jay	January 13, 1999
Kalvin, Bernard	October 20, 2004
Kenny, Maureen	July 29, 1987
Lang, John B.	July 15, 2005
Levy, Alan	October 20, 2004
Loewen, Brian	May 6, 1999
MacAdam, Colin	May 4, 2005
Marafioti, Victor	March 11, 1987
Mitchinson, Tom	November 10, 2005
Mullan, David	July 5, 2004
Nairn, Rob	April 29, 1999
Noble, Julia	October 20, 2004
Parmar, Jasbir	November 10, 2005
Peckover, Susan	October 20, 2004
Signoroni, Antonio	October 1, 1985
Silipo, Tony	December 2, 1999
Smith, Marilyn	February 18, 2004
Suissa, Albert	October 20, 2004
Wyman, Kenneth	July 15, 2005
Members representative of workers	
Beattie, David	December 11, 1985
Besner, Diane	January 13, 1995
Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Felice, Douglas	May 14, 1986
Ferrari, Mary	July 15, 2005
Gillies, David	October 30, 2002
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988
Rao, Fortunato	February 11, 1988
Timms, David	May 4, 1995
Members representative of employers	
Christie, Mary	May 2, 2001
Donaldson, Joseph	October 20, 2004
Jago, Douglas	October 1, 1985
McLachlan, Dennis	March 5, 2001
Meslin, Martin	December 11, 1985
Robb, C. James	June 2, 1993

Part-time	*Initial appointment*
Members representative of employers (con'd)	
Robertson, Peter	July 24, 2003
Séguin, Jacques	July 1, 1986
Sherwood, Robert	May 3, 2000
Stewart, Gordon	March 5, 2001
Tracey, Elaine	December 7, 2005
Young, Barbara	February 17, 1995

Vice-Chairs and Members – Reappointments effective 2005

	Effective
Besner, Diane	January 13, 2005
Butler, Michael	May 6, 2005
Christie, Mary	May 2, 2005
Ferdinand, Urich	April 29, 2005
Gillies, David	October 30, 2005
Hartman, Ruth	October 6, 2005
Josefo, Jay	January 14, 2005
Lebert, Ray	January 1, 2005
Loewen, Brian	May 6, 2005
Martel, Sophie	October 6, 2005
McClellan, Ross	September 4, 2005
McCutcheon, Rosemarie	October 6, 2005
Nairn, Rob	April 29, 2005
Ryan, Sean	October 6, 2005
Silipo, Tony	December 2, 2005

New Appointments during 2005

	Effective
Shirley Clement, part-time Vice-Chair	September 1, 2005
Colleen Dempsey, part-time Vice-Chair	November 10, 2005
Mary Ferrari, part-time Member representative of workers	July 15, 2005
Mark Gannage, part-time Vice-Chair	November 10, 2005
John B. Lang, part-time Vice-Chair	July 15, 2005
Colin MacAdam, part-time Vice-Chair	May 4, 2005
Tom Mitchinson, part-time Vice-Chair	November 10, 2005
Jasbir Parmar, part-time Vice-Chair	November 10, 2005
Elaine Tracey, part-time Member representative of employers	December 7, 2005
Kenneth Wyman, part-time Vice-Chair	July 15, 2005

Appendix A

Senior Staff

David Bestvater	Director, Case Management Systems
Alison Colvin	Director of Information Services
Debra Dileo	Director, Appeal Services
Marsha Faubert	Tribunal Executive Director
Noel Fernandes	Finance Manager
Martha Keil	Vice-Chair Registrar, Office of the Vice-Chair Registrar
Janet Oulton	Appeals Administrator
Carole Prest	Counsel to the Tribunal Chair
Dan Revington	Tribunal General Counsel
Bob Rowe	Director of Finance and Administration
Paul Turkki	Human Resources Advisor

Medical Counsellors

Dr. John Duff	General Surgery, Chair of Medical Counsellors
Dr. Ross Fleming	Neurosurgery
Dr. Emmanuel Persad	Psychiatry
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Anthony Weinberg	Internal Medicine

Appendix B

Auditors' Report and Financial Statements

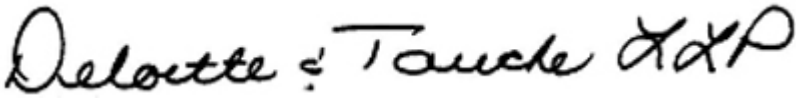
Auditors' Report

To the Chair of
Workplace Safety and Insurance Appeals Tribunal

We have audited the balance sheet of Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") as at December 31, 2005 and the statements of operations, changes in fund balances and cash flows for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 2005 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.



Deloitte & Touche LLP
Chartered Accountants

Toronto, Ontario
February 17, 2006

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Balance Sheet
December 31, 2005

	2005	2004
ASSETS		
CURRENT		
Cash	**$ 1,288,321**	$ 1,326,980
Receivable from Workplace Safety and Insurance Board	**1,369,321**	1,075,307
Prepaid expenses and advances	**361,239**	333,277
Recoverable expenses (Note 4)	**127,458**	137,903
	3,146,339	2,873,467
CAPITAL ASSETS (Note 5)	**188,264**	475,993
	$ 3,334,603	$ 3,349,460
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,392,602**	$ 1,146,595
Accrued severance benefits and vacation credits	**1,984,954**	1,809,107
Operating advance from Workplace Safety and Insurance Board (Note 6)	**1,400,000**	1,400,000
	4,777,556	4,355,702
FUND BALANCES (DEFICIT)		
OPERATING FUND (Note 7)	**(1,631,217)**	(1,482,235)
CAPITAL FUND	**188,264**	475,993
	(1,442,953)	(1,006,242)
	$ 3,334,603	$ 3,349,460

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

.....Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2005

	2005	2004
OPERATING EXPENSES		
Salaries and wages	**$ 9,052,560**	$ 8,781,368
Employee benefits	**2,165,350**	1,976,004
Transportation and communication	**935,200**	954,255
Services and supplies	**5,873,985**	5,593,457
Amortization	**363,070**	665,164
	18,390,165	17,970,248
Services - Workplace Safety and Insurance Board (Note 9)	**477,078**	447,107
TOTAL OPERATING EXPENSES	**18,867,243**	18,417,355
BANK INTEREST INCOME	**(24,456)**	(18,865)
NET OPERATING EXPENSES	**18,842,787**	18,398,490
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	**(18,406,076)**	(17,685,185)
NET UNFUNDED OPERATING EXPENSES	**$ 436,711**	$ 713,305
ALLOCATED TO		
CAPITAL FUND	**$ (287,729)**	$ (594,550)
OPERATING FUND	**(148,982)**	(118,755)
	$ (436,711)	$ (713,305)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Changes in Fund Balances
Year ended December 31, 2005

	Capital	Operating	Total
BALANCE (DEFICIT) - JANUARY 1, 2004	$ 1,070,543	$ (1,363,480)	$ (292,937)
Additions to capital assets	70,614	-	70,614
Amortization of capital assets	(665,164)	-	(665,164)
Severance benefits and vacation credits (Note a)	-	(135,849)	(135,849)
Prepaid expenses (Note b)	-	17,094	17,094
Net unfunded expenses - 2004	(594,550)	(118,755)	(713,305)
BALANCE (DEFICIT) - DECEMBER 31, 2004	475,993	(1,482,235)	(1,006,242)
Additions to capital assets	75,341	-	75,341
Amortization of capital assets	(363,070)	-	(363,070)
Severance benefits and vacation credits (Note a)	-	(175,847)	(175,847)
Prepaid expenses (Note b)	-	26,865	26,865
Net unfunded expenses - 2005	(287,729)	(148,982)	(436,711)
BALANCE (DEFICIT) - DECEMBER 31, 2005	**$ 188,264**	**$(1,631,217)**	**$ (1,442,953)**

Note a) Severance benefits and vacation credits are not funded by WSIB until they are paid.
Note b) Prepaid expenses are funded by WSIB when paid and not when expensed.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Cash Flows
Year ended December 31, 2005

	2005	2004
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 18,112,062**	$ 17,775,812
Cash receipts for recovery of shared services	**507,826**	527,981
Bank interest received	**24,456**	18,865
Expenses, recoverable expenses and advances, net of amortization of $363,070 (2004 - $665,154)	**(18,607,662)**	(18,156,583)
	36,682	166,075
INVESTING		
Acquisition of capital assets	**(75,341)**	(70,614)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	**(38,659)**	95,461
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	**1,326,980**	1,231,519
CASH AND CASH EQUIVALENTS, END OF YEAR	**$ 1,288,321**	$ 1,326,980

Appendix B

Notes to the Financial Statements

December 31, 2005

1. General

Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") was originally created by the Workers' Compensation Amendment Act S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985. The Workplace Safety and Insurance Act replaced the Workers' Compensation Act in 1997 and came into force January 1, 1998. The Workplace Safety and Insurance Board (WSIB), (formerly Workers' Compensation Board) is required to fund the cost of the Tribunal from the Insurance Fund. These reimbursements and funding amounts are determined and approved by the Ontario Minister of Labour.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner appeals by workers and employers in connection with decisions, orders or rulings of the WSIB and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting policies

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

Basis of presentation

The financial statements have been prepared in accordance with the accounting standards for Not-for-Profit organizations published by the Canadian Institute of Chartered Accountants using the restricted method of reporting revenue.

Revenue recognition

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

Capital assets

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

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

Employee benefits

(a) Pension benefits

The Tribunal provides pension benefits for all its permanent employees (and to non-permanent employees who elect to participate) through the Public Service Pension Fund (PSPF) and the Ontario Public Service Employees' Union Pension Fund (OPSEU Pension Fund) which are both multi-employer plans established by the Province of Ontario. The

plans are defined benefit plans, which specify the amount of retirement benefit to be received by employees based on their length of service and rates of pay.

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

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

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

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

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

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

4. 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.

Appendix B

5. Capital Assets

	2005			2004
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Leasehold improvements	$ 2,977,473	$ 2,941,974	$ 35,499	$ 243,024
Furniture and equipment	955,262	876,502	78,760	122,742
Computer equipment and software	497,237	423,232	74,005	110,227
	$ 4,429,972	$ 4,241,708	$ 188,264	$ 475,993

6. Operating Advance from WSIB

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

7. Operating Fund

The operating fund deficit of $1,631,217 as of December 31, 2005 ($1,482,235 as of December 31, 2004) represents future obligations to employees for severance and vacation credits less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

8. Employee Benefits Obligations

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $584,002 (2004 - $593,362) and are included in employee benefits in the statement of operations.

b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The cost of severance benefits accrued in 2005 amounted to $155,962 (2004 - $119,520) and is included in employee benefits in the statement of operations.

c) Vacation credit entitlement

Vacation entitlements are accrued in the year when vacation credits are earned. The cost of vacation credits accrued in 2005 amounted to $19,885 (2004 - $16,329) and is included in employee benefits in the statement of operations.

d) Non-pension future benefits

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

9. 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.

10. Lease Commitments

The Tribunal has several operating lease contracts for computer and office equipment and software license fees, with remaining terms from 1-4 years. The minimum payments under these leases are as follows:

2006	$ 348,224
2007	151,272
2008	145,815
2009	38,032
Minimum operating lease payments	$ 683,343

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

2006	$ 1,055,532
2007	1,055,532
2008	1,055,532
2009	1,055,532
2010	879,610
Minimum operating lease payments	$ 5,101,738

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

11. Guarantees

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

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

b) In the normal course of business, the Tribunal has entered into agreements that include indemnities in favour of third parties, such as confidentiality agreements, engagement letters with advisors and consultants, outsourcing agreements, leasing contracts, information technology agreements and service agreements. These indemnification agreements may require the Tribunal to compensate counterparties for losses incurred by the counterparties as a result of breaches in representation and regulations or as a result of litigation claims or statutory sanctions that may be suffered

by the counterparty as a consequence of the transaction. The terms of these indemnities are not explicitly defined and the maximum amount of any potential reimbursement cannot be reasonably estimated.

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

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

12. Comparative Figures

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