Workplace Safety and Insurance Appeals Tribunal

Annual Report 2007

Ontario

Workplace Safety and Insurance Appeals Tribunal

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

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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 Labor 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 2007 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
The Administrative Justice Universe

> "Go placidly amid the noise and haste and…Speak your truth quietly and clearly…And whether or not it is clear to you, no doubt the universe is unfolding as it should."

When Max Ehrmann wrote *Desiderata*, he probably did not have in mind Canada's administrative justice system. Nevertheless, his words may have some application to the year 2007 for both the Canadian administrative justice universe and, to a lesser extent, the Workplace Safety and Insurance Appeals Tribunal.

Independence of Tribunals and Their Adjudicators

Two thousand seven was a year in which Canada's administrative justice system came under increased scrutiny, not only from the Courts and law professors, but also from the media and the Canadian public. The law professors, in particular, are turning their attention to the independence of tribunals and their adjudicators. Scrutiny usually begins with a review of section 11(d) of the *Canadian Charter of Rights and Freedoms*:

> **11** Any person charged with an offence has the right
>
> …
>
> *(d)* to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

and section 2(f) of the *Canadian Bill of Rights*:

> **2** Every law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate,

> abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to
>
> …
>
> *(f)* deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to the law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause.

These provisions obviously deal with the Canadian judicial system and the phrase "independent and impartial tribunal" obviously refers to Canadian Courts.

The Tribunal within the Administrative Justice System

Is the concept of an independent and impartial tribunal a principle of fundamental justice when "tribunal" refers to a tribunal within the administrative justice system?

Counsel in the *McKenzie*[1] case would argue that tribunal independence has a constitutional foundation; however, currently that concept is the road less travelled. The route may change as the media, the public and the Courts pay greater attention to the extent to which our administrative justice system increasingly affects Canadians' rights and interests. Few Canadians realize the extent to which Canada's administrative justice system touches their lives. With increasing attention paid to our environment, Canadians may soon realize that tribunals and government agencies within the administrative justice system do affect the quality of the air we breathe, the water we drink, the transportation services we use on a regular basis, as well as such things as the rents we pay or collect, entitlement to social benefits, pension payments, quality of medical service, workers' compensation benefits and the quality of education.

Few Canadians realize the extent to which Canada's administrative justice system touches their lives.

1 *McKenzie v. British Columbia (Minister of Public Safety and Solicitor General)*(2006), 272 D.L.R. (4th) 455 (B.C.S.C.), appeal dismissed as moot (2007), 71 B.C.L.R. (4th) 1 (B.C.C.A.)

In 2007, Canadians began to realize that our administrative justice system is an extremely pervasive part of the Canadian legal universe.

The Courts, of course, have been aware of this for some time. In the case of *Cooper v. Canada (Human Rights Commission)* [1996] 3 S.C.R. 854, McLachlin, J. (as she then was), noted at para. 70 that "many more citizens have their rights determined by these tribunals than by the courts." In order for these tribunals to deliver justice to Canadians on a timely and effective basis, there must be extensive flexibility within the tribunal community in delivering a quality service to Canadians. A process which is effective for one particular board or tribunal may not be effective for another. If administrative justice processes are analogous to a yoga exercise, general Practice Directions equivalent to a "Cat Stretch" may be suitable for one tribunal, which deals with unrepresented parties; however, another tribunal, which normally attracts specialized legal counsel as representatives for the parties involved, may require more formal rules of procedure analogous to a "Scorpion Pose."

Flexibility within the Canadian Adjudicative Process

While the British administrative justice system appears to be moving towards a more judicial structure, the Canadian administrative justice system continues to allow for yoga-like flexibility in the adjudication process. It is this flexibility which should make administrative justice boards and tribunals increasingly relevant to the general public.

Ontario's Workplace Safety and Insurance Appeals Tribunal represents a small planet in the administrative justice universe. In 2007, this small part of Ontario's administrative justice universe continued to attempt to unfold as it should. There was an ongoing emphasis on flexibility in an effort to provide effective adjudication in different types of appeals and in dealing with variable caseloads.

A more formal hearing process may be appropriate in "Right to Sue" applications at the Tribunal; however, a less formal hearing process can be more effective in "Entitlement" appeals, and the options of a written process or an alternative dispute resolution (ADR)/mediation process offer additional means of dealing with appeals from the Workplace Safety and Insurance Board. In 2007, the Appeals Tribunal utilized these various options to effect a gradual reduction in the active appeals caseload.

Two thousand seven was a year in which Tribunal resources were stretched as the Tribunal trained and integrated new Vice-Chairs and Members into the appeal system. Considerable resources were expended as a result of the Law Society of Upper Canada's new paralegal regulations, as the Tribunal attempted to ensure that paralegals who represented parties at the Tribunal met the Law Society requirements. While some individuals urged the Appeals Tribunal to change its focus from quality of process and decisions to quantity of decisions, regardless of quality, most members of the injured worker and employer communities continued to support the Appeals Tribunal in its ongoing quest for quality in the appeal system.

In my view, it was the ongoing commitment of everyone at the Appeals Tribunal which allowed the WSIAT universe to "unfold as it should" in 2007, as the number of active appeals continued to decline, the Court of Appeal continued to be supportive of the Tribunal's decisions, and the Tribunal continued to attract quality adjudicators. It is a trend which augurs well for the workplace safety and insurance system in 2008.

Highlights of the 2007 Cases

This section reviews some of the legal, factual and medical issues considered by the Tribunal in decisions summarized in 2007. The summary is intended to provide a sample of some of the typical disputes the Tribunal decides, as well as some of the more complicated legal, medical and evidentiary issues.

The Tribunal decides cases under four Acts. 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. In 2007, the WSIA and pre-1997 Act were amended by Schedule 41 of the *Budget Measures and Interim Appropriation Act, 2007* effective July 1, 2007. The *Workplace Safety and Insurance Amendment Act (Presumptions for Firefighters), 2007*, also came into effect this year.

Appeals Under the WSIA

The WSIA provides for a single loss of earnings (LOE) benefit which is reviewable for a period of 72 months on "material change of circumstances" or annually at the Board's discretion. The amount of a worker's LOE benefits depends on the extent to which the worker can return to the work force and replace his pre-injury earnings. The WSIA emphasizes the need for co-operation by the workplace parties in facilitating the worker's early and safe return to work (ESRTW). If ESRTW is not possible, the Board conducts a labour market re-entry (LMR) assessment and may offer an LMR plan to assist in identifying a suitable employment or business (SEB). The worker's LOE benefits are assessed in light of this SEB. The WSIA also provides for non-economic loss (NEL) awards for workers with permanent impairments.

Disputes frequently arise at the Tribunal about the workplace parties' co-operation or the application of the Board's policy to give notice of non-co-operation before discontinuing LOE benefits. Although there has been some controversy about whether this policy is contrary to the WSIA, this primarily arose in cases where the Board was

not involved in LMR until after the fact. *Decision No. 2117/06*, 2006 ONWSIAT 2856, held that when the Board is directly involved, it is reasonable to require notice and provide an opportunity to the worker to correct the situation prior to closure of benefits. In *Decision No. 2117/06*, the worker suffered a recurrence of a compensable injury and stopped working for a period. The Board reduced her benefits to 50% for non-co-operation. The Tribunal found that the worker had been working beyond her medical restrictions when she suffered the recurrence. Even assuming that the worker erred in doing this, benefits should not have been reduced. While the worker could have been more assertive about her restrictions, it was the employer's job to supervise and ensure that restrictions were taken into account. Work beyond medical restrictions was not misconduct by the worker; at most it was overzealousness. *Decision No. 2117/06* also held that the statutory co-operation obligations in sections 40 and 43(7) relate to the initial injury only. Once there is an aggravation, they do not apply to reduce benefits for the new aggravation.

Co-operation issues may also arise where the worker tries to balance family and LMR obligations. In *Decision No. 1739/04*, 2007 ONWSIAT 1630, the worker had asked for time to make childcare arrangements before he could participate in an LMR program. The Board terminated the program on the grounds that he was unco-operative. On appeal, the Tribunal found that the worker had not been unco-operative, but was merely asking for time to make appropriate arrangements. Even if the worker had not been able to participate for a time due to childcare responsibilities, LMR service should not have been terminated permanently. The situation is similar to a case in which a worker is unable to co-operate due to non-compensable health problems. LMR would be put on hold and the worker might not be entitled to LOE benefits until the worker is able to participate. The worker should also have been given notice of non-co-operation before the benefits were closed.

Decision No. 425/06, 2007 ONWSIAT 919, 82 W.S.I.A.T.R. (online), considered Board *Operational Policy Manual* (OPM), Document No. 19-03-10 which stipulates that further LMR services will not be provided if LMR services are terminated for non-co-operation. *Decision No. 425/06* agreed with *Decision No. 1862/06*, 2006 ONWSIAT 2299, that the WSIA does not indicate that LMR services cannot be reactivated. The merits and justice provision in both the Board's policy and the WSIA continue to apply. LMR services were not reactivated on the facts, however, as the worker disliked school and showed a significant lack of co-operation.

When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72 months. Several 2007 decisions considered statutory amendments in 2002 and 2007 which permit review of final LOE awards in certain circumstances. In *Decision No. 2413/06*, 2007 ONWSIAT 629, 82 W.S.I.A.T.R. (online), the worker

submitted that a new LMR plan ordered by the Tribunal could not be the basis of a final LOE review because the plan was developed after 72 months. Under the 2002 GEA amendments, the Board may review LOE benefits after 72 months when the worker is involved in an LMR program that has not been completed by the end of the 72-month period. *Decision No. 2413/06* stated that these amendments serve the important purpose of ensuring that workers are not deprived of LOE benefits where necessary adjustments to an LMR plan cannot be completed within 72 months. In this case, the previous Tribunal direction to develop a new plan should be understood as an adjustment to the original plan. Accordingly, the LMR plan had not been completed at the time of the 72-month review, and the statutory exception applied. *Decision No. 1427/07*, 2007 ONWSIAT 1849, found that review of a final LOE award for significant temporary deterioration is only available for significant temporary deteriorations occurring after the July 2007 amendments. These amendments were interpreted as explicit acknowledgement that adjustments for temporary recurrences after 72 months were previously impossible under the WSIA.

Decision No. 512/06I, 2007 ONWSIAT 164, 81 W.S.I.A.T.R. (online) considered the statutory limit on LOE benefits available to older workers in the context of an employer's mandatory retirement policy. Section 43(1) sets out limits on LOE benefits, including clause (c) which provides that a worker is entitled to LOE benefits until two years after the injury, if the worker was aged 63 or older on the date of the accident. *Decision No. 512/06I* found that section 43(1)(c) does not provide for an automatic two full years of LOE benefits, but rather a possibility of benefits for up to two years. A 63-year-old worker is only entitled to benefits for two full years if he continues to suffer a loss of earnings due to the injury and none of the other limits in section 43(1) applies. Even prior to amendments to the Ontario *Human Rights Code*, there was no law preventing an employer from continuing to employ workers past age 65. The Tribunal found that the worker would likely have continued in the work force after his mandatory retirement at age 65 but not necessarily at the same wages. LOE benefits were awarded on this basis. The worker also raised a constitutional challenge to the limitation of benefits in section 43(1)(c). While the appeal may reconvene on this issue, it was in inactive status at the end of the reporting period.

Turning to non-economic loss (NEL) awards, the WSIA prescribes the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, third edition (revised) as the schedule for assessing NEL awards. The 2006 Annual Report noted that several cases had considered challenges to the Board's use of the Combined Values Chart (CVC) in the AMA Guides. The CVC is based on the "whole person concept." The effect of combining values rather than adding them is usually to reduce the total value of the NEL award somewhat. *Decision No. 1529/04I*, 2007 ONWSIAT 100, 81 W.S.I.A.T.R. (online), considered the Board's current policy,

OPM Document No. 18-05-05, in the context of an accident covered by the WSIA. It agreed with other Tribunal decisions that the current policy requires the use of the CVC for all prior NEL awards but not for prior non-compensable impairments or pension awards. The worker's arguments regarding the unfairness and arbitrariness of the policy will be considered in the context of the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. The hearing will reconvene to consider those issues.

Board Policy Under the WSIA

While the Tribunal has always considered Board policy, the WSIA expressly states that, if there is an applicable Board policy, the Tribunal shall apply it when making decisions. Section 126 provides that the Board is to identify applicable policy and sets out a process 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. During 2007, there were no section 126 referrals. There were, however, a number of interesting cases on interpretation and application of policy as well as several requests by the Board to reconsider decisions in light of Board policy. While the Tribunal does consider Board reconsideration requests, the usual threshold test applies.

Board policy often changes over time. The rights and obligations of the parties may vary quite significantly depending upon which version of a policy applies. Given the importance of policy, which version of the policy applies is often an issue in dispute. The last Annual Report noted several decisions which held that section 126 policy is similar to legislation and the presumption against retroactivity applies to it. Retroactivity of Board policy continued to be an issue in 2007. *Decision No. 1170/07*, 2007 ONWSIAT 1936, considered the Board's new CPP offset policy which changed the way in which CPP benefits were deducted from partial future economic loss (FEL) awards, effective January 1, 2004. The worker argued that the new policy was an overruling of the previous 1996 policy and that the new policy should be applied retroactively to 1996. The worker relied on earlier Tribunal case law, in particular *Decision No. 915A* (1988), 7 W.C.A.T.R. 269, which held that a change in policy that constitutes an overruling should be applied retroactively to the extent consistent with the principles of good public administration.

Decision No. 1170/07 noted that there were two lines of Tribunal decisions on the Board's 1996 policy; however, no decisions had found that the 1996 policy was inconsistent with or not authorized by the Act. The Board was acting within its discretion in adopting the new policy and it was not an overruling within the meaning of *Decision No. 915A*. Even if it was an overruling, the selection of a retroactivity

date must be consistent with the rules of good public administration. A key consideration is whether the Board failed to take account of changes in medical knowledge or changes in the law. The application date chosen by the Board was consistent with those principles.

In *Decision No. 878/06R*, 2007 ONWSIAT 195, 81 W.S.I.A.T.R. (online), the Board asked the Tribunal to reconsider *Decision No. 878/06*, 2006 ONWSIAT 985, which had held that employment insurance (EI) benefits are not earnings for the purpose of determining a worker's earnings basis and that the version of OPM Document No. 05-02-02 in effect at the time of the accident did not prevent inclusion of EI benefits. OPM Document No. 05-02-02 has been amended several times. The 2001 version has specific provisions prohibiting inclusion of EI benefits and states that it applies to decisions made on or after April 1, 2001, regardless of accident date. *Decision No. 878/06R* denied the Board's reconsideration request, finding that an earlier version of the policy applied. While section 126 requires the Tribunal to apply Board policy, the Tribunal has jurisdiction to interpret the meaning of policy. Policy should be interpreted in a manner consistent with the legal principles governing retroactivity. A different interpretation would produce an unfair result.

Decision No. 878/06R also considered the Board's policy notification process and the Tribunal's jurisdiction to consider relevant policy if the Board does not identify it. The Board notifies the Tribunal by generic policy packages. Policy packages generally contain some provisions which are not relevant to an appeal. When a Tribunal decision does not apply provisions in a policy, it does not mean that the Tribunal has decided that the provision does not apply within the meaning of section 126(4). Rather, it simply means that the provision was not relevant in light of the Tribunal's findings of fact and law. Section 126(3) allows the Tribunal to ask the Board to notify it of an applicable policy if the Board fails to provide a relevant policy. This request is discretionary. The Tribunal may also proceed to apply the correct policy under section 126(1).

Decisions No. 1878/04, 2006 ONWSIAT 2768, and *1878/04R*, 2007 ONWSIAT 2503, considered the effects of the Board's policy on offsetting CPP disability benefits from FEL awards in a different context. The pre-1997 Act section 44(1) requires the Board to set aside additional funds equal to 10% of "every payment" under the FEL provisions in order to provide the worker with a retirement pension. The Board initially set aside 10% of the worker's full FEL award. After the worker received CPP disability benefits, the Board offset the CPP disability benefits against the full FEL award. The Board then calculated the 10% retirement contribution on the reduced FEL.

Decision No. 1878/04 considered that the purpose of offsetting the CPP disability benefits from a full FEL award was generally to avoid over-compensation. The purpose of the retirement pension, however, was to provide a retirement benefit to a worker after age 65. While the Board is directed to have regard to CPP disability benefits in section 43(7), this section does not provide specifics as to how the CPP benefits should be considered. Board policy on the retirement income benefit is also silent on this. *Decision No. 1878/04* viewed the Board practice as leading to arbitrary results, and concluded that the retirement income benefit should not vary depending on how the Board treated CPP disability benefits.

The Board requested reconsideration of *Decision No. 1878/04* on the grounds that section 44(1) directed to the Board to set aside 10% of FEL amounts actually paid to the worker. *Decision No. 1878/04R* found that the Act would bear the interpretation of both the original Vice-Chair and the Board. There was no Board policy specifically dealing with the issue which the Tribunal was required to apply. While another Vice-Chair or Panel might have come to a different conclusion, a difference of opinion on the interpretation of legislation does not constitute, in and of itself, evidence of a significant error requiring reconsideration. Accordingly, the application to reconsider was denied.

Right to Sue Applications

The WSIA and earlier *Workers' Compensation Acts* are based on the "historic trade-off" in which workers gave up the right to sue in exchange for statutory no-fault benefits. The Tribunal has the exclusive jurisdiction to decide whether a worker's right to sue has been removed by the Act. Right to sue applications may raise complicated legal issues, such as the interaction between the WSIA and other statutory schemes.

An issue which has arisen in a number of cases is whether the Tribunal has jurisdiction to determine a section 31 application where the worker has received statutory accident benefits (SABs) under the *Insurance Act* and there is no court action. As noted in the last Annual Report, two 2006 decisions found that the Tribunal does not have jurisdiction. In 2007, two decisions, which had the benefit of more extensive submissions, found that the Tribunal does have jurisdiction.

In *Decision No. 1362/06I*, 2006 ONWSIAT 2253, 80 W.S.I.A.T.R. (online), a truck driver was involved in a single vehicle accident and applied for SABs from the insurer of the owner of the tractor. The driver executed an assignment to the insurer of any workers' compensation benefits to which he might be entitled. This assignment was approved by the Board but no legal action was commenced. The insurer applied

under section 31(1)(c) for a determination of whether the driver was entitled to claim workplace insurance benefits. In finding that the Tribunal had the jurisdiction to decide the application, *Decision No. 1362/06I* considered the interaction between the WSIA and section 59 of the Statutory Action Benefits Schedule under the *Insurance Act. Decision No. 1362/06I* held that the modern principle of statutory interpretation requires interpretation of words in the context of the particular statutory provision, the WSIA and the intended interaction between the *Insurance Act* and the WSIA. Under the Statutory Accident Benefits Schedule, where an insured is entitled to receive workers' compensation benefits, the workers' compensation plan and not the auto insurance policy is the source of the no-fault benefits. Another feature of the interaction is that when there is a dispute about entitlement to workers' compensation benefits, the insurer must pay SABs until the dispute is resolved in order to ensure timely benefits. *Decision No. 1362/06I* held that the mechanism for resolving disputes is an application to the Tribunal, which is the expert body deciding such issues.

Decision No. 14/06, 2007 ONWSIAT 339, 81 W.S.I.A.T.R. (online), also found that the Tribunal had the jurisdiction to decide an application by a SABs insurer but for somewhat different reasons. In that case a dump truck operator was injured in an accident and elected to pursue legal action. He claimed and received SABs but did not pursue legal action. The SABs insurer applied for a determination regarding the truck driver's status under the WSIA. *Decision No. 14/06* found that the insurer's remedy was under section 31(1)(a) of the WSIA. The Tribunal considered section 59 of the Statutory Accident Benefits Schedule under the *Insurance Act* and WSIA section 30 which governs elections between a claim for benefits and a legal action. The Vice-Chair concluded that actual legal action is not required to trigger the WSIA provisions. When an accident occurs in circumstances that would confer the right to claim benefits or commence an action under section 30(1), the parties identified in section 31 are permitted to seek a declaration under section 31(1)(a) to determine whether the right to commence an action is taken away. The Vice-Chair found that the truck driver's right to commence the action was taken away by the WSIA. It followed that the truck driver's election to sue was of no force or effect.

The Tribunal's jurisdiction with respect to SABs insurers is not unlimited under the WSIA. *Decision No. 983/07*, 2007 ONWSIAT 1667, considered an appeal by a SABs insurer who had attempted to obtain reimbursement from the WSIB for SABs that it had paid for an injury which was compensable under the WSIA. The Board refused to reimburse because the worker had not filed a claim for benefits. The Board Appeals Branch concluded that the insurer did not have standing to appeal under the WSIA. At the Tribunal, the insurer argued that depriving the insurer of a right to appeal would be contrary to the presumption of coherence between the WSIA and the

Insurance Act and the presumption against loss of existing rights. *Decision No. 983/07* found, however, that the clear wording of section 125(1) of the WSIA could not be ignored. Section 31 is the only access a SABs insurer has to the Tribunal. The Vice-Chair noted that the insurer might have a remedy in the Courts based on the assignment contract.

In *Decision No. 338/02*, 2006 ONWSIAT 2601, a worker sought to sue her employer for chronic stress caused by excessive job demands. The claim was both in contract and negligence and included a claim against the employer's insurer for the payment of disability benefits. After finding the right of action against the employer was removed, *Decision No. 338/02* considered the claim regarding the insurer's refusal to pay under the long-term disability policy. This claim was not integral to the consequences of the accident and conceivably could involve some benefits unrelated to the claim for compensation. The right of action was not taken away regarding the insurance policy.

In *Decision No. 1118/07*, 2007 ONWSIAT 1557, a worker of a nuclear power station brought an action against his employer for injuries suffered during an emergency. The worker argued that he was entitled to sue because the matter was governed by the federal *Nuclear Liability Act*. *Decision No. 1118/07* found that the *Nuclear Liability Act* governs nuclear atomic energy for the general advantage of Canada. While a nuclear facility is a federal undertaking, that in itself does not oust provincial workers' compensation legislation. Both Acts are remedial legislation and must be interpreted broadly, keeping in mind their true intent and purpose. *Decision No. 1118/07* found that there was no conflict between the Acts. They could co-exist since provincial workers' compensation legislation does not frustrate the purposes of the *Nuclear Liability Act*. The worker's right of action was taken away.

Employer Issues

Appeals involving employer issues, such as classifications, transfers of cost and adjustments of experience rating accounts, continue to form a significant part of the Tribunal's caseload.

What happens after a successful appeal at the Tribunal for reclassification? In implementing the Tribunal's decision should the Board adjust the NEER account in light of the reclassification? The employer in *Decision No. 573/05*, 2006 ONWSIAT 2229, 81 W.S.I.A.T.R. (online), received a credit of approximately $100,000 instead of approximately $500,000 because the NEER account was readjusted in light of the reclassification of a portion of its payroll. *Decision No. 573/05* agreed with previous Tribunal decisions that NEER adjustments and premium adjustments are intertwined.

The decision contains a good review of how a NEER surcharge or refund is calculated and the ways in which a reclassification may affect a NEER account. The transfer of some employees to a new rate group means the old rate group is smaller and has a smaller number of accidents. This results in a smaller NEER refund in the old rate group. In the new rate group, there are more employees and more claims, so the expected claim costs for the rate group and the employer's actual NEER costs increase. The size of the employer is also taken into account in the calculation. There is potentially more fluctuation in claims with smaller employers and higher insurance is required. *Decision No. 573/05* noted that it is to be expected that a reclassification to a rate group with higher premium costs will result in a greater NEER refund and a reclassification to a rate group with lower premium costs will result in a lower NEER refund.

Decision No. 708/07, 2007 ONWSIAT 1490, 82 W.S.I.A.T.R. (online), considered the Tribunal's jurisdiction to direct a retroactive NEER adjustment after allowing the employer's appeal from the denial of SIEF relief in a claim*Decision No. 708/07* reasoned that the Tribunal has jurisdiction to consider issues that flow from its findings on the initial presenting issue which would have been addressed by the Board if its primary ruling had been different. Since it granted SIEF relief in this appeal, the Tribunal had jurisdiction to consider the request for retroactive NEER adjustments flowing from the SIEF relief. On the evidence, there were exceptional circumstances justifying retroactive adjustment. The employer had acted with diligence, the entitlement issues were complex, and the Board had had to obtain medical advice which took a considerable period of time. *Decision No. 708/07* highlighted the need to obtain policy on retroactive experience rating adjustment in SIEF appeals and the Board now provides this additional policy.

Decision No. 1444/06, 2006 ONWSIAT 3037, is an interesting case which considered the appropriate retroactive adjustment where premiums were unreported for approximately seven years because they had been based on an unrealistic estimate of $100 payroll instead of $100,000. Board policy generally provides for two years of retroactive adjustments for provisional premiums; five years for lack of full disclosure; and potentially over five years for fraud. The Board had treated the matter as a correction of a provisional premium but applied a retroactivity period of more than five years. *Decision No. 1444/06* reasoned that provisional assessments are based on likely estimates of payroll. Adjustments are not expected to be substantial and should not be unduly onerous to adjust retroactively. The estimate in this case was not realistic, and the Tribunal treated the case under the retroactivity provisions for lack of full disclosure. The retroactive adjustment was reduced to five years, consistent with the period for lack of full disclosure.

Two decisions considered an employer's standing to participate in an appeal in somewhat unusual circumstances. *Decision No. 1046/05*, 2007 ONWSIAT 630, 82 W.S.I.A.T.R. (online), considered whether an employer could appeal a Board decision to reimburse a worker for costs incurred in obtaining medical reports for an unsuccessful claim. *Decision No. 950/07I*, 2007 ONWSIAT 1175, 82 W.S.I.A.T.R. (online), considered whether a transfer of costs employer has standing in a worker's appeal. Both decisions found that the employers did have standing, relying largely on the employers' financial interests in the outcomes of the appeals. *Decision No. 1046/05* went on to find that while the Board had properly exercised its discretion to reimburse the worker, the costs should not have been included in the employer's cost statement since they were administrative costs rather than benefit costs. In Decision No. 950/07I, the transfer of costs employer was found to be entitled to access to the worker's information in order to participate in the appeal.

Finally, *Decision No. 1926/06*, 2007 ONWSIAT 234, 81 W.S.I.A.T.R. (online), considered whether chronic beryllium disease (CBD) should be excluded from NEER experience rating. Board policy excludes a number of long-latency diseases from NEER. After considering the WCB Board of Directors Minute underlying the Board's policy and medical evidence about CBD, the Tribunal found that CBD is not similar to short-latency diseases such as dermatitis. In CBD, not only symptoms but also sensitization may develop long after exposure. Also, improvements in dermatitis are expected after removal from exposure, but not for CBD. Considering the general nature of CBD and possible misunderstandings in the file, exceptional circumstances warranted excluding the costs from the NEER account.

Occupational Disease

Occupational disease cases, which involve workplace exposure to harmful processes or substances, raise some of the most complicated legal, medical and factual issues. Occupational diseases are compensable if they fall under the statutory definition of "occupational disease" or "disablement."

The 2006 Annual Report noted that the Board has adopted an Adjudicative Advice document on dust exposure and chronic obstructive pulmonary disease (COPD). The Board relies on this Adjudicative Advice document to apportion pensions in cases where the worker has compensable workplace exposure and also smoked. In 2007, *Decisions No. 1886/07*, 2007 ONWSIAT 2188, and *361/07*, 2007 ONWSIAT 1501, applied the analysis in *Decision No. 865/92R4*, 2006 ONWSIAT 569, 77 W.S.I.A.T.R. (online), in concluding that a COPD pension should not be apportioned for smoking. While a pension may be apportioned to reflect distinct non-compensable injuries, apportionment is not appropriate where there is no evidence of pre-existing non-

compensable impairment; the workplace exposure was significant; the area affected was the same for both contributors; there was no measurable pre-existing condition; and it was not possible to segregate the smoking contribution from the workplace contribution. The question of whether a NEL award for COPD should be apportioned arose in *Decision No. 484/06I* but the issue was adjourned to obtain a report from a Tribunal medical assessor.

In another COPD appeal, *Decision No. 854/07*, 2007 ONWSIAT 1253, found that a volunteer firefighter did not have entitlement. There was insufficient evidence of intense or prolonged workplace exposure to smoke in the worker's employment history. In his entire career there were only half a dozen incidents that caused him acute discomfort. The Tribunal concluded that the COPD was related to smoking, not exposure as a firefighter.

Epidemiological evidence often plays an important role in the determination of occupational disease cases. *Decision No. 499/07*, 2007 ONWSIAT 1226, 82 W.S.I.A.T.R. (online), provides a good example of the use of epidemiological evidence in deciding whether a worker's lung cancer was due to his exposures as an underground nickel miner for 36 years or his smoking history of 60 pack years. There was evidence that persons with a smoking history of over 60 pack years are at 30 times the risk of the general population of developing lung cancer. This would be the equivalent of a standard mortality ratio (SMR) of 3,000. The SMR for nickel workers is 102. Any exposure to diesel fumes and asbestos would not significantly change that SMR. It was found that the risk of lung cancer based on the worker's smoking history created an overwhelming probability that the smoking was the cause of his cancer when weighted against the small and uncertain risk factors from his employment.

Decision No. 1008/05, 2006 ONWSIAT 2448, 80 W.S.I.A.T.R. (online), considered a claim for skin cancer based on sun exposure. The Panel reviewed a study of basal cell carcinoma based on a cross-section of the population of Philadelphia which considered exposure, ability to tan, complexion and age. The Board appears to accept the threshold of 10,000 hours of cumulative sun exposure as a benchmark in the literature. The Panel found that worker's employment as a police officer for over 17 years had resulted in cumulative workplace exposure approximating 10,000 hours. The worker had also sustained a severe sunburn in attempting to apprehend a suspect. Considering both the acute sunburn and the cumulative occupational exposure, the worker had entitlement for skin cancer.

Another interesting occupational disease case involved a claim for entitlement to multiple myeloma based on exposure to benzene while working at a tire plant for approximately four years and then a motor vehicle manufacturer for approximately 18 years. In the opinion of a Tribunal medical assessor, the worker had a total

cumulative exposure to benzene of 17.94 ppm-years compared to an expected 20.0 ppm-years during a working life of 40 years. While the exposure was more heavy in the initial four years at the tire plant, it was not known if front-loading the exposure had any consequences for the development of the disease. In denying the claim, *Decision No. 682/05*, 2007 ONWSIAT 1808, found that a link between benzene exposure and multiple myeloma was controversial and unproven. Most studies had failed to identify an environmental etiology for the disease and none of the worker's treating specialists had stated that the condition was related to workplace exposure.

Procedural and Evidentiary Rulings

The year 2007 saw the completion of an extensive review of the Tribunal's Practice Directions. Several Practice Directions were deleted as no longer necessary, the remaining Practice Directions were revised and a number of new Practice Directions were adopted. This section will discuss several interesting procedural and evidentiary issues that arose during this same time period which reflect issues addressed in the Practice Directions.

Under the Act, the Tribunal is given the statutory discretion to reconsider decisions which would otherwise be final. *Decision No. 871/02R2*, 2006 ONWSIAT 3023, 81 W.S.I.A.T.R. (online), contains an excellent discussion of the Tribunal's reconsideration process and how it relates to the hearing process. In the workplace safety and insurance setting, there are multiple levels of adjudication and both the Board and the Tribunal have investigative powers. Issues have been thoroughly reviewed by the time a Tribunal decision issues. In addition to thorough review, a fundamental concept guiding the entire Tribunal process is the duty of fairness. The Tribunal has gone to considerable lengths, in spite of limited resources, to promote fairness in its processes. Parties generally have the option of an oral hearing *de novo*. This is very unusual in a final level of appeal in any adjudicative setting. While this promotes fairness, *Decision No. 871/02R2* notes that it also places significant strain on Tribunal resources. The Tribunal must

While the Tribunal takes a broader approach to reconsideration, it is still a special remedy which should only be invoked in exceptional circumstances. To treat reconsiderations as routine would undermine the principle of finality and the importance of the original hearing, as well as put successful parties at risk of multiple proceedings.

carefully balance its resources to ensure that parties awaiting their first hearing date are not penalized due to expenditure of scarce resources on reconsideration requests.

Decision No. 871/02R2 compares the availability of reconsideration at the Tribunal with the processes available at other boards and tribunals. While the Tribunal takes a broader approach to reconsideration, it is still a special remedy which should only be invoked in exceptional circumstances. To treat reconsiderations as routine would undermine the principle of finality and the importance of the original hearing, as well as put successful parties at risk of multiple proceedings. The onus is on the applicant to satisfy the Tribunal that the threshold test for granting a reconsideration request is met. Where an applicant relies on new evidence, the evidence must be sufficiently substantial to effectively outweigh all the evidence leading to the original decision.

In *Decision No. 409/07I*, 2007 ONWSIAT 1663, the worker challenged the constitutional validity of the WSIA, section 41(7)(a), which limits an employer's obligation to re-employ to two years from the date of injury. *Decision No. 409/07I* concluded that the hearing should first decide whether the employer had complied with its re-employment obligations under the WSIA. Charter disputes do not arise in a vacuum. A number of factual issues were not only of potential significance to the Charter challenge but could also lead to determinations that either altered the nature of the challenge or made it moot. Deciding the merits first coincides with the Tribunal's Practice Direction on *Procedure When Raising a Human Rights or Charter Question* (2007), 79 W.S.I.A.T.R. (online), and the approach taken by the Courts and *Decision No. 1737/99I2*, 2000 ONWSIAT 651, 53 W.S.I.A.T.R. 168.

Decision No. 2106/03, 2006 ONWSIAT 2743, 80 W.S.I.A.T.R. (online), reviews the use of expert evidence and the qualifications necessary to provide an expert opinion. The Tribunal applied the Supreme Court of Canada decision in *R. v. Mohan*, which set out the following criteria for admissibility of expert evidence: the evidence must be relevant; it must be necessary to assist the trier of fact; there must be no exclusionary rule otherwise prohibiting receipt of the evidence; and it must be given by a properly qualified expert. In addition, the circumstances for the admission of "novel science" were considered. *Decision No. 2106/03* adopted the reasoning of the Ontario Supreme Court in *Dulong v. Merrill Lynch Canada Inc.*, that a formal qualification in medicine is required in most cases involving expert evidence on medical issues. When novel scientific theory or technique is involved, it must be subject to special scrutiny to determine whether it meets a basic threshold of reliability.

Finally, *Decision No. 1692/06I2*, 2007 ONWSIAT 1684, discusses the Tribunal's new process for preparing a medical assessor brief. The brief's purpose is to provide the

medical assessor with only the materials that are necessary and relevant to the Tribunal's questions. The Medical Liaison Office prepares the brief. While parties have an opportunity to comment on it, they do not make submissions to the assessor. Submissions are not evidence and must be made to the Vice-Chair or Panel.

Applications for Judicial Review and Other Proceedings

This past year was a busy one for judicial review applications involving Tribunal decisions. As noted in last year's Annual Report, a Divisional Court decision released in November 2006 quashed a Tribunal decision. The Court of Appeal granted Leave to Appeal the Divisional Court decision (see *Mills*, below). The appeal is scheduled to be heard early in 2008.

In a split decision, the Divisional Court quashed a second Tribunal decision in 2007 (see *Rodrigues*, below). The Tribunal has filed an application for Leave to Appeal that decision to the Court of Appeal. Thus, at the end of 2007, not one of the over 45,000 decisions released by the Tribunal had been finally determined by the Courts to be patently unreasonable.

The matters outlined in this section demonstrate that there was a fair amount of judicial review activity over this past year. 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. Only judicial review applications where there was some significant activity during 2007 have been included below.

Judicial Review

1. Decision No. 433/99 (June 24, 1999) and Decision No. 433/99R, 2000 ONWSIAT 1439 (May 30, 2000); Mills v. Workplace Safety and Insurance Appeals Tribunal (November 15, 2006) Divisional Court

A worker had a back injury in April 1979. From 1979 until 1990, there were no records of any back complaints in the applicant's medical charts. In late 1991 he suffered from an episode of back pain. In 1993 he alleged to the Board that his back problems were related to the 1979 accident 14 years earlier. A report from the worker's specialist supported a link between the accident and the problems. The issue for the Vice-Chair was one of medical continuity, compatibility and causation. The Vice-Chair concluded that the 1979 accident did not cause or contribute to the symptoms after 1990, and denied entitlement.

The judicial review was heard in Sudbury on October 5, 2006. A Divisional Court panel of Smith, Kent and Pierce reserved its decision. On November 15, 2006, the Divisional Court released its decision granting the application for judicial review and quashing *Decision No. 433/99* and *Decision No. 433/99R*.

The Court held that there were several errors in the Tribunal's fact finding which, although taken individually were small, the cumulative effect of the errors was at odds with the Tribunal's conclusion. While acknowledging the standard of review was patent unreasonableness, the Court held that the Tribunal's findings of fact were erroneous, and a rational conclusion cannot be based on erroneous fact finding.

The Tribunal brought a Notice of Motion for Leave to Appeal. In May 2007 the Court of Appeal granted leave. The appeal will be heard by the Court of Appeal in February 2008.

2. Decision No. 855/03, 2005 ONWSIAT 2490, 76 W.S.I.A.T.R. (online); Rodrigues v. Workplace Safety and Insurance Appeals Tribunal (2007), 87 O.R. (3d) 71

The worker was a member of a union. Pursuant to the collective agreement, the employer made contributions on the worker's behalf to a benefit plan that provided health and dental care coverage, as well as pension plan coverage. The employer's contributions were based on the hours worked by the worker. Under the terms of the plan, part of the contributions were used to continue the worker's benefits and pension contributions for up to a year after an injury.

The worker was injured. He alleged that the employer's contribution to his benefits should be included in the calculation of his earnings for the purposes of workplace safety and insurance benefits. The worker's appeal was dismissed. The Vice-Chair held that Board policy did not include benefit payments and pension plans in earnings basis. There was no direct relationship between the employer's contributions and the benefits the worker received. The Vice-Chair also held that the Legislature did not intend to include contributions from all employers in Ontario in the earnings of workers, or that some workers would receive non-taxable income.

The worker commenced an application for judicial review. The Workplace Safety and Insurance Board was granted status to intervene in the judicial review. The judicial review was heard in June 2007.

In a majority decision released September 10, 2007, the Divisional Court quashed the Tribunal's decision. Justices Jennings and Lederman found the decision was patently unreasonable for failing to consider submissions on legislative history. Justice Swinton, in a strong dissent, said the Tribunal's decision was not patently unreasonable because it did not refer to those submissions. She noted a failure to mention evidence is not necessarily fatal to a Tribunal decision, and that legislative history plays a limited role in the interpretation of legislation. She noted that in any event legislative history was not determinative of the meaning of "earnings."

The Tribunal filed a Notice of Motion for Leave to Appeal. At the end of the year a decision on the Leave application was pending.

3. Decision No. 1402/03, 2004 ONWSIAT 92, 67 W.S.I.A.T.R. 163, and Decision No. 1402/03R, 2005 ONWSIAT 1864 (August 19, 2005); Jovic v. Ontario (Workplace Safety and Insurance Appeals Tribunal) [2007] O.J. No. 1287

An injured worker had his benefits based upon the actual wages his employer paid him. The worker alleged that the wages that were paid were too low, and that under the collective agreement he should have been paid by the employer at a higher rate. The Tribunal held that it did not have the jurisdiction to interpret a collective agreement, and whether the correct wages were paid was a Labour Relations matter. The worker had not sought a remedy under the collective agreement. The Tribunal found that the amount the worker was paid was the amount to be used in the calculation of benefits, and the Tribunal did not have the jurisdiction to consider what should have been paid.

The worker commenced an application for judicial review of the Tribunal's decisions. The judicial review was heard in March 2007. The application for judicial review was dismissed. The Divisional Court Panel of Carnwath, Matlow and Jennings held that the standard of review was patent unreasonableness, and not correctness as argued by the applicant. The Court found that the Tribunal was acting within its area of expertise in determining this question of law, and it would be incorrect to engage in "labelling" to undermine the characterization of the appropriate standard of review. The Court agreed with the Tribunal that the Tribunal did not have jurisdiction to adjudicate upon an alleged violation of a collective agreement.

Counsel for the worker sought leave to appeal to the Court of Appeal. On October 2, 2007, the Court of Appeal panel of Armstrong, Doherty and Lang dismissed the leave application with costs.

4. Decision No. 172/02I, 2002 ONWSIAT 523 (February 28, 2002), Decision No. 172/02, 2003 ONWSIAT 2088 (September 22, 2003) and Decision No. 172/02R, 2004 ONWSIAT 1388 (June 30, 2004); Singh v. Workplace Safety and Insurance Appeals Tribunal

In January 1995 a worker injured his elbow and back. He received total disability benefits from the date of the accident until early 1996, when his benefits were terminated for failing to accept suitable work. The Board reinstated his wage loss benefits effective December 2001, and awarded a 100% future economic loss award in April 2003.

The worker appealed to the Tribunal for entitlement for a psychotraumatic disability and for wage loss benefits from February 1996 to December 2001. In *Decision No. 172/02* the Vice-Chair granted entitlement for a psychotraumatic disability, but found the worker was not totally disabled until July 1999. The worker's application to reconsider was granted in part in *Decision No. 172/02R*, allowing the temporary total disability benefits to be further backdated to September 9, 1998. A further request to reconsider the allowance of benefits for the period from 1996 to September 1998 was denied.

The worker commenced an application for judicial review. The case was heard on October 25, 2007 by a Divisional Court Panel of Swinton, Lane and Kitely. The Court reserved its decision. As of the end of 2007 the judgment had not been released.

5. Decision No. 18/88I (March 22, 1988) and Decision No. 18/88 (October 27, 1988); Lopez v. Ontario (Workplace Safety and Insurance Appeals Tribunal) [2004] O.J. No. 5359; Lopez v. Workplace Safety and Insurance Appeals Tribunal, Workplace Safety and Insurance Board, and Toronto General Hospital (December 14, 2005) unreported (Ontario Superior Court)

In 1988 the Tribunal heard an appeal from the worker for further benefits. 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 his 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 couldn't 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.

In December 2005 Justice Sachs ruled that the judicial review application should not 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."

In February 2007 the worker commenced yet another application under section 140, under a different style of cause, for leave to continue the application for judicial review. On March 5, 2007 counsel for the Board and the Tribunal attended before Justice Colin Campbell. Justice Campbell denied the application for leave. Justice Campbell also stated that no further material could be filed by the worker until proof of all costs orders had been filed.

6. Decision No. 2282/05, 2006 ONWSIAT 1093, 78 W.S.I.A.T.R. (online) and Decision No. 2282/05R, 2006 ONWSIAT 1928 (August 29, 2006); Kranc v. Workplace Safety and Insurance Appeals Tribunal

A chambermaid at a motel claimed that she was sexually assaulted by K, one of the owners of the motel. The motel was owned by a partnership. She brought an action against the owners. The defendants applied to determine whether the plaintiff's right of action was taken away.

Although the defendants denied the allegations, they agreed for the purposes of the Tribunal application that the allegations were true.

The Panel found the right of action was taken away against all the defendants, except K. The plaintiff was a worker of a Schedule 1 employer, and the sexual assaults were accidents within the meaning of the Act. However the assaults by K were outside the scope of employment, and he could not be

considered to be an employer at the time of the assaults. The Act did not intend to protect employers from actions for deliberate assaults against workers.

A request for reconsideration was denied. The defendants brought an application for judicial review. In February 2007 the defendants filed a Notice of Abandonment of the judicial review.

7. Decision No. 1509/02, 2004 ONWSIAT 196 (February 2, 2004) and Decision No. 1509/02R, 2006 ONWSIAT 2179 (September 27, 2006); Gallina v. Workplace Safety and Insurance Appeals Tribunal

Two sisters were suspended at the same time for smoking in a nonsmoking area at work. Sister #1 reported an accident within a few hours of returning after her suspension. Sister #2 reported an accident later that day, before the suspension took effect.

Sister #1's claim was denied by the Board. Her appeal to the Tribunal was dismissed (*Decision No. 1384/03*, 2003 ONWSIAT 2895). She brought an application for judicial review. On April 6, 2005 the Divisional Court unanimously dismissed the application for judicial review. The Court stated: "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."

However, Sister #2's claim had been 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 (*Decision No. 1509/02*). Sister #2 also brought an application for judicial review.

Following the release of the Divisional Court decision for Sister #1, Sister #2 decided to adjourn the judicial review, to permit her counsel to file an application for reconsideration with the Tribunal. The Tribunal consented to the adjournment.

The basis of the reconsideration application was that the Panel had failed to consider the worker's alternative argument that entitlement could have been granted on the basis of a recurrence. The reconsideration was denied by a different Vice-Chair in *Decision No. 1509/02R*, on the grounds that the worker had failed to explicitly appeal the recurrence issue to the Tribunal. However, the Vice-Chair also noted that there was a final decision of the Board on the recurrence issue, and it was open to the worker to bring a time extension application should she still wish to pursue that issue at the Tribunal.

Following the release of *Decision No. 1509/02R*, the worker retained new counsel. Her new counsel filed a time extension application. In *Decision No. 2021/07E*, 2007 ONWSIAT 2548, the request for a time extension was denied.

The judicial review application is still pending.

8. Decision No. 1118/07, 2007 ONWSIAT 1557 (June 14, 2007)

The plaintiff was allegedly injured while employed at a nuclear generating station. He brought an action. The defendant's application to the Tribunal for an order taking away the plaintiff's right to sue was granted. The Vice-Chair found the fact the employer may be a federal undertaking did not take away the Tribunal's jurisdiction. The *Nuclear Liability Act* did not limit the right to claim compensation.

The plaintiff has commenced an application for judicial review. The Tribunal is in the process of preparing its record of proceedings.

9. Decision No. 167/06, 2006 ONWSIAT 523 (March 9, 2006) and Decision No. 167/06R, 2006 ONWSIAT 2930 (December 14, 2006)

The worker's appeal for chronic pain entitlement was denied by the Tribunal. The worker's family doctor had submitted a report suggesting the worker was a malingerer. The Vice-Chair relied on the letter as part of the evidence he considered in denying the appeal.

The worker commenced an application for judicial review. The Tribunal filed its Record of Proceedings and is waiting for the worker's factum.

10. Decision No. 1971/00, 2001 ONWSIAT 153 (January 24, 2001), Decision No. 1971/00R, 2001 ONWSIAT 3777 (December 11, 2001), Decision No. 1971/00R2, 2007 ONWSIAT 1119 (April 24 2007); and Decision No. 1357/03I, 2003 ONWSIAT 2133 (September 26, 2003), Decision No. 1357/03, 2004 ONWSIAT 2391 (November 19, 2004), and Decision No. 1357/03R, 2007 ONWSIAT 1092 (April 20, 2007)

This application for judicial review involves six decisions for the same worker. The worker was denied entitlement for his neck, based on the Tribunal's assessment of the medical evidence. It is not clear what the nature of the application for judicial review is for. The Tribunal filed its Record of Proceedings and is currently awaiting the worker's factum.

11. Decision No. 1022/02, 2003 ONWSIAT 2660 (December 9, 2003), Decision No. 1022/02R, 2004 ONWSIAT 1707 (August 18, 2004), Decision No. 1022/02R2, 2005 ONWSIAT 2383 (November 1, 2005), and Decision No. 1022/02R3, 2007 ONWSIAT 2461 (October 3, 2007)

Decision No. 1022/02 denied the worker entitlement for benefits for a bilateral shoulder and related left elbow condition. The worker claimed the condition 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 ViceChair decided that *Decision No. 1022/02* should be reopened. The second ViceChair 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. While acknowledging 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, it was directed that the appeal be reheard.

The Tribunal was served with a notice that the judicial review had been abandoned.

The appeal was reheard. The worker withdrew the appeal for elbow entitlement. In *Decision No. 1022/02R3* the worker was granted entitlement for the bilateral right shoulder condition.

Other Litigation Matters

Human Rights Complaint

An injured worker appealed for entitlement for traumatic mental stress on the basis of alleged sexual harassment by his supervisor. A three-person Panel denied the appeal. The worker filed a complaint with the Human Rights Commission, alleging discrimination by the Tribunal and the Panel members on the grounds of disability. It was apparent that the worker's main complaint

was that he did not agree with the decision, and wanted the Commission to change it.

The Tribunal filed an Answer with the Commission, arguing that the Commission should not deal with the Complaint under section 34 of the Code on the grounds that the Commission had no jurisdiction to overturn a Tribunal decision, and alternatively that the complaint was frivolous and vexatious.

Commission staff recommended that the Commission not deal with this complaint. Chief Commissioner Barbara Hall accepted the recommendation of its staff and the Tribunal's submissions, and decided not to deal with the complaint. She found that the matter was more appropriately dealt with under the WSIA, that the complaint did not provide a link between the grounds alleged and the alleged discriminatory behaviour, and that the complaint was vexatious.

Li v. Cirrina, Workplace Safety and Insurance Appeals Tribunal, and Workplace Safety and Insurance Board

An injured worker's appeal was denied by a decision of Ms. Cirrina, an Appeals Resolution Officer at the WSIB. The worker appealed that decision to the Tribunal. Subsequent to filing her appeal, the worker commenced a Small Claims Court action for $4,000 against the Board, the Board's Appeals Resolutions Officer who made the decision, and the Tribunal.

It was not clear why the worker named the Tribunal as a defendant in the action. After being contacted by a lawyer in Tribunal Counsel Office, the worker withdrew her claim as against the Tribunal.

Ombudsman Reviews

The Ombudsman's Office has the authority to investigate complaints about the Ontario government and its agencies, including the Tribunal. When the Ombudsman's Office receives a complaint about a Tribunal decision, the Office considers whether the decision is authorized by the legislation, whether the decision is reasonable in that the Tribunal had evidence upon which it could base its decision, and whether the process was fair. If the Ombudsman requires information from the Tribunal, or if issues arise which indicate the need for a formal investigation, the Tribunal will be notified of the Ombudsman's intent to investigate. While an Ombudsman investigation may result in a recommendation to reconsider, this is unusual. Generally, the Ombudsman concludes that there is no reason to question the Tribunal's decision.

The Tribunal typically receives a few notifications of the Ombudsman's intent to investigate each year. For example, in 2006, 2005 and 2004, there were zero, six, and 12 notifications respectively. All of these matters were previously closed without any recommendation for further action by the Ombudsman. In 2007, the Tribunal received eight notifications of the Ombudsman's intent to investigate. As of the end of 2007, six of these files had been closed and two remained outstanding.

TRIBUNAL REPORT
Executive Director's Message

New Appointees

Since 2004, the Tribunal's complement of Order in Council appointees has been transformed by the addition of 29 new Vice-Chairs and four new Members. New appointees (appointed in the last five years) now represent over half of the Tribunal's Vice-Chair complement, with the Members' group less significantly affected by these developments. The training and development of new appointees has been the focus of a number of the Tribunal's activities in the last several years, and this investment is beginning to show results. The decision output of the Tribunal has increased steadily since 2005; this increase in productivity has allowed the Tribunal to make significant progress in reducing its backlog of active appeals. Once this backlog is eliminated, the Tribunal will once again be able to deliver on its promise of timely processing of appeals. We expect that this will occur by mid-2009. The Tribunal appreciates the patience of its stakeholder community while it has undertaken this process of regeneration.

Practice Directions 2007

At the same time we have been occupied with the development of new appointees, the Tribunal has taken steps to improve the transparency of its practices and procedures by documenting them in a comprehensive set of Practice Directions. Introduced in the fall of 2007, they represent the combined efforts of a number of senior Tribunal staff. The development of these Practice Directions has provided impetus for the redesign of the Tribunal's website, and a review of the Tribunal's other vehicles for delivering information about its activities and decisions. In 2008, the Tribunal will assess its publications to ensure that they provide the most up to date information about its decisions in an accessible format.

Regulatory Framework for Paralegals

The Tribunal undertook an unexpected project in 2007, in response to the introduction of a regulatory framework for paralegals created by amendments to the *Law Society Act*. Non-lawyers make up the majority of representatives who appear on behalf of

parties before the Tribunal, and this group was significantly affected by this development. The Tribunal took the initiative to notify the representative community of their obligations under the *Law Society Act*; facilitated the application for licensing of many paralegals by developing a reference procedure; and monitored its caseload closely to ensure that hearings were not lost as a result of the failure of a representative to take appropriate action. This project will continue in 2008, as paralegals complete the licensing process and the Tribunal continues to monitor the status of this group. In addition, the introduction by the Law Society of a comprehensive Paralegal Rules of Conduct will require the Tribunal to assess its mechanisms for addressing conduct issues for representatives.

Goals for 2008 and 2009

The next two years will be critical for the Tribunal, as we work towards stabilizing our caseload, providing timely hearing dates, providing up to date and accessible information to stakeholders, and working with stakeholders in the transition to a new system of licensing for representatives. We are able to approach these goals with confidence as we are supported by dedicated and knowledgeable staff and appointees.

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 2007 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Office of the 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 (TCO) and is not involved in making submissions in hearings. Draft review, which has been described in prior Annual Reports, is the responsibility of OCC.

OCC provides advice to the Chair and Chair's Office, particularly with respect to complicated reconsideration requests, post-decision inquiries, Ombudsman inquiries and other complaints. OCC lawyers also assisted with the review of the Tribunal's Practice Directions which were released in 2007.

OCC is responsible for facilitating compliance with the *Freedom of Information and Protection of Privacy Act* (FIPPA), responding to FIPPA complaints and appeals, and providing advice and support to other Tribunal departments on privacy matters.

Professional development continued to be important in 2007, given the four different legislative schemes, recent statutory amendments and extensive Board policy and policy amendments. OCC provided orientation training on workplace safety and insurance law and related legal issues to a number of new adjudicators who joined the Tribunal in 2007. OCC lawyers conducted research, prepared current awareness materials, and developed and delivered professional development sessions.

During 2007, OCC has also been active in the development of the Tribunal's knowledge management resources, assisting with various knowledge management initiatives aimed at facilitating the access of Vice-Chairs and Members to information on law, policy and procedure through electronic means.

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 gives notice to the parties. When the appellant is ready, the Tribunal requests the Appeal Record from the Board. The Tribunal then prepares the appeal for hearing, 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.

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 and results in a written decision with reasons. Requests 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 appeals that 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 and the parties pursue more appropriate alternatives.

Vice-Chair Registrar Teams

All files are assigned to pre-hearing staff for substantive review 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 up to the 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 may be referred to ADR staff 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, groups of single party appeals (with the same representative) are referred to ADR staff. This is done where it is believed that a discussion with the parties may result in an expeditious resolution of the appeal, a recommendation or an early decision by the Vice-Chair Registrar.

Tribunal Counsel Office

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

Hearing Work

Under the Tribunal's case processing model, TCO processes appeals which raise the most complex 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 applications for reconsideration of Tribunal decisions.

Pre-hearing Work

When a complex appeal is received by TCO prior to a hearing, the case is assigned to a lawyer. The case is carried by that lawyer until the final decision is released. The lawyer resolves legal, policy and evidentiary issues that arise prior to the hearing, provides assistance to the parties if there are procedural questions concerning the appeal, and attending at the hearing to question witnesses and make submissions on points of law, policy, procedure and evidence.

Post-hearing Work

After a hearing a Tribunal Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. In those circumstances, the Vice-Chair or Panel sends a written request for assistance to the Post-hearing Manager in Tribunal Counsel Office. 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 an

independent medical opinion from a Tribunal appointed medical assessor, or to arrange for written submissions from the parties and TCO lawyers.

TCO Lawyers

TCO has a small group of lawyers with considerable expertise in workplace safety and insurance law, and administrative law. As noted above, lawyers in TCO handle the most complex appeals involving legal and 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, *Human Rights Code* 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 Tribunalrelated court matters.

TCO Legal Workers

TCO legal workers handle exclusively post-hearing appeal work and reconsiderations. 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 Manager directs and assigns work to the TCO legal workers. The Post-hearing Manager also reviews and analyzes the types of post-hearing requests, the reasons for adjournments, and monitors the progression of the post-hearing and reconsideration 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 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 carry out its mandate, MLO works constantly to ensure that it is able to provide access to the Tribunal of the very best impartial and independent outside medical expertise and resources. The Tribunal's relationship with the medical community is viewed as particularly important, since ultimately, the quality of the Tribunal's decisions on medical issues will be dependent on that relationship. MLO co-ordinates and oversees all the Tribunal's interactions with the medical community. MLO's success in maintaining a positive relationship with the medical community is demonstrated by the Tribunal's continuing ability to readily enlist leading members of the medical profession to provide advice and assistance.

Medical Counsellors

The Medical Counsellors are a group of eminent medical specialists who serve as consultants to WSIAT. They play a critical role in assisting MLO to carry out its mandate of ensuring the overall medical quality of Tribunal decision-making.

The Chair of the Medical Counsellors is Dr. John Duff. There were no changes to the roster of counsellors in 2007. A list of the current Medical Counsellors is provided in Appendix A.

Prior to a hearing, MLO identifies those appeals where the medical issues are particularly complex or novel. Once the issues are identified, MLO may refer the appeal materials to a Medical Counsellor. The Medical Counsellor reviews the case identified by MLO to verify that the medical evidence is complete and that the record contains any necessary opinions from appropriate experts. The Counsellor also ensures that questions or concerns about the medical issues that may need clarification for the Panel or Vice-Chair are identified. Medical Counsellors may recommend a Panel or Vice-Chair consider obtaining a Medical Assessor's opinion if the diagnosis of the worker's condition is unclear, or if there is a complex medical problem that requires explanation, or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, Panels or Vice-Chairs requiring further medical investigation may request the assistance of MLO in preparing specific questions for Medical Assessors 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 by recommending the most suitable Medical Assessor.

Medical Assessors

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

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

The opinion of a Medical Assessors is normally sought in the form of a written report. A copy of the report is made available to the worker, employer, the Panel or Vice-Chair, and the Board. On occasion, a Hearing Panel or Vice-Chair will want the opportunity to question the Medical Assessor at the hearing to clarify the opinion. In those cases, the Medical Assessor will be asked to appear at the hearing and give oral evidence. The parties participating in the appeal, as well as the Panel or Vice-Chair, have the opportunity to question and discuss the opinion of the Medical Assessor.

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

The Appointment Process for Medical Assessors

The Medical Counsellors identify highly qualified health care professionals eligible to be appointed to the Tribunal's roster of Medical Assessors. Those health care professionals who agree to be nominated as candidates have their qualifications circulated to all the Medical Counsellors, and to members of the Advisory Group. The Tribunal has the benefit of the views of the Medical Counsellors and the Advisory Group when it determines the selection for the roster from the available candidates. Medical Assessor appointments are for a three-year term, and may be renewed.

Resources by MLO Available to the Public

Of all the medical information made available by MLO, WSIAT Medical Discussion Papers are the most frequently requested. The Tribunal commissions Medical Discussion Papers to provide general information on medical issues which may be raised in Tribunal appeals. Each paper is written by a recognised expert in the field selected by the Tribunal, and each expert is asked to present a balanced view of the current medical knowledge on the topic.

Medical Discussion Papers are intended to provide a broad and general overview of a topic, and are written to be understood by lay individuals. 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 the 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 Website.

Information Services

Information Services provides library, web development, communication, publishing, training, abstracting and translation services to the Tribunal and supports the Tribunal's goal of delivering timely, well reasoned decisions. The group organizes and publishes information about the appeal process for staff and stakeholders.

Web Services

Information Services maintains the content for the Tribunal's websites and strives to keep content current and relevant for users. This year the 2007 Practice Directions were added to the public site. Users can print out a complete set of the Practice Directions or use them online. The Tribunal's decision summary database continues to be heavily used by our stakeholders.

During this period the Tribunal's Intranet site was reorganized to make it easier for staff to find information. This work will help with the move to a new platform for our Intranet in 2008.

Our web developers worked extensively on the information portal for the adjudicators. The portal pulls together information sources and administrative functionality to assist adjudicators with their work. The portal was "launched" in the fall of 2007.

Translation Services

The Tribunal offers services in French to its Francophone stakeholders in accordance with the *French Language Services Act* of Ontario. Our translator is responsible for the translation of materials on our public website, as well as print materials published by the Tribunal.

Publishing Services

After 18 years as a subscription print publication, the *WSIAT Reporter* became a free electronic online publication in 2006. By the end of 2007, seven volumes of the online Reporter have been published. Decisions can be accessed through the subject matter index or keyword index, or through a new table of contents for individual volumes, which was added to the online Reporter in 2007. In addition, each decision headnote now has a list of the headings in the decision, with links to the location of those headings in the full text.

Volume 81 includes the full set of new practice directions that was issued by the Tribunal in October 2007. The Reporter site also includes a cumulative table of contents for all materials in the Reporter, with electronic links to decisions and practice directions published in the online volumes.

Information Services also publishes the Tribunal newsletter, *WSIAT In Focus*, that covers events and people at the Tribunal.

Staff Training

The Tribunal has a strong commitment to staff learning and development and Information Services is responsible for putting together training programs. This year there were two in-house staff skills exchange afternoons.

Ontario Workplace Tribunals Library

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

In July 2007, the Tribunal's librarian, Felicity Fowke retired. Felicity was with the Tribunal for more than 20 years and was well known in the library and adjudicative community. In September 2007, Wendy Reynolds became the new Manager of Library Services.

Case Management Systems

The Case Management Systems Department (CMS) provides the information technology (IT) infrastructure and supports the case management functions of the Tribunal. This department in Year 2007 undertook computer system upgrades; introduced case management system enhancements; and collaborated with Information Services on Tribunal-wide information management initiatives.

With respect to computer systems, the department replaced all of the desktops for end users. At the server level, the department migrated data into the new SharePoint infrastructure and implemented a new data storage network. In terms of case management support, the application development team created a number of new document templates and developed software modules for the customized case management system, including a module that automates the decision release process.

The department was also active in supporting the Tribunal's information management projects and partnered with Information Services in completing and launching the new "Nickopedia" portal. The department developed a new set of individual and team performance reports to support the managers of the appeals processing teams, and conducted numerous technology and process training seminars.

To support the Tribunal's disaster planning initiative, the department introduced new copy and offsite storage/retrieval procedures for "mission critical" data.

Caseload Processing

Introduction

At the Tribunal, appeals proceed through a two-part 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 2007, there were 4,651 active cases within these two process stages. Chart 1 shows the distribution in more detail.

Chart 1: Inventory of Active Cases on December 31, 2007

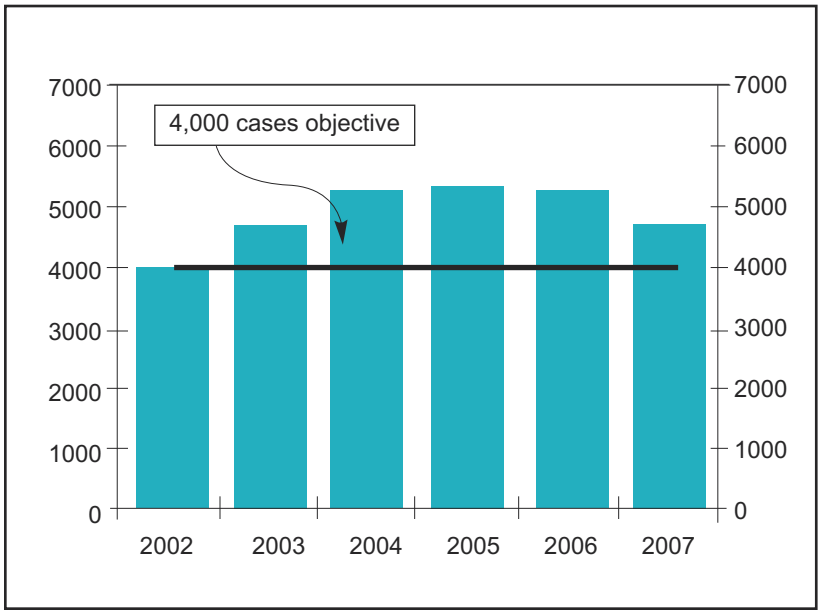
Notice Process	
Cases active in Notice stage processing	1194
	1194
Resolution Process	
Early Review stage	120
Substantive Review	310
Hearing Ready	87
Scheduling and Post-hearing	2333
WSIAT Decision Writing	607
	3457
Total Active Cases	**4651**

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 2007, these factors combined to produce an 11% overall decrease in active inventory as compared to the 2006 year-end figure.

In 2007 the active caseload witnessed declines in each quarter and this was achieved through increased decision output due to the increased size of the adjudicator roster. The Tribunal expects to continue with this higher level of decision output throughout 2008 and 2009. Chart 2 shows the active inventory in comparison to previous years.

Chart 2: Inventory of Active Cases on December 31, 2007

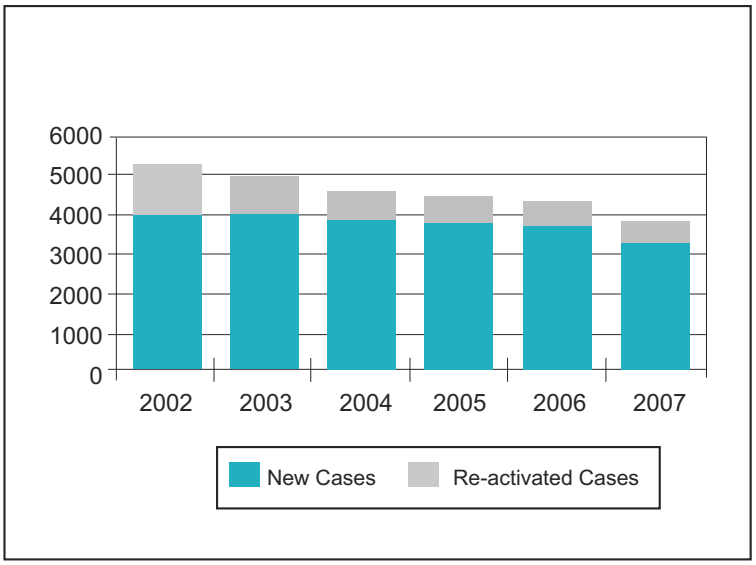


Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2007 the Tribunal's overall intake from new appeals and reactivations totalled 3,894 and this represented a total reduction of 10.7% as compared with the 2006 intake total. "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 WSIA requires written reasons. Also, the Board requires written reasons to implement a decision. Other methods of dispute resolution, used primarily in the pre-hearing areas are telephone discussions regarding issue agendas and evidence; file reviews for jurisdiction issues or compliance with time limits; and, where two parties are participating, staff mediation.

As shown in Chart 4, the Tribunal disposed of 4,533 cases in 2007. This included 1,547 "Pre-Hearing" and 2,986 "Hearing" dispositions.

Chart 4: Cases Disposed of in 2007

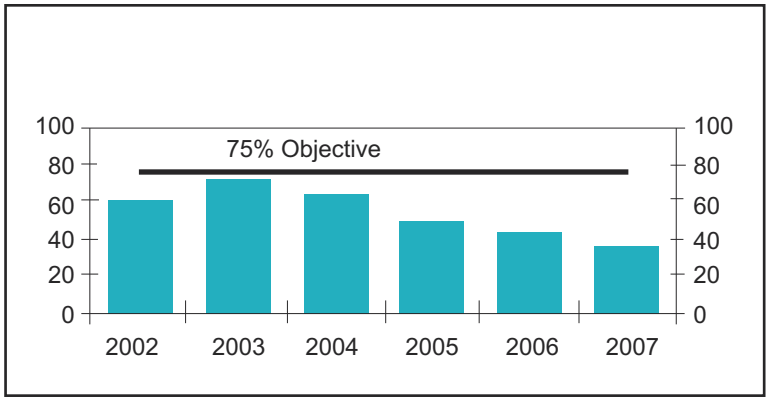
Pre-Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	646
Withdrawn	779
With Tribunal Final Decision	122
	1547
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	106
Withdrawn	12
With Tribunal Final Decisions	2868
	2986
TOTAL (Pre-Hearing and Hearing)	
Without Tribunal Final Decisions	1543
With Tribunal Final Decisions	2990
	4533

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

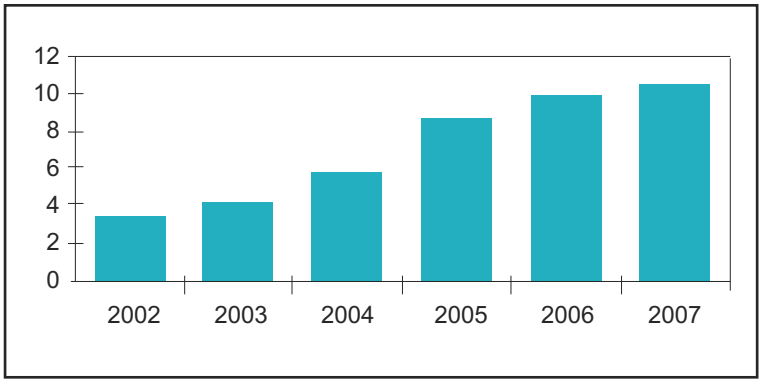
Chart 5 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2007, only 36% of cases were resolved within nine months, a decline of 7% from 2006. The Tribunal has 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 2007.

Chart 5: Percent Disposed of Within 9 Months



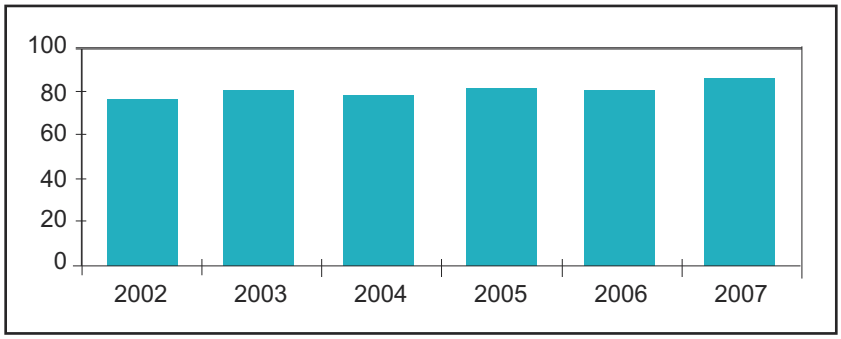
The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Chart 6 shows that the median time interval of these proposed hearing dates increased slightly in 2007 over 2006. 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 2007, this target was achieved 86% of the time.

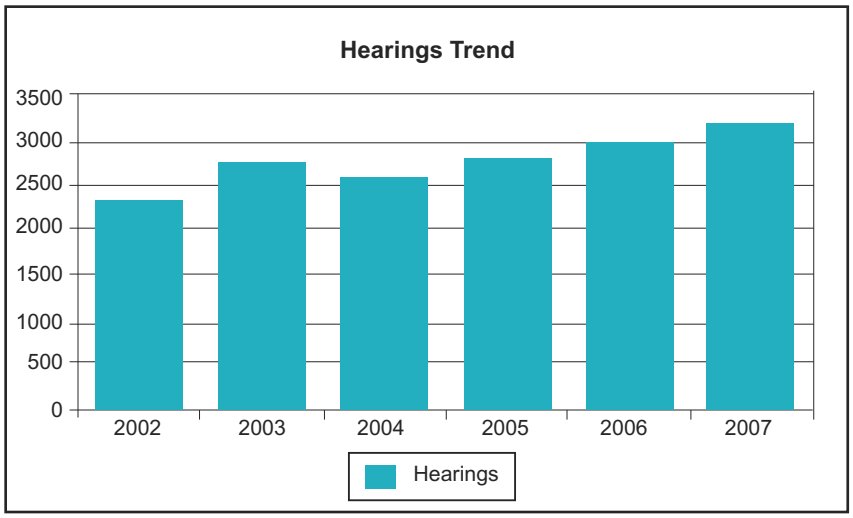
Chart 7: Final Decisions (Percent Released within 120 Days)

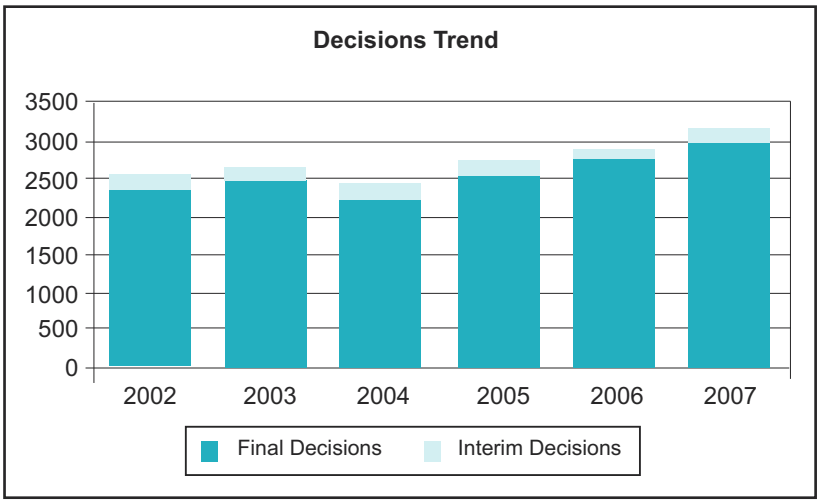


Hearing and Decision Activity

Chart 8 depicts the Tribunal's Hearing and Decision production. In 2007 the Tribunal conducted 3,202 hearings and in this same period, issued 2,990 final decisions and 179 interim decisions (for a total of 3,169 released decisions). As shown in the chart, for 2007, the overall levels of hearing and decision activity were increased significantly over levels achieved in previous years and these measures demonstrated three consecutive years of volume increases.

Chart 8: Hearings and Decision Production Figures

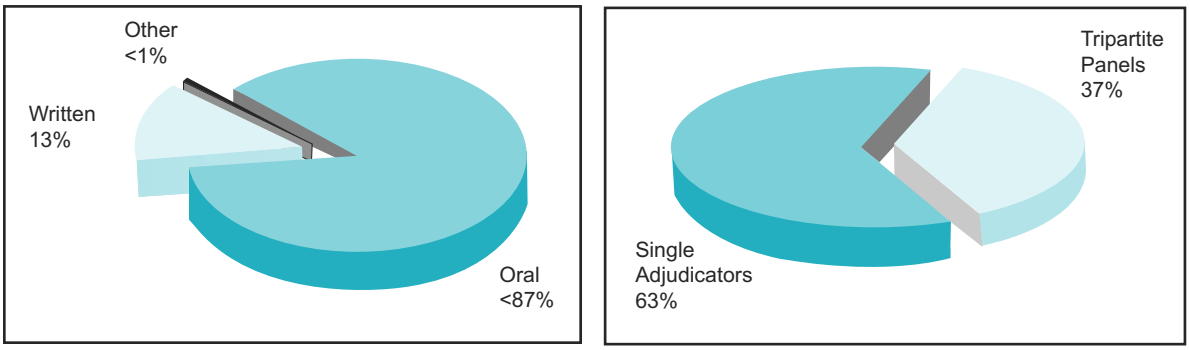




Hearing Type

In 2007 the percentage breakdown of hearing types was as follows: Oral hearings continued to be the most common hearing type at nearly 87%, followed by Written hearings at 13%. The remaining (less than 1%) hearings in 2007 were comprised of Teleconferences, Vice-Chair Registrar and Motions Day case reviews. The percentage of single adjudicators increased in 2007 to 63% (from 56% in 2006); tri-partite panels decreased to 37% of cases heard. Chart 9 presents these hearing characteristics.

Chart 9: Percentage Breakdown of Hearing Types



Representation at Hearing

Tribunal statistics show that for injured workers, 39% were represented by paralegals and consultants; 22% by lawyers; 14% 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: 37% were represented by lawyers; 33% were represented by paralegals and consultants; and 12% by the Office of the Employer Adviser. The remaining 18% are non-categorized. Hearing representation is presented in Chart 10.

Chart 10: Percentage Breakdown of Representation at Hearing

Worker Representation

A) In Worker Appeals

None Recorded	358	12%
Subtotal	358	12%
Consultant	142	5%
Lawyer/Legal	634	22%
OWA	423	14%
Others	17	1%
Paralegal	998	34%
Union	366	13%
Subtotal	2580	88%

B) In Employer Appeals

None Recorded*	136	61%
Subtotal	136	61%
Consultant	4	2%
Lawyer	18	8%
OWA	16	7%
Others	2	1%
Paralegal	17	8%
Union	30	13%
Subtotal	87	39%

Employer Representation

A) In Worker Appeals

None Recorded*	2005	68%
Subtotal	2005	68%
Firm personnel	350	12%
Consultant	49	2%
Lawyer	255	9%
OEA	89	3%
Others	26	1%
Paralegal	164	5%
Subtotal	933	32%

B) In Employer Appeals

None Recorded	40	18%
Subtotal	40	18%
Firm personnel	0	0%
Consultant	11	5%
Lawyer	82	37%
OEA	27	12%
Others	1	0%
Paralegal	62	28%
Subtotal	183	82%

* 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.

Caseload by General Appeal Issue Type

The appeal type categorization of incoming cases and dispositions has been consistent over the years and 2007 was no exception. In 2007, as in past years, Entitlement-related cases constituted the majority of cases (95%). Special Section cases (Right to Sue and Access) comprised typically small portions (5%). Charts 11 and 12 provide historical comparisons of intake and dispositions.

Chart 11: Breakdown of Incoming Cases by Appeal Type for the Years 2002-2007

INPUT BY TYPE	2002		2003		2004		2005		2006		2007	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	1	0.0%	1	0.0%	1	0.0%	1	0.0%	0	0.0%	1	0.0%
Right to Sue	51	1.0%	61	1.2%	63	1.4%	63	1.4%	51	1.2%	37	1.0%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Access	293	5.6%	202	4.1%	212	4.7%	233	5.2%	232	5.3%	164	4.2%
Total Special Section	**345**	**6.6%**	**264**	**5.4%**	**276**	**6.1%**	**297**	**6.6%**	**284**	**6.5%**	**202**	**5.2%**
Preliminary (not yet specified)	40	0.8%	102	2.1%	27	0.6%	10	0.2%	4	0.1%	8	0.2%
Pension	24	0.5%	32	0.6%	9	0.2%	5	0.1%	10	0.2%	4	0.1%
N.E.L./F.E.L.*	302	5.8%	353	7.2%	72	1.6%	38	0.8%	37	0.8%	30	0.8%
Commutation	9	0.2%	6	0.1%	3	0.1%	0	0.0%	0	0.0%	1	0.0%
Employer Assessment	408	7.8%	341	6.9%	194	4.3%	152	3.4%	125	2.9%	122	3.1%
Entitlement	3607	69.2%	3364	68.2%	3579	79.3%	3718	82.8%	3630	83.2%	3307	84.9%
Ext post WSIB dec. deadline	349	6.7%	385	7.8%	288	6.4%	230	5.1%	210	4.8%	159	4.1%
Jurisdiction Time Limit	55	1.1%	13	0.3%	5	0.1%	7	0.2%	5	0.1%	10	0.3%
Reinstatement	3	0.1%	1	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation **	12	0.2%	4	0.1%	1	0.0%	4	0.1%	2	0.0%	1	0.0%
Classification	43	0.8%	41	0.8%	45	1.0%	29	0.6%	54	1.2%	50	1.3%
Interest NEER	12	0.2%	24	0.5%	7	0.2%	0	0.0%	2	0.0%	0	0.0%
Total Entitlement-related	**4864**	**93.3%**	**4666**	**94.6%**	**4231**	**93.8%**	**4193**	**93.4%**	**4079**	**93.5%**	**3692**	**94.8%**
Jurisdiction	5	0.1%	2	0.0%	4	0.1%	0	0.0%	0	0.0%	0	0.0%
	5214		4932		4511		4490		4363		3894	

NOTES: 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.

**The Vocational Rehabilitation 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 2002-2007

OUTPUT BY TYPE	2002		2003		2004		2005		2006		2007	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	3	0.1%	0	0.0%	3	0.1%	0	0.0%	0	0.0%	2	0.0%
Right to Sue	39	0.9%	61	1.4%	62	1.5%	44	1.0%	48	1.1%	67	1.5%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Access	250	6.0%	234	5.2%	209	5.0%	241	5.5%	239	5.3%	136	3.0%
Total Special Section	**292**	**7.0%**	**295**	**6.6%**	**274**	**6.5%**	**285**	**6.5%**	**288**	**6.4%**	**205**	**4.5%**
Preliminary (not yet specified)	89	2.1%	100	2.2%	66	1.6%	18	0.4%	19	0.4%	9	0.2%
Pension	34	0.8%	26	0.6%	23	0.5%	22	0.5%	9	0.2%	11	0.2%
N.E.L./F.E.L.*	223	5.3%	254	5.7%	269	6.4%	194	4.4%	93	2.1%	56	1.2%
Commutation	14	0.3%	6	0.1%	5	0.1%	2	0.0%	1	0.0%	1	0.0%
Employer Assessment	354	8.5%	494	11.0%	230	5.5%	241	5.5%	169	3.7%	152	3.4%
Entitlement	2663	63.8%	2793	62.4%	2934	69.7%	3291	75.0%	3611	79.9%	3863	85.2%
Ext post WSIB dec. deadline	356	8.5%	431	9.6%	345	8.2%	271	6.2%	277	6.1%	180	4.0%
Jurisdiction Time Limit	114	2.7%	22	0.5%	6	0.1%	9	0.2%	7	0.2%	1	0.0%
Reinstatement	7	0.2%	3	0.1%	1	0.0%	2	0.0%	1	0.0%	0	0.0%
Vocational Rehabilitation **	17	0.4%	13	0.3%	0	0.0%	2	0.0%	3	0.1%	1	0.0%
Classification	1	0.0%	19	0.4%	46	1.1%	33	0.8%	35	0.8%	44	1.0%
Interest NEER	1	0.0%	19	0.4%	4	0.1%	17	0.4%	4	0.1%	1	0.0%
Total Entitlement-related	**3873**	**92.8%**	**4180**	**93.3%**	**3929**	**93.3%**	**4102**	**93.5%**	**4229**	**93.5%**	**4318**	**95.3%**
Jurisdiction	8	0.2%	3	0.1%	6	0.1%	2	0.0%	5	0.1%	10	0.2%
	4173		4478		4209		4389		4522		4533	

NOTES: 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.

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

Inactive Inventory

In 2007, the Inactive cases inventory decreased to 4,066 from 4,235 at the end of 2006, a decrease of 4%. Cases are placed in the Inactive category by request of the appellant, or by a Tribunal Vice-Chair, without prejudice to the Tribunal 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 2007, the number of Reconsideration requests was nearly identical to the 2006 total. (There were 213 reconsideration requests in 2007 compared with 212 in 2006.)

Chart 13: Ombudsman Complaints, Activity and Inventory Summary

New Complaint Notifications Received	8
Complaints Resolved	6
Complaints Remaining	2

Chart 14: Reconsideration Requests, Activity and Inventory Summary

Inquiries (Pre-reconsideration) Remaining	72
Reconsideration Requests Received	213
Reconsideration Requests Resolved	248
Reconsiderations Remaining	113

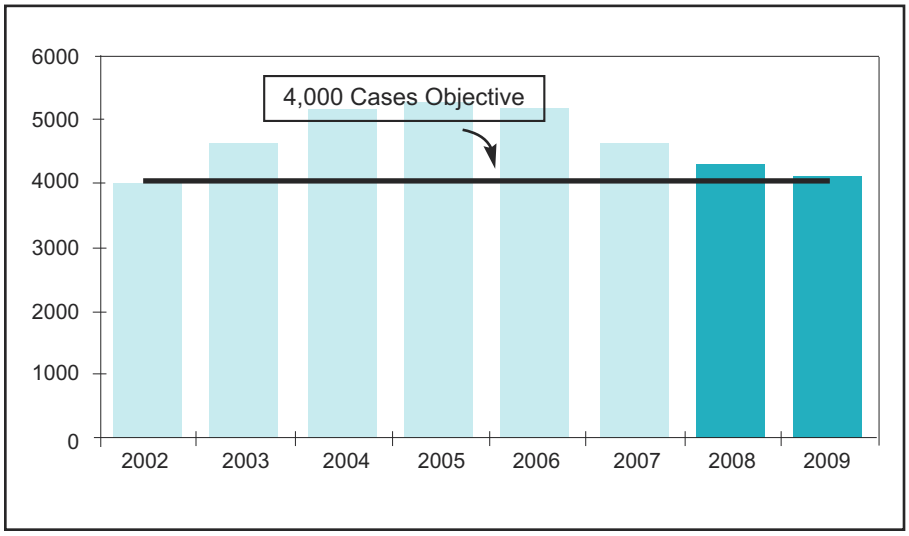
Chart 15: Judicial Reviews, Activity and Inventory Summary

Judicial Reviews Received	6
Judicial Reviews Resolved	2
Judicial Reviews Remaining	16

Looking Ahead – Planning for 2008 and Beyond

Between 2003 and 2005, the Tribunal experienced significant growth in its active inventory, with corresponding increases in the time before hearings could be scheduled. However, beginning in the fourth quarter of 2006, the productivity increased as a result of the increased adjudicator roster and the Tribunal began to reduce the backlog. The Tribunal expects to continue its program of inventory reduction through 2008 and 2009. This is depicted in Chart 16.

Chart 16: Projections for 2008 and 2009 of Tribunal Active Inventory



Financial Matters

A Statement of Expenditures and Variances for the year ended December 31, 2007, (Chart 17) is included in this report.

The accounting firm of Deloitte & Touche has completed a financial audit on the Tribunal's financial statements for the period ending December 31, 2007. The Auditors' Report is included as Appendix B.

Chart 17: Statement of Expenditures and Variances
Year ended December 31, 2007 (in $000s)

	2007 BUDGET	2007 ACTUAL	2007 VARIANCE $	2007 VARIANCE %
OPERATING EXPENSES				
Salaries & Wages	10,296	10,296	–	–
Employee Benefits	1,925	1,852	73	3.8
Transportation & Communication	1,070	1,122	(52)	(4.9)
Services	7,194	7,393	(199)	(2.8)
Supplies & Equipment	454	446	8	1.8
TOTAL – W.S.I.A.T.	20,939	21,109	(170)	(0.8)
Services – W.S.I.B.	515	515	–	–
Interest Revenue	(36)	(51)	15	(41.7)
TOTAL OPERATING EXPENSES	**21,418**	**21,573**	**(155)**	**(0.7)**
ONE TIME EXPENSES				
Severance Payments	70	70	–	–
Training & Quality Control Initiatives	247	247	–	–
TOTAL EXPENDITURES	**21,735**	**21,890**	**(155)**	**(0.7)**

Note: The above 2007 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 $211 is comprised of:

Capital Fund		
Amortization	61	
Fixed assets acquired	(16)	45
Operating Fund		
Accrued severance & vacation benefits	$ 185	
Prepaid expenses	(19)	166
		$ 211

Appendix A

VICE-CHAIRS AND MEMBERS IN 2007

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

Full-time	Initial appointment
Chair	
Strachan, Ian J.	July 2, 1997
Vice-Chairs	
Baker, Andrew	June 28, 2006
Crystal, Melvin	May 3, 2000
Gehrke, Linda	May 27, 1998
Keil, Martha	February 16, 1994
Martel, Sophie	October 6, 1999
McClellan, Ross	September 4, 2002
Moore, John	July 16, 1986
Noble, Julia	October 20, 2004
Peckover, Susan	October 20, 2004
Ryan, Sean	October 6, 1999
Smith, Eleanor	January 7, 2000
Members representative of workers	
Crocker, James	August 1, 1991
Grande, Angela	January 7, 2000
Members representative of employers	
Christie, Mary	May 2, 2001
Wheeler, Brian	April 19, 2000

Part-time	Initial appointment
Vice-Chairs	
Alexander, Bruce	May 3, 2000
Bigras, Jean Guy	May 14, 1986
Butler, Michael	May 6, 1999
Carroll, Tom	May 27, 1998
Clement, Shirley	September 1, 2005
Cohen, Marvin	June 22, 2006
Cook, Brian	September 6, 1991
Dempsey, Colleen	November 10, 2005
Dimovski, Jim	July 1, 2003
Doherty, Barbara	June 22, 2006
Doyle, Maureen	October 20, 2004
Faubert, Marsha	December 10, 1987
Gale, Robert	October 20, 2004
Gannage, Mark	November 10, 2005
Goldman, Jeanette	June 22, 2006
Hartman, Ruth	October 6, 1999
Josefo, Jay	January 13, 1999
Jugnundan, Nalini	November 15, 2006
Kalvin, Bernard	October 20, 2004
Karimjee, Kumail	June 13, 2007
Kenny, Maureen	July 29, 1987
Lang, John B.	July 15, 2005
MacAdam, Colin	May 4, 2005
Marafioti, Victor	March 11, 1987
McCutcheon, Rosemarie	October 6, 1999
McKenzie, Mary	June 22, 2006
Mitchinson, Tom	November 10, 2005
Morris, Anne	June 22, 2006
Mullan, David	July 5, 2004
Muzzi, Rosemary	June 13, 2007
Nairn, Rob	April 29, 1999
Netten, Shirley	June 13, 2007
Parmar, Jasbir	November 10, 2005
Patterson, Angus	June 13, 2007
Robeson, Virginia	March 15, 1990
Sahay, Sonya	November 29, 2006
Sehdev, Surinder	November 15, 2006
Signoroni, Antonio	October 1, 1985
Silipo, Tony	December 2, 1999
Smith, Marilyn	February 18, 2004

Part-time	Initial appointment
Vice-Chairs (continued)	
Sutherland, Sara	September 6, 1991
Welton, Ian	June 22, 2006
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
Hoskin, Kelly	June 13, 2007
Jackson, Faith	December 11, 1985
Lebert, Ray	June 1, 1988
Rao, Fortunato	February 11, 1988
Members representative of employers	
Donaldson, Joseph	October 20, 2004
Phillips, Victor	November 15, 2006
Robb, C. James	June 2, 1993
Séguin, Jacques	July 1, 1986
Sherwood, Robert	May 3, 2000
Tracey, Elaine	December 7, 2005
Young, Barbara	February 17, 1995

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS EFFECTIVE 2007

	Effective
Andrew Baker	May 17, 2007
Jean Guy Bigras	July 1, 2007
Richard Briggs	August 22, 2007
Dave Broadbent	April 18, 2007
Tom Carroll	June 1, 2007
Mary Christie	May 17, 2007
Joseph Donaldson	October 20, 2007

Maureen Doyle	October 20, 2007
Douglas Felice	February 18, 2007
Robert Gale	October 20, 2007
Angela Grande	February 18, 2007
Douglas Jago	January 7, 2007
Bernard Kalvin	October 20, 2007
Martha Keil	February 18, 2007
Victor Marafioti	February 18, 2007
Rosemarie McCutcheon	May 10, 2007
David Mullan	July 5, 2007
Julia Noble	October 20, 2007
Susan Peckover	October 20, 2007
Fortunato Rao	February 11, 2007
Marilyn Smith	February 18, 2007
Barbara Young	February 17, 2007

NEW APPOINTMENTS DURING 2007

	Effective
Kelly Hoskin, part-time Member representative of workers	June 13, 2007
Kumail Karimjee, part-time Vice-Chair	June 13, 2007
Rosemary Muzzi, part-time Vice-Chair	June 13, 2007
Shirley Netten, part-time Vice-Chair	June 13, 2007
Angus Patterson, part-time Vice-Chair	June 13, 2007

SENIOR STAFF

David Bestvater	Director, Case Management Systems
Alison Colvin	Director of Information Services
Jim Curren	Director of Finance and Administration
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
Lynn Telalidis	Human Resources Manager

MEDICAL COUNSELLORS

Dr. John Duff	General Surgery, Chair of Medical Counsellors
Dr. Emmanuel Persad	Psychiatry
Dr. David Rowed	Neurology and Neurosurgery
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Anthony Weinberg	Internal Medicine

Appendix B

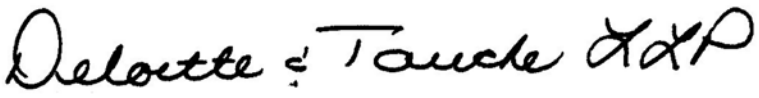
Auditors' Report

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, 2007 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, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.



Chartered Accountants
Licensed Public Accountants

Toronto, Ontario
February 15, 2008

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Balance Sheet
December 31, 2007

	2007	2006
ASSETS		
CURRENT		
Cash	**$ 1,042,684**	$ 1,331,027
Receivable from Workplace Safety and Insurance Board	**1,251,447**	1,289,970
Prepaid expenses and advances	**352,093**	330,567
Recoverable expenses (Note 5)	**134,618**	117,470
	2,780,842	3,069,034
CAPITAL ASSETS (Note 6)	**71,180**	115,571
	$ 2,852,022	$ 3,184,605
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,036,852**	$ 1,344,094
Accrued severance benefits and vacation credits	**2,384,818**	2,199,756
Operating advance from Workplace Safety and Insurance Board (Note 7)	**1,400,000**	1,400,000
	4,821,670	4,943,850
FUND BALANCES		
OPERATING FUND (Note 8)	**(2,040,828)**	(1,874,816)
CAPITAL FUND	**71,180**	115,571
	(1,969,648)	(1,759,245)
	$ 2,852,022	$ 3,184,605

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

Ian J. Strachan, Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2007

		2007		2006
OPERATING EXPENSES				
Salaries and wages	**$**	**10,504,130**	$	9,773,266
Employee benefits (Note 9)		**2,146,427**		2,022,789
Transportation and communication		**1,122,270**		1,024,342
Services and supplies		**7,803,612**		6,212,648
Amortization		**60,632**		153,024
		21,637,071		19,186,069
Services – Workplace Safety and Insurance Board (Note 10)		**514,990**		496,230
TOTAL OPERATING EXPENSES		**22,152,061**		19,682,299
BANK INTEREST INCOME		**(51,183)**		(38,511)
NET OPERATING EXPENSES		**22,100,878**		19,643,788
FUNDS RECEIVED AND RECEIVABLE FROM WSIB		**(21,890,475)**		(19,327,496)
NET UNFUNDED OPERATING EXPENSES	**$**	**210,403**	$	316,292
ALLOCATED TO				
CAPITAL FUND	**$**	**(44,391)**	$	(72,693)
OPERATING FUND		**(166,012)**		(243,599)
	$	**(210,403)**	$	(316,292)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Changes in Fund Balances
Year ended December 31, 2007

	Capital	Operating	Total
BALANCE – JANUARY 1, 2006	$ 188,264	$ (1,631,217)	$ (1,442,953)
Additions to capital assets	80,331	–	80,331
Amortization of capital assets	(153,024)	–	(153,024)
Severance benefits and vacation credits (Note a)	–	(214,802)	(214,802)
Prepaid expenses (Note b)	–	(28,797)	(28,797)
Net unfunded expenses – 2006	(72,693)	(243,599)	(316,292)
BALANCE – DECEMBER 31, 2006	115,571	(1,874,816)	(1,759,245)
Additions to capital assets	16,241	–	16,241
Amortization of capital assets	(60,632)	–	(60,632)
Severance benefits and vacation credits (Note a)	–	(185,062)	(185,062)
Prepaid expenses (Note b)	–	19,050	19,050
Net unfunded expenses – 2007	(44,391)	(166,012)	(210,403)
BALANCE – DECEMBER 31, 2007	**$ 71,180**	**$ (2,040,828)**	**$ (1,969,648)**

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, 2007

	2007	2006
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 21,928,998**	$ 19,406,847
Cash receipts for recoverable expenses	**529,298**	506,082
Bank interest received	**51,183**	38,511
Expenses, recoverable expenses and advances, net of amortization of $60,632 (2006 – $153,024)	**(22,781,581)**	(19,828,403)
	(272,102)	123,037
INVESTING		
Acquisition of capital assets	**(16,241)**	(80,331)
NET INCREASE (DECREASE) IN CASH	**(288,343)**	42,706
CASH, BEGINNING OF YEAR	**1,331,027**	1,288,321
CASH, END OF YEAR	**$ 1,042,684**	$ 1,331,027

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2007

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. CHANGES IN ACCOUNTING POLICIES

On January 1, 2007 the Tribunal adopted the Canadian Institute of Chartered Accountants' ("CICA's") revised standards on the recognition, measurement and presentation of financial instruments for not-for-profit organizations. The standards are titled Section 3855 – Financial Instruments Recognition and Measurement, Section 3861 – Financial Instruments Disclosure and Presentation, and Section 3865 – Hedges. In addition, Section 4400 – Financial Statement Presentation by Not-for-profit Organizations was amended.

In accordance with these revised standards, the Tribunal has classified each of its financial instruments into accounting categories effective January 1, 2007. The category for an item determines its subsequent accounting under the revised standards.

Effective January 1, 2007 the Tribunal classified each of its financial instruments into the following categories:

2. CHANGES IN ACCOUNTING POLICIES (continued)

Asset/Liability	Category
Cash	Held for trading
Receivable from WSIB	Loans and receivables
Recoverable Expenses	Loans and receivables
Accounts payable & accrued liabilities	Other liabilities
Accrued severance benefits & vacation credits	Other liabilities
Operating advance from WSIB	Other liabilities

"Held-for-trading" items are carried at fair value, with changes in their fair value recognized in the Statement of Operations in the current period. "Loans and receivables" are carried at amortized cost, using the effective interest method, net of any impairment. "Other liabilities" are carried at amortized cost, using the effective interest method.

Other accounts noted on the Balance Sheet, such as prepaid expenses and advances and capital assets are not within the scope of the new accounting standards, as they are not financial instruments.

As required, the revised standards have been applied retrospectively as at January 1, 2007 without restatement of the comparative amounts.

As a result of adopting the revised standards as at January 1, 2007, the carrying values of all the Tribunal's financial instruments have remained the same as the carrying values recorded as at December 31, 2006.

The Tribunal selected January 1, 2003 as its transition date for accounting for embedded derivatives. Based on a review of the Tribunal's financial instruments as at January 1, 2007, there were no embedded derivatives at that date that were required to be accounted for separately as derivatives.

3. 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.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

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 and 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. The maximum amount payable to an employee shall not exceed one-half of the annual full-time salary.

(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

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

Employee benefits (continued)

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.

4. 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.

5. RECOVERABLE EXPENSES

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

6. CAPITAL ASSETS

	2007			2006
	Cost	**Accumulated Amortization**	**Net Book Value**	Net Book Value
Leasehold improvements	**$ 2,977,473**	**$ 2,977,473**	**$ –**	$ –
Furniture and equipment	**912,947**	**890,293**	**22,654**	51,949
Computer equipment and software	**269,742**	**221,216**	**48,526**	63,622
	$ 4,160,162	**$ 4,088,982**	**$ 71,180**	$ 115,571

7. OPERATING ADVANCE FROM WSIB

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

8. OPERATING FUND

The Operating Fund deficit of $2,040,828 as of December 31,2007 ($1,874,816 as of December 31, 2006) represents future obligations to employees for severance and vacation credits, less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

9. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $685,389 (2006 – $646,389) 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 net severance benefits accrued in 2007 amounted to an increase of $197,940 (2006 – $222,039) 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 net vacation credits accrued in 2007 amounted to a reduction in the accrual of $12,878 (2006 – reduction of $7,237) and is included in employee benefits in the statement of operations.

d) Non-pension future benefits

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

10. SERVICES – WSIB

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

11. LEASE COMMITMENTS

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

2008	$ 427,186
2009	260,079
2010	46,830
2011	40,391
Minimum operating lease payments	$ 774,486

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

2008	$ 1,055,532
2009	1,055,532
2010*	879,610
Minimum operating lease payments	$ 2,990,674

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

12. 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

12. GUARANTEES (continued)

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.