



WSIAT

# In Focus

August 1999

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The Newsletter of the Workplace Safety and Insurance Appeals Tribunal

## Message from the Chair

### Case Management and Backlog Reduction

In the last few years, the Tribunal has been receiving substantially more appeals than its current process was designed to handle. To deal with the accumulated backlog of appeals and to handle new appeals more efficiently, the Tribunal is adopting a new case management program. In this issue of *WSIAT In Focus*, we want to tell you about our backlog, how we are going to eliminate that backlog by the year 2002, how we are going to handle all new appeals and about a number of pilot projects which will help us refine the new process.

### Nature of the Backlog

The Tribunal hears appeals from final decisions of the Board. In 1995, the Board made major changes to its appeal system. As a result of these changes, the Board now issues approximately 9,000 to 10,000 final decisions each year, in contrast to the fewer than 4,000 decisions it was issuing each year in the early 1990s. The Board currently holds oral hearings in about 30% of cases. This means that, in many cases, the Tribunal hearing is the first time the parties have had an opportunity to speak with one another. The lack of an oral hearing prior to the Tribunal hearing means that the Tribunal now often receives a much less "mature" case than previously. In addition, tight time-lines at the Board may lead to the need for additional work, such as completion of related issues or collection of additional evidence, in order to make the cases ready for hearing at the Tribunal. The Tribunal now has an inventory of more than 9,000 active cases and parties continue to file new appeals at an increased rate.

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## Starting Up the Plan

The Tribunal is adopting a new case management plan in order to handle appeals more efficiently and effectively. Starting in July 1999 and continuing to the end of the year, the Tribunal will test and refine the plan by a number of pilot projects, so that the new plan can be fully operational by January 2000.

The pilot projects start with the key screening and streaming of cases by the Registrar/Vice-Chair. The Registrar/Vice-Chair's team will be screening new appeals and backlogged cases for jurisdictional and evidentiary problems, and streaming them for hearing in one of the Tribunal's hearing formats.

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## Case Management Plan

To deal with the backlog of appeals that has been building up over the past number of years and to handle new appeals more efficiently, the Tribunal is adopting a new case management plan. All new appeals will be processed according to the new plan. The backlog of appeals will be slotted into the new program at the appropriate stage as soon as possible.

### The New Plan

Members of both the worker and employer communities have requested earlier access to a Vice-Chair. The key component of the new case management plan responds to this by introducing the Registrar/Vice-Chair at the initial review stage. The Registrar/Vice-Chair team will review all appeals after a completed Appeal Application has been received by the Tribunal. The two functions of the review are:

1. to **screen** incoming appeals to ensure that they are ready for hearing;
2. to **stream** the appeals to the appropriate hearing stream.

The Registrar/Vice-Chair team screens each appeal for the following:

- jurisdiction, with possible referral back to the Board;
- completeness of the issue agenda/Board record;
- identification of evidentiary problems such as missing medical evidence;

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## ***Message from the Chair***

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### **New Case Management Plan**

In these circumstances, it was necessary to develop a new case management plan to provide different types of process and different allocation of resources, depending upon the case. The goals of the new process are an effective and efficient system which maintains the Tribunal's commitment to accessibility, openness and fairness.

The new process, developed after a study with the Ministry of Labour and the Board, and consultation with the stakeholder communities, involves the screening of cases by a Registrar/Vice-Chair at a very early stage to identify jurisdictional, issue agenda and evidentiary problems, and the streaming of cases to an appropriate type of hearing procedure, with shorter hearings and fast decisions where possible. During the remainder of 1999, the Tribunal will test and refine the new process by means of a number of pilot projects involving the screening of new and backlogged cases by the Registrar/Vice-Chair, expedited and other new hearing formats and alternative dispute resolution services.

### **Elimination of the Backlog**

The case management plan will apply to cases in the Tribunal's backlog. Additional strategies will be used in order to eliminate the backlog by April 2002 while also processing and resolving the larger number of new appeals.

## ***Case Management Plan***

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- possible summary resolution of the appeal;
- determination of whether the case is complex or novel and, therefore, should be in the TCO stream.

As a result of the screening process, appeals will be:

- resolved in a summary manner, if appropriate;
- referred to TCO if the case is complex or novel;
- held as inactive, if they are not hearing-ready, while the parties attend to jurisdictional or evidentiary problems;
- streamed to the appropriate hearing stream, when they are hearing-ready.

When the screening process is complete and the Registrar/Vice-Chair is satisfied that the appeal is hearing-ready, the team then streams the appeals to one of the following streams:

### ■ **Main appeal stream**

- Appeals in this stream are expected to be completed on the first scheduled day.
- In addition to full-day and half-day hearings, there will be a number of other options for shorter hearings and other hearing formats.
- Post-hearing investigation is limited to exceptional cases.
- Parties usually will receive a quick short-form decision.

### ■ **ADR stream**

The early resolution group currently provides ADR services. This will be expanded in the ADR stream. The current ADR services can be selected by the parties at the Appeal Application stage. Alternative dispute resolution services will also be provided in assigned cases from the Registrar/Vice-Chair. As well, ADR services will be provided to assist in other streams.

ADR services will be available at all stages of an appeal through "on call" services by the ADR unit. Parties will be offered mediation services on hearing days while waiting for their hearing. Pilot projects will be instituted in areas such as co-mediation, group ADR and teleconferencing.

### ■ **TCO stream**

This stream is for complex or novel appeals, such as occupational disease cases, multiple-issue cases, cases involving interpretation of science or law, and cases involving novel submissions regarding policy. Cases in the TCO stream are actually managed and made hearing-ready by Tribunal counsel.

### ■ **Written stream**

This stream, which already exists, is for appeals that are not complex and do not involve credibility issues. It will be used primarily for scheduling flexibility and only at the request of the parties. The Tribunal generally is inclined to hold oral hearings in the Main appeal stream.

## **Backlog Reduction**

The Tribunal's current backlog resides at a number of different stages, particularly at: (1) intake and other pre-hearing stages; (2) hearing complete but waiting for a final decision; and (3) post-hearing.

The Tribunal will apply most of the new case management plan to cases in the first category. Cases will be screened and streamed on a first-in, first-out basis within the backlog caseload targets. All cases in this category should be out of the pre-hearing process between implementation of the program and January 2002, with the last of the cases completed by April 2002.

Cases in the second and third categories will receive special attention, with additional support and scheduling relief, in order to complete these cases by the end of 1999.

## Starting Up the Plan

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In addition to full-day and half-day hearings, the Tribunal will offer other options:

- Batch hearing days, where several cases are scheduled on the same day for one-hour hearing slots, with a fast, short-form decision to follow.
- Expedited hearings, where the hearing is limited to two hours.

- Party-managed hearings, where the parties provide all the documentation.
- Group appeals, with the consent of the parties, where large employers and unions are involved, and the appeals may be scheduled as a group at a location convenient to the parties and witnesses.

The Tribunal's experience with ADR to date has been very positive. Therefore, under the new case management plan, ADR will be expanded. Until now, ADR has been limited to contested appeals in which the parties choose this option. The

Tribunal will start pilot projects for a number of ADR initiatives:

- "On call" ADR services, provided at any stage of an appeal. This could be particularly useful on batch hearing days, where parties could be offered mediation services to assist in resolving the case while waiting for their hearing.
- ADR will be extended to single-party appeals, which are almost invariably worker appeals. The Office of the Employer Adviser had indicated that it may be able to stand in for an employer interest in cases where an employer perspective is needed.
- Co-mediation or neutral evaluation by a team of two panel members, one representative of workers and the other representative of employers.
- Teleconferencing. This may be suitable in selected straightforward cases.
- Group ADR. This may be possible for large employers and unions, either together with, or as an alternative to, group hearings.
- Blitz teams, with adjudicators and mediators working in teams, particularly in regional settings.

### WSIAT Case Load Strategy Tour

(In Co-ordination with the OEA/OWA)

#### Registration 8:30 A.M.

|                    |                              |
|--------------------|------------------------------|
| Tues. Sept. 14/99  | Sault Ste Marie              |
| Thurs. Sept. 16/99 | Thunder Bay                  |
| Tues. Sept. 21/99  | London                       |
| Thurs. Sept. 23/99 | Toronto - West               |
| Mon. Sept. 27/99   | Timmins                      |
| Tues. Sept. 28/99  | Sudbury                      |
| Thurs. Sept. 30/99 | Burlington/Hamilton          |
| Mon. Oct. 4/99     | Toronto - East               |
| Tues. Oct. 5/99    | Kitchener/Waterloo/Cambridge |
| Thurs. Oct. 7/99   | Windsor                      |
| Tues. Oct. 12/99   | Ottawa                       |
| Wed. Oct. 13/99    | Kingston                     |
| Mon. Oct. 18/99    | Peterborough                 |
| Tues. Oct. 19/99   | Barrie                       |
| Thurs. Oct. 21/99  | St. Catharines               |

#### Meeting 9:00 A.M.

|                      |
|----------------------|
| Holiday Inn          |
| Victoria Inn         |
| Four Points Sheraton |
| Ramada 427           |
| Senator Hotel        |
| Four Points Sheraton |
| Travelodge Hotel     |
| Ramada-Plaza 401/DVP |
| Four Points Sheraton |
| Cleary Auditorium    |
| Radisson             |
| Holiday Inn          |
| Holiday Inn          |
| Holiday Inn          |
| Holiday Inn          |

#### Contacts

|       |                            |       |                              |
|-------|----------------------------|-------|------------------------------|
| OWA   | Joe Provato (416) 325-9863 | OEA   | Doug Paolini (905)339-2205   |
| WSIAT | Jim Crocker (416) 314-8906 | WSIAT | Joe Donaldson (416) 314-8844 |

- Tribunal members will make presentations and answer questions about the Case Load Strategy.
- Attendance is open to all those with an interest in Ontario's workplace insurance system.
- Meetings are anticipated to last 2 to 3 hours.

## New Medical Discussion Paper

The Ontario Workplace Tribunals Library now has a discussion paper entitled:

*Symptoms in the Contralateral Upper Extremity. Does a painful condition of one extremity cause overuse of and symptoms in the opposite uninjured one?*  
by Dr. W. Robert Harris.

It can be photocopied in the library or sent to you for \$2.40 plus GST.

# Code of Conduct

The Tribunal has finalized a Code of Conduct for Representatives. It sets out the Tribunal's common sense expectations of representatives, both lawyers and non-lawyers, in their dealings with the Appeals Tribunal, as well as outlines available remedies. The Code has been approved by the WSIAT Advisory Group and Assembly, however, we welcome your feedback, and will be responsive to constructive suggestions for its fine-tuning. We hope the Code will prove of mutual benefit to the Tribunal, parties and their representatives.

The full text of the Code is printed below. Other copies (both French and English) are available from the Tribunal's Publications Department. The Code will also be sent out with the Case Records.



## WSIAT Code of Conduct for Representatives

### Purpose

While other quasi-judicial tribunals (such as the Ontario Labour Relations Board) are accustomed to having lawyers represent the parties, it is often the case with the Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") that either the worker and/or the employer will be represented by someone other than a lawyer. While the conduct of lawyers is regulated by the Law Society and their duties set out in the Society's Code of Conduct, no such standards exist for non-lawyers.

This Code recognizes that any person representing either a worker or an employer has certain obligations and responsibilities which must be met. The Code sets out, broadly, the standards of behaviour which the Tribunal expects from any "representative", whether non-lawyer or lawyer, when appearing before it.<sup>1</sup>

This Code does not apply to friends or family who may be present as "moral support" or to assist in an informal and unpaid manner.

### Standards of Conduct

It is expected that any representative appearing before the Tribunal will adhere to the following:

- The representative must honestly represent his/her client. The representative will not knowingly put forward any information known to be untrue. The representative will not knowingly assist or encourage a party to do anything which, in testimony or activity, is dishonest or misrepresents known facts.

- The representative must be prepared to present the case at hand. This includes familiarization with the Case Record and the relevant Board policies. This also includes having consulted with the worker or employer as to their directions and instructions prior to the hearing.
- The representative must be knowledgeable concerning the relevant legislation (the *Workers' Compensation Act* and/or the *Workplace Safety and Insurance Act, 1997*).
- The representative must be aware of and comply with the Tribunal's practice directions and appeal procedures.
- The representative must behave courteously and respectfully to the opposing party (if present), to any witnesses called during the proceedings, to the Vice-Chair or panel hearing the appeal and to Tribunal staff.
- The representative must respect the confidentiality of information disclosed during the Tribunal's processes and use that information for other purposes only with the consent of the parties and of the Tribunal.
- The representative shall not indulge in behaviour that the Tribunal considers to be an abuse of process.

### Remedies

If a representative refuses or fails to comply with the standards set out above, and is, in the opinion of the Hearing Panel, Vice-Chair or Chair, jeopardizing the fair and efficient disposition of a hearing, the Tribunal may make comment on or take official notice of such behaviour. In noting this behaviour, the Vice-Chair, Chair or Panel will remind the representative that such repeated behaviour may result in the representative being suspended from appearing before the Tribunal for a specified period of time.

Should the pattern of behaviour continue over a series of hearings without the representative being able to provide a reasonable explanation for his/her behaviour and should this conduct be officially noted by the respective Hearing Panels/Vice-Chairs, the representative may be suspended by the Tribunal Chair from appearing at the Tribunal. Egregious behaviour (such as a flagrant act of dishonesty) may result in the Tribunal Chair permanently barring the representative from appearing before the Tribunal. Before this particular penalty is applied, the representative will be given opportunity to make submissions on the nature of the proposed penalty.

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<sup>1</sup> The Tribunal's authority to set out this Code derives from ss. 131 and 132 of the *Workplace Safety and Insurance Act, 1997*.

## Tribunal Members

The following members were recently appointed for three-year terms:

### Part-time Vice-Chairs

- **Eban Bayefsky**  
effective April 29, 1999
- **Michael Butler**  
effective May 6, 1999
- **Mike Eagan**  
effective April 29, 1999
- **Urich Ferdinand**  
effective April 29, 1999
- **Loretta Henderson**  
effective March 1, 1999
- **Jay Josefo**  
effective January 13, 1999
- **Brian Loewen**  
effective May 6, 1999
- **Nancy Makepeace**  
effective April 29, 1999
- **Rob Nairn**  
effective April 29, 1999
- **Geoffrey Zimmerman**  
effective April 29, 1999

### Part-time Employer Member

- **Mardi Bullivant**, effective April 29, 1999

### Full-time Worker Member

- **Mary Tzaferis**, effective April 29, 1999

### Part-time Worker Member

- **Maurice Robillard**, effective January 1, 1999

## In Memory of Mr. Bob Apsey

It is with great sadness that we relay the news of Bob Apsey's passing in May 1999. Bob was a Member representative of employers at the Tribunal since its inception. His name will be familiar to many of you, since Bob was involved in more appeals than any other panel member in the history of the Tribunal. What you may not know is that Bob fought a brave battle with cancer for seven years. His spirit, strength and good humour during that difficult time was and continues to be an inspiration to us all.

## Tribunal Director

Doug Jago, who has served the Tribunal as its Director and General Manager since July 1, 1997, has decided to retire. Doug was first appointed as a Member representative of employers in 1985. He assumed the duties of Director during a time of great change, and we would like to thank him for all his contributions including adapting Tribunal operations to reflect legislative changes, the initial planning for renovations to accommodate the Tribunal's growth, and the arranging of shared services among the Tribunal and other agencies.

The Tribunal is very pleased to announce that, as of July 1, 1999, Zeynep Onen becomes our new Tribunal Director. Zeynep has also been a part of the Tribunal since it began, first as a lawyer in the Tribunal Counsel Office, and as a Vice-Chair since 1988. Zeynep was also the Tribunal's Alternate Chair from 1993 to 1996. She has been pivotal in the development of our caseload strategy (see page 1 of this issue of *WSIAT in Focus*), and will continue to play an integral part in guiding the Tribunal through the next phase of its evolution.

### **WSIAT In Focus**

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**Editorial Board:** Linda Moskovits, Marvin Goldstein,  
Joe Zaffino

**Editor:** Melinda M. Reyes

**Production:** Melinda M. Reyes

**French Version:** Véronique Lavoie-Naster

**Subscriptions:** Publications Department (416) 314-9280

**Workplace Safety and Insurance Appeals Tribunal**  
505 University Ave., 2nd Floor  
Toronto, Ontario M5G 2P2

**Telephone:** (416) 314-8800; **Fax:** (416) 326-5164

**Toll-free within Ontario:** 1-888-618-8846

**Web Site:** <http://www.wsiat.on.ca>

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