

# In Focus

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August 2004

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The Newsletter of the Workplace Safety and Insurance Appeals Tribunal

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## MESSAGE FROM THE CHAIR

Ian Strachan

### A New Beginning

The arrival of a new Minister in November of 2003 managed to rekindle some of the lost enthusiasm in the Appeals Tribunal environment and gave both the injured worker and employer communities reason for cautious optimism. It was a positive end to a less than positive year.

There is little doubt that 2003 was a challenging year for the Appeals Tribunal. It was a year in which the Workplace Safety and Insurance system and the Tribunal should have reaped the benefits of Tribunal accomplishments over the previous years, while renewing a commitment to quality adjudication rather than focusing only on the quantity of appeals. With the elimination of the large backlog of appeals, 2003 should have been a year in which our “steady state” process was gradually fine-tuned to serve as a model for quality service in the administrative justice system. Unfortunately, early in the year the Tribunal was faced with new challenges which, to most informed people within the workers’ compensation community, could have been avoided. Understandably, the rationale for these counterproductive developments was a complete mystery to intelligent observers of the Ontario administrative justice system.

At the end of 2002, the Tribunal was in a “steady state” mode in which incoming appeals were approximately equal to appeal dispositions.

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## New Features Added to WSIAT Web Site ([www.wsiat.on.ca](http://www.wsiat.on.ca))

### Forms

#### Notice of Appeal for Employers

A new form called “Notice of Appeal for Employers” is now available on the web site. This form is designed for use in employer appeals. It can be filled in on-line and is available in both Word and pdf formats.

#### Response Form

The Response Form has been revised. The most current version is dated May 2004. When using the Response Form, please take note of the date shown at the bottom of each page to ensure that you are using the most recent version of this form.

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## ADR Services Merge with OVCR

In recognition of the wide range of pre-hearing services that can result in the resolution of appeals, the Tribunal has merged the Alternate Dispute Resolution

(ADR) department with the Office of the Vice-Chair Registrar (OVCR). In implementing this change, we hope to obtain efficiencies in streaming of files for all forms of dispute resolution outside the hearing process. Through this amalgamation of

services, we continue to develop effective practices for the resolution of appeals in the pre-hearing process. The Tribunal will also continue to conduct mediations in appropriate cases. Questions may be directed to David Lee in the OVCR at (416) 314-8838.

## DECISION SUMMARY SEARCH TIP

### Exact Phrase Searches

For searches in the Keywords, Summary and References fields, there is a drop-down box to choose the type of search. One of the search type options is “Exact phrase.” Selecting this option will return a result that displays only decisions that contain the exact phrase that was typed in the field box.

It is important to note that an exact phrase includes punctuation. For example, there is a Keyword heading of “Supplements, transitional provisions.” If you were to type “supplements transitional provisions” without the comma in the keyword search box, and use the “Exact phrase” search option, your search would return no decisions. In order to obtain a correct result, you must include the punctuation (the comma, in the example) in the exact phrase search.

There is no need to include punctuation in “All words,” “Any words” or “Boolean” searches.

## MLO UPDATE

### Medical Discussion Papers

The following revised discussion paper is now available.

- Limping and Back Pain

### Medical Generic Reports

Medical generic reports on the following topics have been placed in the Library, and are available in the vertical files:

**Title:** Silicosis Review – Heart Condition  
**Author:** Dr. Kenneth R. Chapman  
**Date:** March 5, 2004  
**VF No.:** VF 11335

**Title:** Asbestosis, obstructive and restrictive and mixed pattern lung disease  
**Author:** Dr. Dildar Ahmad  
**Date:** June 6, 2004  
**VF No.:** 11336

**Title:** Asbestosis, emphysema, obstructive and restrictive lung disease  
**Author:** Dr. Norman L. Jones  
**Date:** April 30, 2004  
**VF No. :** VF 11337

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### New Features Added to Web Site

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### The Selection of Appeals for a Written Process

Casebooks that will assist parties in preparing submissions for a written appeal have been prepared by the Tribunal’s Office of the Vice-Chair Registrar. An introduction to the following casebooks is now available on the web site:

- NEL Quantum Appeals
- Loss of Earnings Casebook
- Post-1990 Hearing Loss Casebook
- Pre-1990 Hearing Loss Casebook
- Temporary Total & Temporary Partial Benefits Casebook.

To obtain complete copies of a casebook, please contact the Office of the Vice-Chair Registrar at (416) 314-8800 or by e-mail at [resourcecentre@wst.gov.on.ca](mailto:resourcecentre@wst.gov.on.ca).

### Sending Feedback to the Tribunal Through the Web Site

We have restructured our format for receiving on-line feedback from web site users.

If you are sending feedback and suggestions regarding Tribunal services, policies and procedures, please use the new **Online Feedback Form**. This form can be accessed by clicking on the **Contact Us** link located at the top of most web pages on our web site, then clicking on the link labeled **Online Feedback Form** found under the section “Send Us Your Feedback.”

If you have questions or comments about the web site design, content or functionality, you may contact the webmaster at [webmaster@wst.gov.on.ca](mailto:webmaster@wst.gov.on.ca).

*Please take note that we are unable to respond to case-specific inquiries through our web site. If your communication is case-related, please contact the Tribunal at (416) 314-8800 to have your call directed accordingly.*

The Tribunal enjoyed a core roster of knowledgeable and experienced vice-chairs and members (OICs), which was poised to focus on quality decision making and improved turnaround time for appeals. In January 2003, there was some cause for optimism; however, there quickly emerged a feeling of apprehension among Tribunal constituents who sensed that many of the most experienced and knowledgeable OICs might not be reappointed. This apprehension soon turned a positive outlook into a negative one for much of the year. As concerns spread among supporters of a quality administrative justice system, organizations such as the Ontario Bar Association, Ontario Federation of Labour, Ontario Mining Association, Canadian Auto Workers, together with numerous smaller groups and concerned individuals made their concerns known to the Premier's Office. They were dedicated and resolute, and ultimately their views prevailed, resulting in Cabinet reappointments for a number of experienced vice-chairs and members.

### **Budget Reduction**

Just when some sense of relief was forming as a result of these OIC reappointments, the Tribunal received notice of a significant budget reduction halfway through its fiscal year. This caused the Tribunal to postpone projects; move regional hearings to Toronto (which increased travel costs for injured workers and employers, while saving money for the Tribunal); leave staff positions vacant; and defer expenditures until 2004 wherever possible. Earlier Tribunal financial forecasts had been extremely accurate in assessing annual budget

requirements and the rationale for the reduction was unclear. In retrospect, it may have been a recognition that the outgoing Minister would not recommend a sufficient number of OIC appointments and reappointments to deal with the Tribunal's incoming caseload, thereby reducing the funding needed for the requisite number of OICs. Not all knowledgeable OICs had been reappointed and the Tribunal's OIC roster, which had peaked at 65 full and part-time vice-chairs plus 30 members, continued to erode to 50 (30 vice-chairs and 20 members) by the end of 2003. This short-term, and arguably short-sighted, financial gain for the Insurance Fund would create long-term consequences for injured workers and employers in Ontario, as a new appeal backlog began to develop.

### **Two-Year Business Plan**

By year-end, the lack of adjudicative resources meant that a sufficient number of hearings could not be scheduled. The Tribunal's steady state model which existed at the beginning of 2003, had once again developed a backlog with the caseload approximately 16% above the production target of 4000 active appeals. This trend will continue in the first half of 2004 and, as a result, the Appeals Tribunal must now develop a new two-year business plan to eliminate the new and growing backlog. The production plan will require a significant increase in the number of knowledgeable vice-chairs in 2004; it will also require approval of sufficient resources to eliminate the new backlog and fulfill an earlier undertaking given by the Ministry of Labour and the Tribunal to the Ombudsman to offer timely hearing dates to appellants and respondents. In the

words of Yogi Berra, "It's 'déjà vu' all over again."

### **Cautious Optimism**

With the appointment of a new Minister of Labour in November and a new government which espouses the principle of competency-based appointments, the Tribunal environment has again taken on an air of cautious optimism. Since its inception in 1985, the Tribunal had sought to retain the services of its most skilled and competent adjudicators and employees—a characteristic which has caused the Divisional Court and Ontario Court of Appeal, when dealing with judicial reviews, to recognize the Appeals Tribunal as a highly specialized or "expert" administrative law tribunal. This internal commitment to a competency-based operation, combined with a growing Canadian awareness of the significance of its administrative justice system and the underlying appointment/reappointment process, will hopefully allow the cautious optimism which existed at year-end to evolve into a well-founded conclusion that the integrity of the Appeals Tribunal and its appeal process will prevail in Ontario.

In a sense, the events of 2003 have given the Tribunal and its constituents a stronger sense of purpose and a renewed commitment to a quality system. It may have been a year of trial by fire, but the flames did not consume the organization or its committed supporters; rather, the adversity has generated an increased sense of duty and decency which should auger well for the workers' compensation community and the Ontario administrative justice system in the next few years.

## WSIAT PUBLIC INFORMATION MEETINGS 2004

The Workplace Safety and Insurance Appeals Tribunal is pleased to announce that it is continuing its program of public information meetings aimed at assisting clients to better understand the Tribunal and to access its processes and services more effectively.

Each session will include a presentation on the Tribunal's structure, processes and current initiatives, tips for best practices as well as the opportunity for discussion with Tribunal members on hearing preparation, presentation and other issues.

Attendance is open to anyone with an interest in the Ontario workplace safety and insurance appeal system. All sessions are free of charge and pre-registration is not required. Meetings will last from 9:00 a.m. to 11:00 a.m. Registration will commence at 8:30 a.m. Light refreshments will be served.

### SESSIONS ARE SCHEDULED TO TAKE PLACE IN:

**WINDSOR** – (Tuesday, September 28th, 2004)  
(9:00 a.m. - 11:00 a.m.)  
Windsor Hilton Hotel  
277 Riverside Drive West  
Windsor, Ontario N9A 5K4  
(519) 973-4231

**KINGSTON** – (Tuesday, November 23rd, 2004)  
(9:00 a.m. - 11:00 a.m.)  
Four Points Sheraton Hotel and Suites Kingston  
285 King Street East  
Kingston, Ontario K7L 3B1  
(613) 544-4434

For further information, please contact Christiane Rieder at:  
(416) 314-3733 or toll-free at 1-888-618-8846, ext. 4-3733.

## TRIBUNAL MEMBERS

Since the last issue of WSIAT In Focus (April 2004), **William Flanagan** and **David Mullan** have been appointed part-time Vice-Chairs.

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If you would like to be placed on the subscription list for WSIAT In Focus, please contact the Tribunal Resource Centre at the following number:  
(416) 314-3700.

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### **MLO Update** *continued from page 2*

**Title:** Chronic Fatigue Syndrome  
**Author:** Dr. George Sweeney  
**Date:** May 5, 2004  
**VF No.:** VF 11338

**Title:** Herpes Simplex Ocular  
Disease  
**Author:** Dr. Peter J. Agapitos  
**Date:** March 12, 2004  
**VF No.:** VF 11339

All discussion papers and medical generic reports listed above are available in the Ontario Workplace Tribunals Library. When ordering medical generic reports, please quote the Library location number. Self-serve photocopies may be made in the Library for 20 cents per page. Alternatively, copies may be ordered for \$5 per document.