



WSIAT

In Focus

November 2005

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The Newsletter of the Workplace Safety and Insurance Appeals Tribunal

20th Anniversary Symposium

Over 150 members of the workplace safety and insurance community, including stakeholders, past and present Order-in-Council appointees, and representatives from the WSIB and the Ministry of Labour, gathered on October 6 at a Symposium and Reception to mark the Tribunal's twentieth anniversary of operations. The event provided an opportunity for participants to reflect on the Tribunal's objectives, accomplishments, and future challenges. For those who could not attend, the notes of some of our speakers are available online through the Tribunal's library (see instructions at end of article); and materials provided at the event are also available on the Tribunal's website (www.wsiat.on.ca).

The symposium provided the Tribunal with the opportunity to emphasize its commitment to the delivery of quality adjudication in the workers' compensation sector. In its 20 years, the Tribunal has played a critical role in the development of legal principles in compensation law, and is respected nationally for its leadership role in this area. Its practices and procedures have informed developments in other workers' compensation appeals agencies across Canada. The Tribunal has been an innovator in developing technology associated with its case management system, one that has been studied by other tribunals at the provincial and national levels.

Tribunal staff and adjudicators are justly proud of these accomplishments, but understand that the Tribunal must continue to develop and adapt to the recent demands of its environment. The last eight years have been characterized by significant change for such a young agency, including:

- Higher than usual caseloads: The most significant challenge faced by the Tribunal is the maintenance of its high standard of adjudication in an environment of heavy case volumes. Since 1998 the Tribunal's caseload has stabilized at about double its historic levels and is not expected to decline. The number of incoming appeal

MESSAGE FROM THE DIRECTOR

Marsha
Faubert

applications has been relatively consistent since 2001, with approximately 3,900 new appeals filed per year.

- Changes to the statutory benefit scheme administered by the Tribunal, with extensive revisions occurring in 1998.
- Increases in the volume of information to be assimilated by adjudicators and parties; for example, the decision database has now exceeded 35,000 decisions.
- Turnover in the Tribunal's complement of adjudicators is expected to be a regular feature of the agency's operations. In the last two years, 14 new vice-chairs have been appointed; at the same time, however, six vice-chairs have left the Tribunal. Ongoing change in adjudicators requires fast and effective training and information supports to achieve individual productivity and quality and consistency in decision-making in the shortest possible time.

These challenges place increasing pressures on Tribunal staff and adjudicators who, like others in the private and public sector, must do "more with less". Recruiting and sustaining new appointees is rendered more difficult by the lack of progress in achieving fair remuneration for these OIC appointees; it is now almost 17 years since there has been an increase in compensation levels for OIC appointees with the Tribunal.

We are fortunate that the level of commitment to excellence remains high among our adjudicators. In addition, our staff continue to shine, working hard to develop strategies to manage the Tribunal's caseload and reduce wait times for hearing dates while sustaining the quality of its decisions. The Tribunal is committed

*See 20th Anniversary Symposium,
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November 1980:

Professor Paul Weiler submits a Report entitled “Reshaping Workers’ Compensation for Ontario” to the Minister of Labour after being commissioned to do so earlier in the year.

June 1981:

The Weiler Report, subsequent government White Paper (with 21 major proposals largely drawn from the Weiler Report) and draft legislation is released for public discussion.

1982:

Draft legislation is sent to the government’s Standing Committee on Resources Development.

June 12, 1984:

Minister of Labour introduces Bill 101, *An Act to amend the Workers’ Compensation Act*.

December 14, 1984:

Ontario Legislature gives third and final reading to Bill 101. This Act provides the most sweeping changes to the workers’ compensation system in Ontario since workers’ compensation legislation came into effect in 1915.

October 1, 1985:

Workers’ Compensation Appeals Tribunal (WCAT), an independent and external tripartite tribunal, is created to be the final level of appeal for Board decisions, replacing the Board’s internal Appeal Branch. Ron Ellis is appointed the first Tribunal Chair.

December 1, 1985:

WCAT releases its first decision, Decision No. 1.

January 1986:

WCAT reaches significant operational level, as the previous months were largely preliminary and organizational in scope, with only a few hearings taking place.

May 22, 1987:

Decision No. 915 is released. Over 250 pages long, this leading decision on Pensions and Chronic Pain entitlement set the standard for quality decision-making at the Tribunal and has been extensively relied upon in subsequent decisions for its sweeping and ground-breaking analysis. This seminal decision covered a host of issues ranging from adjudicative issues regarding Board policy, to the role of the Tribunal in the appeal process, the weighing of medical evidence and the application of

WSIAT Timeline

This Timeline of significant Tribunal events was prepared by the Tribunal Counsel Office on the occasion of the WSIAT 20th Anniversary celebrations

discretion. Heard by a five-member WCAT Panel consisting of Ron Ellis, Brian Cook, Lorne Heard, Doug Jago and Bob Apsey, the hearing lasted twenty-seven days. Counsel appearing in Decision No. 915 included David Brady, J.J. Robinette, George Adams, Doug Gilbert, Les Liversidge, Andrew King, Michael Green,

Nicole Godbout, John Martin, Dave Timms, John McKinnon, Marion Endicot, Orlando Buonestella, David Craig, John Slinger, Alec Farquhar, Mary Tzaferis, Ros Pauker, Dorothy Kent, Dan Revington, Tom Carroll, David Starkman, Garth Dee, and Richard Fink.

January 2, 1990:

The Workers’ Compensation Act, 1990 is enacted. This Act makes a number of significant changes, including replacing permanent pension awards with NEL (non-economic loss) and FEL (future economic loss) awards.

November 1994:

A Royal Commission on Workers’ Compensation is appointed to study workers’ compensation, but is disbanded after the government changes.

June 1995:

The new Government assigns Minister C. Jackson to workers’ compensation reform. Minister Jackson publishes an interim Discussion Paper on this matter in January 1996, followed by a final report in June.

November 1996:

Bill 99 (the new *Workplace Safety and Insurance Act, 1997*) is tabled in the Legislature, later passed and given effect as of January 1, 1998. Bill 99 changes the WCAT’s name to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). The legislation changes the Tribunal’s jurisdiction in some respects, makes the Tribunal bound by Board policy, and allows Tribunal hearings to be conducted by single vice-chairs. Bill 99 introduces time limits to appeals, Early and Safe Return to Work.

June 1997:

Ian Strachan is appointed Chair of WSIAT, replacing the Tribunal’s first Chair, Ron Ellis, who led the Tribunal for a dozen years.

See *WSIAT Timeline*,
continued on next page

1998-2001:

As a result of Bill 99, WSIAT receives an avalanche of new appeals. Changes to the Board's internal appeals process starting in 1995 had already resulted in the Tribunal receiving significantly more appeals. The additional appeals from Bill 99, combined with a shortage of qualified Tribunal vice-chairs and side-members and the departure of or failure to re-appoint experienced vice-chairs, creates an appeal backlog.

2000-2001:

The Government considers amalgamating WSIAT with other tribunals. Following widespread opposition to this initiative from both the injured worker and employer communities, the Government decides to leave the Tribunal as a separate adjudicative agency.

2002-2005:

The Tribunal reorganizes its internal processing to streamline appeals, develops an innovative case tracking system, and undertakes new initiatives in knowledge management and training of new Tribunal adjudicators. A number of qualified adjudicators are appointed or re-appointed to the Tribunal.

October 6, 2005:

The Tribunal celebrates its 20th Anniversary with a Special Symposium.

20th Anniversary Symposium, *continued from page 1*

to achieving these objectives and to help us do so, we have identified the appointment, training, support and fair compensation for capable adjudicators as our priorities for the foreseeable future.

Accessing Symposium documents from the OWTL web site:

Electronic copies of papers and speech notes from most of the Symposium presentations are available by accessing the OWT Library catalogue as follows:

- Go to www.owtlibrary.on.ca and click on Library Catalogue
- Enter the word *symposium* in the "any word or phrase" search box.
- Press "enter". The first six results are the symposium papers.
- Click on the pdf link to see a copy of the paper.

Presentation to the 20th Anniversary of the Workplace Safety and Insurance Appeals Tribunal / Jolley, Linda 2006 ED 260.pdf

click here

TRIBUNAL MEMBERS

Since the last issue of *WSIAT In Focus* (August 2005), **Shirley Clement** has been appointed a part-time Vice-Chair.

Reappointments

Cabinet has reappointed the following individuals for three years:

- **Sophie Martel**, Full-Time Vice-Chair
- **Rosemarie McCutcheon**, Full-Time Vice-Chair
- **Ross McClellan**, Full-Time Vice-Chair
- **Ruth Hartman**, Part-Time Vice-Chair
- **Tony Silipo**, Part-Time Vice-Chair
- **David Gillies**, Part-time Worker Member

Congratulations to all.

DECISION SUMMARY SEARCH TIP

Keyword Directory contrasted with Direct Input

There is an important difference in keyword searching between a term selected through the Keyword Directory and a term entered directly into the Structured Keywords field.

If you use the Keyword Directory to obtain terms, each individual term listed is an exact complete term. For example, click on Keyword Directory, then enter "commutation" in the Keyword Contains field. From the lengthy list of terms, click only on "Commutation" then click the Add to Search button, scroll down to the Selected Keywords area, and click on Decision Search. You are then returned to the Decision Summary Search page, with Commutation listed in the Structured Keywords field. When you click the Search button, there will be only a short list of results, all containing Commutation as the keyword heading with no subheadings.

If you want to search using the Keyword Directory for all decisions with the keyword heading of Commutation including all its subheadings, you must select all those keyword terms with Commutation as the heading. If you want to search for all decisions with the word commutation anywhere in the keyword term, you must select all those keyword terms with commutation anywhere in the term.

By contrast, if you enter the word "commutation" directly into the Structured Keywords field on the Decision Summary Search page, you will get all decisions with the word commutation anywhere in the term.

Please keep this considerable difference in search performance in mind when developing your search strategy.

WSIAT 20th Anniversary Symposium: a look back

Introduction

On October 6, 2005, the Workplace Safety and Insurance Tribunal held a symposium to celebrate the 20th anniversary of the Tribunal. The event was a resounding success. Over 150 people attended, including Tribunal adjudicators and staff, lawyers, medical professionals and leading representatives from the employer and injured worker communities. Attendees were given a package of materials, including a brief history of the Tribunal and a timeline of significant dates in WSIAT history. These documents are now available on the Tribunal website.

The day began with registration and light refreshments. Ian Strachan, Chair of the Tribunal, gave a warm welcome to the speakers and all attendees. He thanked those attending for their support of the Tribunal over the years, through both good times and challenging times, and expressed how this support had made possible the success of the Tribunal. Mr. Strachan noted that when Paul Weiler predicted a better adjudicative future for the workers' compensation system, one of the tools he recommended was the creation of an external appeals tribunal. He hoped that most would agree that since the Tribunal opened its doors on October 1, 1985, both the Board and the Tribunal have worked to improve the process and helped to make Professor Weiler's prediction of an improved system a reality.

The Program

The Symposium program consisted of three Panels, all featuring distinguished speakers recognized for their background and expertise in different aspects of the Tribunal's work.

Retrospective and Future Directions

The first Panel was entitled, "Retrospective and Future Directions." This Panel was chaired by John Slinger, Chief Corporate Services Officer of the WSIB. Mr. Slinger has a long association with workplace safety and insurance law, first as a representative and later as a Hearings Officer, Director of the Board's Appeals Branch, and Vice-President of the Regulatory Services and Appeals Division. Mr. Slinger introduced three well-known speakers who shared their historical perspectives on the Tribunal and its development, and their views of the Tribunal's future. All three speakers praised the Tribunal for its history of independence and fairness, and for the high quality of decisions produced

by the Tribunal.

Ron Ellis, the first chair of the Tribunal, spoke about the three main goals that infused the creation of the Tribunal. First was the importance of recruiting the best possible vice-chairs, worker and employer members, and staff. Second was the need for independence, both from the Board and from political influence, not only in terms of adjudication, but also in terms of staffing, payroll and administration. Third was the creation and importance of a collegial tripartite institution. Mr. Ellis expressed his wish that tripartite panels in all appeals be restored. Mr. Ellis concluded by praising the Tribunal for an unmatched standard of performance, and by offering a toast to all of the Tribunal's members and staff, both past and present.

Lois Cromarty, Executive Director of the Northumberland Community Legal Centre, praised the Tribunal for three milestones and achievements: first, for its creativity and innovation in its approach to appeals; secondly, for its breaking new ground in its rulings, such as expanding the definition of an accident to include an unexpected result, and allowing entitlement for chronic pain; thirdly, for the high standard of excellence that the Tribunal has achieved. Ms. Cromarty suggested that the Tribunal should attempt to speed up the hearing process for the most time-sensitive issues such as return to work and labour market re-entry. She also suggested that the Tribunal should develop a process to resolve problems caused when the Board fails to properly implement Tribunal decisions.

David Brady, Barrister and Solicitor from Hicks Morley LLP, and a previous winner of the Ron Ellis award for excellence in workers' compensation law, contrasted the Tribunal experience with the Board's internal appeals branch that preceded it. He described the Appeals Branch as an ad hoc and ill-defined system that had no body of law, no regard for case law, and a reverence for Board practices, vaguely defined policies, and Board medical consultants and assessors. He then described the Tribunal as being an open, accessible and understandable system of adjudication that has created a body of case law that is recognized for its precedent value throughout North America. He also stated that the Tribunal has had a wide impact on workers and employers, on their representatives, and on the Board. Mr. Brady concluded by stating that he feels privileged to have witnessed the growth of the Tribunal over the past twenty years.

David Brady described the Tribunal as an open, accessible and understandable system of adjudication that has created a body of case law recognized for its precedent value throughout North America.

Delivering Expertise, Fairness and Accessibility in Ontario

The second Panel was entitled, “Delivering Expertise, Fairness and Accessibility in Ontario,” on the relationship of the Tribunal to Administrative Justice. It was moderated by Linda Gehrke, a Vice-Chair of the Tribunal. The Tribunal was fortunate to have two eminent and very well-respected individuals speak on this topic, both of whom praised the Tribunal for continued excellence in the Administrative Justice system.

David Mullan, Professor Emeritus, Queen’s University Law School, part-time Vice-Chair of the Tribunal, and one of Canada’s foremost experts on administrative law, noted that the Tribunal has never been overturned on a judicial review. He also stated that the Tribunal has earned a great deal of respect and deference from the judiciary. Mr. Mullan went on to say that the Tribunal has led by example in the processes used in conducting its hearings and by producing high-quality, fair decisions. He praised the work of the Tribunal’s pre-hearing staff, and noted the excellent quality of work done in preparing cases for hearing. Mr. Mullan concluded by noting that the Tribunal’s emphasis on the importance of well-reasoned decisions has been a critical element in the delivery of transparent and high-level administrative justice.

The Honourable Justice Stephen T. Goudge of the Ontario Court of Appeal congratulated both the Tribunal for its 20 years of excellence, and Tribunal Chair Ian Strachan for the leadership he had demonstrated. Justice Goudge also praised the Tribunal for the detailed reasons that are a feature of its decisions. This was important, because the theme of Justice Goudge’s remarks was the importance of giving reasons. He noted that administrative tribunals are required to give detailed reasons for their decisions, and referred to the Supreme Court case of *R. v. Sheppard*, which highlighted the importance of reasons. Justice Goudge acknowledged the Tribunal for the detailed analyses that are contained in its reasons, and cited the seminal Tribunal *Decision No. 915* as an example of this. He also stated that he had appeared before the Tribunal as a lawyer, and always found the Tribunal to be worthy of respect.

Why the Tribunal Matters

The third Panel was entitled “Why the Tribunal Matters” and was on the theme of the Tribunal and independent decision-making. Hosted by Dan Revington, General Counsel to the Tribunal, three well-known individuals, representing the Board, the employer community, and the worker community spoke. All three praised the Tribunal and indicated that the Tribunal has earned the respect of their respective constituencies.

Linda Jolley, Vice-President of Research at the WSIB, spoke about the relationship between the Board and the Tribunal. She stated that despite some difficulties between the two organizations, the Tribunal does matter, has had a significant impact upon, and has earned the respect of the Board. She indicated that Tribunal decisions have had a great impact upon the way that the Board collects and weighs evidence, applies law and policy, and articulates reasons for its decisions. She also stressed the importance of the Tribunal’s influence over the Board in adopting a number of important legal principles, such as the burden of and standard of proof. She finished by expressing hope that the high standard of excellence will be maintained by the Tribunal in the years to come.

Michael Zacks, Acting Director of the Office of the Employer Adviser, stated that while employer representatives have long viewed the Tribunal positively, employers themselves have sometimes viewed the Tribunal less favourably. This is partly due to the increased costs associated with expanded areas of entitlement allowed by the Tribunal, such as chronic pain. Employers also viewed the Tribunal as making policy, which should be within the purview of the Board. Mr. Zacks stated, however, that the employer community now generally views the Tribunal as an independent and competent body and is satisfied with its work. Mr. Zacks urged the Tribunal to communicate regularly with employer groups so that the employer community could better understand the Tribunal.

Wayne Samuelson, President of the Ontario Federation of Labour, gave a bold and impassioned speech. He began by congratulating the Tribunal on its 20-year history. Mr. Samuelson discussed occupational disease and said that he had been astonished by meeting many workers with diseases such as asbestosis who had not brought forth compensation claims. He predicted that a large wave of occupational disease claims would be coming to the Board and the Tribunal in the near future. He stated that while employers are concerned about premiums being too high, premiums are actually very low currently, compared to historical levels. He said that it was important for the system to be equitable and for us not to forget that the basis for the system is the injured workers – real people who are suffering due to on-the-job injuries.

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WSIAT PUBLIC INFORMATION MEETINGS 2005

Since 1999, the Tribunal has held public information sessions in the centres where it holds hearings. These sessions are designed to provide information to our stakeholders about our processes and services, to explain special initiatives, to assist stakeholders in understanding how to better access Tribunal resources, and to provide a forum for feedback regarding Tribunal processes.

The 2005/2006 program will focus on many of the technical aspects of processing appeals at the Tribunal, including production, the "life of an appeal" (addressing such elements as pre-hearing and post-hearing processes from application to decision release), case assignments, staff communications with OICs, hearing preparations, scheduling, the roles of OIC vice-chairs and members, decision writing, decision making and the decision release process.

Sessions include a technical presentation by Tribunal staff and a vice-chair, as well as a discussion segment with a full hearing panel. The public information sessions are co-ordinated by the Tribunal's Resource Department.

SESSIONS ARE SCHEDULED TO TAKE PLACE IN:

Sault Ste. Marie

Tuesday, November 22, 2005 (9:00am - 11:00am)
Holiday Inn Sault Ste. Marie Waterfront
208 St. Mary's River Drive
Sault Ste. Marie, Ontario P6A 5V4
(705) 949-0611

London

Tuesday February 7, 2006 (9:00am - 11:00am)
Hilton London
300 King Street, London, Ontario N6B 1S2
(519) 439-1661

Timmins

Tuesday June 6, 2006 (9:00am - 11:00am)
Cedar Meadows Resort
1000 Norman Street, Timmins, Ontario P4N 8R2
(705) 268-1336

For more information and a complete schedule of upcoming sessions, visit our web site at: www.wsiat.on.ca or contact the Tribunal's Resource Department at: (416) 314-3733, or toll free at: 1-888-618-8846, ext. 4-3733.

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Conclusion

Following the Panel presentations the Tribunal's Executive Director Marsha Faubert thanked the speakers and all those in attendance, and invited everyone to stay for a reception. All attendees enjoyed meeting new people and renewing acquaintances with old friends, and lively discussions continued long after the last speech. The Symposium was a tremendous event and a wonderful celebration of 20 years of excellence.

The Tribunal's achievements of the past 20 years are due to the efforts of its staff and the support it has received from the entire workers' compensation community. The Tribunal extends a warm thank you to all those who have contributed to the successes of the past 20 years, and hopes that the next 20 years will be as successful.

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