

End of the Beginning

"This is not the end. It is not even the beginning of the end; but it is, perhaps, the end of the beginning." The words were a telling prophecy when spoken by Churchill in the context of a war. In a diminished WSI context, the phrase "end of the beginning" could apply to the year 2001 and to the Appeals Tribunal's recent adjudicative evolution.

The changes introduced by the Workplace Safety and Insurance Act, 1997, and the massive inflow of appeals which followed, necessitated significant changes in the Tribunal's structure and operations. Problems involving long delays in processing and in fixing hearing dates for a caseload that had increased by approximately 400% over three years, essentially required a new beginning for the Tribunal. One of the first steps was the development of a business plan to deal with the increased caseload and to point the Tribunal towards a target date when it would hopefully reach a "steady state" mode, i.e., one where the outflow of appeal dispositions matched the inflow of appeals. With the assistance of the Workplace Safety and Insurance Board (WSIB), the Ministry of Labour (MOL) and the Ombudsman, the Tribunal began its appeal inventory reduction project.

It was clear that, in order to be successful, the project would require assistance throughout the WSI adjudicative system. The WSIB pledged its support and began by filling a large number of vacancies at the initial adjudication level. The WSIB Appeal Branch agreed to consolidate related appeals within the adjudicative system under a "whole person adjudication" guideline and reduce the outflow of final appeals to the Tribunal. Regular discussions between Board and Tribunal personnel evolved into a "Quality Loop" process in which staff met to identify administrative problems within the adjudicative system and to propose solutions. The Tribunal's external Advisory Group lent its support to adjudicative changes and to the new Appeal Application process. With a renewed emphasis on alternative dispute resolution (ADR), as well as an expanded roster of adjudicators and appeal administrators, the Tribunal took aim at a series of quarterly targets. While there were many bumps along the road, Tribunal personnel overcame most internal problems. These included lack of space, mould contamination in our building, extensive training for new personnel, development and implementation of a new case management system, rumours of a mega-tribunal designed to swallow the Appeals Tribunal, introduction of revised Appeal Applications and ongoing construction disruptions. By the end of 2001, the combined efforts of everyone involved in the WSI administrative justice system allowed the Tribunal to achieve its year-end target. With continued co-operation, the Tribunal anticipates meeting its March 31, 2002 target and, after that date, maintaining a steady-state appeal flow.

One of the Tribunal objectives for 2002 was the guarantee to parties of a hearing date within four months of those parties filing the Confirmation of Appeal notice advising that

the parties were ready to proceed to a hearing. By the end of 2001, the Tribunal was offering parties a hearing date within 90 days of filing of the Confirmation of Appeal form. This change in availability of hearing dates meant a significant change in the approach of many representatives. At one time, representatives would automatically advise the Tribunal that they were ready to proceed to hearing, knowing that it would take two years to actually reach the hearing stage. Now representatives do not file the Confirmation of Appeal form until they are fully prepared for a hearing; they know that the hearing date will be set well within a four-month period. This change in availability of Tribunal hearing dates, combined with the shortened timelines for WSIB internal appeals, puts even more pressure on lawyers and representatives who specialize in the workplace safety and insurance area. They are now offered early dates by both the Appeals Branch and the Tribunal and must balance their caseloads and time commitments to accommodate both agencies.

If March 31, 2002 is viewed as the "end of the beginning" phase, it means that the remainder of 2002 will represent a "step down" phase for the Tribunal operation. Given the reduced appeal inventory, the Tribunal will have a reduced budget and this, in turn, will result in reduced numbers of adjudicators and appeal administrators. Although the number of personnel will decline, experienced staff and adjudicators should ensure that there is no erosion in the quality of service. They will be assisted by improvements in the Information Technology system (tracIT) which should enhance accessibility to appeal information and simplify the overall process. As the tracIT system is further refined, the Tribunal will be able to store new material electronically and not depend upon paper records. In the next phase of the Tribunal's evolution, we should move towards the electronic transfer of Appeal Records from the WSIB to the Tribunal and, ultimately, to the parties. The groundwork at the Tribunal for this type of e-system was laid during 2001 and, at least potentially, signals a major move towards e-adjudication. During 2001, the Tribunal also opened a new user-friendly website which provides access to some Tribunal resources, including Tribunal decisions. Interested parties can access the website at www.wsiat.on.ca. In November, this new website received 136,000 "hits," 25% of them involving the decision summary search page.

Of necessity, the primary focus at the Appeals Tribunal over the past few years has been increased production and reduction of the appeal inventory. As the Tribunal moves towards a steady-state scenario, there will be a renewed focus by stakeholders on the quality of our administrative justice system. Within the workplace safety and insurance adjudicative system, "quality loop" communication should ensure that the Board and Tribunal continue to review their policies and practices with a view to providing parties with a relatively seamless system. Continued meetings between Board and Tribunal staff on administrative issues should ensure that most potential problems are identified and solutions developed before those problems become a significant obstacle within the

adjudicative system.

As always, the quality of the administrative justice system will depend upon the quality of the individuals involved in that system. If the quality of administrative justice is to remain at a high level, ways must be found to ensure that qualified competent individuals remain in the administrative justice system. Successful businesses, sports teams and justice systems find ways to retain their best people on a long-term basis. Successful businesses utilize such devices as "top hat" pension plans, deferred profit sharing plans and stock options to ensure that the best people remain with the operation. Sports teams utilize long-term contracts and options on future services to achieve the same result. If the quality of the administrative justice system in Canada is to improve, creative measures are required to ensure that quality individuals remain within the system and continue to make a contribution towards improving Canadian administrative justice.

In last year's Annual Report, I referred to our "journey of a thousand miles" and some of the initial steps which were taken to launch the Tribunal on that journey. As the first stage of the journey nears completion, there should be some satisfaction in the overall performance of the Tribunal and the workplace safety and insurance adjudicative system. There are indeed miles to go; however, the remainder of the journey should be easier by virtue of a successful beginning. In many ways, that beginning has laid a foundation for continuing improvements to the WSI adjudicative system and, with the ongoing contributions of quality individuals, the "end of the beginning" should ultimately be viewed as a Canadian administrative justice success.

Ian J. Strachan, Tribunal Chair
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Workplace Safety and Insurance Appeals Tribunal