

Chair's Report - 2003

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. 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.

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.

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".

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.

Ian J. Strachan, Tribunal Chair

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