

Chair's Report -2004

A Ray of Light

There was a consistent theme concerning appointments in the Chair's message carried in the Tribunal's Annual Reports for 2001 through 2003. In 2001, the report observed: "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." The 2002 report noted: "No skilled CEO devises a business plan which automatically terminates the employment of the most qualified, most competent and most experienced employees after six or nine years. Knowledgeable CEOs attempt to retain the services of those quality individuals through a variety of employment inducements." The message in the 2003 report focused on the need for additional knowledgeable adjudicators at the Appeals Tribunal and on the emergence of a new appeal backlog resulting from the previous government's ill-conceived reduction in the Tribunal's OIC roster.

Since the quality of the adjudicative product obviously depends upon the quality of the people involved in decision-making, the need for a "merit-based" system for appointing people to the administrative justice system was apparent. At the end of 2004, there emerged a "ray of light" for quality appointments to Ontario's administrative justice system, as the Ontario government announced an agency review and a renewed focus on the appointment process. The Divisional Court and the Ontario Court of Appeal had made it clear that they regarded the Appeals Tribunal as an "expert" tribunal which provides an informal, but informed, alternative to the courts. It is the quality of key OIC appointees which allowed the Tribunal to develop this reputation within the judicial system and to ultimately serve as a model for the new British Columbia Workers' Compensation Appeals Tribunal. Both British Columbia and Quebec have begun significant reforms in the public appointments process designed to improve the integrity of their administrative justice systems. The Ontario government's agency review, together with the focus on a reformed appointment process, signals a renewed commitment to a quality Administrative Justice system for Ontario and to the development of more expert tribunals.

This potential government reform was extremely timely from the Tribunal's perspective, because the loss of some knowledgeable and competent adjudicators meant that the Tribunal's appeal backlog continued to grow in 2004. While the Tribunal's constituency continued to be understanding about appeal delays related to the backlog, the sense of frustration conveyed at the Tribunal's regional outreach sessions was apparent. Having gone through one appeal reduction program, it was difficult for constituents to accept that a second backlog could be allowed to develop.

There were a number of factors which contributed to the loss of some adjudicators and the creation of a new backlog, including a 15-year salary freeze for OICs, which led a number of Tribunal lawyers/adjudicators to seek other employment. Persons who might otherwise have applied to join the Appeals Tribunal, saw the level of remuneration as a major obstacle which, when combined with the uncertainty of the appointment process, made career prospects in the Ontario administrative justice system less attractive. They saw that the only tangible reward for good work was not increased remuneration, but merely the opportunity to take on additional work. The government review, which includes a review of remuneration for OICs, should help address the long-term erosion in the salary levels at the Tribunal.

As the Appeals Tribunal enters 2005, it maintains its ongoing commitment to provide effective delivery of services within the workplace safety and insurance system; however, provision of this effective delivery can only take place if and when the Tribunal receives adequate tools to do the job. A roster of knowledgeable

and competent adjudicators, together with sufficient budget resources, is the foundation for any effective appeals system. Fortunately, many of the current OICs have shown remarkable dedication and professionalism by continuing to provide a quality adjudicative product in spite of the eroding remuneration levels. System-wide co-operation in the use of early intervention, improved training, knowledge management and ADR techniques, will allow the Board and Tribunal to build upon this foundation.

By the end of 2004, there were signs that the ray of light would continue to shine throughout 2005. Cabinet's addition of nine new Vice-Chairs, including two university law school professors, towards the end of the fiscal year and the prospect of another 12 new Vice-Chairs in 2005 should enable the Appeals Tribunal to address the appeals backlog, once those individuals are trained and integrated into the hearing process. In addition, groundwork has been laid for the introduction of a new Knowledge Management system in 2005, which should enable new appointees to obtain information on a more timely basis and also allow experienced adjudicators to readily access research memos, case law and legislative provisions relating to their appeal caseloads.

As the quality of the Tribunal's roster of adjudicators continues to evolve in 2005, the ray of light from 2004 should shine brighter and the shadow of the appeals backlog should diminish along with the timelines for appeals. It should also be a year in which Ontario rejoins British Columbia and Quebec as leaders in the Canadian administrative justice system.

Ian J. Strachan, Tribunal Chair

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Workplace Safety and Insurance Appeals Tribunal