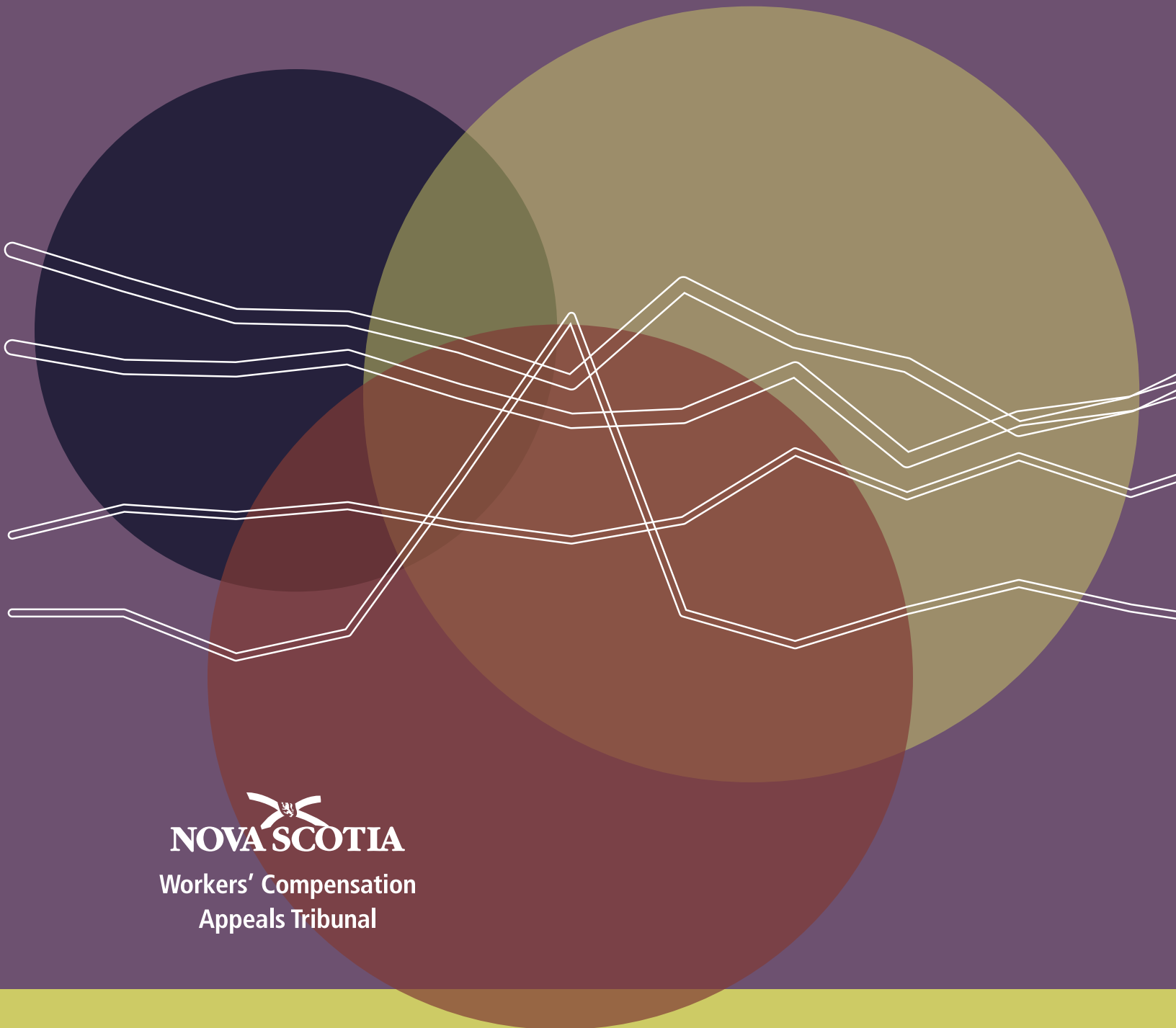


Workers' Compensation Appeals Tribunal

Annual Report
for the year ending March 31, 2007




NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

Workers' Compensation Appeals Tribunal

Annual Report
for the year ending March 31, 2007



Workers' Compensation Appeals Tribunal

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1 800 274-8281
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To Her Honour
The Honourable Mayann E. Francis, O.N.S.
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the fiscal year ending March 31, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Murray K. Scott".

Murray K. Scott
Minister Responsible for Part II of the *Workers' Compensation Act*



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Murray K. Scott
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2007.

Respectfully submitted,


Louanne Labelle
Chief Appeal Commissioner

Tribunal Personnel 2006-07

Mary Jewers
Office manager

Charlene Downey
Secretary-receptionist

Sarah Gallant
Clerk II

Diane Smith
Scheduling coordinator

Samantha MacGillivray
Clerk II

Colleen Bennett
Executive assistant to the
Chief Appeal Commissioner

Appeal Commissioners

Louanne Labelle
Chief Appeal Commissioner

Leanne Rodwell Hayes
Alison Hickey
Glen J. Johnson
Gary Levine
Alexander MacIntosh

Andrew MacNeil
Michelle Margolian
David Pearson
Brian Sharp (on secondment)
Andrea Smillie

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Executive Summary

The Workers' Compensation Appeals Tribunal cooperates with its system partners (comprising the Workplace Safety and Insurance System, or "WSIS") in building a fair and sustainable compensation system.

The year in review

The year 2006–07 was very challenging for the tribunal and its system partners. It was challenging not only because of the number of appeals, but also because of their complexity.

As anticipated, the total number of appeals filed with the tribunal almost doubled in 2006, going from 566 to 1089. The increase was due primarily to appeals from decisions by the board's transitional services team that dealt with entitlement to chronic pain benefits under the Chronic Pain Regulations.

The efficient and timely processing of appeals was therefore a priority for the tribunal. The tribunal was able to improve its timeliness in the resolution of appeals. Overall, 81 per cent of appeals were resolved within 6 months as compared to 73 per cent in 2005–06. The average days-to-decision was 144, compared to 171 for 2005–06.

The high number of chronic pain appeals affected every aspect of the tribunal's operations. Many workers who appealed chronic pain decisions were either unrepresented or had representatives who were not members of the Workers' Advisers Program (overall, WAP represented about 50 per cent of workers, down from 66 per cent in 2005–06). These workers required more assistance from tribunal staff to comprehend fully tribunal processes and appeal requirements.

More appeals were heard by way of oral hearing: 561 oral hearings were held in 2006–07, as compared to 287 the year previous.

The outcome of appeals was also affected by the number of chronic pain appeals. The overall overturn rate by the tribunal dropped from 50 per cent to 37 per cent, due to the high number of denials in chronic pain appeals.

The tribunal issued 815 decisions as compared to 517 in 2005–06. Many of these dealt with complex legal issues, including constitutional challenges to the 6 per cent maximum for a pain-related impairment, to the definition of chronic pain, and to policy 1.3.6 (on the compensability of stress under the Government Employees Compensation Act (GECA)).

This overview would not be complete without recognizing the individual contributions of all tribunal staff to the efficient and fair resolution of appeals during this past year. Their dedication and commitment ensured that the tribunal maintained not only its efficient operations but also the standard of quality and consistency expected by all participants.

The tribunal's annual report for the year 2006–07 will highlight tribunal-appellant interaction, the adjudication of appeals in noteworthy cases, and participation in joint initiatives with system partners.

System Planning

As chief appeal commissioner, I sit on the Heads of Agencies Committee, which oversees implementation of the WSIS strategic plan. The WSIS plan was updated in preparation for the WSIS annual general meeting held on May 3rd, 2006, in Sydney.

My presentation focussed on joint initiatives undertaken by the agencies in the last year. While in Cape Breton, I took the opportunity to meet with representatives of the injured workers' groups as well as with employer representatives. The discussion centred on handling the chronic pain appeals in the system and related issues.

The plans of the individual system partners are expected to be consistent with the WSIS plan, yet be much more detailed, tailored to each agency's mandate and operation.

I also meet regularly with the Chief Workers' Adviser, the Chief Hearing Officer, and the manager of the board's Transitional Services Team (TST) to discuss issues arising from the adjudication of claims and appeals.

Two of our appeal commissioners assist with the planning of joint training sessions with the board and the workers' advisers program. Two other appeal commissioners are part of an appeal issues discussion group that is presently preparing a training tool to be used throughout the system in the adjudication of claims. This initiative is aimed at improving consistency of system decision-making.

Interaction with stakeholders

The tribunal is represented on the System Goals Advisory Committee, mandated to implement system performance measures as recommended by a committee of stakeholders.

I spoke to injured workers groups in Halifax and Sydney on September 11th and 18th, 2006. I have also taken the opportunity to speak to employer representatives to obtain feedback on tribunal processes. These meetings contribute to a better understanding of the system.

On November 9, 2006, I was invited to meet with the board's Board of Directors. This is a yearly occurrence. I brought them up to date with operations at the tribunal. In particular, we discussed issues involving the processing of chronic pain appeals.

On November 30, 2006, I was also invited to attend a stakeholder consultation session hosted by the acting chair of the board's Board of Directors, Ramsey Duff, and the Deputy Minister of Environment and Labour, Bill Lahey. Employer and worker representatives discussed future directions for the system. A more involved consultation was held on January 10, 2007.

On March 6, 2007, I joined my system colleagues Anne Clark, Chief Worker Adviser, Terry Taylor, Chief Hearing Officer, and Al MacNeil, Manager of the board's chronic pain unit, for a presentation to the Construction Association of Nova Scotia. This will be a blueprint for other workshops to employer groups planned for various areas in the province.

Financial Operations

In 2006–07, the tribunal's total expenditures were within 86 per cent of the original authority and within 86 per cent of our revised forecast. Net expenditures totalled \$1,525,565.

Performance Measures

The tribunal has established benchmarks for performance measures.

Appeal commissioners are expected to release decisions within 30 days, as opposed to the legislated 60 days. Appeals are processed within 15 days of receipt by the tribunal. Approximately 15 per cent, for various reasons, take a greater time to process. Appeals that are set down through the docket day process are processed as quickly as possible.

Essentially, the tribunal can hear an appeal within 45 days of receiving notice that the participants are ready to proceed.

Privacy Concerns

While final decisions are stored in a publicly accessible archive, the available version is stripped of participant-identifying information: no names are used of either a worker or employer and, typically, only the most general descriptions of workplace events are recorded in the body of a decision.

Prior to adjudication, when, for example, a worker files an appeal to the tribunal, the relevant employer has a right to participate in the appeal, and that right carries with it a right of access to relevant material from the worker's claim file. Before a copy of a claim file is provided to the employer, tribunal staff will screen the file for information that is both personal to the worker and irrelevant to the matter at issue.

The tribunal is subject to the Freedom of Information and Protection of Privacy Act.

The Year Ahead

The tribunal expects that the continued processing of chronic pain appeals will dominate the coming year's operations.

We look forward to working with system partners in the implementation of the worker and employer counsellor programs.

Stakeholders have also identified priorities for system partners including reducing litigiousness of the system and improving effectiveness.

We will endeavour to work with our partners and stakeholders to improve understanding of the appeal system and to encourage a more collaborative approach to the resolution of appeals.

We constantly monitor and refine our appeal management processes to attain a higher level of efficiency and to improve communications with participants.



Louanne Labelle
Chief Appeal Commissioner

Introduction

The Workers' Compensation Appeals Tribunal (the "tribunal") works with several partner agencies within a framework known as the Workplace Safety and Insurance System (WSIS). Our partner-agencies are the Workers' Compensation Board (the "board"), the Workers' Advisers Program (WAP), and the Occupational Health and Safety Division (OHS) of the Department of Environment and Labour.

The tribunal's annual report for the year 2006–07 will highlight three areas: tribunal-appellant interaction; the adjudication of appeals in noteworthy cases; and tribunal participation in joint initiatives with system partners. The annual report also includes a section addressing appeals from tribunal decisions heard or considered by the Nova Scotia Court of Appeal.

Tribunal Mandate and Performance Measures

The tribunal hears appeals from final decisions of hearing officers of the board. Although governed by the same enabling statute as the board, the tribunal is legally and administratively separate from it, and is not ordinarily bound by board decisions or opinions, ensuring a truly independent review of contested outcomes.

In the processing and adjudication of appeals, the tribunal strives to strike a balance between procedural efficiency and fairness. Its work is directed by principles of administrative law, by statute, and by decisions of superior courts.

Its performance is shaped by, and measured against, several parameters drawn from the Workers' Compensation Act (the "act," as amended) and by its own survey of client groups (chiefly, injured workers) generally performed biennially.

Appeal commissioners are expected to release decisions within 30 days of an oral hearing or the closing of deadlines for written submissions, as opposed to the legislated 60 days.

New appeals are processed within 15 days of receipt by the tribunal. Approximately 15 per cent, for various reasons, take a greater time to process.

Appeals that are set down through the docket day process are processed as quickly as possible.

Essentially, the tribunal can hear an appeal within 45 days of receiving notice that the participants are ready to proceed.

Operations Overview

Overall, the number of appeals received by the tribunal, and the number of decisions rendered, have increased significantly compared to the previous year (see Figures 1 and 2). In the past fiscal year, 815 decisions were issued, up from 517 issued in 2005–06. This increase is largely accounted for by an increase in chronic pain appeals. Concurrently, there were 483 appeals awaiting adjudication by the tribunal at the end of 2006–07, up from 275 awaiting adjudication at the end of 2005–06 (see Figure 3). In 2006–07, the tribunal received 1089 appeals, a dramatic increase from the 566 received in the previous year.

Assuming that the outcome of appeals at the Internal Appeals level of the board remains constant, the tribunal can anticipate a continuation in the current high level of appeals, at least through December 2007.

Please see Appendix 1 containing specific data for the following figures.

Figure 1
Appeals Received

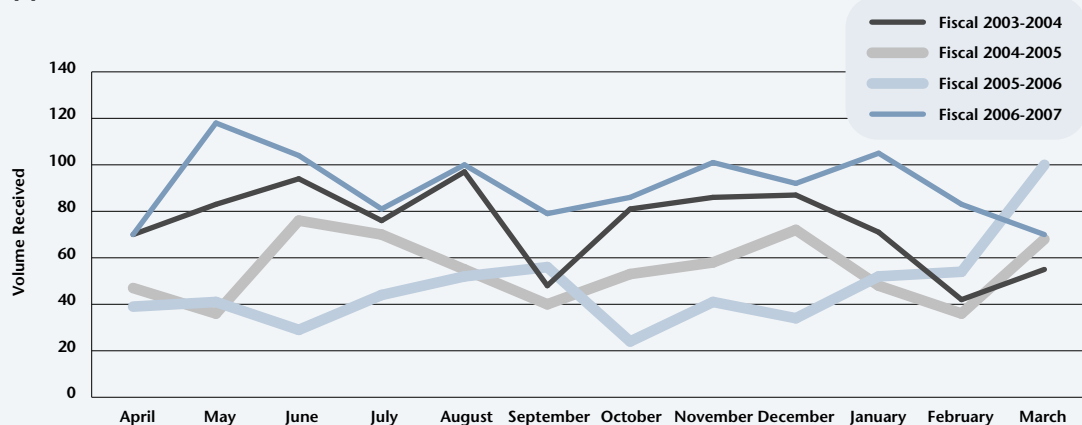


Figure 2
Decisions Rendered

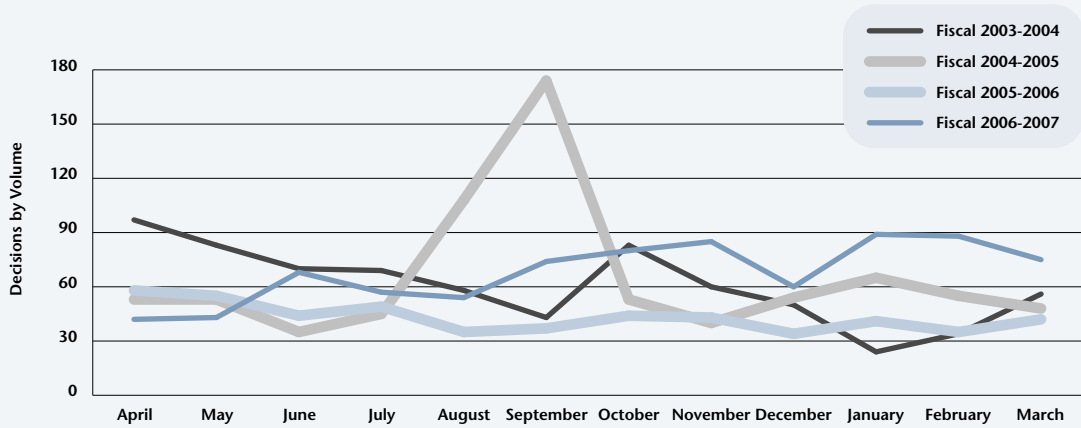
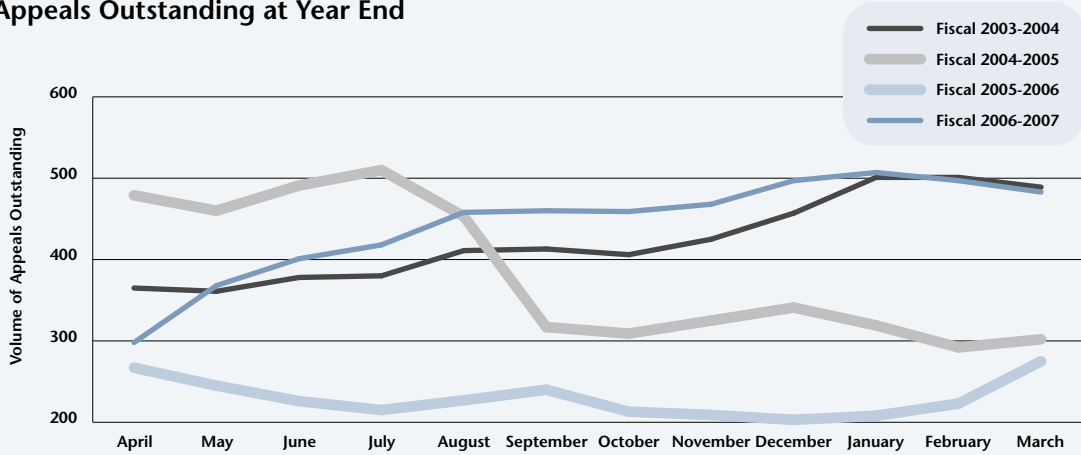


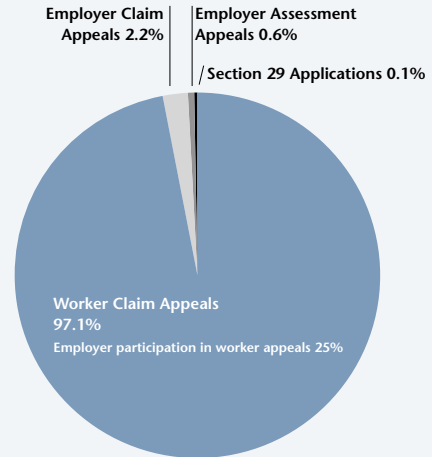
Figure 3
Appeals Outstanding at Year End



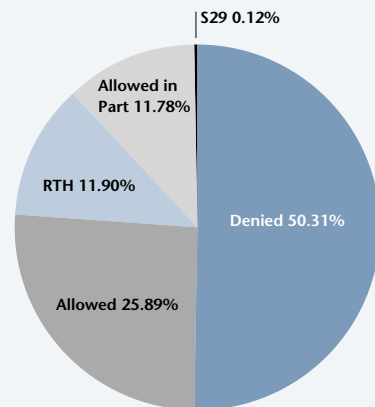
Of the 815 decisions issued, 791 dealt with appeals by injured workers (see Figure 4). Another 18 appeals were filed by employers as a result of board decisions in workers' claims. Five decisions were issued in appeals by employers from board assessment decisions. One decision was issued as a result of an application made under s. 29 of the act. The overall overturn rate by the tribunal dropped from 50 per cent to 37 per cent, due to the high number of denials in chronic pain appeals (see Figure 5).

Of the 791 appeals brought by injured workers, employers participated in 25 per cent. Employer participation varied from the filing of written submissions to the less frequent attendance at, and participation in, oral hearings.

**Figure 4
Decisions by Appellant Type**



**Figure 5
Decisions by Outcome**



Tribunal-Appellant Interaction

The tribunal exists to adjudicate appeals by workers and employers from final decisions of the board, and to consider applications concerning the “right to sue” under s. 29 of the act. In an attempt to improve service to participants in those appeals and applications, the tribunal regularly evaluates its interactions with participants.

In an effort to help workers and employers, the tribunal prepared a brief outlining how the date of injury or the date of permanent impairment affects awards for permanent benefits. Entitled “A brief explanation of our date-driven system,” this paper can be found on the tribunal’s website.

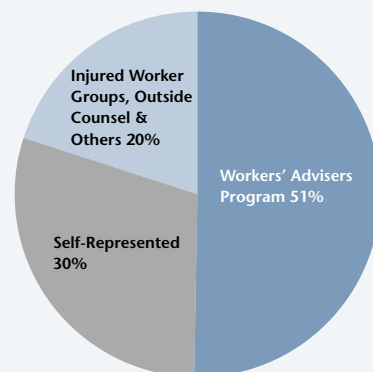
Self-Represented Participants

The tribunal’s self-represented participant “project” has become part of the tribunal’s regular practice, with some changes. As the proportion of workers’ appeals where workers are self-represented has increased, this practice has become ever more important (see Figure 6).

Self-represented workers are now contacted by a senior staff person, rather than an appeal commissioner. The checklist of what to expect at the hearing is still reviewed, and any questions are answered or are referred to an appeal commissioner. Hearings are usually scheduled as part of this phone call.

The tribunal has expanded its role in contacting self-represented participants to include self-represented employers. Self-represented employers are contacted by telephone shortly after they advise the tribunal that they are participating. The appeal commissioner who contacts the employer will not hear the appeal. The appeal commissioner will review the tribunal’s procedures, explain what to expect before, during, and after the hearing, and answer any questions the employer may have.

Figure 6
Decisions by Representation



Self-represented employers have expressed concerns when there has been a hearing where the worker has a legally trained representative. The tribunal's focus in the coming year will be to attempt to ensure that all appeal participants are able to present their case without feeling overwhelmed. The challenge will be to retain the tribunal's neutrality in adjudicating appeals.

Appeal Management

The tribunal conducted a complete review of its appeal process, including all correspondence, to ensure effective communication with clients. The tribunal has also been monitoring performance measures in light of the increased number of appeals. Current service delivery targets are being met, that is, the majority of appeals are being processed within 15 days of receipt, and the majority of appeals are being set down within 45 days of the appeal being ready.

The tribunal has also reviewed its appeal management processes to ensure adequate information is provided to employers who are self-represented. The tribunal has noted an increase in self-represented employers participating in appeals and is taking measures to ensure that employers receive adequate information to assist them in preparing for appeals.

Timeliness (to decision), clarity of letters and decisions, and management of participant expectations continue to be focus areas for tribunal improvement. Overall, 81 per cent of appeals were resolved within 6 months as compared to 73 per cent in 2005–06. The average days-to-decision was 144, compared to 171 for 2005–06 (see Figure 7).

Within two weeks of filing a notice of appeal, appellants receive confirmation not only that their appeal has been received, but also that the notice of appeal has been reviewed and that a mode of appeal—whether by written submission or oral hearing—has been determined, subject to any objections of the participants. The proportion of appeals decided by oral hearing has increased over last year, just as the number of self-represented appellants has increased (see Figure 8).

Generally, within the third week following receipt of a notice of appeal, the tribunal has determined if any other statutory participant (which includes the injured worker, the employer, and the board) will participate and has sent confirmation to the appellant.

Figure 7
Timeliness to Decision

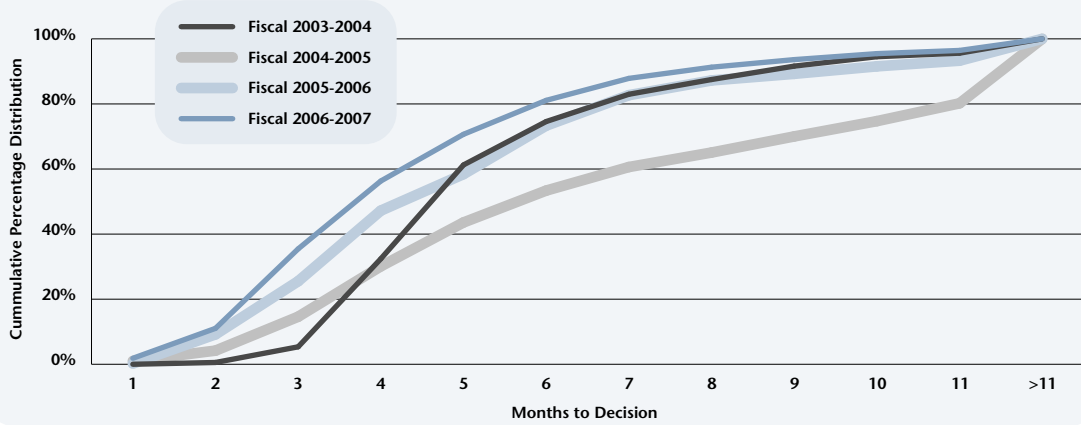
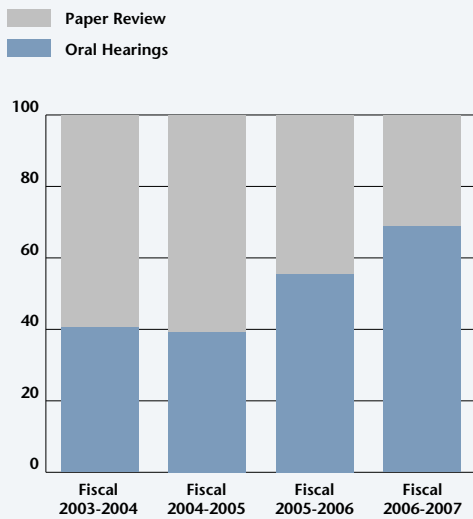


Figure 8
Decisions by Mode of Hearing



Appeals proceeding by oral hearing involving multiple participants are scheduled by conference call. Increasingly, the tribunal has found it effective and efficient to schedule conference calls by e-mail. To facilitate this process the tribunal will be revising its forms to require participants with e-mail addresses to provide them.

Employer participation in workers' appeals remains constant from the last fiscal year, at 25 per cent of all appeals.

Requests for postponements, adjournments, and extension of submission deadlines in written appeals fluctuated during the year, from a monthly high of 50 to a low of 11. Such requests are often more frequent in winter due to weather conditions, but there are many other factors, including availability of late-retained counsel, worker or representative illness, availability of evidence, availability of expert witnesses or their reports, which result in delays and continue to pose scheduling and workload challenges.

On complex appeals, several conference calls may be held to facilitate receipt of evidence before the scheduling of the hearing. Appeals raising preliminary issues are referred to the presiding appeal commissioner, who may also conduct conference calls before the hearing is scheduled.

The increasing complexity of tribunal procedure reflects the variety of appeal scenarios.

The number of extension requests in both written submission and oral hearing appeals has remained static. These requests often pose last-minute problems for appeal commissioners' travel arrangements, and workload, and frequently result in file re-assignments. In an effort to reduce these complications, this year the tribunal has become more rigorous in applying the 180-day procedural limit to the length of time an appeal may be outstanding. This is more difficult in complex appeals.

Each appellant now receives slightly more correspondence so as to keep all participants informed at each stage of the appeal, and to set out the next steps in the process. Workers are now copied on all letters, regardless of representation.

The tribunal evaluates the suitability of its hearing locations on an ongoing basis. Factors considered include the travelling distance required of all participants, cost of the room rental, accessibility for those with physical challenges, and the safety and security of all involved.

Freedom of Information and Protection of Privacy

Tribunal decisions contain personal and business information, particularly medical information. Hearings are held in camera. The decisions are provided to appeal participants including the worker, the board, and the employer. The decisions are available to the public through a subscription service that is provided by the Department of Environment and Labour as part of their database publication.

The tribunal is governed by Part II of the Workers' Compensation Act. The legislation does not specifically permit the publication of decisions. However, the tribunal has adopted a practice manual, available online, which sets out the tribunal's procedures and rules for the making and hearing of appeals as authorized under s. 240 of the act.

The tribunal's practice manual advises of the publication of tribunal decisions and provides as follows:

9.00 PUBLICATION OF TRIBUNAL DECISIONS

9.10 General

Tribunal decisions include a cover page setting out the names of participants and representatives. This information is not found in the body of the decision. The Tribunal endeavours to exclude any information from the body of a decision which could identify

the participants. Decisions, without identifying features, are available through the Nova Scotia Department of Environment and Labour website. The database is developed and maintained by the Nova Scotia Environment and Labour Library. Anyone wishing to use the database should contact the Environment and Labour Library at 424-8474.

9.20 Personal Identifiers in Decisions

Generally, decisions are written without personal identifiers for participants, except on the cover page. The names of participants, lay witnesses and others (where the use of names would tend to identify the participants), are not used in Tribunal decisions. Witnesses may be identified by their role, for example, the "worker" or the "employer", or by initials.

Expert witnesses may be referred to by name. However, if an appeal commissioner considers that the use of an expert's name might identify the participant, the expert witness may be referred to by title, for example, the worker's attending physician, or by initials.

The names of representatives will generally not be used in the body of a decision. Instead, they may be referred to by their role, such as the worker's representative. Board claim file numbers or employer registration numbers are not included in the body of a decision.

Quotations contained within tribunal decisions are edited to protect privacy. This will normally be accomplished by substituting a descriptive term for a name, and using square brackets to show the change, e.g., [the Worker].

A footnote at the bottom of the first page of every decision indicates that the participants have not been referred to by name in the body of the decision as the decision may be published. The publication version of decisions on the Department of Environment and Labour database does not include any of the names of the participants nor claim numbers (which appear on the cover page of a decision).

Further vetting occurs after the decision has been released and prior to publication if circumstances warrant. Requests have also been made to withhold decisions from publication due to the extremely sensitive material contained in some of the decisions. These requests are considered and decisions may be withheld from publication.

The tribunal has adopted a "decision quality guide" that outlines quality standards for decision making. It includes a section concerning privacy issues, stating that "decisions should be written in a manner that minimizes the release of personal information." However, at the end of the day, a decision maker must have the discretion to include in a decision reference to evidence that the decision maker finds relevant to support the findings outlined in the decision.

Worker claim files are released to employers, after vetting by the tribunal for relevance. The tribunal will be revising its file release policy to ensure compliance with FOIPOP without compromising the needs of participants to know the evidence on appeal. Of particular concern to the tribunal is the need to ensure that personal worker information is not used for an improper purpose or improperly released/made public by a third party. The tribunal's policy and correspondence accompanying file copies will be revised to reflect these requirements.

Decisions for the year 2006–07

The tribunal’s business is to adjudicate appeals from decisions of the board and to consider applications brought under s. 29 of the act to determine whether a party has a right to sue in the civil courts.

Adjudication is the tribunal’s principal activity, and any decision may illuminate or advance the tribunal’s approach to an issue, even those in already well-developed areas of adjudication. For the interest of advocates and stakeholders, a detailed discussion of noteworthy decisions, selected from the 815 decisions issued in the year 2006–07, is provided below (see Figures 9 and 10).

Figure 9
Decisions by Issue Categories – Worker

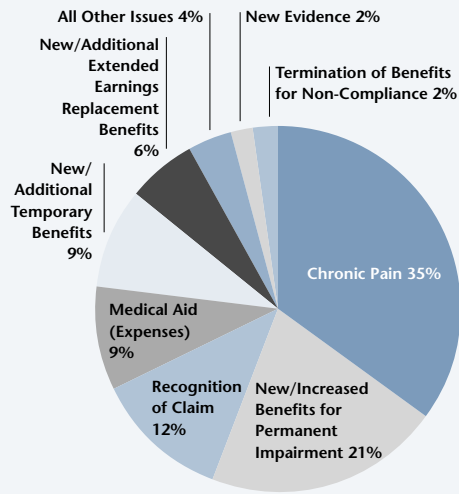
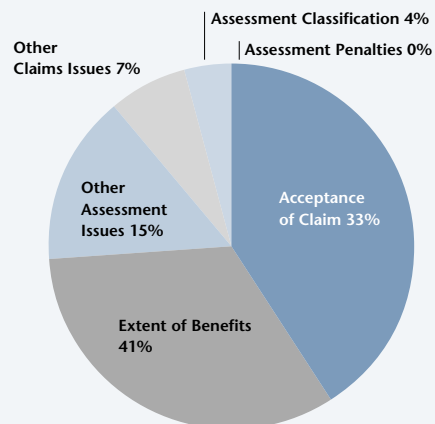


Figure 10
Decisions by Issue Categories – Employer



Noteworthy Decisions (by issue)

Chronic pain

Several appeals involved Charter challenges to the Chronic Pain Regulations:

In *Decision 2006-137-AD* (June 9, 2006), the tribunal addressed the issue of whether the definition of chronic pain contained in the Chronic Pain Regulations violated the equality rights contained in s. 15(1) of the Canadian Charter of Rights and Freedoms, insofar as it was the same definition contained in the FRP Regulations that had been struck down by the Supreme Court of Canada in *Martin*. The tribunal concluded that the definition of chronic pain itself was not challenged in *Martin*; rather, it was “the consequences flowing from the automatic exclusion of chronic pain from the general scheme of the Workers’ Compensation Act that was challenged.” Consequently, there was no Charter violation.

In *Decision 2006-109-AD* (August 10, 2006) a panel addressed the issue of whether s.7 of the Chronic Pain Regulations infringed the equality rights in s. 15(1) of the Charter. Section 7 provides for a maximum award of a 6 per cent pain-related impairment (PRI) rating for chronic pain, and it was this “cap” on PRIs that was challenged. The panel found that the worker in this case, as a chronic pain sufferer, was part of a group subject to differential treatment based on a ground expressly included in s. 15(1) of the Charter, i.e. physical disability. However, the panel concluded that the differential treatment did not discriminate in a substantive way. The panel found that the Chronic Pain Regulations took into account the actual needs, capacity, and circumstances of workers with chronic pain, “in a manner that respects their value as human beings and as members of Canadian society.” The panel saw s. 7 as an attempt to fit chronic pain sufferers into an impairment-based system and treat them like all workers with permanent medical impairments. It concluded that a reasonable person in circumstances similar to the worker, fully apprised of contextual factors and relevant circumstances, would conclude that s. 7 did not have the effect of demeaning the worker’s dignity.

This decision is currently on appeal to the Court of Appeal.

In *Decision 2006-188-AD* (October 24, 2006), the tribunal found that there was no infringement of s. 15(1) equality rights under the Charter where the Regulations did not provide for a 12.5 per cent PMI for chronic pain (s. 10E benefits) or wage-loss benefits for workers injured prior to March 23, 1990. The tribunal concluded that drawing distinctions based on date criteria was not prohibited by the Charter.

In *Decision 2006-079-AD* (December 12, 2006), the tribunal rejected an argument that the definition of chronic pain contained in the Chronic Pain Regulations violated the worker's equality rights under s. 15(1) of the Canadian Charter of Rights and Freedoms. The tribunal concluded that workers with work-related ongoing, long-term pain that do not meet the statutory definition of "chronic pain" are not treated differently than workers whose condition meets the definition of "chronic pain." Instead of creating a distinction based on a personal characteristic, the Chronic Pain Regulations eliminated such a distinction. A worker with "chronic pain" receives a pension based on a permanent impairment award called a "pain-related impairment." However, this is not different in substance from a worker with work-related, ongoing, long-term pain that does not meet the statutory definition of "chronic pain" who receives a pension based on a permanent impairment award called a "permanent medical impairment."

Prior to the enactment of the Chronic Pain Regulations, workers who met the requirements of 10E of the act were awarded a 12.5 per cent for chronic pain. In *Decision 2005-445-AD* (February 27, 2007), the tribunal addressed the issue of the recalculation of chronic pain benefits under s. 12 of the Chronic Pain Regulations. The worker was in receipt of s. 10E benefits for chronic pain, consisting of 50 per cent of an EERB and a permanent impairment benefit based on a 12.5 per cent PMI rating. When the board recalculated the worker's benefits pursuant to s. 12 of the Chronic Pain Regulations, the worker was found to be entitled to a 6 per cent PRI and a full EERB. The board replaced the worker's 12.5 per cent PMI with a 6 per cent PRI. The worker sought to maintain his 12.5 per cent PMI, in addition to a 6 per cent PRI.

The panel found that s. 12 of the regulations, when given its plain and ordinary meaning, and read within the scheme and context of the act, did purport to replace the worker's s. 10E benefits with the benefits provided in the regulations. The panel found it unlikely that Cabinet would have intended to give the s. 10E chronic pain sufferers a level of PIB higher than chronic pain sufferers who did not qualify for s. 10E benefits.

The panel also concluded that the regulation-making power of the board did not extend to taking away benefits provided by the act. The tribunal declined to apply policy 3.3.5 to the extent that it, too, would result in the replacement of the worker's 12.5 per cent PMI with a 6 per cent PRI, and would therefore be inconsistent with the act. Consequently, the worker kept the 12.5 per cent PMI and was not awarded an additional 6 per cent PRI.

Several tribunal decisions addressed the issue of entitlement to a pain-related impairment (PRI) award in addition to a permanent medical impairment (PMI) award:

In *Decision 2006-022-AD* (April 27, 2006), the tribunal found that the worker was entitled to a PMI in addition to a PRI. The worker in this appeal had neurological problems in his right arm and hand attributed to nerve root pressure and a significant disc herniation with impingement of the spinal cord. There were permanent changes in the cord. These changes included myelomalacia. He was said to have a marked degree of pain secondary to deafferentation from a spinal cord out of keeping with the degree of abnormality, significant dysregulation of the blood vessels in his feet with a significant dependent rubor. His family doctor and a specialist also stated that the worker suffered from chronic pain. He met the criteria of chronic pain/myofascial pain with multiple trigger points. The pain, triggered by the injury, was persistent, continuous, disproportionate, and beyond a normal recovery time. Therefore, despite having a 50 per cent PMI for his painful spinal cord injury, the worker was found to have chronic pain as a component of his injury.

In *Decision 2006-479* (November 28, 2006) a worker who suffered from bilateral carpal tunnel syndrome was awarded a PRI for chronic pain. Surgery had been performed, but the worker still experienced pain. The tribunal concluded that the worker was not entitled to a separate PMI for her carpal tunnel syndrome.

The definition of chronic pain contained in the act and regulations differs from the definition of chronic pain commonly used in the medical community. Although some physicians have diagnosed patients with “chronic pain,” their conditions do not meet the statutory definition of chronic pain, and they do not qualify for benefits under the Chronic Pain Regulations. In *Decision 2006-437-AD* (August 9, 2006), the worker had been diagnosed by his family doctor as having “chronic pain syndrome.” Despite this diagnosis, the tribunal found that the worker’s symptoms, as described by his family doctor, did not match the statutory definition of chronic pain.

Decision 2006-532-AD (February 28, 2007) addressed the argument that the phrase “all other like or related conditions” contained in the statutory definition of chronic pain included conditions such as osteoarthritis and spinal stenosis. The tribunal rejected this argument, finding that the phrase referred to conditions similar to chronic pain syndrome, fibromyalgia and myofascial pain syndrome, but which did not exhibit significant objective findings. The distinction between “chronic pain” as defined in the act, and persistent, longstanding pain that is explained by objective findings (as is the case in spinal stenosis and osteoarthritis) was noted. The lack of objective findings in chronic pain cases is what usually distinguished chronic pain from non-chronic pain cases and made the treatment of chronic pain more challenging. In such cases, a determination would usually be made that the pain had persisted beyond a normal recovery time was disproportionate to the original injury.

Several appeals involved the reconciling of old Workers’ Compensation Appeal Board decisions with recent findings of chronic pain. In some cases, such as *Decisions 2006-273-AD* (August 24, 2006) and *2006-279-AD* (June 29, 2006), the tribunal concluded that awards made by the Appeal Board included an amount for chronic pain; as a result, workers were not entitled to an additional PRI award.

Section 84

Pursuant to s. 84 of the act, the board can suspend, reduce, or terminate a worker's benefits where, in the board's opinion, the worker has failed to cooperate.

In *Decision 2006-014-AD* (April 10, 2006) the worker's benefits were suspended when she left the province without advising the board. The tribunal concluded that the board's decision to suspend benefits was appropriate, but that the duration of the suspension was not. Upon her return to the province, the worker had contacted the board regarding her suspension of benefits; however, the board did not reinstate the worker's benefits. The tribunal concluded that the worker's benefits should have been reinstated upon her return to the province.

In *Decision 2006-217-AD* (May 15, 2006), the tribunal concluded that it was inappropriate to suspend a worker's benefits where the worker was not reasonably able to conform his conduct to acceptable standards in order to participate in appropriate treatment to promote his recovery, due to his painful condition, documented psychological problems, and the stress of participating in a pain management program. Under the circumstances, the worker's failure to fully participate was not unreasonable. Therefore, it was not appropriate to suspend his benefits under s. 84(2) of the act.

In *Decision 2006-181-AD* (July 31, 2006), the worker was seeking to overturn the board's decision to suspend his benefits as a result of his refusal to attend the Columbia Health Centre for treatment. The worker's reasons centred on family obligations around the holiday season. The tribunal found that it was not reasonable for the worker to fail to attend Columbia Health; family responsibilities were not extraordinary and the worker's permanent impairment was not a barrier to chronic pain treatments.

Decision 2005-436-AD (August 31, 2006) addresses language as a potential barrier to compensation. The worker was a unilingual francophone whose benefits were terminated under s. 84, when she withdrew from her multi-disciplinary treatment program. She alleged that the lack of facility in the French language of one of her attending physicians rendered her treatment in the program inappropriate. The tribunal found that, despite the worker's perception of language being a barrier to appropriate treatment, no such barrier existed. The tribunal also rejected an argument that the lack of fully bilingual specialists constituted a breach of the worker's s. 7 Charter rights.

In *Decision 2006-746-AD* (January 22, 2007), the tribunal overturned the board's decision to suspend the worker's benefits due to several missed medical appointments and his failure to return to work on particular day. The return to work date had been changed twice and the worker misunderstood which day he was to return. After being notified of his failure to return on the appointed day, he reported to work the following day. While the tribunal concluded that the worker had missed enough appointments to cause concern, he subsequently provided legitimate reasons for missing most of the appointments. The tribunal ordered the reinstatement of the worker's benefits.

Supplementary benefits

Section 227 of the act and board policy 3.8.1R4 provide for the payment of supplementary benefits. To qualify, an injured worker must meet all of the following four criteria:

- be receiving a Permanent Partial Disability benefit for an injury which occurred before March 23, 1990
- be receiving, or be entitled to receive, his/her Permanent Partial Disability benefit on a periodic basis

- be receiving a Canada or Quebec Pension Plan disability pension for his/her compensable injury; or in the opinion of the board, be ineligible to receive a Canada or Quebec Pension Plan disability pension for his/her compensable injury, only because of having made insufficient, or no, contributions to the Plan
- have a personal income below the threshold set for individuals under the GIS Program

Decision 2006-1007-AD (March 29, 2007) addressed the issue of what constituted the relevant date for CPP purposes, when assessing a worker's entitlement to a supplementary benefit.

The worker never returned to work after his 1986 compensable shoulder injury. The board awarded him a 3 per cent PMI in 1988; the Appeal Board increased it to 10.5 per cent in 1989. The worker applied to Human Resources Development Canada (HRDC), unsuccessfully, for CPP disability benefits in 1988 and 1989. His applications were denied on the basis that, although his condition may have prevented him from returning to his pre-accident employment, a determination could not be made that the worker was completely disabled from resuming any type of work.

In 2005, the board concluded that the worker suffered from chronic pain and awarded him a PRI. A board medical advisor expressed the opinion that the worker's chronic pain (but not his shoulder injury) would qualify him for CPP disability benefits.

The worker re-applied for CPP disability benefits in 2005. As he had insufficient contributions (because he hadn't worked since 1986), HRDC reviewed the worker's claim under the late applicant provision. The operative year for CPP purposes was 1989, based on the worker's history of payments into the CPP. HRDC concluded that the medical evidence did not support a finding that the worker was completely disabled from working back in December 1989. On that basis, the worker was again denied CPP disability benefits.

The worker applied for a supplementary benefit for the 2005–06 year. The board denied his claim on the basis that his failure to qualify for CPP disability benefits was due to the fact that he was not completely disabled from working in 1989, and not because of insufficient contributions.

The tribunal concluded that the operative date for assessing the worker's entitlement to CPP benefits should be the same date as his application for the supplementary benefit. The regulations provide that, when assessing a worker's request for a supplementary benefit, the worker be eligible for a CPP disability pension for his compensable injury, but for insufficient contributions. It was reasonable to interpret that provision as referring to the present time, not a date in the past. There was nothing contained in the regulations or board policy to suggest that the operative time would be anything but the present time of the application. The tribunal noted that supplementary benefits were intended to assist individuals like the worker who were unable to return to work following their injury, but received no earnings-replacement benefits and whose income fell below a certain threshold.

In *Decision 2006-194-AD* (July 31, 2006), the worker sought supplementary benefits prior to October 1, 2002. She met the conditions for a supplementary benefit under s. 227 except that her PPD had been paid as a lump sum because of the denial of compensation due to chronic pain. Once the PRI was awarded (it was backdated to 1990), the worker qualified, and was provided a supplementary benefit only backdated to Oct 1, 2002.

Changes to s. 227 of the act and to the regulations provided increased benefits as of Oct 1, 2002. The board interpreted the new rules as prohibiting the fixing of an eligibility date earlier than Oct 1, 2002. The tribunal found that the amendments to the legislation did not extinguish the rights to a supplementary benefit that existed prior to 2002. The tribunal applied s. 190 to relieve the time limitation on retroactive benefits in s. 30(2) of the regulations. The worker was found to be entitled to a supplementary benefit from February 1, 1996, until October 1, 2002, based on the calculation formula that was in place at the time.

A similar approach was followed in *Decision 2006-478-AD* (October 30, 2006).

Employer Appeals

In *Decision 2006-552-AD* (January 24, 2007), the employer challenged its assessment by the board. It argued that it was not an “employer” and therefore was not subject to mandatory coverage under the act.

The employer was a Nova Scotia company involved in fishing. It owned 12 vessels and was the holder of multiple fishing licences leased to captains and deckhands, who were hired directly by the employer under contracts called lease contracts. The contracts demonstrated the extent of control exercised by the employer over every aspect of the fishing activity except for the actual fishing. The employer provided the vessels, gear, licences; underwrote the operating expenses; and was in complete control of the disbursement of the proceeds of the landed catch value. The relationships reflected, in reality, more of an employer/employee relationship than lease arrangements or joint venture partnerships. The captain of a larger crew acted more as a foreman, training novice crew members, than as a business partner.

The tribunal noted that Section 2 (ae) of the act specifically addressed the unique arrangements in the fishing industry by including in the definition of worker a person who becomes a member of the crew of a vessel under a profit-sharing arrangement.

The tribunal therefore concluded that the employer was properly characterized as an employer under the act and was subject to mandatory coverage under the act. As the employer owned 12 vessels and had between one and four workers on each boat, it was subject to mandatory coverage under the act. The uniqueness of the fishery, including its communal aspects was acknowledged; however, these characteristics supported the view that the employer was an employer under the act.

This decision is under appeal.

In *Decision 2006-211-AD* (January 18, 2007), the tribunal rejected the employer's argument that it should not have been assessed a demerit to its experience rating because: (1) the worker's claim should never have been accepted as compensable; or (2) even if it was compensable, the demerit should not be applied because the employer was not afforded the opportunity to challenge the acceptance of the claim until the worker had been in receipt of benefits for one and a half years. The tribunal drew an adverse inference against the corporate employer, because the employer's principal did not attend to provide sworn testimony.

Decision 2006-385-AD (September 28, 2006) involved the employer's appeal of a decision in which the board had refused to recover an overpayment from the worker, even though the employer had demonstrated that the worker's long-term rate had been incorrectly calculated. The board had also found that the overpayment would not impact on the employer's claim costs. The tribunal confirmed the board's finding that the overpayment should not be recovered, given the criteria in policy 10.2.1R. The possible specific prejudice to the worker (if there were recovery) outweighed the possible general prejudice to the workers' compensation system from non-recovery.

In *Decision 2006-350-AD* (October 31, 2006), the employer appealed a recognition finding, arguing that there should not be recognition because the worker had taken himself out of his employment by attempting to start a fight. The worker suffered from a rage disorder, and had a history of conflict and violence. He disliked a co-worker, and approached the co-worker while the co-worker's truck was parked. He repeatedly challenged the co-worker to a fight. The precise mechanism of the injury was unclear, but the worker had jumped on the truck while the co-worker was driving away, and then purportedly suffered the injury by falling off the truck when the co-worker stopped. The tribunal concluded that the fight was not caused by the employment. It was merely happenstance that the worker's target happened to be a co-worker, and that the attempted fight occurred at work. The cause of the fight was the worker's pre-disposition to violence.

Section 29

Decision 2006-237-TPA (August 23, 2006) involved an application by an extra-provincial company, performing a contract within the province for a short term, which involved the hiring of local labourers (one of whom was killed). The application was brought to answer whether the company was a covered employer within the definition of the act. If the company were a covered employer, then the subrogated action against it that had been brought by the board would be barred by operation of s. 28(1) of the act. A review of the operations of the company while in the province, and a review of applicable case law revealed that the applicant did not exercise the "fundamental control" over the work and remuneration of the deceased worker required to be shown by an employer. The subrogated action was not barred.

GECA Stress

The board is responsible for administering the Government Employees Compensation Act (GECA) on behalf of the federal government to compensate federal employees for workplace injuries.

The GECA definition of “accident” is broader than that contained in the Workers’ Compensation Act (WCA). It includes both stress resulting from a traumatic event and work-related stress that develops over time (gradual onset stress). Under the WCA, only stress resulting from a traumatic event is considered compensable.

In 2005, the board approved policy 1.3.6 entitled “Compensability of Stress as an Injury Arising out of and in the Course of Employment - Government Employees Compensation Act (GECA).” It applies to all decisions made on or after July 25, 2005. With respect to claims for gradual onset stress, the policy provides that certain criteria must be met to establish entitlement to benefits. Additionally, the policy states that mental or physical conditions caused by labour relations issues are not compensable. Several tribunal decisions addressed GECA stress claims and policy 1.3.6 in 2006.

Decision 2006-328-AD (September 21, 2006) applied Board Policy 1.3.6.

The worker was a correctional officer. The evidence suggested that it was not staff problems that led to his leaving work; rather, it was overwork. The tribunal concluded that the worker’s stress arose out of a labour relations issue; in this case, a change of working conditions. As this was a work-related event that the policy specifically excludes from being compensable, the appeal was denied.

In *Decision 2006-156-AD* (December 28, 2006), the worker sought recognition of work-related stress. Evidence did not support that the worker’s depression related to his compensable condition. The depression had developed before he was diagnosed with industrial bronchitis. He went off work with depression within a few months of the announcement that his employer was closing. The worker’s main concerns were financial (as reported to his treating physicians at the time). A panel found that the only work-related factor was uncertainty as to his future when his employer closed. This was not considered to be an unusual stressor, and it was not compensable under the act.

In *Decision 2006-129-AD* (January 12, 2007), the worker sought recognition that he suffered a compensable injury in the form of stress under s.4 (1) of GECA. The tribunal found that board policy 1.3.6 was essentially a codification of existing law. The evidence did not suggest that he suffered a reaction to a traumatic event; rather, he suffered gradual onset stress. His claim was denied, as the work-related stressors were neither unusual nor excessive.

This decision is under appeal.

In *Decision 2006-425-AD* (February 19, 2007), a panel addressed a GECA claim for gradual onset stress. The worker sought recognition that he suffered personal injury by accident pursuant to the GECA. He claimed that his treatment by co-workers and supervisors over time had caused a mental disability that disabled him from work.

The panel looked at the state of the common law for the correct legal test to be applied in determining gradual onset stress cases under GECA, and determined that the proper test was an objective one. It stated, “although the test has been expressed in various ways by court and tribunal, the essence is the same: there is no room for a subjective view of the events or the worker’s reaction to them, in determining whether or not an accident occurred under GECA.”

The panel compared the common law test to the requirements of policy 1.3.6. The panel found that applying the policy would lead to the same result for this worker. He had a DSM diagnosis, and the events he complained of were neither unusual nor atypical. Regardless of whether the policy was specifically applied, the worker did not meet the test to establish that an “accident” had occurred.

Stress

Decision 2005-156-AD (August 31, 2006) applied the test for a “traumatic” event as set out by the Nova Scotia Court of Appeal in Logan. The tribunal followed the Logan approach and confirmed that the appropriate test was an objective, not subjective, one. In this case, the worker sought recognition that the termination of a long-awaited job interview (terminated in the course of her interview when it became apparent that the worker did not meet the minimum qualifications) constituted a traumatic event to which she had an acute reaction. The tribunal concluded that the test to be applied was whether a reasonable person would have reacted to the aborted interview in the same way as the worker did. The answer was “no,” and the worker’s stress was determined to be non-compensable.

Decision 2005-465-AD (December 29, 2006) overturned the board's recognition of a stress injury. The worker was a corrections officer. He was suffering a continuing depressive illness, to which his employment duties materially contributed. He interrupted a break-in in his home in June 2004. The intruder was known to him as a frequent inmate. The intruder also was a neighbour, whose apartment abutted the worker's back yard. They recognized each other when the break-in was interrupted. The worker took a number of days off, but returned to his normal duties. The worker laid off again in March 2005, pointing to stress. After some questioning by the board, the worker pointed to the June 2004 break-in as a traumatic event. The board accepted the worker's claim. The worker returned to modified duties in August 2005, but had no contact with inmates. The inmate/intruder was released and returned for a number of months to the apartment. During this time, the worker was able to continue working notwithstanding the inmate's close proximity. The inmate also went to the worker's front door on one occasion, but there was no contact on that day. The tribunal concluded that the incident did not "arise out of or in the course of employment." There was no indication the worker was targeted for a workplace reason. The inmate broke into a number of homes at the same time, while intoxicated, all in the same vicinity.

Referrals to a Workers' Compensation Board Hearing Officer

(under Section 251 of the Workers' Compensation Act)

Section 251 of the act permits the tribunal to refer appeals back to a board hearing officer for reconsideration. Referrals may occur where the quantity or nature of new or additional evidence, or the disposition of an appeal, merits the referral. The tribunal may make a referral at any point in the hearing of an appeal.

Historically, appeals have been referred for one of five reasons:

- to permit reconsideration of decisions in light of new or additional evidence that becomes available
- to ensure hearing officers consider all of the evidence and issues that are relevant to appeals
- to expedite claim management
- to consolidate issues that need to be adjudicated
- to make use of the board's resources to gather further relevant evidence

The tribunal resolved 97 appeals by referral back to the hearing officers in 2006–07. This represents a marginal decline in the number of decisions resulting in referrals (from 13 per cent in 2005–06 to 11.9 per cent in 2006–07).

Appeals from Tribunal Decisions

A participant who disagrees with a tribunal decision can ask the Nova Scotia Court of Appeal to hear an appeal of the decision. This is a two-step process.

First, the person wanting to bring the appeal must ask the Court's permission to bring the appeal. This is called seeking leave to appeal. Generally, if the Court is not convinced that the proposed appeal raises a fairly arguable issue, it will deny the person leave to appeal, without providing reasons. If leave to appeal is denied, there is no second step and the tribunal's decision is confirmed.

Second, if the Court believes the appeal raises a fairly arguable issue, it will hear the appeal and provide a written decision that will confirm, vary, or overturn the tribunal's decision.

During this fiscal year, 18 appeals from tribunal decisions were filed with the Court of Appeal:

- Workers appealed 14 tribunal decisions to the Nova Scotia Court of Appeal (one was filed by the Workers' Advisers Program).
- Employers appealed 3 decisions concerning compensation provided to a worker.
- One employer appealed a decision concerning its assessment.
- The board did not appeal any tribunal decisions.

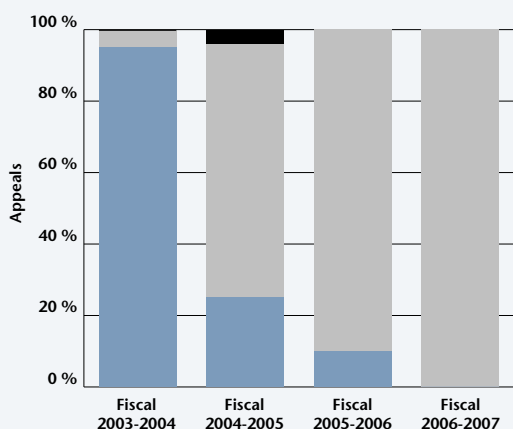
During this fiscal year, 12 appeals were resolved as follows:

- Two appeals were withdrawn by the person who had asked the Court of Appeal for leave to appeal.
- The Court of Appeal dismissed five appeals at the leave stage.
- One appeal was resolved by a consent order directing a re-hearing.
- Two appeals were dismissed by the Court for procedural reasons.
- The Court of Appeal decided two appeals: one was allowed and one was denied. A summary of these decisions is set out below.

At the beginning of this fiscal year, there were 10 active appeals before the Court (see Figure 11). At the end of this fiscal year, there remained 15 active appeals.

Figure 11
Appeals Before the Courts

■ Chronic Pain Matters (on hold) at CA
■ Court of Appeal Active Matters
■ Appeals Before the Supreme Court of Canada



Decisions of the Court of Appeal

The Court decided two appeals this fiscal year.

In the first, the Court considered whether a wrongful dismissal resulting in disabling stress could form the basis of a workers' compensation claim in *Logan v. Nova Scotia (Workers' Compensation Appeals Tribunal)* (2006), 246 N.S.R. (2d) 147 (C.A.).

The Court found that the tribunal was correct to find that a wrongful dismissal was not an accident for workers' compensation purposes. It found that the tribunal was correct to find that there must be an objectively determinable accident that arose out of and in the course of employment. The Court stated:

As WCAT recognized, there may well be gray areas in which it would not be clear where the right to sue for events related to a wrongful dismissal ends and the right to claim workers' compensation benefits begins. However, that does not cast any doubt on the general principle that a wrongful dismissal is not an accident for workers' compensation purposes. I agree with WCAT's fundamental conclusion that this result is consistent with—indeed I would say required by—the historic trade off underlying workers compensation legislation.

In the second appeal, the Court held that the tribunal made a series of patently unreasonable factual findings and misstated conclusions of medical experts in *Metropolitan Entertainment Group v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2007 NSCA 30.

Due to these errors of law, the Court allowed the appeal and directed a new decision be made.

The Court stated that hearing officers' findings of fact in an oral hearing include an assessment of the overall reliability of evidence and its weight. Also, while a lack of evidence of a cause outside work is a relevant consideration in assessing causation, it is an error in law to put an onus on the board or an employer to prove a cause outside of work.

There are currently several interesting issues before the Court of Appeal, including:

- the effect of aboriginal status on the assessment of employers
 - whether a failure to cover the costs of marijuana for medical purposes violates the equality rights under the Canadian Charter of Rights and Freedoms
 - whether the board's policy that caps living allowances for workers who are retraining at \$750 a month is permitted by the Workers' Compensation Act
-
- whether the impairment rating scheme under the Chronic Pain Regulations violate equality rights under the Canadian Charter of Rights and Freedoms
 - whether workers injured before March 23, 1990, be provided with earnings-replacement benefits if they first have a pain-related impairment after February 1, 1996

Inter-agency Cooperation

Several standing inter-agency groups work together to improve service delivery:

Issues Resolution Working Group (IRWG)

Monthly meetings are held between the Chief Worker Adviser, Chief Appeal Commissioner, Chief Hearing Officer as well as the Manager of the TST Unit and the board's Director of Service Excellence and Client Services to discuss issues arising from the adjudication of claims and for the processing of appeals within the appeals system in an effort to improve service delivery in these areas.

In particular, the IRWG has identified opportunities for process improvement and resolution of issues raised by representatives from the tribunal, internal appeals, the workers' advisers program, and adjudicators in the board's claims level. Initiatives this past year have included several joint training sessions and the establishment of a case conference project, focused on resolution of issues before an appeal becomes necessary. The IRWG has been particularly useful in making consistent the approach to the adjudication of chronic pain claims and appeals. Monthly discussions review leading decisions, trends, statistics, and adjudicative issues.

A sub-group, the Appeal Issues Discussion Group, has completed a training tool to serve as a reference manual for all those involved with the workers' compensation system, to improve understanding and consistency.

Appeal Issues Discussion Group

A sub-committee of representatives from the tribunal and the Workers' Advisers Program, Internal Appeals and Client Services Department of the board meet as a group and have continued to work on the development of a training tool to help improve the consistency of adjudication throughout the system. The training tool covers everything from the application of the act to benefit of the doubt, responsibilities of the worker and employer, survivor benefits, appealing a claim. It outlines the basic principles for adjudication under these headings and will be adapted as needed as a training tool for both adjudicators within the system and for outside participants.

System Goals Advisory Group

A group of stakeholder representatives (from employer, labour, and injured-worker groups) and representatives from the tribunal and other system agencies have continued to develop performance measures and targets for the WSIS as a whole. Some of these measures and targets, by their nature, relate to individual agency performance, notwithstanding their development to reflect system performance.

Partner agencies continue to work together to provide joint training to decision makers and others in the workers' compensation system.

Joint Training

Adjudicators from all levels of the system as well as workers' advisers participate in these joint training sessions, which not only help in improving decision quality and consistency, but also foster collegial interaction between system partners.

A joint training session was held in January 2007. Appeal commissioners joined workers' advisers for a workshop by Dr. Jamie Cox, Director of WCB Health Services. He gave a presentation on the new physicians' initiative, including the new Doctors NS contract. He also explained the new "Tiered Services" program by the board covering multi-disciplinary treatment facilities in the province.

Another joint training session was held on February 28, 2007, covering employer assessments. It was offered by the board's assessment department.

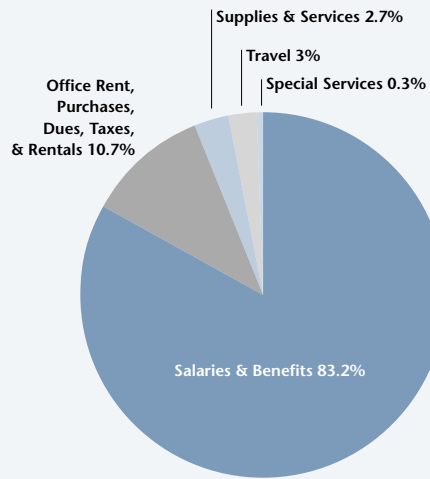
On May 25, 2006, appeal commissioners, hearing officers, case managers, and workers' advisers participated in a joint training session. They heard a presentation by a board medical consultant on forms of hearing loss and the quantifying of impairments for hearing loss. They also heard an interesting presentation from psychologist Dr. Steven Porter on the assessment of credibility of witnesses.

Financial Report

In 2006–07, the tribunal’s total expenditures were within 85.6 per cent of the original authority and within 85.9 per cent of our revised forecast. Net expenditures totalled \$1,525,565.00 (see Figure 12).

Figure 12
Budget Expenditures

(for the Fiscal Year Ending March 31, 2007)



The year ahead

The tribunal expects that its operations in 2007–08 will continue to be dominated by the adjudication of chronic pain appeals. It is anticipated that board-level adjudication of benefit claims for chronic pain will generate another several hundred appeals. These appeals will be in addition to the continuing stream of appeals generated by board decision makers in the ordinary course of adjudication.

We look forward to working with system partners in the implementation of the worker and employer counsellor programs.

Stakeholders have also identified priorities for system partners including reducing litigiousness of the system and improving effectiveness of decision making and programming.

We will endeavour to work with our partners and stakeholders to improve understanding of the appeal system and to encourage a more collaborative approach to the resolution of appeals.

We constantly monitor and refine our appeal management processes to attain a higher level of efficiency and to improve communications with participants.

Tribunal Strategic Plan

Appeal commissioners and staff met for a full day to discuss strategic priorities for the current year. Several initiatives were confirmed, including

- continued fine-tuning of appeal management processes
- refining of the self-represented participant process
- continuing its work to benchmark key performance indicators
- continued participation in joint initiatives with system partners

The tribunal also reviewed the issue of occupational health and safety and, in particular, assessed the risk of workplace violence.

Appendix 1

Figure 1
Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 03-04	70	83	94	76	97	48	81	86	87	71	42	55	890
Fiscal 04-05	47	36	76	70	55	40	53	58	72	48	36	68	659
Fiscal 05-06	39	41	29	44	52	56	24	41	34	52	54	100	566
Fiscal 06-07	70	118	104	81	100	79	86	101	92	105	83	70	1089

Figure 2
Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 03-04	97	83	70	69	58	43	83	60	50	24	34	56	727
Fiscal 04-05	53	53	35	45	108	174	53	40	54	65	55	48	783
Fiscal 05-06	58	55	44	49	35	37	44	43	34	41	35	42	517
Fiscal 06-07	42	43	68	57	54	74	80	85	60	89	88	75	815

Figure 3
Appeals Outstanding at Year End

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Fiscal 03-04	365	361	378	380	411	413	406	425	457	501	501	489
Fiscal 04-05	479	460	491	510	453	317	309	325	341	319	292	302
Fiscal 05-06	267	245	226	215	227	240	213	209	203	208	223	275
Fiscal 06-07	298	368	401	418	458	460	459	468	497	507	497	483

Figure 4
Decisions by Appellant Type

	Total
Worker Claim Appeals*	791
Employer Claim Appeals	18
Employer Assessment Appeals	5
Section 29 Applications	1
Total	815

** Employer participation in worker appeals 25%.*

Figure 5
Decisions by Outcome

Allowed	211
Allowed in Part	96
Denied	410
S29	1
RTH	97
Moot	0
Preliminary Decisions*	2
Correcting Decisions*	1
Total Final Decisions	815

** Does not reduce the number of appeals outstanding.*

Figure 6
Decisions by Representation

Self-Represented	245
Workers' Advisers Program	419
Injured Workers Groups, Outside Counsel & Others	151

Figure 7
Timeliness to Decision (cumulative percentage by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
Fiscal 03-04	0.00	0.55	5.36	32.42	61.26	74.59	82.97	87.50	91.62	94.51	95.60	100
Fiscal 04-05	1.02	4.19	14.61	30.11	43.58	53.37	60.61	65.06	70.01	74.71	80.18	100
Fiscal 05-06	0.21	9.19	25.52	47.22	58.43	73.33	82.69	87.22	89.25	91.55	93.29	100
Fiscal 06-07	1.84	11.04	35.46	56.32	70.67	81.10	87.85	91.29	93.62	95.46	96.44	100

Figure 8
Decisions by Mode of Hearing

	Oral Hearing	Paper Review	Total
Fiscal 03-04	295	432	727
Fiscal 04-05	308	475	783
Fiscal 05-06	287	230	517
Fiscal 06-07	561	254	815

Figure 9
Decisions by Issue Categories – Worker

Recognition of Claim	129
New/Additional Temporary Benefits	95
New/Increased Benefits for Permanent Impairment	227
Medical Aid (Expenses)	103
New/Additional Extended Earnings Replacement Benefits	69
New Evidence	17
Chronic Pain	377
Termination of Benefits for Non-Compliance	23
All other issues	47
Total	1087

Figure 10
Decisions by Issue Categories – Employer

Acceptance of Claim	9
Extent of Benefits	11
Assessment Classification	1
Assessment Penalties	0
Other Claims Issues	2
Other Assessment Issues	4
Total	27

Figure 11
Appeals Before the Courts

	Chronic Pain Matters (on hold) at CA	Court of Appeal Active Matters	Appeals Before the Supreme Court of Canada	Total
Fiscal 03-04	323	16	1	340
Fiscal 04-05	6	17	1	24
Fiscal 05-06	1	9	0	10
Fiscal 06-07	0	15	0	15

Figure 12
Budget Expenditures
 (for the Fiscal Year Ending March 31, 2007)

	Authority	Final Forecast	Actual Expenditures
Salaries & Benefits	\$1,355,500.00	\$1,356,500.00	\$1,275,312.00
Travel	\$54,000.00	\$50,000.00	\$47,690.00
Special Services	\$95,000.00	\$87,000.00	\$8,254.00
Supplies & Services	\$61,500.00	\$63,500.00	\$45,193.00
Office Rent, Purchases, Dues, Taxes & Rentals	\$216,000.00	\$220,000.00	\$187,233.00
Sub Total	\$1,782,000.00	\$1,777,000.00	\$1,563,682.00
Less Recoveries	\$0.00	\$0.00	\$38,117.00
Totals	\$1,782,000.00	\$1,777,000.00	\$1,525,565.00

