Workers' Compensation Appeals Tribunal

Annual report
for the year ending March 31, 2012

NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

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Ross Landry
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, 2012.

Respectfully submitted,

Louanne Labelle

Louanne Labelle
Chief Appeal Commissioner

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His Honour
Brigadier-General The Honourable J.J. Grant, CMM, ONS, CD (Ret'd)
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, 2012.

Respectfully submitted,

Ross Landry
Minister Responsible for Part II of the *Workers' Compensation Act*

Tribunal Personnel 2011–12

Colleen Bennett
Supervisor, Office Services

Arlene Kennedy
Acting Registrar

Charlene Downey
Secretary/receptionist

Joy Fowler
Secretary

Samantha MacGillivray
Secretary

Diane Smith
Scheduling coordinator

Appeal Commissioners

Louanne Labelle
Chief Appeal Commissioner

Glen Johnson
Leanne Rodwell Hayes
Alison Hickey
Gary Levine
Brent Levy
Sandy MacIntosh
Andrew MacNeil
David Pearson
Andrea Smillie

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Executive Summary

The Workers' Compensation Appeals Tribunal (the tribunal) hears appeals from final decisions of hearing officers of the Workers' Compensation Board (the board) and determines whether the act bars a right of action against employers. The tribunal is legally and administratively separate from the board and ensures an independent and impartial review of board decisions.

The tribunal also works with several partner agencies within the framework known as the Workplace Safety and Insurance System (WSIS). Partner agencies are the board, the Workers' Advisers Program (WAP), and the Occupational Health and Safety division of the Department of Labour and Advanced Education.

This annual report will highlight the processing and adjudication of appeals as well as the tribunal's participation in joint initiatives with system partners.

Operations Overview

Operational trends this year indicate that the tribunal's appeal volumes remain comparable to last year. The tribunal received 832 appeals in 2011–2012, compared to 821 in the previous year. The tribunal was able to increase decision output during the year as the number of decisions issued by the tribunal increased from 617 in 2010–2011 to 664 in 2011–2012.

Even though more appeals were resolved last year, appeals continue to take longer to schedule for hearing as employer participation and proportion of workers represented by WAP has increased. This means that a scheduled hearing date must be convenient for more than one party. Further, because of increased demand for WAP services, a worker may have to wait six to eight weeks for an initial interview with worker advisers.

At year-end, 670 appeals remain to be resolved, compared to 596 last year. Approximately 52 per cent of decisions were released within six months of the date the appeal was received, compared to 57 per cent in the previous year.

Of the 664 decisions issued this past year, 57 per cent of workers were represented by WAP. However, of the 670 outstanding appeals at year-end, 74 per cent of workers were represented by WAP.

Employers participated in 32 per cent of the resolved appeals in 2011–2012 and are participating in 39 per cent of the appeals outstanding at the tribunal at year-end. Many employers are unrepresented but may benefit from the advice offered by the Employer Advisor Program. The tribunal communicates directly with unrepresented participants – whether they be workers or employers – to provide them with information on appeal processes.

During the year 2011–12, entitlement to new or increased benefits for permanent impairment was again the issue most often on appeal, representing 29 per cent of issues on appeal. Appeals for initial recognition of a claim increased from 16 to 20 per cent of issues on appeal.

The tribunal heard most appeals (63.4 per cent) by way of oral hearing, a decrease from last year's total of 74.5 per cent.

Outcomes on appeal for the year 2011–12 remained constant. The overturn rate (appeals allowed or allowed in part) by the tribunal increased slightly to 44 per cent from 43 per cent the year previous. The number of appeals referred back to the hearing officer decreased to 13 per cent, from 17 per cent. The number of appeals denied increased to 42 per cent, from 40 per cent. The number of appeals withdrawn increased to 94 from 82. The tribunal resolved a total of 758 appeals this past year.

Appeals continue to be filed predominantly by workers (96 per cent).

Appeals to the Court of Appeal increased during 2011–12 to 18 (2.7 per cent of decisions rendered) from 12 the previous year. At year end, 17 appeals remained at the Court of Appeal. Of the decisions issued by the Court this year, 5 appeals were denied at the leave stage, 3 were denied on the merits, upholding the tribunal's decision, and 1 was allowed in part.

The tribunal continued to issue a consistent and coherent body of decisions, providing clarity and guidance to adjudicators, injured workers and employers throughout the system.

I would like to recognize, again this year, the individual contributions of all tribunal staff to the efficient and fair resolution of appeals during the past twelve months. Their dedication and commitment ensured that the tribunal maintained not only its efficient operations but also the standards of quality and consistency expected by all participants.

Strategic planning

A key priority identified in the tribunal's strategic planning process last year was to engage our partners in developing strategies to improve timeliness while ensuring that participants have a reasonable opportunity to prepare their case. By this collaborative effort, particularly with the WAP, the tribunal has made progress in resolving older appeals, while improving the management of appeals filed more recently.

Another issue identified for strategic development involved the impact of growing employer participation and the need to educate employers, with the ultimate goal of providing hearings that workers and employers perceive to be fair.

Both these issues were addressed this past year by the creation of a full-time registrar position within the tribunal. This position is currently filled on secondment by a long-term board employee with many years' experience in dealing with individual participants, advocates and timely processes. The tribunal identified the need for a full-time registrar to provide improved services for workers and employers.

During this past year, the tribunal also reviewed all staff positions to better respond to the challenges faced by our workers and employers. We engaged our staff in this process, all staff positions were reviewed, job descriptions were updated and classifications changed, where appropriate.

Interagency Cooperation

As Chief Appeal Commissioner, I am a member of the Heads of Agencies Committee, which oversees implementation of the WSIS strategic plan. I also meet regularly with the Chief Workers' Adviser, the Manager of Internal Appeals, the Manager of the board's Client Services department and board legal counsel to discuss issues arising from the adjudication of claims and appeals. This second group forms the Issues Resolution Working Group (IRWG), whose mandate is to develop and implement issue resolution initiatives to support improved communication, information sharing and overall efficiency of the workers' compensation system.

During 2011–2012, IRWG monitored the outcomes of the WSIS liaison officer pilot project at the Internal Appeals level of the board which supported the early resolution component of IRWG's issues resolution strategy framework. This position built upon the success of the special projects officer pilot at the tribunal. IRWG has committed to revisit the strategy and update its commitments based on stakeholder feedback.

The tribunal hosted a stakeholder consultation session in the fall of 2011 to discuss progress on the system-wide issues resolution strategy. The discussion focused on the outcomes of the liaison officer pilot and also provided an opportunity to learn about the comprehensive Internal Appeals review planned for 2012.

The tribunal implemented the recommendations of a joint working group that had examined and designed a facilitation process. While the tribunal has had moderate success in this endeavour, we will continue our efforts to identify opportunities for early resolution and in diverting claim files from the appeal system where formal appeal processes may not be necessary.

An IRWG sub-committee, the Appeal Issues Discussion Group, continued to monitor progress on hearing loss claims in an effort to promote consistency throughout the system. Initiatives will also be developed regarding decision quality, to achieve a level of system learning that continuously improves the quality of decisions.

Interaction with Stakeholders

Tribunal members take the opportunity to speak with injured workers groups and employer representatives to inform participants of, and to obtain feedback on, tribunal processes. As mentioned, the tribunal held a consultation session to obtain feedback on initiatives dealing with issues resolution.

I also met with worker and employer representatives on several occasions to discuss matters of concern including privacy issues, disclosure of documents and employer participation in appeals.

On a yearly basis, I meet with the board's Board of Directors to bring them up to date on operations at the tribunal. On May 10, 2011, the Deputy Minister of Labour and Advanced Education and the Chair of the board's Board of Directors hosted the seventh annual meeting of stakeholders. This was an opportunity for partner agencies such as the tribunal to answer questions from stakeholders on tribunal operations.

Financial Operations

In 2011–12, the tribunal's total expenditures were within 74 per cent of the original authority and within 87 per cent of our revised forecast. Net expenditures totaled $1,500,298.70, a slight decrease from the previous year.

Key Initiatives for the Coming Year

- Timely and efficient adjudication of appeals – the tribunal's strategic plan developed in 2011–2012 identified timeliness as a key priority and this past year we engaged our partners, primarily the WAP, in developing strategies to improve timeliness. This joint effort will continue in the coming year, facilitated by the tribunal's acting registrar, who occupies a full-time position filled by secondment.
- Consistent and high quality decision making ensured by performance management and peer review.
- Simplified and fair appeal processes ensured by continued efforts by the tribunal to educate, inform and assist self-represented appeal participants, including the growing number of employers; this priority is also facilitated by the tribunal's full-time acting registrar.
- Continued cooperation with partner agencies within the workers' compensation system particularly in developing an issue resolution strategy aiming at a less adversarial appeal resolution system.
- Completion of a review of the tribunal's policies and procedures covering protection of privacy and disclosure of information.

Louanne Labelle
Chief Appeal Commissioner

Introduction

The Workers' Compensation Appeals Tribunal (the tribunal) hears appeals from final decisions of hearing officers of the Workers' Compensation Board (the board) and determines whether the act bars a right of action against employers. The tribunal is legally and administratively separate from the board and ensures an independent and impartial review of board decisions.

The tribunal also works with several partner agencies within the framework known as the Workplace Safety and Insurance System (WSIS). Partner agencies are the board, the Workers' Advisers Program (WAP) and the Occupational Health and Safety division of the Department of Labour and Advanced Education.

This annual report will highlight the processing and adjudication of appeals as well as the tribunal's participation in joint initiatives with system partners.

Tribunal Mandate and Performance Measures

While governed by the same enabling statute as the board, the tribunal is legally and administratively separate from it, and is ordinarily not bound by board decisions or opinions. This ensures 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 act, and by its own survey of user groups.

The tribunal's decisions are written. Appeal commissioners strive to release decisions within 30 days of an oral hearing or the closing of deadlines for written submissions, although the act requires that decisions be released within 60 days of a hearing.

New appeals are processed within 15 days of receipt by the tribunal.

Optimally, the tribunal can hear an appeal within 45 days of receiving notice that the participants are ready to proceed. Most appeals take longer to schedule because, increasingly, there is more than one party involved or more (specialist) medical evidence is sought. As demand for representation by WAP rises, it necessarily takes longer for WAP to meet with a potential client, and more time for WAP to evaluate a potential client's claim.

Operations

Operational trends this year indicate that the tribunal's appeal volumes remain comparable to last year. The tribunal received 832 appeals in 2011–2012, compared to 821 in the previous year (see Figure 1). The tribunal was able to increase decision output during the year as the number of decisions issued by the tribunal increased from 617 in 2010–2011 to 664 in 2011–2012 (see Figure 2).

Even though more appeals were resolved last year, appeals continue to take longer to schedule for hearing as employer participation and proportion of workers represented by WAP has increased. This means that a scheduled hearing date must be convenient for more than one party. Further, because of increased demand for WAP services, a worker may have to wait six to eight weeks for an initial interview with worker advisers.

At year-end, 670 appeals remain to be resolved, compared to 596 last year (see Figure 3). Approximately 52 per cent of decisions were released within six months of the date the appeal was received, compared to 57 per cent in the previous year (see Figure 4).

Please see Appendix containing specific data for the following figures.

Figure 1

Appeals Received

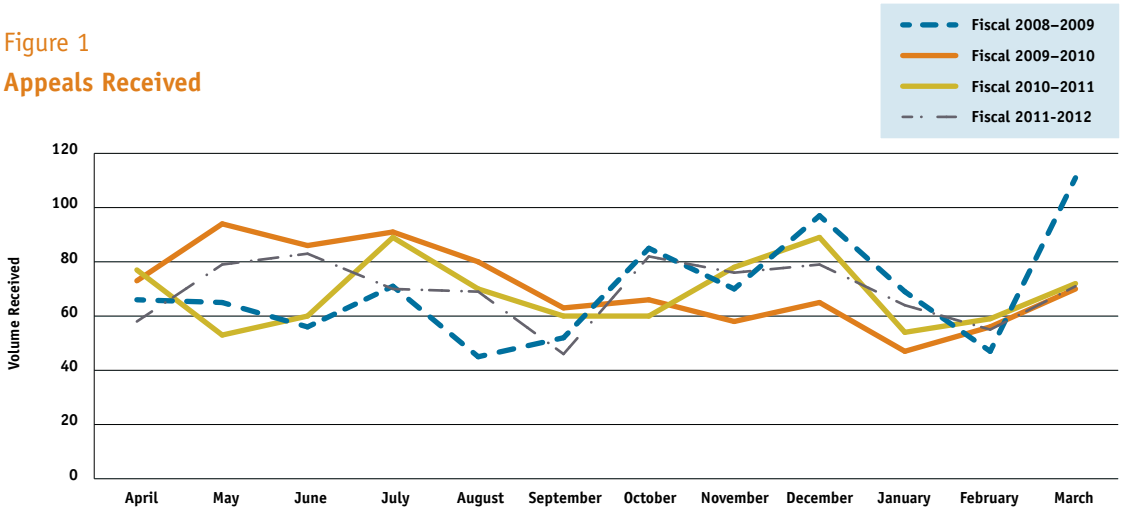


Figure 2

Decisions Rendered

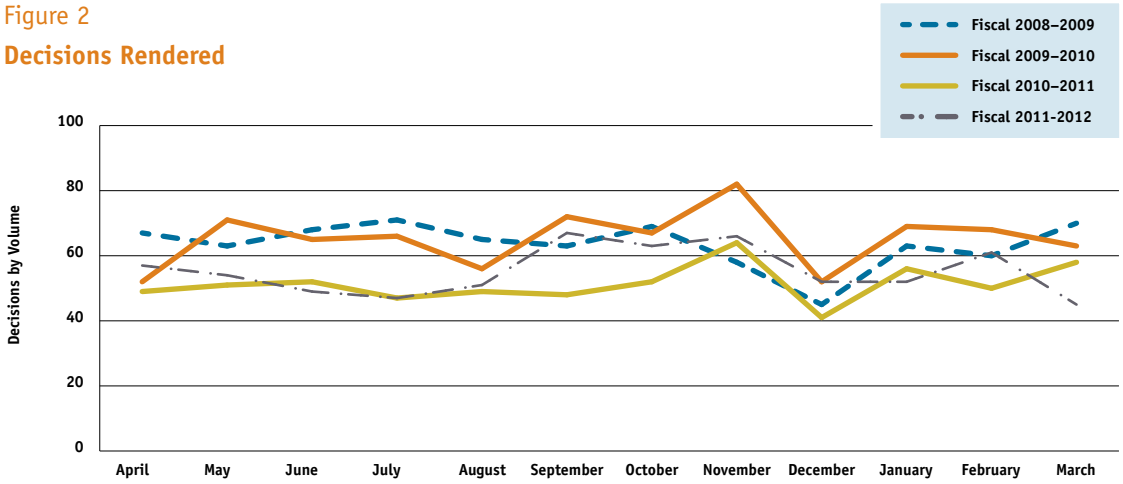


Figure 3

Appeals Outstanding at Year End

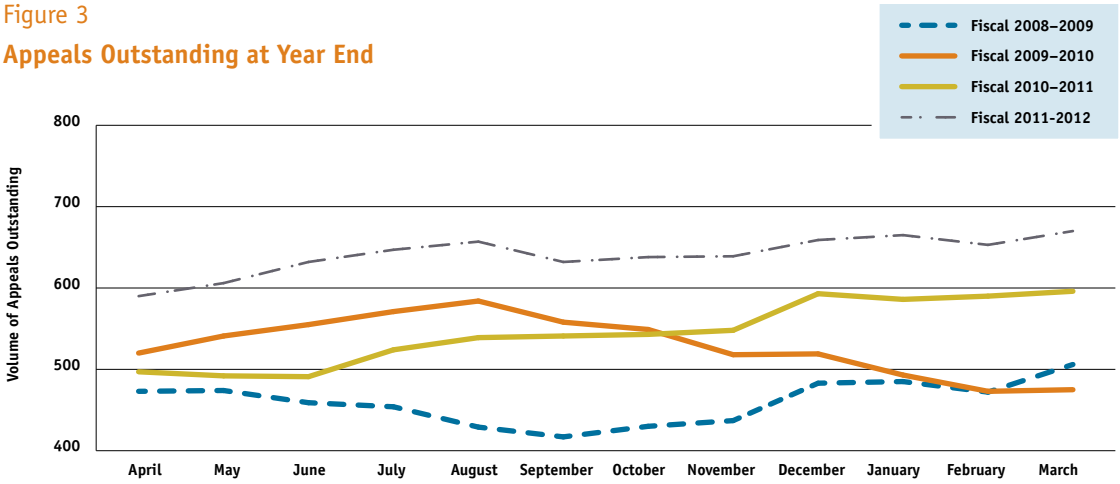
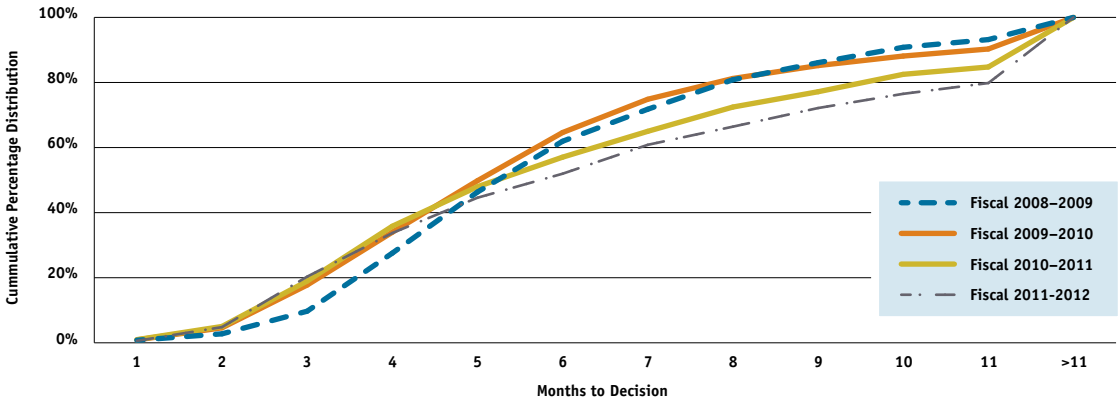


Figure 4

Timeliness to Decision



Of the 664 decisions issued this past year, 57 per cent of workers were represented by WAP (see Figure 5). However, of the 670 outstanding appeals at year-end, 74 per cent of workers were represented by WAP.

Employers participated in 32 per cent of the resolved appeals in 2011–2012 and are participating in 39 per cent of the appeals outstanding at the tribunal at year-end. Many employers are unrepresented but may benefit from the advice offered by the Employer Advisor Program. The tribunal communicates directly with unrepresented participants – whether they be workers or employers – to provide them with information on appeal processes.

Figure 5

Decisions by Representation

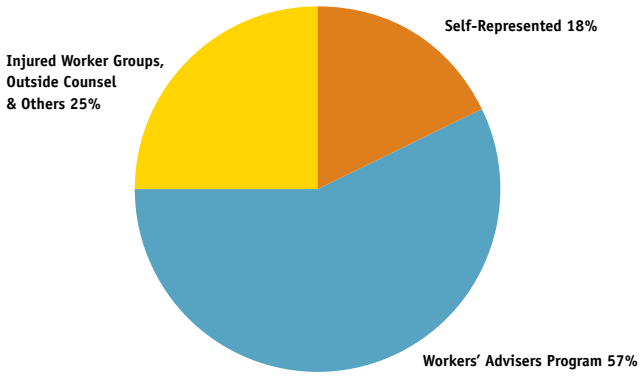
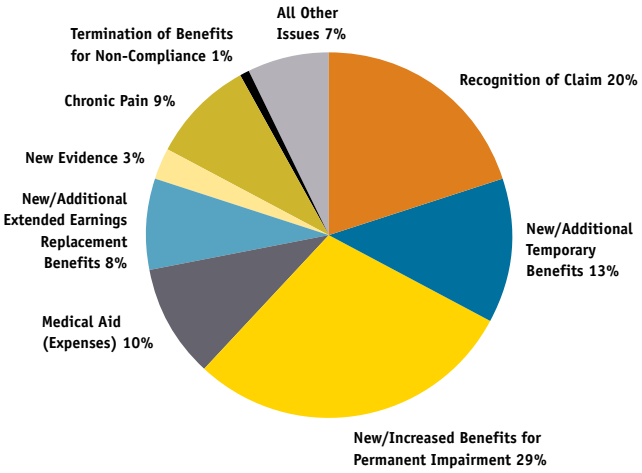


Figure 6

Decisions by Issue Categories – Worker



During the year 2011–12, entitlement to new or increased benefits for permanent impairment was again the issue most often on appeal, representing 29 per cent of issues on appeal. Appeals for initial recognition of a claim increased from 16 to 20 per cent of issues on appeal (see Figures 6 and 7).

The tribunal heard most appeals (63.4 per cent) by way of oral hearing, a decrease from last year's total of 74.5 per cent (see Figure 8).

Figure 7

Decisions by Issue Categories – Employer

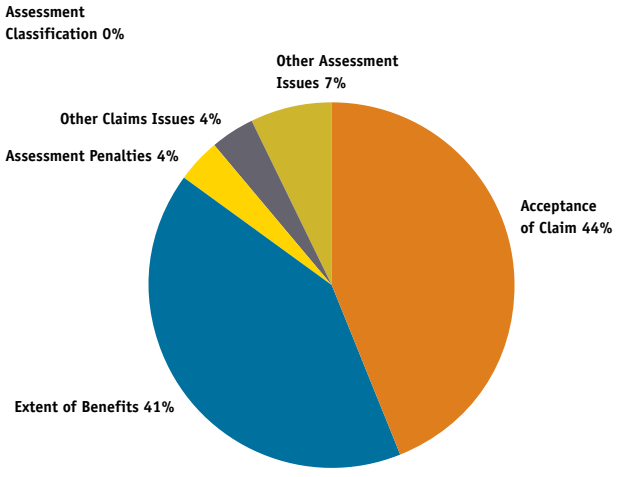
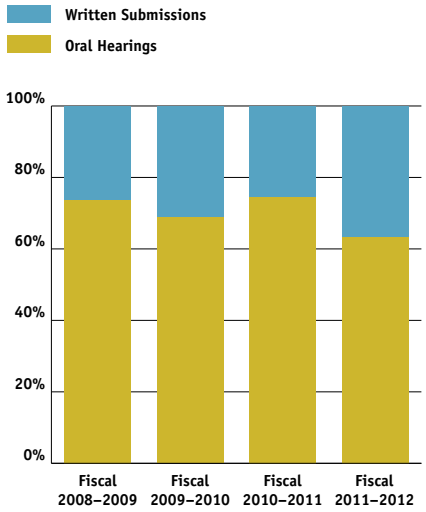


Figure 8

Decisions by Mode of Hearing



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Appeals continue to be filed predominantly by workers (96 per cent) (see Figure 10).

Figure 9

Decisions by Outcome

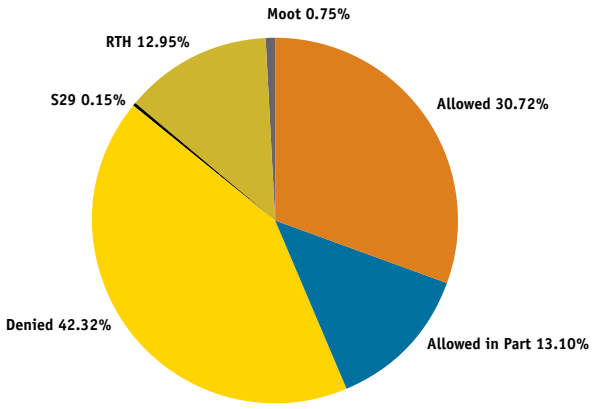

Figure 10

Decisions by Appellant Type

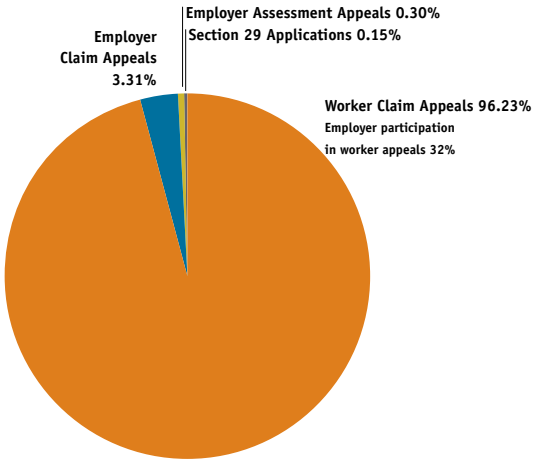

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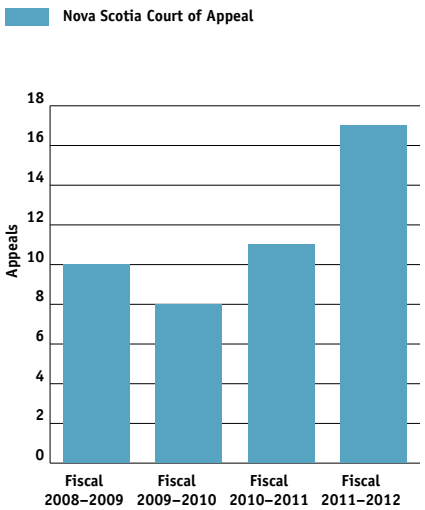
Figure 11

Appeals Before the Courts at Year End



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The Chief Appeal Commissioner also met with worker and employer representatives on several occasions to discuss matters of concern including privacy issues, disclosure of documents and employer participation in appeals.

Annually, the Chief Appeal Commissioner meets with the board's Board of Directors to bring them up to date on operations at the tribunal. On May 10, 2011, the Deputy Minister of Labour and Advanced Education and the Chair of the board's Board of Directors hosted the seventh annual meeting of stakeholders. This was an opportunity for partner agencies – including the tribunal – to answer questions from stakeholders on agency operations.

Appeal Management

The fiscal year 2011–12 was the first full year of managing appeals using written updates, requesting information on readiness status at set intervals (at 3, 6, and 9 months), as a means of keeping all participants informed on the appeal status while endeavoring to ensure compliance with tribunal deadlines. As with all initiatives, the effort was successful on some, but not all, levels. There continues to be a significant number of appeals remaining unresolved for over a year, generally because medical evidence is being sought, but has not been received within the desired time frame.

In some instances, it was necessary for the tribunal to work more closely with WAP to resolve some appeals in a more timely manner, in addition to the monthly docket meetings.

Contested appeals continue to present challenges to timeliness, often necessitating multiple pre-hearing conference calls. More complex matters are referred early in the appeal to the presiding appeal commissioner.

The most significant change in the year was the introduction of a full-time registrar in February. Presently, this is a one-year secondment position; however, the demands of the role have required full-time attention for some time. Responsibilities include, but are not limited to, contacting self-represented participants by telephone early in the appeal process to provide information on the appeal process, answer questions, and potentially to refer a participant to an advisory body for assistance; processing appeals; overseeing correspondence on files; monitoring deadlines; conducting conference calls; reviewing and vetting files; liaising with representatives for workers, employers and the board; conducting docket meetings with WAP; and assisting the Chief Appeal Commissioner with file assignment and scheduling matters.

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 from January 2010 to date are now published on the Canadian Legal Information Institute's free public website at www.canlii.org. Decisions issued prior to January 2010 are available free to the public through the Department of Labour and Advanced Education website at www.gov.ns.ca/lae/databases.

The tribunal is governed by Part II of the 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:

> **14.00 PUBLICATION OF TRIBUNAL DECISIONS**
> **14.10 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 made prior to January 1, 2010, without identifying features, are available free through the Nova Scotia Department of Labour and Advanced Education website at www.gov.ns.ca/lae/databases.
>
> Decisions made after January 1, 2010, without identifying features, are available on the Canadian Legal Information Institute's free website at www.canlii.org.

14.20 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 versions of the decisions on public databases do 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" which 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." Ultimately, 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's file release policy ensures compliance with Freedom of Information and Protection of Privacy (FOIPOP) without compromising the need 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 or made public by a third party. The tribunal's correspondence accompanying file copies has also been revised to reflect these requirements and to refer to appropriate sanctions.

The tribunal rarely receives FOIPOP applications. Applications regarding claim files are referred to the board as they remain the property of, and are held by, the board, unless there is an active appeal. If there is an active appeal, no FOIPOP application need be made by an appeal participant, as the act provides for distribution of relevant claim files to appeal participants.

Most FOIPOP applications for generic information particular to the tribunal are addressed through the tribunal's Routine Access Policy, which is posted on the tribunal's website.

Decisions for the Year 2011–12

The year 2011–12 has not seen any major developments or trends in workers' compensation law; however, the tribunal has continued to hear appeals which have incrementally developed jurisprudence in relation to the interpretation and application of the act and board policy.

The following noteworthy decisions are categorized under broad topic or issue descriptors.

"Arising out of and in the Course of Employment"

The tribunal had a number of interesting fact situations before it this year for a determination on whether a personal injury by accident had arisen out of and in the course of employment. In *Decision 2011-410-AD* (February 15, 2012), the tribunal determined the claim for benefits for a snow plow driver who had been called in to work before his scheduled shift, and slipped on the stairs leaving his house. It was argued that it would be arbitrary to use a property line as a determinating factor in compensability. The tribunal's decision was not based on this arbitrary finding, but on a finding that the risks which caused the worker's injury did not relate to compensable travel and instead related to the inherent personal risks on his property.

In *Decision 2011-167-AD* (January 17, 2012), the fact situation involved a nurse who was injured in her home while "on-call" to take telephone calls for technical support. She received such a call in the middle of the night and left her downstairs bedroom to deal with it on the computer in the living room. Before returning to bed she decided to go to the upstairs bathroom, but instead of going down the hall to the bathroom, she went through the adjacent basement door and fell down the stairs.

The argument that the worker's home should be considered her workplace for the duration of her shift was rejected by the tribunal, however the appeal was allowed. The tribunal found that the risk to which the worker was exposed arose out of the employment. The choice to go to the bathroom was reasonably incidental to the employment.

Statute-barred Claims

A claim for bilateral carpal tunnel syndrome that was filed by a worker in 2010, when her symptoms had arisen in 2005, was found by the tribunal not to be statute-barred in *Decision 2011-701-AD* (January 30, 2012). The tribunal found that the five year filing limit in s. 83 of the act did not begin to run until the worker had reason to believe that there was a relationship between her injury and the workplace. The worker's evidence was that the first time it was suggested to her that there might be a work-related cause for her bilateral carpal tunnel syndrome was in 2010.

Causation

The tribunal was faced with an unusual fact situation regarding causation in *Decision 2011-586-AD* (January 31, 2012). Psychiatric counseling that the worker received in the wake of her injury revealed issues of past abuse which were affecting her functioning. She was diagnosed with post traumatic stress disorder and argued that while it was not caused by a workplace injury, it only came to light as a result of the injury and the manner in which the board had treated her after her injury. The psychiatric opinion on record noted that the worker's treatment by the board had not been emotionally traumatic. The tribunal found that the link between the injury and the benefit sought was too tenuous to attract entitlement to compensation.

In *Decision 2011-180-AD* (September 14, 2011), the issue of a no-scent policy in the workplace was considered. In this case the board found that the worker had a pre-existing allergic condition that was worsened by exposures to allergens in her workplace. The worker's symptoms were temporary in nature and she would have been able to return to work after a short period of time; however, it took a long time to reach an agreement with the employer concerning her return to work after the implementation of a no-scent policy. The tribunal left it to the board to determine the reasons for this and the extent of the worker's loss of earnings.

In *Decision 2010-706-AD* (September 18, 2011), the worker was arguing entitlement to temporary earnings-replacement benefits (TERB) on the basis that the employer's failure to implement a no-scent policy prevented her from attending at the workplace. The tribunal found that the worker had a personal condition which prevented her from returning to the workplace and that she was not entitled to TERB because no "injury" had taken place. Her "injury" was an aggravation of her pre-existing condition and that was not what was keeping her out of the workplace. The tribunal considered the fact that the worker's claim had been accepted initially, but stated that there had to be a causal connection between the "injury" and the inability to go to work. The causal connection in this case was between the worker's personal condition and her inability to attend at the workplace in the absence of a no-scent policy.

Decision 2005-313-AD (September 15, 2011), was the first of approximately 10 appeals with the tribunal dealing with environmental exposure claims from staff at a hospital. The panel in this decision determined, having heard a large amount of expert evidence, that the worker had sustained a short-term respiratory irritation caused by exposure to dust during renovations at the hospital. However, this injury did not cause the worker to stop working and did not have any chronic or long-term effects.

Medical Aid

Board policy 2.3.5 came into effect on February 25, 2011 and sets out general principles concerning the award of medical aid. The tribunal considered this policy in *Decision 2010-605-AD* (April 15, 2011) in determining a worker's entitlement to chiropractic treatments which exceeded the number set out in the board's non-binding procedure 7.1.1. The tribunal determined that, in addition to any implied authority on the board's part to develop non-binding guidelines, board policy 2.3.5 appeared to contemplate the development of such non-binding guidelines as part of the board's provision of medical aid.

In *Decision 2009-81-AD*, and *Decision 2009-760-AD & 2010-609-AD* (May 31, 2011), the tribunal determined a worker's entitlement to a number of medical aid items. The worker was allowed a front loading washing machine, due to mobility problems. Her request for an assessment at a driver's assessment clinic was allowed because she had considerable difficulty using her right leg and foot. Her claim for a backyard fence to permit her small children to play in safety was not allowed as it did not satisfy the criteria for "compensation" in relation to a compensable injury. Similarly, the tribunal did not allow the worker's claim for reimbursement of automobile repossession fees, which she claimed were incurred due to the board's alleged inaction and incorrect earlier decisions. The worker's claim for the pill form of medical marijuana, Cesamet, was denied. The tribunal has yet to award medical aid in the form of medical marijuana.

In *Decision 2011-239-AD* (September 29, 2011), the worker's request for a La-Z-Boy chair with heat and massage, a Conair body relaxing wand, a massage and heat cushion for the car, and a deep massage cushion was turned down. The tribunal found that the board's decision to exercise its discretion not to provide the requested items was based on a reasonable finding that they did not constitute appropriate health care for the worker.

Other Benefits

In *Decision 2011-66-AD* (April 27, 2011), the tribunal awarded a worker travel expenses from his summer residence to physiotherapy, instead of restricting him to deemed travel from his primary residence. The tribunal noted that policy 2.1.1R7 does not speak of primary residences, but of travel for medical treatment.

In *Decision 2011-532-AD* (November 14, 2011), the worker claimed the cost of childcare expenses incurred as a result of having to attend physiotherapy. The board had refused to pay for childcare expenses incurred during the worker's normal pre-injury work hours because of a belief that these expenses would have been incurred for him to attend work in any event and could not be viewed as an expense related to his need to attend an appointment. The tribunal noted that the requirement that the expense be incurred outside of the normal pre-injury work day is not legislated and where there was no evidence that the worker had child care expenses at the time of his injury, it did not find this criteria relevant.

Medical Conditions

The tribunal dealt with claims for various forms of cancer alleged to be caused by workplace exposures, as well as claims for other medical conditions. In *Decision 2010-112-AD* (May 10, 2011), a non-smoking construction worker claimed that he developed oropharyngeal squamous cell carcinoma (cancer of the cell lining in the tonsil region of his throat) due to occupational exposures including second-hand smoke, asbestos, chemicals, dust, fumes, etc. The tribunal accepted expert opinion evidence to the effect that smoking could be a causal factor in the development of this form of cancer.

The medical consequences of a tick bite were the subject of an appeal before the tribunal in *2011-142-AD* (August 2, 2011). The worker developed a variety of symptoms including headaches, balance problems, and weakness. Lyme disease was suspected. The tribunal accepted the opinion of the specialist to whom the worker had been referred, that the worker's symptoms were not attributable to a tick bite, over the opinion of the worker's family doctor who had diagnosed the worker with a tick-borne illness.

The tribunal considered a claim for "dark room disease" in *Decision 2009-220-AD* & *2009-374-AD* (May 18, 2011). The worker was a darkroom technician who had developed a multitude of health problems, including cognitive dysfunction, adult onset asthma, dark room disease (sore eyes, itching nose, sore throat, headaches) and environmental intolerance, over the course of many years. The tribunal considered expert evidence from university professors in the field of occupational and environmental health. It accepted that the worker's adult onset asthma was work-related, but was unable to find a causal link between the worker's other symptoms and his work in the darkroom.

Stress

The tribunal continued to evaluate fact situations under s. 2 of the act to determine whether the stress giving rise to the claim was an acute reaction to a traumatic event, or in the nature of gradual onset stress. In *Decision 2011-34-AD* (May 19, 2011), the worker in question had been subjected to ethnic-based harassment over a period of time. The worker also had issues with shift changes and procedural changes. None of these situations were considered by the tribunal to constitute a "traumatic event" under the act.

In *Decision 2011-49-AD* (May 24, 2011), the same worker claimed TERB for surgery for a compensable knee injury, while off work for non-compensable stress. The tribunal acknowledged that the worker was off work for a non-compensable injury, but found that the compensable injury and surgery would have required him to be off work for a specific period during that time, and thus contributed to his earnings loss to a material degree, entitling him to TERB.

In *2011-359-PAD* (March 9, 2012), the worker was a correctional officer. The worker asserted that he had post traumatic stress disorder brought on by one particular incident at work, where he was faced with the threat of being thrown over a railing to the floor below. The evidence did not bear out any reaction between that particular incident and the psychological symptoms which forced the worker off work approximately 7 years later. He was found not to have suffered an acute reaction to a traumatic event in the words of s. 2 of the act.

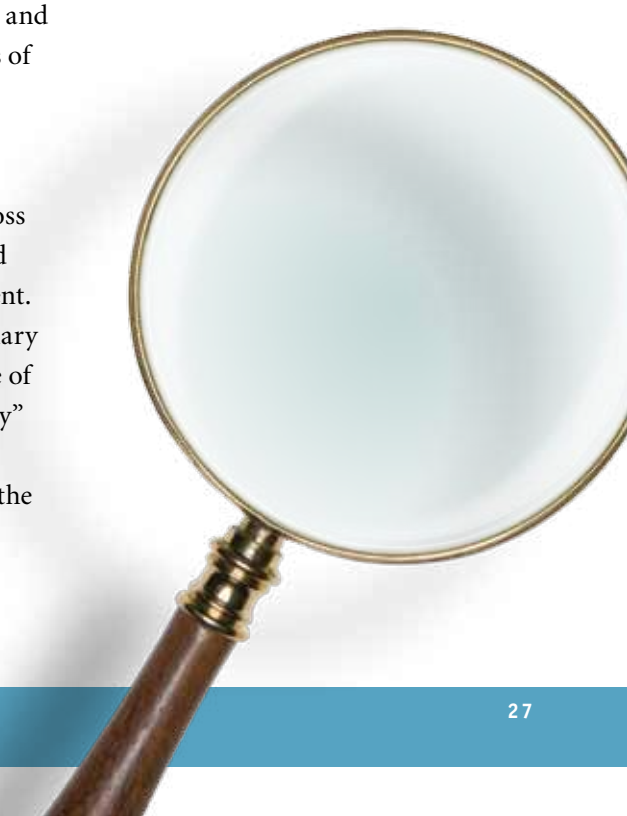
Calculation of Earnings Loss

In *Decision 2011-380-AD* (December 12, 2011), a worker who had suffered an injury in January of 2009 and had a loss of earnings commencing in May of 2010, argued that her initial earnings profile should have been based on her usual winter income as well as on the seasonal employment that she held in the summer. The tribunal considered policy 3.1.1R2 which directs that the profile is to be based upon "normal weekly earnings" and describes situations involving "concurrent" employment and earnings more than 12 months after an injury. The tribunal determined that the worker did not have concurrent employment because the injury occurred in January and her seasonal employment was in the summer. The appeal commissioner in this case was of the view that normal weekly earnings should be calculated based on earnings received close in time to the date of injury. Since the worker's seasonal earnings were not earned close in time to the date of her injury, it was found that they should not be included in her initial earnings profile.

Several decisions released by the tribunal in the past year have dealt with what types of payments should be included in a worker's post-accident earnings. The most significant of these was *Decision 2011-209-AD* (February 10, 2012). The tribunal concluded that the worker's Early Retirement Incentive Program benefits (ERIP) received from the employer could not be included in the worker's post-injury earnings profile for the purpose of calculating his TERB. The tribunal found that clause 3 (viii) of board policy 3.1.1R2, which includes "other employment income "as regular salary or wages, is inconsistent with the act. The tribunal found that the policy expanded the terms "regular salary or wages" to a point not authorized by the legislation when considering the text, context and purpose of the legislation. The board was not authorized to include ERIPs as "earnings" under the act. This decision is currently on appeal to the Nova Scotia Court of Appeal.

In *Decision 2011-93-AD*, *2011–120-AD*, *2011-325-AD*, and *2011-423-AD* (November 28, 2011), following precedent, the tribunal determined that a worker's retirement package should not be taken into consideration in determining his post-accident earnings. The tribunal further found that the worker's employment insurance (EI) benefits should not form the basis of his initial rate. In this case the worker had suffered a recognized injury, but never experienced an earnings loss because he was placed on modified duties. The board calculated his benefits using his EI rate. The tribunal found that the worker's EI should not form the basis of the initial rate as s. 42 of the act and policy 3.1.1R2 reflected that EI is not considered earnings until 26 weeks of earnings-replacement benefits have been paid.

In *Decision 2010-571-AD* (May 30, 2011), the tribunal considered the question of whether dividends paid to a worker from a company that he owned was "income", entitling the worker to a payment of TERB for a loss of earnings. The worker had been on the payroll of his company, but had switched to collecting dividends in order to secure favorable tax treatment. The tribunal agreed with the board that, in general, a dividend is not salary or wages, but found that the act contemplated considering the substance of a payment and not merely its form. The dividend was found to be "salary" considering that it was generally paid bi-weekly, it was a regular annual amount, the worker had performed active service for the company, and the payment had stopped when the services stopped.



Reasonably Available Employment

In *Decision 2010-589-AD* (October 26, 2011), the argument was made that an accommodated position that had been tailor-made for the worker following his injury, was not "reasonably available employment" as it was not generally available in the labour market. It was acknowledged by the tribunal that many accommodated positions would not be available generally and the question of whether or not the position was suitable and reasonably available was not the appropriate inquiry to be made in these circumstances as the job was *actually* available. The tribunal found that the question of whether an employment opportunity would be "reasonably available" would only be asked in a situation where a worker was being deemed capable of doing work within a particular category of employment.

Suspension of Benefits (s. 84)

Most decisions rendered by the tribunal in relation to s. 84 of the act related not to the justification for the suspension, but to the extent and long-term effects of a suspension.

In *Decision 2011-159-AD* (July 19, 2011), the tribunal noted that the board had the inherent power to lift a suspension under s. 84(2) because a suspension was, by its nature, a temporary discontinuance or postponement of benefits. Inherent within the power to suspend would be the ability to determine the circumstances under which a suspension could be lifted. The hearing officer in this case had set out circumstances under which the suspension could be lifted. The tribunal found that, even without that, the board had the ability to accomplish the same result by exercising its authority under s. 72 to review and adjust TERB at any time.

In *Decision 2011-137-AD* (November 24, 2011), the tribunal looked at the case of a worker whose benefits had been terminated pursuant to s. 84 of the act for covertly obtaining alternate employment while on temporary benefits, and denying it. The worker did not contest the issue of her suspension; however, presented with medical evidence of a likely permanent medical impairment and a possible need for surgery. The tribunal determined that the breach of s. 84 did not affect the basis for awarding medical aid. The tribunal found that the consequences of terminating medical aid seemed disproportionate and overly harsh, given that the worker might be left with a permanent impairment which, through surgery, might be corrected or improved.

In *Decision 2011-468-AD* (October 13, 2011), the tribunal relied on Orebro test scores, and other standardized tests, in allowing the worker's appeal. The worker's benefits had been suspended for a lack of cooperation with return to work efforts. The tests performed on the worker indicated that he had emotional problems which had precluded participation in a Tier 3A program. The worker's scores on the Orebro test and other standardized tests were found to have value given that they were regularly administered and, particularly in the case of the Orebro score, widely administered and cited.

Permanent Impairment

In *Decision 2010-240-AD* (April 12, 2011), the tribunal rejected medical evidence that suggested that the worker's delusional disorder should be assessed separately from his post-traumatic stress disorder. This was seen to be an improper application of the board's permanent medical impairment (PMI) guidelines which assess psychiatric disorders on a "whole person" basis.

Application of the AMA Guides to a shoulder impairment with decreased range of motion and crepitus was undertaken by the tribunal in *Decision 2010-250-AD* (April 20, 2011). After evaluating conflicting medical opinions and soliciting an opinion from a Board Medical Advisor, the tribunal calculated the worker's PMI for his shoulder on the basis of both range of motion and crepitus to ascertain the appropriate PMI rating.

In *Decision 2010-621-AD* (September 27, 2011), the worker had an exposure to radioactive material which had caused non-Hodgkin's lymphoma. The treatment affected bones, muscles and ligaments of the legs, such that mobility was greatly reduced. In applying the AMA Guides to the worker's impairment the Board Medical Advisor used the lower extremity categories to estimate a judgement rating. The tribunal accepted the evidence of a physical medicine and rehabilitation specialist that the section of the AMA Guides dealing with blood cell diseases was the appropriate section within which to rate the worker's PMI.

The tribunal looked at the process for quantifying a pain-related impairment under the AMA Guides in *Decision 2010-292-AD* (August 31, 2011). The tribunal noted that the method of assessing the category of "pain behaviour" in the AMA Guides was contrary to the method used in the board's assessment tool which forms part of policy 3.3.5. The tribunal found that the use of Table 18-3 of the AMA Guides is mandated by the *Chronic*

Pain Regulations, but the scoring method of determining the actual pain impairment in the AMA Guides was not consistent with the assessment tool. The tribunal used the assessment tool, and not the AMA Guides.

Assigning an effective date for a permanent impairment continues to be a challenge for decision makers in the system. In *Martell v. Nova Scotia (Workers' Compensation Appeals Tribunal)* 2007 NSCA107, the Court referred the determination of the effective date of the worker's pain-related impairment (PRI) rating to the board for reconsideration. Its determination was appealed to the tribunal which based an effective date for the worker's "chronic pain" on evidence of a period of injections that had relieved his pain for a two-year period. The tribunal found that the worker's response to the injections supported the fact that there was an objective basis for his pain. The worker's re-emergent back pain differed from what he had previously experienced, and met the definition of "chronic pain" at that time (see *Decision 2009-660-AD (*January 9, 2012)).

Benefits where Worker Deceased

In *Decision 2011-418-AD* (October 28, 2011), the worker's spouse sought the payment of a survivor pension for life. Prior to his death the worker had been awarded a 100 per cent PMI rating for mesothelioma. Section 60 of the act contemplates payment of a survivor pension for life where a worker died before February 1, 1996 or was injured before that date. The tribunal relied on s. 12 to fix the injury date on the basis of an occupational disease. The tribunal found the date of injury in the worker's case to be 2010, which was when there was clear evidence of mesothelioma.

In *Decision 2011-357-AD* (January 31, 2012), the tribunal found that the appellant was a dependent spouse for the purposes of the payment of survivor benefits. The appellant had been separated from the worker, her husband, at the time of his death. The tribunal followed its previous reasoning in *Decision 2010-297-AD* (August 16, 2010). It found that the inclusion of a 12 month cohabitation requirement in the s. 2(ab) definition of "spouse" was intended to extend the category to unmarried persons who met the cohabitation requirement, not to add another requirement to legally married couples. The tribunal accepted the testimony of the appellant that she received routine monetary contributions from the worker before his death, and that he paid any expenses that she was unable to cover.

The tribunal noted in *Decision 2010-901-AD & 2011-455-AD* (October 12, 2011) that section 34(5) of the act provides that a permanent impairment benefit (PIB) is payable for the lifetime of a worker. Since the worker in this case had passed away, there was no longer a possible continuation of a PIB. Any entitlement to a commutation of a PIB had been extinguished by the worker's death. The tribunal found that, similarly, s. 37 of the act conditions an earnings-replacement benefit to the continued loss of earnings due to a compensable injury. Since a deceased worker cannot have earnings, he or she is no longer able to claim a compensable loss of earnings and entitlement to the associated benefits ceases.

Privacy

An issue that arose over the past year regarding the placement of a worker's family doctor's chart notes, in their entirety, on the claim file. The issue came before the tribunal within the context of *Decision 2011-324-AD* (January 5, 2012) and *Decision 2011-331-AD* (January 17, 2012). A request was made for a direction to the board to remove irrelevant personal information from the worker's claim file. The tribunal found that s. 246(1) of the act requires it to consider all of the evidence on appeal, which includes everything in the board's claim file. The tribunal is not authorized to alter the record and its responsibility is to weigh the evidence.

In *Decision 2011-113-AD* (May 27, 2011), the authority of the board's Compliance Officers to engage in surveillance activities was challenged. The tribunal noted that the board's Compliance Officers are given the powers of Peace Officers, but this term is not defined in the act. Given the definition of Peace Officer in the Criminal Code, the tribunal accepted that Compliance Officers could perform surveillance.

New Evidence Policy

In *Decision 2011-193-AD* (January 30, 2012), the argument was raised that the board's new evidence policy, policy 8.1.7R1, was inconsistent with the act. The evidence that was sought to be considered "new evidence" was oral testimony of the worker's spouse. The tribunal found that the evidence in question could have been provided at the time the final decision of the board was made. The tribunal accepted the reasoning of the Nova Scotia Court of Appeal in (*MacDonald v. Workers' Compensation Board NS et al)*, 2000 NSCA 134, that the policy was not inconsistent with the discretionary power given to the board to reconsider a decision. The tribunal rejected the worker's alternative argument, finding that the policy had not been applied in an *ultra vires* manner so as to exclude all oral testimony, but only oral testimony that did not meet the criteria for "new evidence."

Hearing Loss

This year, the pattern of a worker's audiogram in relation to the board's policy on hearing loss, remained an issue in hearing loss adjudication. In *Decision 2011-651-AD* (February 23, 2012), the tribunal considered a report from the board's consulting audiologist which was similar to earlier opinions he had rendered prior to *Decision 2010-463-AD* (January 25, 2011). In that decision, the tribunal held that asymmetry in the pattern of hearing loss was not necessarily a clear indicator that a worker did not have noise-induced hearing loss. The board's Consulting Audiologist maintained that noise-induced hearing loss should be symmetrical, but stated that an asymmetry of 10 decibels would not be enough to rule out compensabillity.

In *Decision 2010-587-AD* (October 20, 2011), the tribunal drew inferences regarding the noise exposure the worker had in the workplace, based on the testimony and other evidence before it. There were no actual or estimated noise levels provided regarding the equipment to which the worker was exposed. The employer has appealed this decision, alleging a failure on the part of the tribunal to apply, or to apply properly, policy 1.2.5AR, as it pertains to the noise levels of exposure.

Appeals from Tribunal Decisions

The tribunal is the final decision-maker in the workers' compensation system.

A participant who disagrees with a tribunal decision can ask the Nova Scotia Court of Appeal to hear an appeal of the decision. Such an appeal must be filed with the Court within 30 days of the tribunal's decision. Under special circumstances, the Court can extend the time to file an appeal.

The Court of Appeal can only allow an appeal of a tribunal decision if it finds an error in law or jurisdiction. The Court does not redetermine facts or investigate a claim.

An appeal has two steps.

First, the person bringing the appeal must seek the Court's permission to hear the appeal. This is called seeking "leave to appeal." Where it is clear to the Court that the appeal cannot succeed, it denies leave without giving reasons and no appeal takes place. This year most applicants were denied leave to appeal.

Second, if leave is granted, there is an appeal hearing and the Court will allow or deny the appeal.

During this fiscal year, 18 appeals from tribunal decisions were filed with the Court of Appeal: 14 decisions were appealed by workers and 4 decisions were appealed by employers concerning compensation provided to workers.

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

- 1 appeal was withdrawn
- 1 appeal was dismissed due to a failure to follow Court procedures
- leave to appeal was denied 5 times
- 4 appeals were decided by the Court of Appeal – 3 were denied and 1 was allowed in part
- 1 appeal was resolved by a consent order directing a rehearing

At the beginning of this fiscal year, there were 11 active appeals before the Court of Appeal. At the end of this fiscal year, there remained 17 active appeals.

Decisions of the Court of Appeal

The Court decided four appeals this fiscal year:

Halifax (Regional Municipality) v. Hoelke, 2011 NSCA 96

Mr. Hoelke sought medical treatment of actinic keratosis (pre-cancerous spots) which he attributed to exposure to the sun from his work as a bus driver. The tribunal found that driving a bus was a material cause of the actinic keratosis. It noted that actinic keratosis is caused by sun exposure and that almost all of Mr. Hoelke's spots were on the side of his face which was exposed to the sun while driving the bus (an uncommon distribution). It found that Mr. Hoelke had sustained a compensable "accident."

Halifax Regional Municipality appealed arguing that there was no "accident." The relevant portion of the definition of "accident" requires "disablement." The municipality argued that there was no disablement as the actinic keratosis did not result in a loss of earnings or earnings capacity.

The Court denied the appeal.

It rejected the municipality's argument that disablement requires earnings loss. It found that disablement refers to how an injury occurs (an over-the-course-of-time injury), not whether the injury results in disability. It discussed why the municipality's reasoning would lead to unreasonable results at paragraph 39:

> The result would force workers who are injured but can continue to work to go off work to receive medical aid benefits such as physiotherapy, prescription medication, etc. Such an interpretation is untenable. The appeal commissioner's determination that a loss of earnings or earnings capacity is not necessary to qualify the "disablement" aspect of the definition of accident is reasonable and in keeping with the purpose and intent of the Act.

Drake v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2012 NSCA 6

Mr. Drake was found to have an initial 5 per cent PMI rating from a 1987 accident which was increased to 20 per cent in 2008. He sought a finding that he had presented new evidence allowing a greater initial rating. In addition, he sought a finding that the 2008 increase should be further increased using a judgement rating. The tribunal had found that Mr. Drake had not presented new evidence as the evidence would not change the initial rating decision. It found that a judgement rating was not appropriate as Mr. Drake's impairment could be rated using the PMI Guidelines.

The Court allowed in part Mr. Drake's appeal.

It found that the tribunal had applied the proper test for determining whether a judgement rating is appropriate. However, the Court found that the tribunal erred in considering whether the additional evidence would change the original decision. It stated that new evidence is merely evidence which is capable of changing the original decision. The determination of whether it actually changes the result can only be made after the finding of new evidence. The Court directed the board to reconsider its decisions to determine whether the new evidence alters them.

Enterprise Cape Breton Corporation (Cape Breton Development Corporation) v. Southwell, 2012 NSCA 23

Mr. Southwell, a former miner, sought a finding that his sinus condition resulted from occupational exposures. His claim was originally denied in 1995 in a decision which considered whether coal and limestone dust caused the condition. In 2005, he sought to have his claim reconsidered on the basis of exposure to "shotcrete," a cement product he sprayed on mine walls for 8 months in 1995.

The tribunal confirmed the finding that new evidence related to shotcrete had been filed in 2005. It found that the evidence changed the 1995 decision finding that an occupational disease had resulted from the shotcrete exposure. Enterprise Cape Breton appealed the tribunal's acceptance of Mr. Southwell's claim.

The appeal was denied.

The Court of Appeal found that the tribunal had correctly applied the new evidence test, but cautioned that each piece of additional evidence must meet that test. The Court confirmed that while scientific and epidemiological evidence may be presented to help establish an occupational disease, it is not always necessary.

The Court wrote that it was unnecessary for Mr. Southwell to file a new claim in order to have advanced the shotcrete exposure argument. The same condition existed regardless of its cause.

Creelman v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2012 NSCA 26

Mr. Creelman was being paid temporary earnings-replacement benefits. His temporary earnings-replacement benefits were suspended when he was jailed for criminal offences. The tribunal confirmed the suspension of benefits declining to redirect his temporary earnings-replacement benefits to a dependant. It found that it was appropriate to suspend earnings-loss benefits, as Mr. Creelman's choice to commit criminal acts had left him temporarily unable to earn income regardless of his workplace injury.

The Court of Appeal denied the appeal.

It found the tribunal's decision to be reasonable. It noted that the Workers' Compensation Act allows for a redirecting of benefits while someone is jailed. However, this is a discretionary power and the tribunal exercised its discretion in a reasonable manner.

Special Projects

The tribunal has continued to assist worker and employer participants without representation. They are contacted by telephone, shortly after receipt of a notice of appeal, to ensure that they understand how things will proceed at the tribunal. It also provides an opportunity to review the issues that are on appeal and the evidence that is anticipated. Frequently, it results in speedy scheduling of the hearing.

The Facilitation Sub-committee of IRWG held its final meeting on April 15, 2011. The mandate of the sub-committee was to explore early resolution and other possible process changes to implement a more collaborative approach to resolving disputes within the workers' compensation system, and in particular, appeals before the tribunal.

In its final report, the sub-committee acknowledged that the tribunal already has in place the practices and procedures for a facilitation process. In theory, all sub-committee members supported a facilitation process, however, there were concerns and considerations that make the development and implementation of a comprehensive process difficult.

Ultimately, the board agreed to provide a representative for facilitation sessions, if the board feels it is an appropriate situation for facilitation. At the time of the final meeting, the board representatives anticipated that the individual participating on behalf of the board would be the board's liaison officer. The representatives from WAP indicated a willingness to participate in a facilitation process, on a case-by-case basis.

The sub-committee felt that it would be feasible to implement immediately a procedure for dealing with new evidence submitted to the tribunal. Upon receipt of a new medical report, either with the notice of appeal or at a later stage, the tribunal reviews it as quickly as possible to determine if it is relevant and possibly determinative of the issues on appeal. If so, a telephone conference or an expedited appeal hearing is scheduled, or submission deadlines are set.

This process has been implemented for uncontested appeals. In addition, the tribunal now reviews all files in detail, once the notice of intention to participate has been received from an employer or the period for receipt of the notice has expired, and identifies appeals that may potentially be handled on an expedited basis.

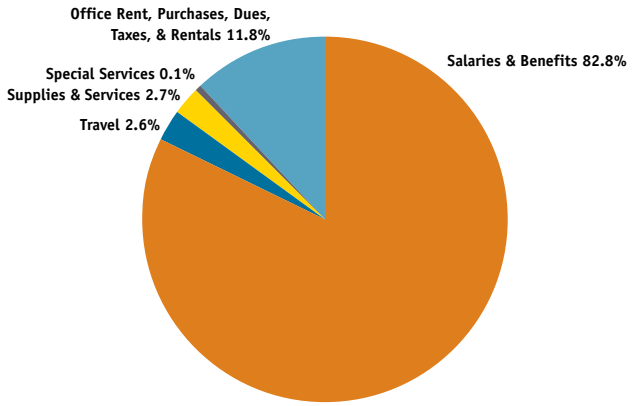
Financial Operations

In 2011–12, the tribunal's total expenditures were within 74 per cent of the original authority and within 87 per cent of our revised forecast. Net expenditures totaled $1,500,298.70, a slight decrease from the previous year (see Figure 12).

Figure 12

Budget Expenditures

(for the Fiscal Year Ending March 31, 2012)



Appendix

Figure 1 – Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 08–09	66	65	56	71	45	52	85	70	97	69	47	111	834
Fiscal 09–10	73	94	86	91	80	63	66	58	65	47	56	70	849
Fiscal 10–11	77	53	60	89	70	60	60	78	89	54	59	72	821
Fiscal 11–12	58	79	83	70	69	46	82	76	79	64	55	71	832

Figure 2 – Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 08–09	67	63	68	71	65	63	69	58	45	63	60	70	762
Fiscal 09–10	52	71	65	66	56	72	67	82	52	69	68	63	783
Fiscal 10–11	49	51	52	47	49	48	52	64	41	56	50	58	617
Fiscal 11–12	57	54	49	47	51	67	63	66	52	52	61	45	664

Figure 3 – Appeals Outstanding at Year End

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Fiscal 08–09	473	474	459	454	429	417	430	437	483	485	472	506
Fiscal 09–10	520	541	555	571	584	558	549	518	519	493	473	475
Fiscal 10–11	497	492	491	524	539	541	543	548	593	586	590	596
Fiscal 11–12	590	606	632	647	657	632	638	639	659	665	653	670

Figure 4 – Timeliness to Decision (cumulative percentage by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
Fiscal 08–09	0.79	2.76	9.71	27.56	46.33	61.94	71.78	80.84	86.09	90.81	93.18	100
Fiscal 09–10	0.89	4.60	17.75	33.97	49.81	64.62	74.84	81.23	85.19	88.12	90.29	100
Fiscal 10–11	0.97	5.02	18.96	35.82	47.97	57.05	64.99	72.45	77.15	82.50	84.76	100
Fiscal 11–12	0.60	4.82	20.33	33.73	44.58	51.96	60.84	66.42	72.14	76.51	79.82	100

Figure 5 – Decisions by Representation

Self-Represented	118
Workers' Advisers Program	380
Injured Worker Groups, Outside Counsel & Others	166

Figure 6 – Decisions by Issue Categories – Worker

Recognition of Claim	175
New/Additional Temporary Benefits	114
New/Increased Benefits for Permanent Impairment	252
Medical Aid (Expenses)	85
New/Additional Extended Earnings Replacement Benefits	67
New Evidence	31
Chronic Pain	84
Termination of Benefits for Non-Compliance	13
All other issues	59
Total	880

Figure 7 – Decisions by Issue Categories – Employer

Acceptance of Claim	12
Extent of Benefits	11
Assessment Classification	0
Assessment Penalties	1
Other Claims Issues	1
Other Assessment Issues	2
Total	27

Figure 8 – Decisions by Mode of Hearing

	Oral Hearings	Written Submissions	Total
Fiscal 08–09	561	201	762
Fiscal 09–10	539	244	783
Fiscal 10–11	460	157	617
Fiscal 11–12	421	243	664

Figure 9 – Decisions by Outcome

Allowed	204
Allowed in Part	87
Denied	281
S29	1
RTH	86
Moot	5
Total Final Decisions	664
Appeals withdrawn	94
Total Appeals Resolved	758

Figure 10 – Decisions by Appellant Type

	Total
Worker Claim Appeals*	639
Employer Claim Appeals	22
Employer Assessment Appeals	2
Section 29 Applications	1
Total	664

** Employer participation in worker appeals 32%*

Figure 11 – Appeals Before the Courts at Year End

	Nova Scotia Court of Appeal	Supreme Court of Canada	Total
Fiscal 08–09	10	0	10
Fiscal 09–10	8	0	8
Fiscal 10–11	11	0	11
Fiscal 11–12	17	0	17

Figure 12 – Budget Expenditures

(for the Fiscal Year Ending March 31, 2012)

	Authority	Final Forecast	Actual Expenditures
Salaries & Benefits	$1,615,000.00	$1,422,300.00	$1,241,979.48
Travel	$56,000.00	$62,400.00	$38,650.94
Special Services	$85,000.00	$15,000.00	$1,890.12
Supplies & Services	$60,000.00	$62,000.00	$40,002.91
Office Rent, Purchases, Dues, Taxes, & Rentals	$210,000.00	$196,000.00	$177,775.25
Sub Total	**$2,026,000.00**	**$1,757,700.00**	**$1,500,298.70**
Less Recoveries	$0.00	$33,400.00	$0.00
Totals	**$2,026,000.00**	**$1,724,300.00**	**$1,500,298.70**