



OFFICE OF THE COMMISSIONER OF REVIEW TRIBUNALS  
CANADA PENSION PLAN/OLD AGE SECURITY

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CANADA PENSION PLAN/  
OLD AGE SECURITY  
REVIEW TRIBUNALS

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ANNUAL REPORT 1999-2000

Canada



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CANADA PENSION PLAN/OLD AGE SECURITY

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**REVIEW TRIBUNALS**

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ANNUAL REPORT 1999-2000

THE OFFICE OF THE COMMISSIONER OF REVIEW TRIBUNALS  
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Office of the Commissioner  
of Review Tribunals  
Canada Pension Plan/  
Old Age Security



Bureau du Commissaire  
des Tribunaux de révision  
Régime de pensions du Canada/  
Sécurité de la vieillesse

June, 2001

The Honourable Jane Stewart, P.C., M.P.  
Minister of Human Resources Development  
House of Commons  
Ottawa, Ontario  
K1A 0A1

Dear Ms Stewart:

I am pleased to submit to you the sixth Annual Report of the Canada Pension Plan/Old Age Security Review Tribunals. This report covers financial and other matters for the period of April 1, 1999 to March 31, 2000, and also includes other information on our activities up to December 31, 2000.

Given the greatly increased volume of appeals over the past few years, our continuing challenge has been to ensure that all Appellants can be heard within six to seven months. During this fiscal year, we set a record for hearings held while successfully maintaining our commitment to the high service standards for all parts of the Review Tribunal Appeal process which were outlined in a new publication for Appellants.

While this represents a considerable achievement for us, we also realize that quantitative goals are often reached at the expense of some qualitative ones. We believe that the attention of both headquarters staff and Panel Members can now be focussed more directly on the plight of our Appellants, who deserve our vigilance and assistance as they try to cope with both illness and financial difficulty.

I wish to acknowledge the excellent work and dedication of my Deputy Commissioner, Margaret McGrath, and our staff at headquarters in Ottawa as well as our Panel Members across the country. Without their help, support and cooperation, we could not have achieved the important advancements outlined in this Report.

Yours sincerely,

A handwritten signature in black ink that reads "G. Peter Smith".

G. Peter Smith,  
Commissioner

## MISSION STATEMENT

“To ensure expert, independent, unbiased quality service to all parties to an appeal to a Review Tribunal by treating all parties to the appeal equally, fairly and with understanding, respect and dignity.”

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**I**n 1991, Parliament created the *Canada Pension Plan Review* Tribunals with the passage of Bill C-116. In 1995, Bill C-54 gave Review Tribunals additional jurisdiction to hear appeals under the *Old Age Security Act*. The Review Tribunals were created as a body independent from government, which would make determinations regarding eligibility for persons claiming benefits under these two Acts.

When a person claiming entitlement to a benefit is not satisfied with the decision made by Human Resources Development Canada, that person may appeal to a Review Tribunal under section 82 of the *Canada Pension Plan* or section 28 of the *Old Age Security Act*.

A Review Tribunal is an independent body of three persons selected by the Commissioner from a Panel of up to 400 individuals appointed by the Governor-in-Council. The Review Tribunal conducts a hearing and makes a decision regarding eligibility for benefits in individual cases.

The Office of the Commissioner is an independent, quasi-judicial body with the responsibility of ensuring that individual hearings are carried out by Review Tribunal Panel Members in communities across the country. The Office of the Commissioner also has responsibility for providing legal advice, technical support, training and other assistance to Panel Members and for ensuring that all parties to an appeal are provided with the proper documentation, notices, and other material that may be necessary to ensure a fair and impartial hearing.





## SECTION I: MAJOR ACHIEVEMENTS

The major achievements of the reporting period (i.e., fiscal year 1999/00 with additional information to the end of calendar year 2000) reflect two overarching goals for the Office of the Commissioner of Review Tribunals, CPP/OAS (OCRT). These are:

- 1) To provide everything possible and proper to enable Appellants to put forward their best case at the Review Tribunal hearings, and;
- 2) To provide everything possible and proper to enable Panel Members to make the most informed and fair decisions as a result of Review Tribunal hearings.

As indicated in Section II, we have made considerable progress toward achieving the first goal. Our major achievements in this area include setting a record for the number of hearings held, and greatly increasing the quality and depth of OCRT communications with Appellants.

### **A. Hearings Record Set**

Two things happened in 1999/00 to make it a banner year in terms of the volume of cases and hearings. A record for “hearings held” (10,326) and “hearings finalized” (11,209) was set. Also, as indicated in Chart C, the total number of hearings held exceeded new appeals received for the first time in the history of the OCRT.

Achieving these successes required an enormous effort on the part of headquarters staff and Panel Members alike. But it also must be pointed out that, ironically, overall appeal volumes began to decline markedly in the summer of 2000, just after these notable events had been experienced earlier that year.

## **B. Better Communications with Appellants**

One result of severe budgetary restraint in the Income Security Programs Branch (ISP) of the Department of Human Resources Development Canada (HRDC), particularly since the mid-90's, has been the lack of resources to deal with CPP Disability applicants in person, or even in a somewhat personalized way on the telephone.

In general, and for most of the nine-year existence of the OCRT, individuals who are denied benefits by the department, and who subsequently appeal that decision, have been dealt with only by letter.

This reality has led the Department to mount several pilot projects, which could lead to more "customized" treatment of applicants in the future. In fact, in October 2000, OCRT was proud to join the Department of Human Resources Development in sponsoring a project in British Columbia involving the "early release" of detailed reasons for departmental decisions. Both the previous and present Commissioners of OCRT have long advocated providing Appellants with more timely information.

In addition, OCRT has also acted on its own to improve the quantity and quality of client relations. In this reporting period, two special initiatives have been undertaken to provide Appellants with a wider range of services. First, we have worked to enhance our counselling to Appellants to a standard as close to individual needs and circumstances as is possible, and to all those Appellants who are amenable. Second, since August 2000, a new Appellant brochure has been provided to all new Appellants at the time their appeal is accepted. Of particular note in the brochure is the commitment to service standards that will allow all Appellants to know exactly what to expect of OCRT during the process.

Improving communications with clients through such initiatives as enhanced counselling and the Appellant brochure will, among other things, help identify the medical records and other documentation Appellants are required to provide at a hearing to support their claim. Further assistance, in the form of payment for the retrieval and copying of medical records for those Appellants who cannot afford it, will be provided in 2001/02. In recent years, these costs have risen dramatically in many provinces.

OCRT has also made progress over the reporting period in achieving its second major goal of helping Panel Members make the most informed and fair decisions possible. Building on one of last year's achievements, the in-service professional development Advanced Workshop, OCRT has worked to improve decision resources for Panel Members.

### C. Improving Decision Resources for Panel Members

It is OCRT policy not to issue guidelines on the interpretation of the statutory and regulatory provisions of the *Canada Pension Plan* or the *Old Age Security Act*. Each Tribunal on each case has a particular independence from OCRT, and must make a determination based on the evidence before it, without direction from others.

The same general rule applies to the writing of decisions and reasons, and OCRT has refrained, for example, from providing model decisions or decision templates to Panel Members.



However, the decision-writing task of Panel Members has been made somewhat easier with the two-volume "Book of Authorities" prepared by our Legal Services Division. It contains decisions of the Pension Appeals Board, the Federal Court of Canada and the Supreme Court of Canada in CPP cases appealed beyond the Review Tribunal level. A copy of the book has been provided to all Panel Members.

Particularly welcomed by Panel Members is the "detailed subject index", which groups decisions for easy reference under thirteen subjects, ranging from judicial interpretation of "severe" and "prolonged" disability in the CPP legislation through to the assignment of retirement benefits, and survivor's benefits.

Legal Services is now in the process of preparing a similar book on OAS jurisprudence.

Another initiative which is helping provide decision assistance to Panel Members is a newsletter containing information and commentary on the evolving jurisprudence in areas of concern to Panel Members. It is sent to Members

on an as-needed basis. The first edition appeared early last year, and many members have reported that they have found such information very useful in their deliberations.

Finally, and as identified as a major issue area for OCRT in last year's Annual Report, work was continued on the codification of effective and appropriate relationships with HRDC.

#### **D. Demonstrating and Codifying Independence**

A great deal of progress has been made on the issues surrounding OCRT's relationship with HRDC, as a result of decisions taken in August 2000 by HRDC Deputy Minister Claire Morris. For example, work is now underway on the proposed series of Memoranda of Understanding (MOU) between the OCRT as a quasi-judicial body and HRDC as the provider of selected and agreed-upon services through various branches such as Income Security Programs, Finance, Systems, and Human Resources. The objective is to ensure that relations in these areas can be regularized and clarified in a manner that is consistent with the requirement that OCRT continue to be effective as well as impartial and independent.

In a separate development, in the spring of last year, OCRT established a direct working relationship with Treasury Board, in contrast with the previous practice of dealing with the Board via the Income Security Programs Branch of HRDC.

## SECTION II: MANDATE AND OPERATIONS

### **A. Who We Are**

The Office of the Commissioner of Review Tribunals (OCRT) is comprised of the following.

- A full-time Commissioner and Deputy Commissioner appointed by the Governor-in-Council for fixed terms.
- Up to 400 Panel Members who are also appointed by the Governor-in-Council for fixed terms and who serve on an “as-needed” basis.
- A Public Service staff of 84 Full Time Equivalent (FTE) positions responsible for the day-to-day operation of the office.

### **The Commissioner and Deputy Commissioner**

Neither the Commissioner nor the Deputy Commissioner conducts hearings or decides the outcome of appeals. The Commissioner is responsible for the planning, organization and management of the Review Tribunal appeal process to ensure that the process is efficient and fair, and that Panel Members and staff are equipped to carry out their responsibilities.

The Deputy Commissioner is responsible for day-to-day operations and replaces the Commissioner in his or her absence.

### **Panel Members**

Only a Review Tribunal can hear and decide the outcome of appeals. Such Tribunals do not act on behalf of “The Minister” or the Appellant or any other parties to an appeal. A Review Tribunal is made up of three people chosen by the Commissioner from a Panel of up to 400 Members appointed by the Governor-in-Council. As of March 31, 2000, 310 Panel Members were available for hearings.

There are three categories of Panel Member: Legal, Medical and General. Appeals are heard by a three-member Review Tribunal, which includes one member from each category. The legislation requires that all hearings be chaired by a lawyer who is a member of the bar of a province. In the case of CPP disability appeals (over 95% of all appeals), one of the members must be a qualified health professional. The remaining members, usually referred to as 'General' members, are not required to have medical or legal expertise although most have a background in community service.

In the case of appeals involving issues under the *Charter of Rights and Freedoms*, it is the practice of the Commissioner to include at least two lawyers on the Review Tribunal.

Tribunal Members are reimbursed for reasonable travel and living expenses related to their work, and they also receive a *per diem* allowance for the time they spend at hearings. The Chair of a Tribunal is entitled to a *per diem* allowance of \$450, and each of the other two Members is entitled to a *per diem* of \$325.

Table 1 shows the distribution of Panel Members by category and by province as of March 31, 2000. Although the Province of Quebec administers its own equivalent of the Canada Pension Plan, Review Tribunal members in that province are required to hear OAS appeals as well as CPP appeals of Appellants who now reside in that province.

TABLE 1: PANEL MEMBERS BY CATEGORY AND PROVINCE, MARCH 31, 2000

Province	Legal	Medical	General	Total
British Columbia	11	15	11	37
Alberta	7	8	8	23
Saskatchewan	3	1	2	6
Manitoba	5	3	3	11
Ontario	54	47	46	147
Quebec	4	4	3	11
New Brunswick	7	6	5	18
Nova Scotia	11	10	11	32
Prince Edward Island	2	2	2	6
Newfoundland	5	7	7	19
<b>Total</b>	<b>109</b>	<b>103</b>	<b>98</b>	<b>310</b>

## Employment Equity in Panel Membership

Since the creation of Review Tribunals, special efforts have been made by the government to ensure that the number of women members in all categories of Panel Membership reflects equal opportunity goals. As shown in Table 2, as of March 31, 2000, 45% of all members are now women, including one quarter of the members in the Legal category, 46% of the General membership and 67% of the medical membership.

Although the OCRT does not formally track the employment equity profile of Panel Members, representation on the Panel of persons with disabilities, members of visible minority groups and Aboriginal peoples has continued to increase yearly.

TABLE 2: *PANEL MEMBERS BY CATEGORY AND SEX, MARCH 31, 2000*

Category	Men	%	Women	%
<i>March 31, 2000</i>				
Legal	82	75%	27	25%
Medical	34	33%	69	67%
General	53	54%	45	46%
<b>Total</b>	<b>169</b>	<b>55%</b>	<b>141</b>	<b>45%</b>
<i>(1999)</i>	<i>157</i>	<i>54%</i>	<i>132</i>	<i>46%</i>

## The OCRT Staff

The Commissioner is supported by a complement of public service employees made up of five division heads, an executive assistant, legal, program management, financial, administrative and clerical staff.

The OCRT operates at arm's length from the Department of Human Resources Development Canada (HRDC); however, the Department does provide the OCRT with administrative and technical support for computer, personnel and financial services. For this reason, the Director of Management Services of OCRT maintains a



formal working relationship with the Assistant Deputy Minister, Financial and Administrative Services in HRDC.

## **B. What We Do**

The primary function of the OCRT is to hold hearings and make determinations on appeals of decisions of the Minister of Human Resources Development regarding individual entitlement to benefits under the *Canada Pension Plan* and the *Old Age Security Act*.

An appeal starts with a letter to the Commissioner from a person (the “Appellant”) who has been denied a benefit under section 81 of the *Canada Pension Plan* or section 27.1 of the *Old Age Security Act*. Departmental decisions that do not come under these sections of these Acts cannot be appealed to a Review Tribunal. The courts have ruled that Review Tribunals do not have the power to hear appeals involving allegations of administrative error or the provision of erroneous advice on CPP matters.

Courts have also ruled that Tribunals cannot forgive overpayments. Review Tribunals do not have the power to disregard or change legislation; they must decide appeals on the basis of the evidence available and the legislation as it stands.

Once the appeal is acknowledged, the Commissioner writes to the appropriate departmental officials for a copy of the documents that formed the basis for the earlier decision. This information, together with any additional material provided by the parties to an appeal, constitutes the hearing case file for the appeal.

In most instances, the parties to a Review Tribunal appeal are:

- The person who has been denied a benefit – the Appellant.
- The Minister of Human Resources Development – represented by a public service employee.
- Any person who has a direct interest in the outcome of the appeal, such as a married or common-law partner or child or other relative – referred to as an “added party”.

Appeals to a Review Tribunal are *de novo*, meaning they are not limited by the issues and information available to “The Minister” and the Department when the earlier



*Pictured above is a Three Member Panel which hears appeals. Seated at left is Jean McNeil who is the General Member (sometimes referred to as the “Community” Member); in the middle is Gordon Dryden who is the Legal Member and Chair of the Panel; and, on the right is the Medical Member, Mavis McKenzie who is a registered nurse.*

*Seated at the right in the foreground is the Appellant, who, in this case, is being portrayed by Legal Panel Member, Perry Arnot of Toronto. Standing in the foreground to the left is the “Minister’s Representative” who appears on behalf of the Department of Human Resources Development, in this case, being portrayed by Toronto Legal Panel Member, Peter Benesch.*

*Often a lawyer, union leader, pension consultant or community worker will appear at the side of the Appellant. Also, relatives and friends are often welcomed to the hearings to support Appellants.*

*Legislation requires the hearings to be conducted in private. The written decision is kept confidential to the parties. The general public and the media are not allowed into hearings.*

decision was made. Subject to some limitations in cases involving previous Review Tribunal or Pension Appeals Board (PAB) decisions, each appeal is decided as if it was being heard for the first time.

OCRT staff make the necessary arrangements for the hearings. The legislation stipulates that hearings are closed to the public. All hearings are held in Canada, usually in, or close by, the community in which the Appellant lives. The OCRT will reimburse reasonable travel and living expenses of Appellants or added parties who must travel outside their community to attend a hearing. There are also special expense reimbursement rules for parties who must travel to Canada from another country to attend their hearing. Sign and language interpretation are provided by the OCRT when necessary.

Each party has the right to be represented by legal counsel or other representative, or they can represent themselves. The OCRT does not reimburse any party for legal expenses or witness fees or for obtaining additional medical reports. The office will, however, pay retrieval and copying fees of Appellants for their existing medical records.

The legislation directs that hearings be conducted as informally as the circumstances permit. In practice, this means that hearings are much less formal than a court or court-like tribunals. For example, witnesses are not sworn in. Generally speaking, the proceedings are flexible enough to be adapted to meet the needs of the parties, especially Appellants, in each appeal.

A hearing is, nonetheless, a legal proceeding with some structure. Typically, Appellants present evidence supporting their claim, and the Members of the Review Tribunal ask questions.

After the hearing, the Members of the Review Tribunal review and discuss all of the evidence given on paper and in person, and write detailed reasons for their decision. All of the information and the decision are then forwarded to the OCRT where the official file is updated with the information provided at the hearing.

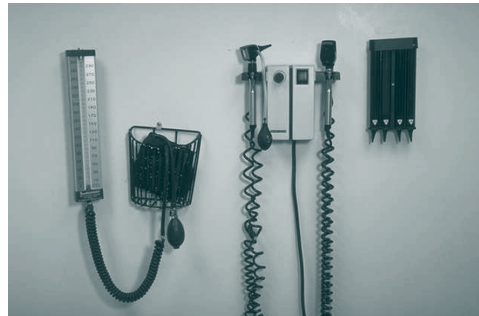
The Commissioner is responsible for ensuring that all parties to the appeal and their representatives are informed in writing of the Review Tribunal's decision and the reasons for it.

A Review Tribunal's decision under the *Old Age Security Act* is final and binding, subject only to judicial review under the *Federal Court Act*.

A Review Tribunal's decision under the *Canada Pension Plan* can be appealed to the Pension Appeals Board if the Board agrees to hear the case. If the Board does not agree to hear an appeal, the Review Tribunal's decision is final.

### C. Fairness and Impartiality

The powers of Review Tribunals are statutory; that is, they are set out in the two Acts under which appeals can be made. Review Tribunals can confirm or vary a decision of "The Minister" made under section 81 or subsection 84(2) of the CPP or under subsection 27.1(2) of the *Old Age Security Act*. Review Tribunals may take any action in relation to any of those decisions that might have been taken by "The Minister".



These powers include:

- A. the authority to determine any question of law or fact as to whether a benefit is payable;
- B. the amount of any such benefit;
- C. whether a person has a right to a division of pensionable earnings and the amount of the division; and,
- D. whether a person is eligible for an assignment of retirement benefits and the amount of the assignment.

In some circumstances, Review Tribunals can even "re-open" their own decisions.

Review Tribunals must exercise these powers in a way that is procedurally fair. Guidance on procedures can be found in the *Review Tribunal Rules of Procedure*, which are regulations made under the *Canada Pension Plan*. For matters not covered under these rules, Review Tribunals must rely on the general principles of procedural fairness which include: the right to know the case against you and to reply; the right to

an unbiased decision-maker; and, the right to have the case decided by the person or persons who heard it.

Since the mid-1990's, in most regions of the country, the appearance of an Appellant before a Review Tribunal is the first face-to-face meeting he or she will have with those deciding whether or not benefits are to be paid. It has also been the first time that an Appellant receives the detailed reasons why he or she has been denied a pension benefit at the first two stages of decision of the Department of Human Resources Development. For a significant number of Appellants, the Review Tribunal process is the first opportunity to fully appreciate the nature of the information required to demonstrate eligibility for benefits.

In the interests of fairness, efforts are being made to provide Appellants with as much information as possible prior to a hearing. For example, and as mentioned in Section I, a pilot project on the "early release" of the detailed reasons for the denial of benefits was begun in British Columbia in October 2000.



Special efforts are also made by the OCRT staff and the Members of Review Tribunals to ensure that every Appellant or added party is treated fairly and that before, during and after any hearing, the principles of procedural fairness are strictly observed.

A complaints mechanism has been put in place to receive and review issues raised by Appellants and others, and any complaint is fully investigated. Reports are obtained from the Panel Members and/or other hearing participants concerned, and a formal response is provided to every complainant.

The Commissioner's office continues to work closely with all Panel Members to ensure that all Appellants are treated equally, fairly, and with understanding, respect and dignity.

To this end, OCRT provides Panel Members with the training and resources that help

them carry out their duties in a way that fosters public respect and confidence in the process. The goal is to ensure that all parties to an appeal receive equitable treatment no matter where in the country the hearing is held, or which particular Members are hearing the case.

Section III of this report outlines the major activities of the five divisions within the Office of the Commissioner of Review Tribunals which are dedicated to achieving these goals.

### **Code of Conduct for Panel Members**

All Panel Members are subject to the principles set out in Part I of the federal government's *Conflict of Interest Code*, as well as a *Code of Conduct for Review Tribunal Panel Members* introduced by the Commissioner in 1996, covering the following topics:

- Promotion of Integrity and Independence
- Collegiality
- Decision-making
- Conduct during Proceedings
- Bias
- Discussion of Cases
- Contact with Media or Government
- Gifts and Benefits
- Disqualification and Reporting
- Post-Employment/Appointment

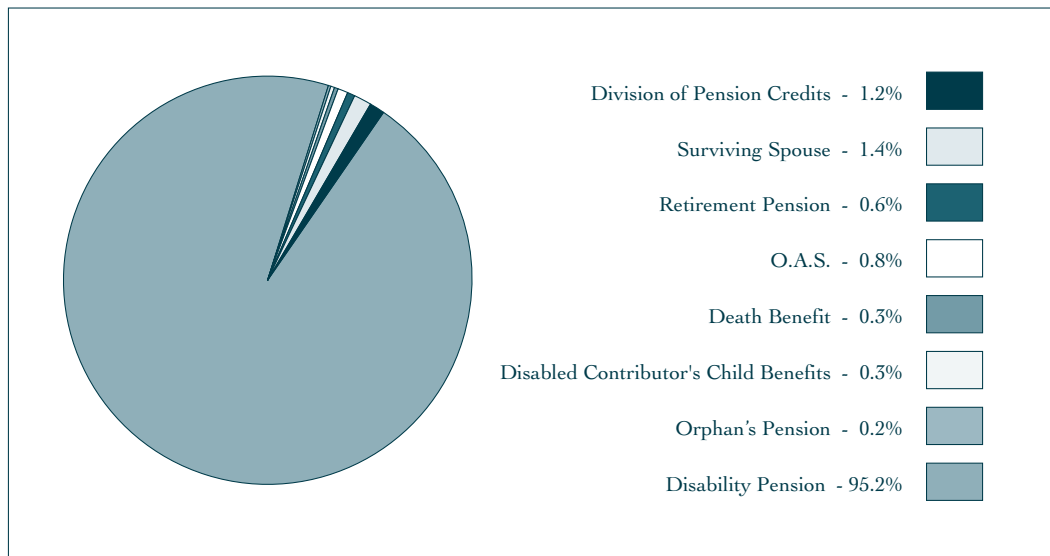
### **D. The Hearings**

#### **Reasons For Appeals**

As shown in Chart A, over 95% of cases heard by Review Tribunals are appeals from decisions made by the Department of Human Resources Development regarding

applications for CPP disability benefits. The proportions of cases in each of the categories shown on the chart have been virtually unchanged since OCRT was established.

CHART A: *APPEALS TO REVIEW TRIBUNALS BY BENEFIT TYPE*



*CUMULATIVE TO MARCH 31, 2000*

**Workload and Results of Appeals**

When the Review Tribunal system was established in 1991, it was anticipated that approximately 1,800 appeals would be received each year. But, as shown in Chart B, that number increased dramatically, peaking in 1997/98 at nearly 11,000, and falling somewhat in the past two reporting periods. This decrease would appear proportionate to a decrease in initial applications for disability benefits to the Income Security Programs Branch of the Department.

CHART B: APPEALS TO REVIEW TRIBUNALS, 1992/93 – 1999/00

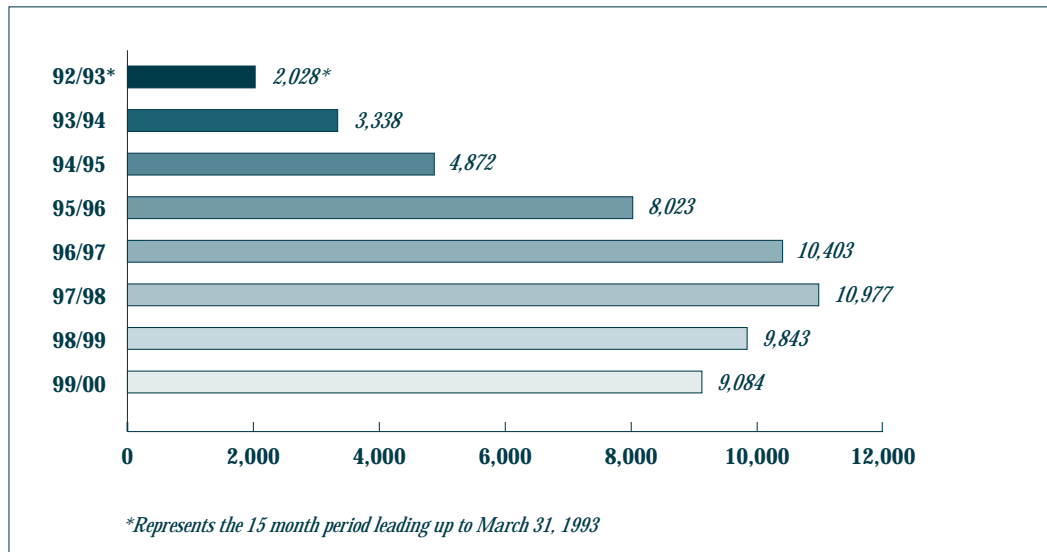


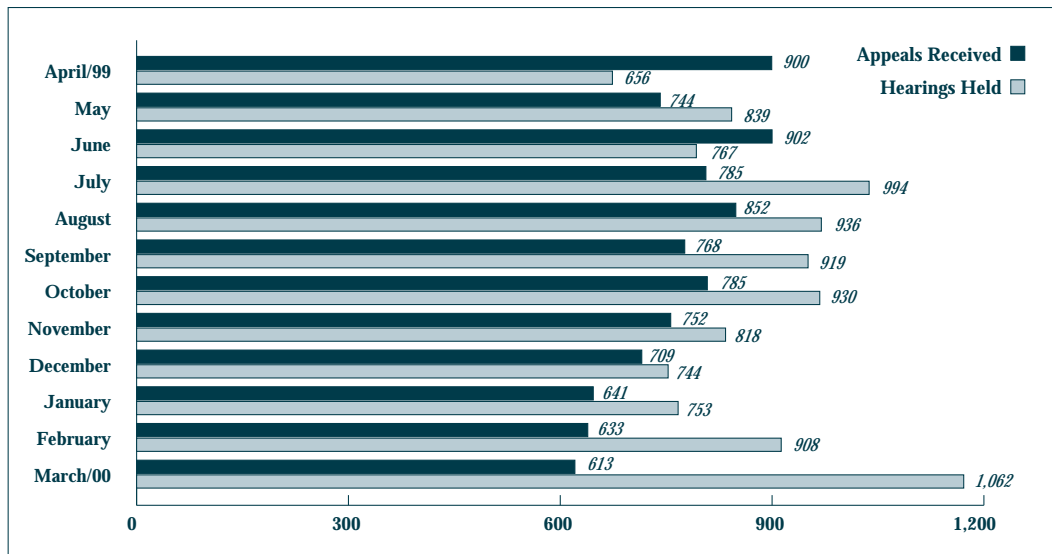
TABLE 3: APPEALS TO REVIEW TRIBUNALS — CPP AND OAS, 1997/98 – 1999/00

	1997/98	1998/99	1999-00
Balance of Cases, April 1	6,130	9,002	7,939
New Appeals Received	10,977	9,843	9,084
Reversals/Withdrawals/ Refused /Referrals*	(477)	(1,996)	(2,646)
<b>Potential Hearings**</b>	<b>16,630</b>	<b>16,849</b>	<b>14,377</b>
* Includes the number of decisions <u>reversed</u> by “The Minister” prior to hearings, plus cases <u>withdrawn</u> by Appellants prior to hearings, as well as late appeals <u>refused</u> plus cases <u>referred to Review Tribunals in error and redirected to “The Minister” for reconsideration or to the Pension Appeals Board for action.</u>			
** Includes outstanding appeals at the end of the previous fiscal year, and the number of new appeals received during the current year.			



Chart C shows a month-by-month breakdown of appeals received versus hearings held for the year. As it indicates, more hearings were held than appeals received, and 1999/00 is the first year since OCRT was created that this has been the case.

CHART C: APPEALS RECEIVED AND HEARINGS HELD BY MONTH —



*OAS AND CPP, 1999/00*

As indicated in Table 4, nearly 2,400 more hearings were held in 1999/00 than in 1997/98. This meant that the number of outstanding cases at the end of the fiscal year was dramatically reduced. These figures reflect both the slight decrease in the number of appeals received as well as increased efforts by OCRT to process more cases in a timely fashion. These efforts include such measures as grouping cases for the same location in order to reduce costs and optimize the use of available Panel Members.

At the same time, OCRT must ensure that Appellants are allowed time to prepare sufficient documentation such as additional medical reports or other evidence, or to obtain counsel or a representative.

TABLE 4: TRIBUNAL HEARINGS BY OUTCOME — CPP AND OAS,  
1997/98 – 1999/00

Outcome	1997/98	1998/99	1999/00
Adjourned	322	618	891
Allowed	1,864	2,244	2,607
Dismissed	5,756	6,640	6,790
Withdrawn at Hearing	8	26	38
<b>Total Hearings Held*</b>	<b>7,950</b>	<b>9,528</b>	<b>10,326</b>
Outstanding at end of Period	9,002	7,939	4,905
* Does not include re-hearings under Section 84(2) of the Canada Pension Plan.			
<i>N.B.: At the end of each of the years indicated, approximately 1,300 appeals could not be acted on because of insufficient documentation, requests for delays by Appellants and other reasons.</i>			

Several trends shown in Table 4 are worthy of note. For example, the increase in “Total Hearings Held” ( from 7,950 in 1997/98 to a record-setting 10,326 two years later) indicates that efforts to process cases in a more timely fashion have paid dividends. The 46% decline in the number of cases outstanding at the end of the period (from 7,939 in 1998/99 down to 4,905 in 1999/00), is also a positive sign that the process has been made more efficient.

## E. Appeals of OCRT Decisions

All parties to an appeal regarding a question of CPP benefit entitlement, including the Department of Human Resources Development, have 90 days from the day they receive the Tribunal’s decision to request leave to appeal that decision to the Pension Appeals Board (PAB). The Pension Appeals Board process is referred to in legal terms as *de novo*, in that it considers all evidence relevant to the issue, whether or not that evidence was presented earlier to the Review Tribunal.

TABLE 5: APPEALS OF CPP REVIEW TRIBUNAL DECISIONS TO THE PENSION APPEALS BOARD, 1997/98 – 1999/00

	1997/98	1998/99	1999/00
<b>Tribunal Decisions*</b>	<b>7,607</b>	<b>8,824</b>	<b>9,339</b>
Appeals by the Minister	253	32	43
Appeals by Appellant/Others	2,641	2,854	3,355
<i>*Includes all decisions of Tribunals, whether allowed or dismissed.</i>			

As Table 6 indicates, in 1993/94, almost one quarter (24.7%) of all decisions of Review Tribunals, in which benefit claims were allowed, were appealed to the Pension Appeals Board by “The Minister” of Human Resources Development. For the past two years, that figure has been less than 2%.

TABLE 6: PERCENTAGE OF CPP CASES “ALLOWED” BY REVIEW TRIBUNALS AND APPEALED BY MINISTER TO THE PENSION APPEALS BOARD, 1993/94 TO 1999/00

1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00
24.7%	8.7%	16.6%	21.9%	13.6%	1.4%	1.7%

Over the same period the number of cases dismissed by Review Tribunals in which the Appellant or other parties sought leave to appeal to the Pension Appeals Board remained at roughly 35%-49%, and of those, approximately half were not accepted for appeal by the PAB.

## F. Resources

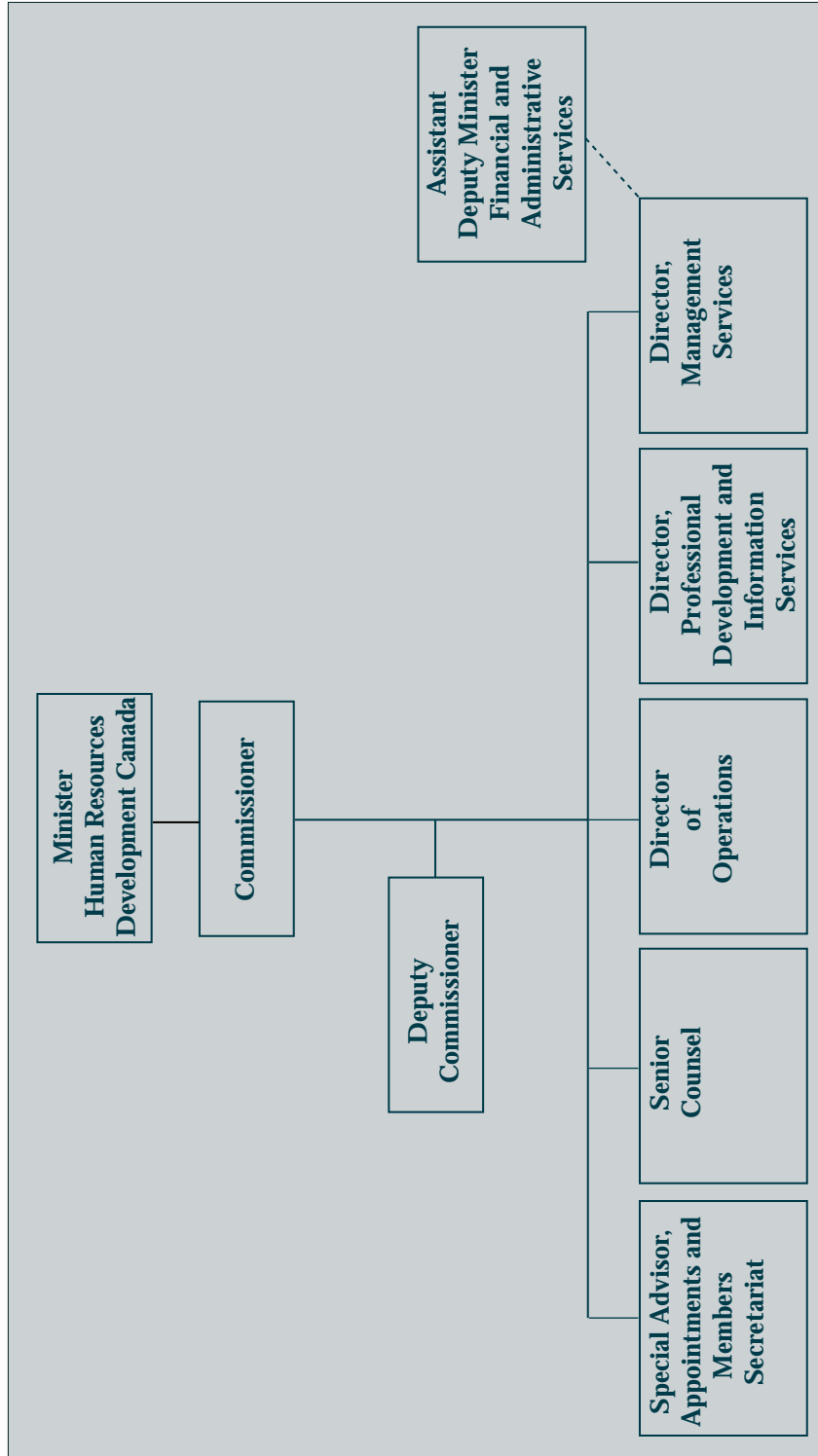
The Office of the Commissioner of Review Tribunals is staffed with 84 full-time equivalent (FTE), excluding the Commissioner, the Deputy Commissioner and the Panel Members who are all Governor-in-Council appointees.

In the fiscal year 1999/00, OCRT expenditures were divided as follows: 25% in salary costs, 40% in Per Diem payments and 35% in non-salary operations.

TABLE 7: EXPENDITURES

<i>Fiscal Year Ended March 31, 2000</i>	
Salaries	\$3,315,649
Per diems	\$5,175,890
Operating Costs – Non-salary	\$4,641,959
<b>Total</b>	<b>\$13,133,498</b>

CHART D: ORGANIZATION CHART



## SECTION III: PROGRESS REPORTS BY OPERATING UNITS

### **Legal Services**

Unlike federal government departments, the Office of the Commissioner of Review Tribunals is an independent body and does not receive its legal services from the Department of Justice. The OCRT has developed an in-house division of lawyers, legislative/policy and paralegal staff, headed by a Senior Counsel, who perform a wide range of legal, policy and operational functions.

Senior Counsel provides legal and policy advice to the Commissioner, Deputy Commissioner, Review Tribunal Members and Senior Management in the Office of the Commissioner, and is also responsible for overseeing the legal component of professional development programs.

The staff of lawyers provides legal advice to Panel Members and staff on day-to-day operations and works closely with Members on the quality of decisions. They also manage all appeals involving constitutional issues and are responsible for the release of written decisions on all appeals.

Legislative and policy staff screen appeals and advise the parties on OAS appeals and OAS/CPP re-hearings. They also co-ordinate OAS appeals to the Tax Court of Canada and undertake projects on legislative and policy issues.

Paralegal staff co-ordinate relations with the Pension Appeals Board, review post-hearing correspondence and carry out other administrative support duties.

During the past year, the Legal Services Division has improved information and refocused counselling efforts for Appellants before hearings. Better understanding by Appellants of the “new facts” required for a “rehearing” has led to more relevant evidence being provided in support of such requests and has resulted in changes in decisions in over 20% of cases. The Legal Division has also streamlined scheduling practices for these rehearings, conducted under subsection 84(2) of the CPP Act.

Legal Services has also been working on changes to accommodate recent legislation passed by Parliament extending CPP and OAS benefits to same-sex partners. The Division has worked with counsel for Appellants and “The Minister” to resolve appeals held in abeyance pending this legislative change. As a result, 48 of the 65 appeals involving same-sex issues were resolved without the need for a hearing, and the remaining cases involving constitutional issues will benefit from the improved pre-hearing procedures introduced during this period.

The Division also took the lead in bringing together a team of OCRT employees to improve the timeliness of Review Tribunal decisions. This had been a concern, particularly during peak periods. By the early fall 2000, the OCRT was issuing almost all Review Tribunal decisions within its standard of 6 – 8 weeks from the date of hearing.

The Division was also actively involved in the delivery of orientation and advanced training programs for Panel Members, as well as communications and listening skills training for staff. An in-house newsletter on legal developments was launched and a comprehensive package of CPP jurisprudence was provided to Panel Members. The Division has also initiated the development of a comprehensive package of OAS jurisprudence, and welcomed its first two articling students. It has also agreed to participate in an academic program to give third-year law students experience in the practical work of administrative tribunals.

In addition, OCRT lawyers continue to be actively involved in outreach efforts with HRDC staff and those who act on behalf of Appellants as well as professionals in related sectors in order to improve the appeals process.

## **Operations**

The Operations Division is responsible for planning and coordinating the appeals hearing process and works to ensure that all parties to an appeal receive the most efficient service possible. The Division coordinates the preparation of the hearing case file containing all the documentation for a given appeal and its delivery to the Appellant, the Department and added parties.

The responsibilities of the Division include the scheduling of appeals at times and locations suitable to all parties as well as efforts to counsel Appellants to ensure that they are aware of all aspects of the hearing process.

To this end, during 1999/00, Operations staff implemented the “enhanced counselling” program which entails telephone conversations between a Client Service Officer and the Appellant or the Appellant’s Representative in order to provide detailed information, including the medical and other documentation that will be required.

During this fiscal year, the goal of finalizing 10,800 appeals was surpassed, with 11,209 cases being completed. These included 10,326 hearings and 883 appeals that were settled or withdrawn before a hearing. This was the first year in the history of the OCRT that more appeals were heard than were received. Operations staff was responsible for much of the administrative work involved in achieving this milestone. For next year, the latest revised projections are that OCRT will finalize 7000 cases, including 6400 hearings.

During the period, the Division also reviewed several hundred inactive appeals, and implemented a new Workload Planning Model to improve the quality of work for Appellants and the quality of working life for OCRT employees.

In the coming months, Operations staff will work on the further improvement of counselling for Appellants through telephone training programs for staff. They will also take the lead in a survey of Panel Members on issues raised by the British Columbia pilot project on “early release” of reasons for the denial of benefits by HRDC. The Division will also be working with HRDC and the Pension Appeals Board to improve forecasting at all levels of the appeal process.

### **Professional Development and Information Services**

The Professional Development and Information Services (PDIS) group has responsibility for training and communications, including the continuous learning needs of all OCRT staff and Panel Members.

The Division is also responsible for communications with the general public, government employees and all others involved with the hearing process, and regularly prepares videos, fact sheets, newsletters and information brochures. For example, an



Appellant brochure was created and is now sent to all Appellants when their appeal is accepted and acknowledged. The brochure is designed to help balance the knowledge of the parties to an appeal by ensuring that Appellants are better informed of their rights and obligations. One-page fact sheets have also been created for people who are contemplating an appeal of a Canada Pension Plan or Old Age Security decision.

The Division also took the lead in the development and design of the OCRT Website (<http://www.ocrt-bctr.gc.ca/>) which was launched in December, 2000. The site is targeted to Appellants and their representatives as well as the general public. It contains a great deal of information on the appeals process, covering such issues as how to make an appeal and information on legislation as well as links to other government departments and agencies. Users can also download forms used in the appeals process, such as a notice of appeals form, applications to reopen decisions, travel expense claim forms, and out of country questionnaire forms.



In addition, a strategy is being developed for interactive on-line services to Appellants, representatives and Panel Members which reflects the “e-service” vision of the Federal Government. Among other things, this new service will allow Appellants to request and view their appeal status information and receive their decision electronically.

A major part of the Division’s role continues to be the co-ordination of orientation sessions, workshops and conferences for Panel Members and OCRT staff. Panel Members must attend an orientation session on Canada Pension Plan issues before they can sit. Because of the relatively low number of cases involving OAS issues, a small number of Panel Members must also complete an OAS training and orientation session in addition to the CPP session.

During this reporting period, the Division also carried out several workshops for OCRT staff on legislative and procedural matters, stress mapping, and the development of learning plans.

The Division also took the lead in improving access to health information by Panel Members in order to assist them in the assessment of medical evidence in disability appeals.

### **Management Services**

The Management Services Division provides the necessary infrastructure to support the appeals process. This includes assisting Panel Members, Appellants and OCRT staff with financial and administrative matters including human resources services and staffing, systems implementation, materiel management and operational issues. It also includes records management, data entry, and systems administration, as well as facilities management, health and safety questions, and security issues.

The Division also handles remuneration to Panel Members and the payment of travel and living expenses to staff, Panel Members and parties to an appeal. The record number of hearings over the reporting period has meant a greatly increased workload, particularly in terms of expense requests and *per diem* payments to Panel Members.

The Division also negotiates agreements with key service providers such as couriers, travel agencies, interpreters and security companies. For example, because of the many travel requirements of OCRT staff and Panel Members, OCRT now has an individual on-site who works to meet travel and accommodation needs on a full time basis.

One of the major preoccupations of the Division is the continued improvement of the Appeals Management System which provides instantaneous, detailed, bilingual information on the status of appeals and related correspondence, as well as comprehensive file tracking and performance measurement for the many thousands of files that flow through the office every year. Over the past year, Management Services has worked to ensure that decision production formats were compatible with the AMS system, and that the system could produce accurate labelling and other products.

In addition, work was continued on the enhancement of the AMS system to provide more relevant data on all appeals, particularly appeals for a rehearing. Panel Members are provided with up-to-date status reports on the attendance at hearings of the Appellant, added parties and/or representatives. The security of the system was also upgraded to protect personal data while allowing general information to be collected.

During the period, Management Services also increased the number of “conference call hearings” for Appellants who were unable to attend hearings in a given location, and continued efforts to make OCRT’s services more visible to potential Appellants through listings on the Government Electronic Directory Services (GEDS), on the Internet, and, in the future, in the Blue Pages of government listings in telephone books across the country.

### **Appointments and Members Secretariat**

The primary responsibility of the Appointments and Members Secretariat is to ensure that Panel Members are available to carry out their duties across Canada every month. Each Member is asked to be available for hearings for three days at a time, ten times each year. Some Review Tribunal Panel Members sit much more often than others depending upon the volume of cases in their particular region. The Appointments and Members Secretariat coordinates the appointment of Members for each individual appeal and attempts to spread the work as evenly as possible.

The Division prepares monthly reports indicating where and when hearings have taken place. Information in these reports is then used to suggest the creation of new regions based on the history and volume of cases heard in a given area as well as the workload of Members. This information is also used to inform the Minister’s Office of the areas where more Panel Members may be required to ensure that vacancies are filled, and also provides the Minister’s office with advice on the types of qualifications potential appointees should have. To accomplish this task, the Secretariat prepares a Summary of Needs by Province. As of March 31, 2000, for example, the total Panel Membership requirement to cover all hearings across the country was 331. This included 113 Legal, 111 Medical and 107 General Panel Members. The actual Membership at the time was 310, which was comprised of 109 Legal, 103 Medical and

98 General Panel Members. This and other information is routinely made available to the office of the Minister of Human Resources Development for consideration and action.

Another responsibility of the Secretariat is to receive and help investigate complaints against Panel Members, in cooperation with the Commissioner and Senior Counsel.

## SECTION IV: MAJOR ISSUES AND THE WAY AHEAD

### Major Issues and the Way Ahead

Last year, OCRT's Annual Report cited three major issue areas for the immediate future. These were:

- “1) The imbalance in resources of the two main parties to an appeal, i.e. an individual Appellant versus The Department of Human Resources Development Canada (HRDC);*
- 2) The need for detailed, personalized reasons for the denial of a benefit at the earliest opportunity in the CPP/OAS decision-making process; and,*
- 3) Codification of effective and appropriate relationships with HRDC.”*

As noted earlier, significant progress was made on issue three during the reporting period, and codification of appropriate OCRT relationships is no longer a major issue. As a matter of fact, it has become the subject of a joint project, the results of which should be in place late in the 2001/02 fiscal year.

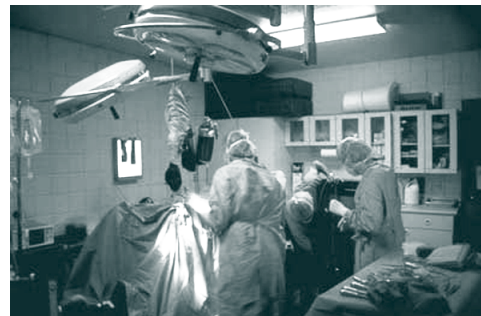
Progress on the second major issue has been slower in coming, but significant steps had been taken by December 2000. As noted in Section I of this report, a joint pilot project on the “early release of the Minister’s Submission” was undertaken between OCRT and HRDC. The purpose of the study was to examine various approaches to providing Appellants with the detailed reasons for the denial of benefits in sufficient time for them to prepare and present their best case at a Tribunal hearing. Both the previous and current Commissioners have put a priority on this issue because they view it as a matter of basic fairness. OCRT is looking forward to a positive evaluation of the pilot project.

Progress has also been made on last year’s number one issue, that of re-dressing the imbalance in resources of the two major parties at our hearings. As noted earlier in this report, the initiation of the Appellant counselling effort, and the design and

delivery of an Appellant brochure containing service standards are both measures that will lead to stronger case presentations by Appellants. Other initiatives such as the development of the OCRT Website, and a “plain language” re-write of all form letters sent to Appellants will also help to correct the imbalance. But more work needs to be done to provide better resources for Appellants, and two areas have emerged for priority attention.

The first is the question of professional or semi-professional advocacy and representation services for Appellants. Only about 30% of Review Tribunal Appellants rely on the services of trained advisors, and several provinces do not list CPP appeals as eligible for the issuance of legal aid certificates. There are also questions about fees charged by representatives. These and other representation matters will be assessed during 2001/02. What must be borne in mind is that Appellants not only have a right to representation, but that they generally benefit from the help provided by advocates and representatives.

The second is the equally serious, but more pressing question of Appellant access to their own medical records, an issue which was raised earlier in this report. It is a pressing concern because record copying and retrieval charges have risen sharply in recent years in many provinces. It is not unusual for OCRT Appellants in Ontario, for example, to be faced with charges in the hundreds of dollars



for their own medical records. Also, the number of Appellants informing Panel Members of their inability to pay such fees has increased dramatically. Work is under way on this matter, with the overall goal of providing OCRT assistance to Appellants, early in the pre-hearing period, both for the identification of such records, and to cover copying and retrieval charges for people unable to do so.

### **Emerging Policy Questions**

Administrative Tribunals in the Canadian governmental system are part of the executive branch of government, and are thus charged with implementing policy. In other words, they are not policy-making bodies. However, in periods of policy review

and evaluation these bodies can and should be called upon to advise the policy makers within the boundaries of their mandate.

The Privy Council Office, in *A Guide Book for Heads of Agencies (1999)*, sets out this policy advisory role for tribunals such as OCRT. In particular, at page 15, the guide refers to the role of tribunals in the “sharing of expertise in ensuring relevance on any proposed legislative changes” and mentions the expectation that tribunals will provide “appropriate cooperation on policy development”.

Review Tribunal Panel Members are in a position to comment on policies, regulations, and practices which affect CPP Disability clients because they have more direct and personal contact with CPP Disability claimants than do either officials of HRDC or Judges on the PAB.

The OCRT has encouraged them to ensure their concerns, analyses and views are made known throughout the organization. Panel Members have responded both individually and as a group in a Tribunal, as well as at workshops, and continue to report on issues of concern to clients. Most notable among these have been:

- The number of Appellants who appear at the hearing with little or no awareness of contributory requirements.
- The number of Appellants who state at the outset of the hearing that, “I’m only here because the insurance company forced me to appeal”.
- The rising number of Appellants who state that they cannot afford the costs of acquiring medical records.

Panel Members have also proposed a full review of the impact of the 1998 changes, including the contributory requirements necessary to qualify for benefits, and other measures implemented in the 1990’s, which were designed to make CPP Disability “harder to get”.

Some Members have suggested that a particular group of Appellants is finding it difficult to qualify for benefits. These are individuals who have worked and contributed all their lives but have fallen ill in their mid-fifties and subsequently stopped working. Following a period of rehabilitation, they returned to work on a trial

basis only to find they were unable to do so, and it became necessary to apply for disability benefits. But they do not qualify because they have exceeded time limits for making claims. It may be that the six-year framework cuts too fine a line for those who leave work with a progressing condition as compared with those who leave due to a catastrophic event such as an accident.

Many other concerns have been raised by Panel Members, and OCRT staff continue to collect, analyze and record these insights for presentation to policy makers at the appropriate time.