



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

CANADA PENSION PLAN/
OLD AGE SECURITY
REVIEW TRIBUNALS

ANNUAL REPORT 2000-2002

The Office of the Commissioner of Review Tribunals

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Office of the Commissioner
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Canada Pension Plan/
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Bureau du Commissaire
des tribunaux de révision
Régime de pensions du Canada/
Sécurité de la vieillesse

October 2002
The Honourable Jane Stewart, Q.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 Seventh Annual Report of the Canada Pension Plan/Old Age Security Review Tribunals. This report covers our activities and expenditures for the period April 1, 2000, to March 31, 2002.

The decline in the volume of appeals during this period has allowed us to take important steps towards improving substantially the quality of the Review Tribunal appeal process. Reform measures set in motion during the last two fiscal years have begun raising the standard of fairness by ensuring Appellants are much better prepared for hearings and have access to resources that ensure a more equitable balance of advantage among the parties to an appeal. We have also launched training initiatives for Tribunal Members to ensure that they are better versed in the legislation, rules of evidence and alternate techniques for dispute resolution, more capable of assessing medical evidence and more responsive to the situation of Appellants and their cultural diversity.

As you read this report, you will see that these changes constitute significant achievements. Yet much remains to be done, both in administrative and policy terms, to improve the quality and fairness of the appeal system and the capacity of the *Canada Pension Plan* to serve the most vulnerable members of our society.

I wish to acknowledge the excellent work and dedication of my Deputy Commissioner, Guy Arseneault, and his predecessor, Margaret McGrath, as well as our staff at headquarters in Ottawa and our Panel Members across the country. Without their help, support and professionalism, we could not have made the important advances described in this report.

Yours sincerely,

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

G. Peter Smith
Commissioner

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“The mission of the OCRT is 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.”



1. OUR MISSION, ROLE AND OPERATIONS

The primary responsibility of the Office of the Commissioner of Review Tribunals (OCRT) is to hold hearings and make determinations on appeals by individual Canadians of decisions by “the Minister” of Human Resources Development affecting entitlement to benefits under the Canada Pension Plan (CPP) and the Old Age Security Act (OAS).

“The mission of the OCRT is 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.”

This report tells how the OCRT has carried out this responsibility in fiscal years 2000/01 and 2001/02, focusing in particular on initiatives raising the standard of fairness to Appellants and improving the quality of Review Tribunals. As an introduction to these subjects, this first section of the report describes our mission, our role, who we are, what we do and our most basic priorities during this reporting period.

Our Mission

The mission of the OCRT is 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.

Our Role

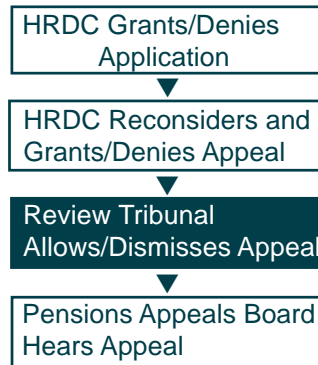
The OCRT represents an important stage in the appeal system for people seeking benefits under the *Canada Pension Plan* and the *Old Age Security Act*.

Role within the Appeal System

The role played by the OCRT within the appeal system differs, depending upon the legislation.

Under the *Canada Pension Plan*, there are three levels of appeal after the initial decision made by Human Resources Development Canada (HRDC) on an application for a benefit. Within 90 days after receiving a decision on the application, a person may request a reconsideration of the decision by HRDC under section 81 or subsection 84(2) of the *Canada Pension Plan*.

Figure 1
Appeal System under
the *Canada Pension Plan*

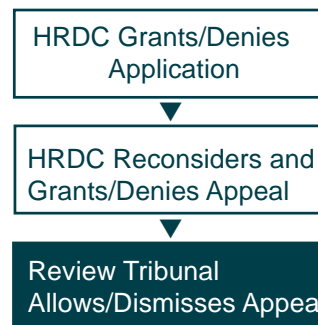


As Figure 1 shows, the second level of appeal is a Review Tribunal. If a person disagrees with the results of the reconsideration by HRDC, he or she may file an appeal under section 82 of the *Canada Pension Plan* to the Commissioner of Review Tribunals within 90 days of the reconsideration decision. The OCRT will then organize a Review Tribunal.

The third level of appeal is the Pension Appeals Board (PAB), a panel of judges from the Federal Court or a Provincial Court. The PAB decision is final, though subject to judicial review by the Federal Court of Appeal.

Under the *Old Age Security Act*, there are only two levels of appeal after the initial application to HRDC.

Figure 2
Appeal System Under
The *Old Age Security Act*

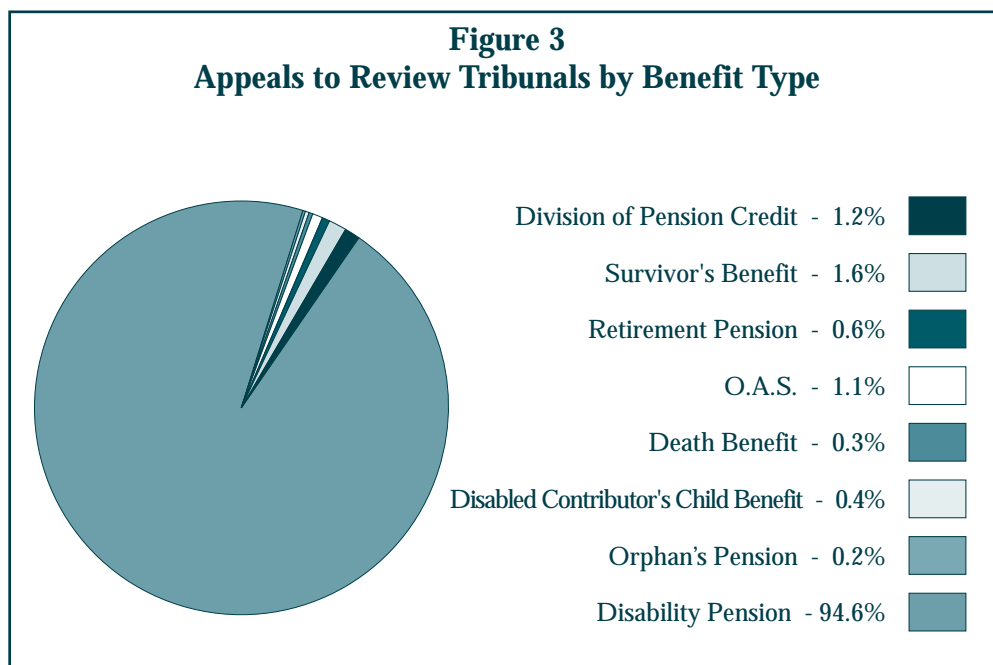


As Figure 2 shows, the first level of appeal is a reconsideration by HRDC under subsection 27.1(2) of the Act of its initial decision on an application. A person must request a reconsideration within 90 days of receiving a letter informing him or her of that initial decision.

The second and final level of appeal is the Review Tribunal. If a person disagrees with the reconsideration decision by HRDC, he or she may file an appeal under section 28 of the *Old Age Security Act* with the OCRT within 90 days of receiving the decision. In the case of Old Age Security benefits, the decision of the Review Tribunal is final and binding, though any of the parties may seek a judicial review by the Federal Court of Canada.

Benefits Addressed by Review Tribunals

Our appeals involve entitlement to benefits under the *Canada Pension Plan* (CPP) and the *Old Age Security Act* (OAS), and as a result of social security agreements with other countries and the *Canadian Charter of Rights and Freedoms*. As Figure 3 illustrates graphically, some 95 per cent of appeals pertain to disability benefits under the CPP.



As Figure 3 shows, appeals under the CPP may involve entitlement to:

- ⦿ Disability benefits;
- ⦿ Benefits for children of disabled contributors;
- ⦿ Retirement pensions and pension sharing;
- ⦿ Death benefits, survivor's benefits and orphan's benefits; and
- ⦿ Division of pension credits.

Under the *Old Age Security Act*, a Review Tribunal appeal may involve a decision concerning:

- ⦿ Old Age Security pension,
- ⦿ Guaranteed Income Supplement,
- ⦿ Allowance, and
- ⦿ Allowance for survivors.

Review Tribunals may also have to consider social security agreements between Canada and another country because these may help a person qualify for benefits under the CPP and *Old Age Security Act*. An appeal may also involve a claim that must be considered under the *Canadian Charter of Rights and Freedoms*.

Who We Are

The OCRT, because of its responsibility for holding hearings and making determinations on appeals of decisions by Human Resources Development Canada, is required to be at arm's length from the Department. Since HRDC is a party to the appeal and has a representative at the hearing, and since the decisions

“Since HRDC is a party to the appeal and has a representative at the hearing, and since the decisions taken by Review Tribunals can be of profound importance to Appellants, an arm’s-length relationship between the OCRT and HRDC constitutes an important foundation for impartiality.”

taken by Review Tribunals can be of profound importance to Appellants, an arm's-length relationship between the OCRT and HRDC constitutes an important foundation for impartiality. The appointment by the Governor-in-Council¹ of the OCRT's chief executives and Review Tribunal Members represents one aspect of that arm's-length relationship. Further steps to codify it, and thus place the agency on a proper footing, are now being discussed with Human Resources Development Canada.

The two components of the OCRT are the Office of the Commissioner and Review Tribunal Members themselves.

1. A Governor-in Council appointment is one made by the Governor General on the advice of Cabinet.

The Office of the Commissioner

The chief executives of the OCRT, the Commissioner and Deputy Commissioner, are appointed by the Governor-in-Council for fixed terms. Neither they nor their Office conduct hearings or decide the outcome of appeals. The Commissioner is responsible for the overall direction of the Review Tribunal appeal system, while the Deputy Commissioner focuses on daily operations. The two work closely together.

The OCRT is a quasi-judicial body charged with ensuring that individual hearings are in fact carried out by Review Tribunal Members in communities across Canada. The OCRT also has responsibility for providing legal advice, technical support, training and other assistance to Review Tribunal Members. The financial resources required to carry out these responsibilities during this reporting period are described in Annex B.

A complement of public servants supports the Commissioner and Deputy Commissioner in carrying out their responsibilities. The roles of the five divisions within the OCRT – legal services, operations, professional development and information services, management services and the appointments and members secretariat – are described in Annex A.

Though the OCRT operates for the most part at arm's length from HRDC, the Department does provide administrative and technical support for computer, personnel and financial services. In November 2001, the Deputy Minister of HRDC agreed to a temporary delegation of Human Resources authorities to the Director of Management Services at the OCRT.

Review Tribunal 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 Department or any other party to an appeal. Nor are Tribunal Members either officials of the Department or public servants.

A Review Tribunal is composed of three people chosen by the Commissioner from a National Panel of up to a maximum of 400 Members appointed by the Governor-in-Council. As of March 31, 2002, 277 Panel Members were available to serve at hearings, up from 268 a year earlier.

There are three categories of Panel Members:

- Legal Members (lawyers, who are members of their provincial bars),
- Medical Members (who must be qualified health professionals), and
- General Members (usually people who are active in their communities and capable of bringing a community perspective).

Most Review Tribunals consist of one Member from each category. The legislation stipulates that a lawyer, a member of the provincial bar, must chair all hearings. A qualified health professional must serve on tribunals adjudicating appeals with respect to entitlement to disability pensions under the *Canada Pension Plan*. Only in appeals involving issues under the *Canadian Charter of Rights and Freedoms* is it the Commissioner's practice to include at least two lawyers.

It is important to understand that being a Review Tribunal Member is not a full-time job. It is at best part-time employment, with Members sitting an average of 50 hearings over roughly 16 to 20 days in 2001/02 and receiving a modest *per diem* and travel expenses.

What We Do

The OCRT process of holding hearings and making determinations on appeals under the CPP and *Old Age Security Act* can be broken down into:

- Preparations for a hearing,
- The hearing itself, and
- A decision and dissemination phase.

1. Preparations for a Hearing

The appeal process starts with a letter to the Commissioner from a person (the "Appellant") who has been denied benefits under section 81 of the *Canada Pension Plan* or section 27.1 of the *Old Age Security Act* – that is, as a result of a "reconsideration" by Human Resources Development Canada.

Once this letter has been acknowledged, the Office of the Commissioner will appoint a Tribunal, generally from Members in the region where the Appellant

"The appeal process starts with a letter to the Commissioner from a person (the "Appellant") who has been denied benefits under section 81 of the Canada Pension Plan or section 27.1 of the Old Age Security Act – that is, as a result of a "reconsideration" by Human Resources Development Canada."

lives. The OCRT will also schedule and make the necessary arrangements for a hearing at a location most convenient to the Appellant.

At the same time, the Office of the Commissioner will communicate with the Appellant to make sure that he or she understands the process.

As well, the OCRT will request from the appropriate Departmental officials copies of all the documents that formed the basis for the earlier decision. The Office of the Commissioner will also ask the Appellant, the Department and any other parties to the appeal for copies of any additional documents that they believe may be relevant to the case. All of these documents will be combined into a “hearing case file” that will be sent out in advance of the hearing to all the parties and the Tribunal Members.

2. The Hearing

Generally, the parties to an appeal are:

- ◉ The person who has been denied a benefit (the Appellant),
- ◉ A Departmental official representing CPP Disability, and
- ◉ 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 (usually termed “added parties”).

“In most regions of the country, the appearance of an Appellant before a Review Tribunal will be the first face-to-face meeting he or she will have with those deciding whether or not benefits will be paid.”



In most regions of the country, the appearance of an Appellant before a Review Tribunal will be the first face-to-face meeting he or she will have with those deciding whether or not benefits will be paid. Usually, hearings take place in or close to

“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.”

the community where the Appellant lives. The OCRT will reimburse reasonable travel and living expenses paid by Appellants and added parties who must travel outside their community to attend a hearing.

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. However, appeals to a Review Tribunal are *de novo*, meaning they are not limited by the issues and information available to “The Minister” or the Department when the earlier decision was made. In other words, the hearing is an entirely new proceeding, and each appeal is decided as if it were being heard for the first time.

The powers of a Review Tribunal include the authority to determine any question of law or fact with respect to:

- Whether a benefit is payable,
- The amount of such benefit,
- Whether a person has a right to a division of pensionable earnings and the amount of the division, and
- Whether a person is eligible for an assignment of retirement benefits and the amount of the assignment.

The legislation directs that hearings be conducted as informally as circumstances permit. In practice, this means that hearings are much less formal than a court of law. For example, witnesses are not sworn and the procedures are usually flexible enough to take into account the needs of the parties, especially those of the Appellant.

Yet hearings are also legal proceedings with some structure. Each party has the right to be represented by a legal counsel or other representative. Typically, Appellants present evidence supporting their claim and the Members of the Tribunal ask questions. The official representing HRDC may also present evidence and be questioned.

If notified in advance, the OCRT will provide a translator at the hearing. Hearings are also closed to the public to protect the privacy of the parties, particularly that of the Appellant.

3. Decision and Dissemination

After the hearing, the Members of the Review Tribunal review and discuss all of the evidence given on paper and in person. They then write detailed reasons for their decision. Once this task is complete, they forward the decision and its reasons, their copies of the hearing case files, their notes and all other documents bearing on the case to the Office of the Commissioner.

The Office of 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. As well, the OCRT uses the information provided by the Review Tribunal to update the official file on the case.



Realities and Priorities

The Review Tribunal system is a community-based appeal process that presents a significant contrast to those presided over by judges or public servants. This approach is appropriate since a Review Tribunal hearing is neither a court of law nor a specialized administrative tribunal adjudicating highly technical matters

such as transportation safety or competition in the telecommunications industry. Review Tribunals must, instead, decide upon the entitlement to disability and other CPP benefits and old age pensions of some of the most vulnerable people in Canadian society. It is only proper that the decision-makers in such cases be community-based.

“The Review Tribunal system is a community-based appeal process that presents a significant contrast to those presided over by judges or public servants.”

This reality has shaped the priorities that have guided the OCRT during the last two fiscal years and have been central to its activities since its creation in 1991.

The first priority derives from the plain fact that Appellants are often sick, elderly and financially pressed – not, in short, in the best condition to contest their denial of a benefit. This reality means that continuing efforts must be made to achieve a fair balance of advantage in Review Tribunal proceedings, with a special emphasis on ensuring that Appellants are as well prepared as possible to make their case. Thus, the first priority of the OCRT since its inception has been to:

- 1. Raise the standard of fairness in Review Tribunal proceedings, particularly by creating the conditions that will allow Appellants to put forward their best case at hearings.**

Section Two of this report delineates the initiatives during the last two fiscal years to meet this priority.

In a community-based appeal process, it is also important that the adjudicators be representative of the community, responsive to its Appellants’ plight and Canada’s cultural diversity, and well informed on the legal, evidentiary and medical issues that can be so central to many appeals. Thus, the second priority for the OCRT now and in the past has been to:

- 2. Ensure that the national panel of Review Tribunal Members is as informed about legal, evidentiary and relevant medical issues, as responsive to Canada’s cultural diversity and the plight of Appellants, and as representative of the community as possible.**

Section Three of this report describes the initiatives taken in the last two fiscal years to meet this priority.

Section Four presents statistics on our workload and the disposition of appeals and shows how these have affected – and in turn been modulated by – the continuing efforts to improve the quality of the adjudication process.

Section Five shows how the achievements of the last several fiscal years have laid a foundation from which to examine the future challenges and opportunities facing the appeal system under the *Canada Pension Plan* and the *Old Age Security Act*.

“Budgetary restraint in the Income Security Programs Branch of the Department of Human Resources Development Canada (HRDC) during the middle and late 90s has resulted in fewer resources for dealing with CPP disability applicants in person or even in a somewhat personalized way by telephone. As a direct consequence, many Appellants have learned only at the Review Tribunal hearing itself why the Department has denied them benefits.”



2. RAISING THE STANDARD OF FAIRNESS

In the case of appeals involving disability benefits which represent some 95 percent of all appeals, the simple fact is that many Appellants are ill and experiencing psychological stress because of their condition and financial pressures. If left to their own devices, most Appellants – as would be the case with most members of the general public – will remain far from expert on either the factors affecting their eligibility for benefits under the Canada Pension Plan and the Old Age Security Act or how to conduct themselves during a Review Tribunal hearing. These circumstances do not make for a level playing field.

For this reason, it has been a key OCRT priority in the past and especially over the last two fiscal years to raise the standard of fairness by:

- Better preparing Appellants for the hearing,
- Exploring how best to ensure that Appellants have access to the resources they need to make their case, and
- Updating procedural guidelines for hearings and responding to complaints.

Preparing Appellants for the Hearing

Budgetary restraint in the Income Security Programs Branch of the Department of Human Resources Development Canada (HRDC) during the middle and late 90s has resulted in fewer resources for dealing with CPP disability applicants in person or even in a somewhat personalized way by telephone. As a direct consequence, many Appellants have learned only at the Review Tribunal hearing itself why the Department has denied them benefits. As well, many have understood only from Tribunal Members' questions at the hearing what kinds of information they should have provided to prove their eligibility for a benefit.

In the interests of fairness, both the Department and the OCRT have taken important steps during the last few fiscal years to make sure that Appellants are much better prepared in advance of a Review Tribunal hearing. HRDC and the Office of the Commissioner cooperated in testing and implementing more timely release of the Department's detailed reasons for the denial of the benefit. Over the last two fiscal years, the OCRT has significantly improved its own pre-hearing

communication with Appellants, as well as providing counselling to the majority of Appellants to make sure they are better prepared for their hearing.

Early Release of HRDC Explanation of Decision Under Appeal

In fiscal year 2001/02, Human Resources Development Canada started providing to the OCRT for transmission to Appellants more detailed explanations as to why the Department had denied them benefits during reconsideration of their application.

Until recently, Appellants received only a short and rather general letter from HRDC, notifying them that the Department had denied them benefits. A more detailed explanation for the denial was usually provided only at the Review Tribunal hearing. In most instances, it was the arguments in this explanation that Appellants would have to counter to win their appeals.

“The trial ended March 2001 and the response was overwhelmingly positive. The pilot project showed that the preferred time to release the information was four to six weeks before the Appellant’s Review Tribunal hearing.”

Because this situation put Appellants at a disadvantage, HRDC decided to work with the OCRT on a pilot project to determine when would be the best time to release to Appellants detailed explanations for a denial of benefits. The project began in October 2000 in British Columbia and involved 342 actual cases. Its focus was on different time frames for early release of this information – two to three weeks, four to six weeks or three to four months prior to the hearings. Review Tribunal Members, Appellants and their representatives involved in the pilot were all asked for their reactions.

The trial ended March 2001 and the response was overwhelmingly positive. The pilot project showed that the preferred time to release the information was four to six weeks before the Appellant’s Review Tribunal hearing. Information provided earlier tended to go astray or be forgotten. Information supplied later did not provide enough time for Appellants and their representatives to get ready for the hearing.

By the end of March 2002, the Department had implemented across the country a policy of sending, six to eight weeks before an appeal, this case information to the OCRT for transmission to Appellants. By that date, the OCRT had already received this information for transmission to Appellants in 2,444 cases.

The OCRT continues to press the Department to provide detailed rather than general denial letters when notifying applicants of its decisions on applications and their subsequent reconsideration. Such a practice would enhance fairness at these stages too, thus complementing the progress made as a result of the earlier release of the HRDC Explanation of Decision Under Appeal.

Improved Counselling and Communication

During the past two fiscal years, the Office of the Commissioner has continued to enhance the quality of the counselling and communication services it provides to Appellants. As a consequence, Appellants benefit from:

- ⦿ A better and expanded counselling service,
- ⦿ 1-800 telephone access to people who can answer their questions,
- ⦿ A new website with a wide range of information and contacts,
- ⦿ Improved brochures and other written materials, and
- ⦿ An ongoing evaluation of this communication effort.

The emphasis on communication and counselling flows from the recognition that many Appellants, particularly in disability cases, not only lack understanding of the Review Tribunal process and eligibility requirements for benefits, but also are experiencing psychological stress due to illness and financial pressures.



Individual Counselling:

By the end of 2001/02, the majority of Appellants was receiving, at least one month before their hearings, individual counselling over the telephone on the relevant legislation and regulations, the eligibility requirements for benefits, and what to expect at hearings. In November and December 2001, the counsellors, who are OCRT Client Services Officers, received crisis management training so that they would have the skills to deal with stressed people over the telephone.

“By the end of 2001/02, the majority of Appellants was receiving, at least one month before their hearings, individual counselling over the telephone on the relevant legislation and regulations, the eligibility requirements for benefits, and what to expect at hearings.”

It is important to understand that around eight per cent of Appellants simply can't be reached by telephone, while a small number prove unreceptive because they are experiencing psychological or financial distress, are pessimistic about the outcome of their hearing or lack the necessary language or literacy skills.

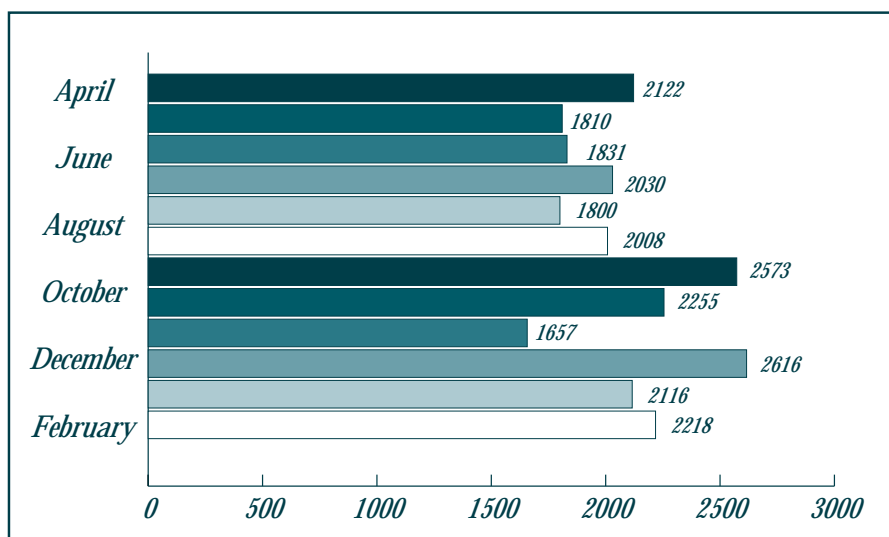
In the coming fiscal year, the OCRT plans to increase the coverage of its counselling effort and further “customize” its approach to take into account the individual needs of Appellants.

1-800 Telephone Access:

The Office of the Commissioner of Review Tribunals has a toll-free number (1-800-363-0076) through which Appellants can initiate communications with OCRT staff, contact their Client Services Officers or ask questions about the Review Tribunal process. The 1-800 telephone staff also received training in crisis management during November and December 2001.

As Figure 4 shows, the OCRT receives more than 2,000 calls a month to this 1-800 number.

Figure 4
Telephone Calls Received by OCRT 2001/02



Of these calls, 47 per cent are for Client Services Officers providing counselling. About ten per cent of calls involve inquiries about the appeals and hearing process, while another nine per cent of callers want to know about Review Tribunal decisions affecting them. Only eight per cent of callers make general enquiries.

OCRT Website:

For some years now, the OCRT has had its own website at www.ocrt-bctr.gc.ca and www.bctr-ocrt.gc.ca. In 2002/03, the Office will be moving to the more user-friendly addresses of www.reviewtribunals.gc.ca and www.tribunauxderevision.gc.ca. Both sets of addresses will remain in use for some time.

The website has been designed to be as helpful as possible to Appellants and their representatives. On the site a wide range of information is available on appeals, Review Tribunals, the relevant legislation and regulations, how to launch an appeal and many other matters. The site also provides access to a wide variety of publications and links to related sites. As well, electronic versions of a number of frequently used forms – everything from Notices of Appeal to Appellant Travel Expense Claims – can be downloaded from the site.

In keeping with the Federal Government's strategy for Government On-Line, the OCRT is now starting to explore which key services it would be most appropriate to provide electronically through the website to Appellants and their representatives, though couriers and telephones would continue to be used to reach Appellants without Internet access.

Brochures and Other Written Materials:

Among the written material sent by courier to Appellants are letters, a brochure and the official documentation of their case.

“Taken together, these initiatives form an integrated counselling and communication strategy and as such are being continually reassessed to provide a foundation for ongoing improvement.”

As a matter of routine, the OCRT writes letters to all Appellants, acknowledging their request for an appeal, explaining the appeal process in outline and notifying them of their hearing date and location. The letters also provide the OCRT's 1-800 number and the name of the Client Services Officer assigned to their individual case.

In August 2000, the OCRT released a new reader-friendly brochure designed to accompany the letter from the Commissioner accepting an Appellant's request for an appeal. The brochure describes in reader-friendly language what the OCRT is and what it does.

Upon accepting an appeal, the OCRT also formally requests from the Department all the documentation of its decision on an Appellant's application and the reconsideration of the application. OCRT staff then chronologically organizes this basic documentation for the appeal and sends copies of it by courier to Review Tribunal Members and all parties to the case, including the Appellant. In fiscal year 2001/02, the Office of the Commissioner began discussion with HRDC on how to improve the quality and usefulness of this documentation.

Continuing Evaluation of Communication Effort:

Taken together, these initiatives form an integrated counselling and communication strategy and as such are being continually reassessed to provide a foundation for ongoing improvement.

In summer and fall 2001, the OCRT asked more than 600 Appellant representatives to comment on the effectiveness of its website and brochure. An analysis of the

responses resulted in 15 major recommendations, many of which will be acted upon in fiscal year 2002/03.

In fiscal year 2001/02, the OCRT also undertook the first two phases of a review of its correspondence with Appellants, revising its contents so that it would be more useful to them. The third and final phase of this review will be carried out in 2002/03.

Balancing Advantages at Hearings

In this reporting period, the Office of the Commissioner of Review Tribunals launched two initiatives to ensure a more even balance of advantages between Appellants and the Department in the Review Tribunal process. These steps directly address the difficulties many Appellants have in gaining access to:

- Their medical records, and
- Legal aid to ensure them effective representation at hearings.

Access to Medical Records

Effective January 2001, the OCRT revised and extended its policy for assisting Appellants to gain access to their medical records.

The reason for this change is that an Appellant's medical records can be vital evidence in an appeal, especially in the 95% of appeals involving eligibility for disability benefits under the *Canada Pension Plan*. Though the Supreme Court of Canada has upheld the legal right of patients to have access to their medical records, the exercise of that right can be difficult for some Appellants.

In some instances, it can simply be difficult to find old medical records. However, the main obstacle is the size of the fees charged by many hospitals and physicians for retrieving and photocopying medical records. These can amount to hundreds of dollars. HRDC will pay for the retrieval of such records during the application and reconsideration phases of a case, but there is a significant number of instances when the necessary records are not identified at this time. In such circumstances, since Appellants in Review Tribunal disability cases are already financially pressed because they are no longer

“Under the new policy, the Office of the Commissioner will reimburse Appellants for fees charged by physicians, clinics, hospitals and other health-care institutions for retrieving and photocopying Appellants’ existing medical records.”

working, the retrieval and photocopying fees can prevent Appellants from submitting medical records as evidence.

Under the new policy, the Office of the Commissioner will reimburse Appellants for fees charged by physicians, clinics, hospitals and other health-care institutions for retrieving and photocopying Appellants' *existing* medical records. In March 2002, the OCRT was also working on a procedure whereby Client Services Officers would, during counselling sessions, help Appellants identify such records and ensure they are aware of this policy.

The OCRT has also been raising concerns about the impact of these fees in discussions with medical governing bodies and medical and hospital associations at the provincial/territorial and national level.

Access to Legal Aid

In fiscal year 2001/02, the OCRT initiated discussions on Appellant access to legal aid with the Legal Aid Division of Justice Canada, which has been assessing unmet needs in this area.

“...the OCRT initiated a study to discover whether Review Tribunal Appellants would be eligible for legal aid in Canada’s provinces and territories. The results were troubling. Appellants cannot qualify for legal aid in five jurisdictions. Even in the majority of jurisdictions where they might qualify, there is enormous variation in the eligibility requirements. Considerable differences also exist in the funds available for legal aid in the provinces and territories.”

At present, about one-third of Appellants choose to appoint people to represent them at hearings. These can include lawyers (sometimes paid for by legal aid), paralegals, union pension benefit advocates or various kinds of freelance consultants.

Yet according to reports from Tribunal Members over the past several years, many more Appellants would benefit from legal representation than actually do so. The reason is that they cannot afford the cost of a lawyer or other representative. These observations are hardly surprising since many Appellants, especially those seeking disability benefits, are ill and often in financial stress because they have had to stop working.

In response to these reports, the OCRT initiated a study to discover whether Review Tribunal Appellants would be eligible

for legal aid in Canada's provinces and territories. The results were troubling. Appellants cannot qualify for legal aid in five jurisdictions. Even in the majority of jurisdictions where they might qualify, there is enormous variation in the eligibility requirements. Considerable differences also exist in the funds available for legal aid in the provinces and territories.

Hearing Procedure and Complaint Processes

Review Tribunals must exercise their powers in a procedurally fair way. Some OCRT rules and guidelines now exist to ensure fairness. For matters not covered by these, Review Tribunals must rely on the general principles of procedural fairness – 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 actually heard it. Another important guarantee of fairness is a fair and responsive complaint process.

In this reporting period, the OCRT embarked on initiatives to:

- Revise the procedural guidelines for hearings, and
- Add a new dimension to the complaint process.

Revising Procedural Guidelines for Hearings

In this reporting period, the OCRT began the process of revising the procedural guidelines used in Review Tribunal hearings.

At present, Appellants, their Representatives and Review Tribunal Members can find general instruction on procedures in the *Review Tribunal Rules of Procedure*.

These are regulations made under the *Canada Pension Plan* in 1991 when the present system of appeals, including the Office of the Commissioner of Review Tribunals, was created.

They are quite general. In order to provide more specific guidance, the OCRT developed its own *Procedural Guidelines* in 1993.

In the nine years since the present

“In the nine years since the present Procedural Guidelines were developed, both the Office of the Commissioner and Tribunal Members themselves have gained an extraordinary amount of direct experience as to what works and doesn't work and what is fair and unfair at hearings within this community-based appeal system.”

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In 2001/02, the OCRT prepared new draft *Procedural Guidelines* in light of this experience. In 2002/03, the Office of the Commissioner plans to undertake a forthright consultation with Members and representatives of all parties to an appeal, seeking their comments on the draft guidelines.

Complaint Processes

Appropriate complaint processes not only ensure that specific wrongs and lapses in fairness are rectified, but also provide vital feedback on broader policy issues. In this reporting period, the OCRT had in place both types of complaint processes.

Complaints Relating to Review Tribunal Appeals:

The Office of the Commissioner of Review Tribunals has a formal complaint process to receive and investigate issues raised by Appellants and others.

Each and every formal complaint the OCRT receives is completely investigated, using procedures common in the legal profession. There are some 50 formal

“The OCRT established this complaints desk because many Tribunal Members had reported that growing numbers of Appellants were pursuing appeals only at the request of insurers who threatened a reduction in benefits otherwise. Members had also observed that in some cases it was not clearly in the financial interest of the Appellant to win the Review Tribunal appeal.”

complaints a year and each complainant receives a full and formal response from the OCRT.

Disability Insurance Complaints Desk:

In September 2001, the OCRT created the Disability Insurance Complaints Desk to collect and report on concerns raised by stakeholders of both the private disability insurance sector and public providers of income support for people with disabilities.

The OCRT established this complaints desk because many Tribunal Members had reported that growing numbers of Appellants were pursuing appeals only at the request of insurers who threatened a reduction in benefits otherwise. Members had also observed that in some cases it was not

clearly in the financial interest of the Appellant to win the Review Tribunal appeal. This situation raises important questions about what the appropriate relationship should be between CPP disability insurance and income support for people with disabilities provided by private insurance companies and public institutions such as workers' compensation boards and welfare departments.

The Office of the Commissioner began collecting such complaints on an ad hoc basis during 2001/02, though it has no power to investigate them beyond those granted in CPP legislation. However, given the growing frequency of these complaints, the OCRT has initiated discussions with provincial insurance regulators and financial institutions complaints bodies. In 2002/03, the OCRT plans to undertake a more systematic approach to the collection of these complaints, with a view to reporting them to federal and provincial authorities responsible for overseeing providers of disability insurance, as well as workers' compensation boards and welfare authorities.



“...the OCRT now provides Panel Members with training to 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 individual Members are hearing the case.”

3. ENSURING INFORMED, RESPONSIVE AND REPRESENTATIVE REVIEW TRIBUNALS

Review Tribunals constitute a community-based appeal system. Ever since its inception in 1991 an effort has been made to ensure that the National Panel from which individual tribunals are chosen is roughly representative of our national community. It has also been argued that one of the strengths of Review Tribunals is that Members have more in common with Appellants than the public service professionals or judges who perform adjudicative functions in other appeal systems. At the same time, community-based Review Tribunal Members, lacking the specialized expertise of public servants and judges, must be adequately trained to fulfil their responsibilities. The importance of training has long been recognized by the Commissioner's Office and a wide variety of educational programs has been carried out since 1991.

In fiscal years 2000/01 and 2001/02, a number of new training initiatives was undertaken. Educational sessions intended to sensitize Members to a range of cultural and class concerns as well as fairness and ethical issues have been developed and used. In addition to basic training for new Members, the OCRT has developed and provided advanced workshops on alternate dispute resolution, rules of evidence and decision writing. Finally, during this reporting period, the OCRT developed and largely implemented a strategy to make it easier for Members to interpret medical evidence at hearings. As a consequence of these new training initiatives, the number of Members taking advanced training at educational workshops rose to 258 in this reporting period, up from 90 in the two previous fiscal years.

Improving Members' Understanding of Eligibility Requirements and Rules of Evidence

If Review Tribunals are to make fair and sound decisions, it is critical that their Members understand the criteria for eligibility for benefits under the *Canada Pension Plan* and the *Old Age Security Act*, as well as the rules for assessing evidence used by other administrative tribunals and the judiciary. In the more informal kind of proceeding that Review Tribunals are expected to provide, it is also important for Members to have some understanding of alternate techniques for dispute

resolution. During this reporting period, the OCRT offered Review Tribunal Members:

- ◉ Orientation for new Members on eligibility requirements; and
- ◉ Advanced workshops on eligibility requirements, dispute resolution, rules of evidence and writing Review Tribunal decisions.

New Member Orientation

As noted in Section One, roughly 95 per cent of Review Tribunal appeals pertain to disability benefits under the *Canada Pension Plan*. The emphasis in the OCRT's orientation effort in this reporting period and previous ones has, therefore, been very much on preparing Tribunal Members to carry out their responsibilities in this area. However, in 2001/02, the Office of the Commissioner also launched a new orientation workshop addressing eligibility requirements under the *Old Age Security Act*.

“Every newly appointed Review Tribunal Member is expected to take part in an orientation session focusing largely on eligibility requirements for benefits under the CPP.”

Orientation for Appeals under the *Canada Pension Plan*

Every newly appointed Review Tribunal Member is expected to take part in an orientation session focusing largely on eligibility requirements for benefits under the CPP. In 2000/01, the OCRT held two such workshops, with the number rising to four in 2001/02.



These training sessions addressed the philosophy of the *Canada Pension Plan*, the role of Review Tribunals and their code of conduct before focusing in depth on eligibility requirements for various CPP benefits, as well as the kinds of evidence that might be brought forward to meet these requirements.

Orientation for Appeals under the *Old Age Security Act*.

Because there are not nearly as many appeals under the *Old Age Security Act* (OAS), many Review Tribunals never hear such an appeal. For this reason, there is no need for all Members to be expert in this area. On the other hand, since such appeals can arise anywhere in the country, it is important to ensure that in every part of the country there are Members knowledgeable about appeals under the *Old Age Security Act*.

In 2001/02, the OCRT developed an OAS orientation program and piloted the new curriculum during March 2002 in Calgary.

Advanced Workshops

In 2000/01, the OCRT held four advanced workshops on dispute resolution, rules of evidence and decision writing, continuing this program from the previous fiscal year and completing the training of all Members who had been appointed by that time.

“Providing Members with alternate tools for resolving disputes was an important emphasis at these workshops. The reason is that it is all too easy for a proceeding to become adversarial because of the presence of two opposing parties. In order to make such an outcome less likely, the workshops underscored the importance of fairness and taught techniques such as consensus-building, active listening and assumption-testing.”

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In addition to providing refresher sessions on CPP eligibility requirements, these workshops

also focused on imparting skills such as fact finding and the assessment of evidence, including credibility. Sessions were also held on writing decisions, so that these would be clear, concise, accurate and legally proper.

Strengthening Members' Capacity to Assess Medical Evidence

Because some 95 per cent of Review Tribunal cases relate to disability benefits, many decisions turn on the medical evidence presented before or at the hearing. Obviously, the assessment of medical evidence has always been an important skill for Members. This reality is one reason why panels hearing disability cases must have one Member who is a qualified health professional.

Yet it is by no means an easy task to assess medical evidence because one reason why cases reach the second level of appeal represented by Review Tribunals is that the medical evidence may not have provided clear guidance to decision makers. With the continuing explosion in medical knowledge, it is also more difficult to remain up to date.

These circumstances explain why the OCRT in 2000/01 developed a medical information strategy. Its goal was to improve the capacity of Members to weigh and evaluate medical evidence. The strategy was largely implemented in 2001/02 and involved initiatives to:

- ◉ Increase the medical information resources available to Members,
- ◉ Deepen Members' understanding of medical conditions encountered most frequently among Appellants, and
- ◉ Monitor future health information and informatics developments for relevance to OCRT needs.

In Summer 2001, the OCRT also conducted an analysis of 494 disability cases to determine what kinds of medical conditions were encountered most frequently during Review Tribunal hearings. The primary condition most often met could be described as musculoskeletal problems, including most prominently back pain and fibromyalgia.

Increasing Medical Information Resources for Members

In 2001/02, the OCRT took a number of important steps to increase the medical information resources available to Members. For example, the OCRT made increasing use of the Internet to bring medical information to Members and is now promoting an email network for them. A new Panel Members' *Bulletin*

contains reliable medical links as well as OCRT news. In future, the OCRT plans to provide a secure area for information exchange.

“The Office of the Commissioner continues to work closely with all Review Tribunal Members to ensure that all Appellants are treated equally, fairly and with understanding, respect and dignity. To this end, the OCRT now provides Panel Members with training to 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 individual Members are hearing the case.”

If Members have specific questions about medical issues, they can now call a 1-800 number to gain access to the well-furnished OCRT library. The Office of the Commissioner has provided every Review Tribunal Member with copies of *Taber’s Cyclopedic Medical Dictionary*, as well as the most recent *Compendium of Pharmaceuticals and Specialties* and *Merck’s Manual*.

Deepening Members’ Understanding of Frequently Encountered Medical Conditions

In November 2001 and February 2002, the OCRT brought about 70 Members together to participate in advanced educational workshops focusing on medical conditions encountered most frequently among Appellants – chronic back problems and fibromyalgia.

Work on these new educational modules began in Spring 2001. The approach taken was to have presentations by Medical Members and outside medical experts on fibromyalgia and chronic back problems, hold mock hearings involving fictitious Appellants with these conditions, have workshop participants make determinations on the cases, give their reasons and then hold a general discussion in which the experts would have an opportunity to comment on the Members’ assumptions and reasoning.

Work on these new educational modules began in Spring 2001. The approach taken was to

In 2002/03, the OCRT aims at ensuring that most remaining Members have the opportunity to participate in these medical sessions.

Monitoring Health Information and Informatics Developments

The burgeoning fields of health information and informatics promise to produce new sources of medical information for Members, as well as new modes of delivering and providing secure electronic services to Members and Appellants.

In 2001/02, the OCRT began monitoring developments in these fields through Health Canada and the Canadian Institute for Health Information.

Ensuring Responsiveness and Fairness

The Office of the Commissioner continues to work closely with all Review Tribunal Members to ensure that all Appellants are treated equally, fairly and with understanding, respect and dignity. To this end, the OCRT now provides Panel Members with training to 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 individual Members are hearing the case.

To this end, the OCRT developed and began using at its advanced educational workshops for Members new training sessions to sensitize them to:

- Cultural differences among Appellants,
- Appellants' perceptions of their condition in disability cases, and
- Fairness and ethical issues.

About 70 Members have been exposed to these new training modules, and it is expected that most of the rest will benefit from them in fiscal year 2002/03.

Imparting Sensitivity to Cultural Diversity

In November 2001 and February 2002, Members participated in the new OCRT training sessions for imparting sensitivity to the cultural diversity of Appellants.

The need for such training arises from the reality that Canada is becoming increasingly multicultural, with the result that a growing number of Appellants grew up in cultures other than English and French. On top of the challenge of adapting economically and socially to Canadian society and gaining access to culturally appropriate medical care, Appellants from other cultures often have different ways of expressing themselves, as well as different attitudes towards disability and the need to present themselves at hearings.

It was to make Tribunal Members aware of these circumstances and cultural differences that the OCRT began in Spring 2001 to devise this training module.

The approach taken has been to invite representatives from organizations serving members of these cultural minorities – especially people with disabilities – in the communities where OCRT educational workshops take place. Within broad parameters set by the OCRT, the organizations themselves determine how best, using volunteer workers, to raise Members’ awareness of these issues.

“The need for such training arises from the reality that Canada is becoming increasingly multicultural, with the result that a growing number of Appellants grew up in cultures other than English and French. On top of the challenge of adapting economically and socially to Canadian society and gaining access to culturally appropriate medical care, Appellants from other cultures often have different ways of expressing themselves, as well as different attitudes towards disability and the need to present themselves at hearings.”

At advanced educational workshops in November 2001 and February 2002, the OCRT presented some 70 Review Tribunal Members with new training modules intended to deepen understanding of the situation of many Appellants, particularly those seeking disability benefits under the *Canada Pension Plan*.

Encouraging Better Appreciation of Appellants’ Circumstances

At these sessions, advocacy groups serving people with specific medical conditions described, within parameters set by the OCRT, how the course of their constituents’ illness can influence their eligibility for disability benefits under the CPP. Representatives from the Multiple Sclerosis Society and the Canadian Mental Health Association made such presentations at OCRT advanced workshops during 2001/02.

Reviewing Ethical and Fairness Issues

The OCRT inaugurated a training session on ethical and fairness issues at advanced educational workshops for Review Tribunal Members in November 2001 and February 2002.

In order to make Members more aware of ethical and fairness issues they may face in carrying out their responsibilities, the OCRT began developing in spring 2001 a series of ethics and fairness dilemmas that may occur around or in hearings. Members discussed these dilemmas for half a day at the two workshops.

Annex C contains the Code of Conduct for Review Tribunal Members.

Composition of the National Panel

As noted in Section One, individual tribunals are selected from a National Panel of up to 400 (277 at the end of 2001/02) Members appointed by the Governor-in-Council. This Panel is broadly representative of the national community along a number of dimensions.

Based on the geographic distribution of existing Panel Members and OCRT projections of the numbers of hearings to be expected in each province, the Governor-in-Council makes appointments to the National Panel. As a consequence, most hearings take place close to Appellants' homes and are usually adjudicated by Members who come not only from their own province, but also from the same part of the province.² Table 1 shows the distribution of Legal, Medical and General Members by province as of March 31, 2001 and 2002.


Province	Total Members		Legal		Medical		General	
	2001	2002	2001	2002	2001	2002	2001	2002
Nfld.	17	19	6	6	7	7	4	6
PEI	4	6	2	2	-	2	2	2
NS	26	29	10	8	8	10	8	11
NB	17	19	6	6	5	7	6	6
Que.	11	11	4	4	4	4	3	3
Ont.	127	124	43	43	37	36	47	45
Man.	9	9	3	3	3	3	3	3
Sask	7	7	3	3	2	2	2	2
Alta.	18	14	6	4	6	6	6	4
BC	32	39	8	11	13	15	11	13
Total	268	277	91	90	85	92	92	95

Since the establishment of Review Tribunals in 1991, the Governor-in-Council has made a consistent effort to ensure that the number of women Members in all categories of Panel membership reflects the goals of equal opportunity. As Table 2 shows, the real challenge has been to find enough female Legal Members. Overall, however, the proportion of women Members has ranged from 44 to 48 per cent.

	1999/01		2000/01		2001/02	
	No.	% Women	No.	% Women	No.	% Women
Legal	109	25%	91	24%	90	19%
Medical	103	67%	85	72%	92	67%
General	98	46%	92	49%	95	47%
TOTAL	310	46%	268	48%	277	44%

Although the OCRT has not formally tracked the employment equity profile of Panel Members, representation has continued to rise on the Panel from persons with disabilities, members of visible minorities and Aboriginal peoples.

2. It should be noted that there are far fewer Review Tribunal Members in Quebec because far fewer appeals under the Canada Pension Plan take place in Quebec. The reason is that Quebec has its own Quebec Pension Plan.

A woman with short dark hair, wearing a dark sleeveless top, is seated at a desk. She is looking down at a document she is holding. On the desk in front of her are several large stacks of papers, some of which are bound together. To her right is a metal wire basket filled with more papers. In the background, a wall is covered with various forms and documents, some of which have state names listed, such as ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, WYOMING. The entire image has a blue color cast.

“In a very real sense, the cases brought forward and their disposition represent the basic inputs and outputs of the Review Tribunal appeal system.”

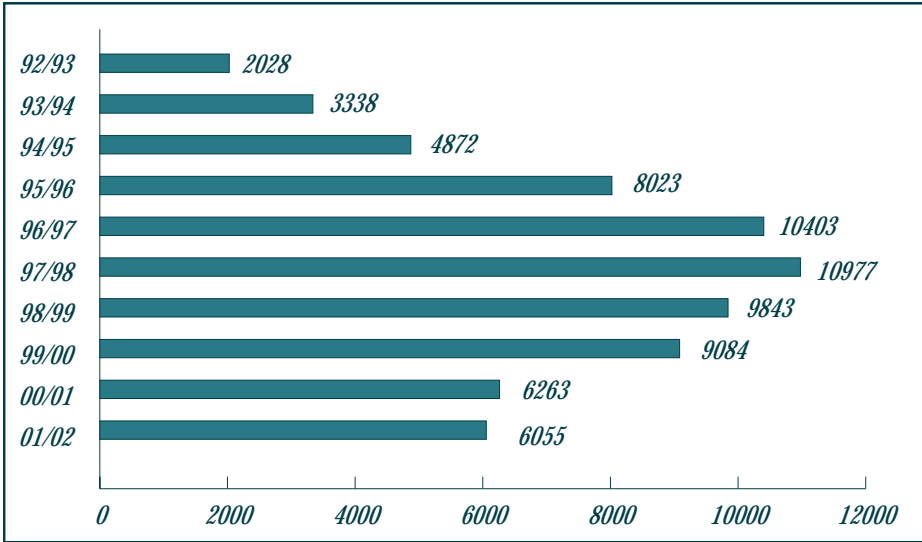
4. WORKLOAD AND DISPOSITION OF CASES

No report on our activities would be complete without an understanding of our changing workload and trends in the disposition of our cases. In a very real sense, the cases brought forward and their disposition represent the basic inputs and outputs of the Review Tribunal appeal system. This section provides statistics on both the numbers of cases and their disposition, as well as brief explanations to put these statistics in a meaningful context.

A Changing Workload

In 1991 when the Review Tribunal appeals system was created, most observers believed that it would have to handle no more than 1,800 cases a year. The reality has proven very different, as Figure 5 makes very clear.

Figure 5
Appeals to Review Tribunals, 1992/93 to 2001/02

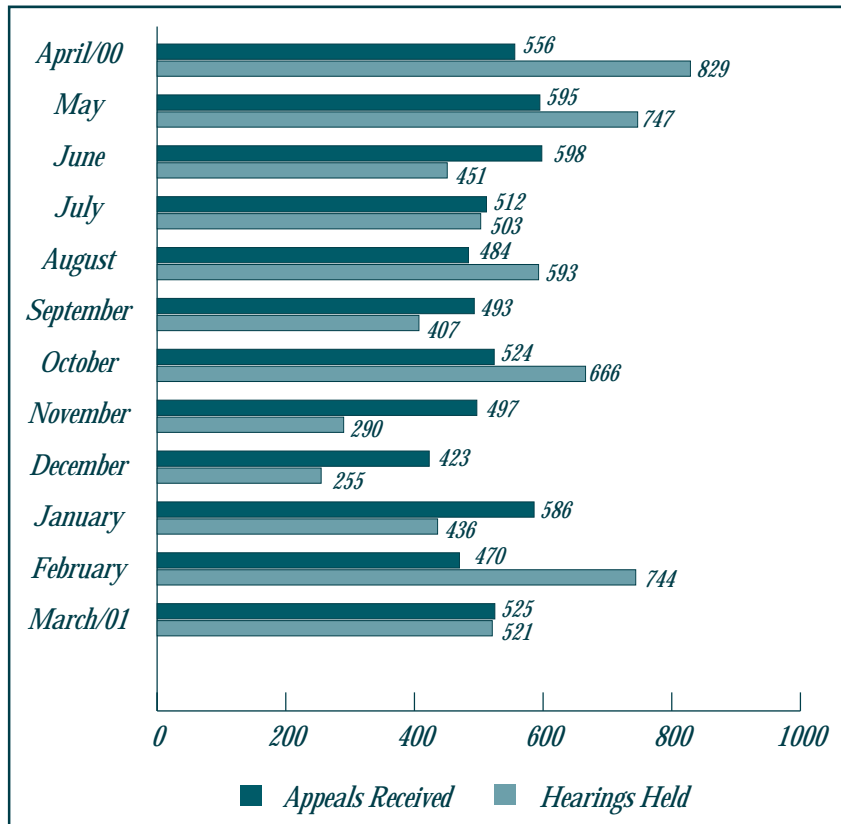


The number of appeals to Review Tribunals rose very rapidly after 1992/93, peaking in 1997/98 at 10,977 cases, essentially because of strong growth in the numbers of appeals involving CPP disability benefits. Disability pension cases represent about 95 per cent of all Review Tribunal appeals, as Figure 3 in Section One shows.

Since 1997/98, there has been a marked decline in the number of cases, corresponding to a similar fall in the number of applications to Human Resources Development Canada and reflecting a rise in the proportion of benefits granted by the Department. This more recent decline has now slowed and HRDC has projected that the number of applications will likely reach a plateau at around the level attained in 2001/02.

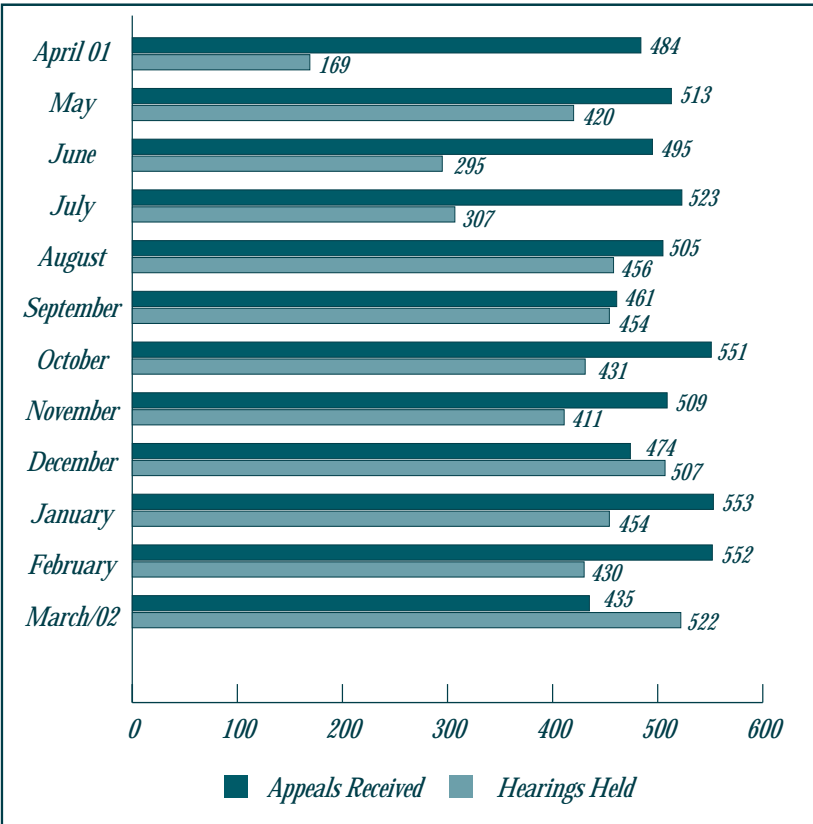
Figures 6 and 7 show the monthly distribution of appeals received and hearings held in 2000/01 and 2001/02, respectively.

Figure 6
Appeals Received and Hearings Held by Month
OAS and CPP for 2000/01 Fiscal Year



The more evenly distributed the hearings are over the year, the less the burden is on Members and the OCRT at specific, high-demand periods. The overall quality of the appeal process improves as a consequence. In 2000/01, the number of hearings held every month ranged from a high of 829 in April to a low of 255 in December. For 2001/02, the OCRT set as an objective a reduction in this variation, and the results are evident in Figure 7.

Figure 7
Appeals Received and Hearings Held by Month
OAS and CPP for 2001/02 Fiscal Year



Though there was considerable variation in the monthly distribution of hearings during the first four months of 2001/02, the number of hearings held during each of the last eight months hardly varied at all. It was the first time the OCRT in its history had achieved this consistency in the scheduling of hearings.

This achievement is all the more noteworthy when one considers that the scheduling of a hearing occurs only with the consent of all the parties and the

OCRT must gather from and disseminate to all parties well before the hearing copies of all available documentation. As a result, there is generally a delay of several months and sometimes longer between the OCRT receiving a request for an appeal and the actual convening of a hearing. As Table 3 shows, the interplay of these factors means that at the beginning of a new fiscal year, there is always a significant number of cases left over from the previous year. In past years, this number has been reduced by the setting of annual hearing targets, resulting in a rush of hearings in February and March that considerably shrank the inventory of cases carried over to the next year. With the introduction in 2001/02 of the new policy of spreading hearings evenly throughout the year, the need to schedule a higher number of hearings in February and March no longer exists and the balance of cases at the end of 2001/02 is higher than usual, as Table 3 shows. It is expected that this inventory will decrease over the next year.

Fiscal Year	97/98	98/99	99/00	00/01	01/02
Balance of Cases, April 1st	6,130	9,002	7,939	4,905	3,953
New Appeals Received	10,977	9,843	9,084	6,263	6,055
Reversals, Withdrawals, Refused³	477	1,996	2,646	1,439	1,168
Potential Hearings⁴	16,630	16,849	14,377	9,729	8,840
Hearings Held	7,950	9,528	10,326	6,442	4,856
Adjournments	322	618	891	666	618
Balance of Cases, March 31st	9,002	7,939	4,905⁵	3,953	4,602

From 1997/98 to 1999/00, the OCRT faced a significant backlog of cases because of the high numbers of appeals coming forward. In 1999/00, the OCRT held a record 10,326 hearings, clearing much of this backlog. As a consequence, the wait time for an appeal declined considerably.

While it might be argued that fewer delays represent a clear-cut benefit to Appellants, it is also true that this improved situation allows less time to prepare for a proceeding with which they are often unfamiliar. As well, more counselling for and better communication with Appellants before hearings has meant that they themselves are more inclined to take the time needed to seek advice and assemble documentation supporting their case. The result has been fewer hearings

held – especially in 2001/02 – even taking into account the decline in the number of appeals received. This apparent loss in efficiency, however, is simply a reflection of the considerable gain in the quality of the Review Tribunal appeal process because of the balancing of advantages between the parties to appeals.

Trends in Disposition of Cases

Significant trends are also apparent in the disposition of cases coming before Review Tribunals. Table 4 shows in absolute numbers the outcomes of Review Tribunal decisions over the last five years.

	1997/98	1998/99	1999/00	2000/01	2001/02
Adjourned	322	618	891	666	618
Allowed	1,864	2,244	2,607	1,778	1,684
Dismissed	5,756	6,640	6,790	3,959	2,526
Withdrawal at Hearing	8	26	38	39	28
Total Hearings Held⁶	7,950	9,528	10,326	6,442	4,856

3. Includes number of decisions reversed by “The Minister” prior to hearings, plus cases withdrawn by the Appellant prior to the hearings, as well as late appeals refused, plus cases referred to Review Tribunals in error and redirected to HRDC for reconsideration or the Pensions Appeals Board.

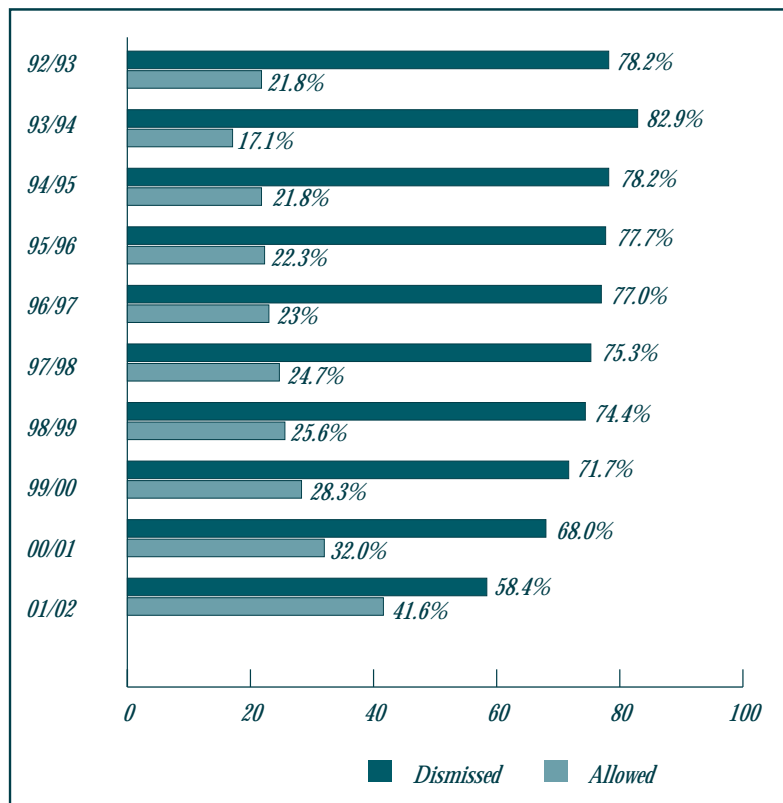
4. Includes outstanding appeals at the end of the previous fiscal year and the number of new appeals received during the current year- less reversals, withdrawals and refused cases.

5. There were 37 cases with multiple adjournments within the same fiscal year. Thus only 854 cases were added to the final outstanding total.

6. Does not include re-hearings under section 84(2) of the Canada Pension Plan.

Though not readily apparent from the absolute numbers above, the rate at which Review Tribunals are allowing appeals is climbing. This trend is very apparent in Figure 8, which shows “allowed” and “dismissed” rates in percentage terms over time.

Figure 8
Hearing Outcome Rates (CPP Disability Only) 1992/93 to 2001/02



There are a number of considerations relevant to the rising rate at which Review Tribunals are allowing appeals on disability benefits. First, similar trends are also evident in the determinations of the Department and the Pension Appeals Board. As well, the sharp rise in decisions allowed by Review Tribunals in 2001/02 is partly attributable to a Federal Court decision that same year interpreting in a much less restrictive manner the *Canada Pension Plan* requirement that a disability be “severe”.

We believe that another factor in this increasing incidence of allowed appeals is the rising standards in terms of both quality and fairness within the Review Tribunal appeal system. Since its inception and especially in the last three to four years, there has been a concerted effort to make sure that Appellants are better informed about their rights and have greater access to vital resources such as their own medical records, as Section 2 demonstrates. There has also been a sustained effort to ensure that Tribunal Members are better informed and more responsive to the circumstances and cultural diversity of Appellants, as Section 3 has shown.

These improvements do not mean that decisions are not appealed to the Pension Appeals Board (PAB), as Table 5 shows.

Fiscal Year	1997/98	1998/99	1999/2000	2000/01	2001/02
Tribunal Decisions⁷	7,607	8,824	9,339	5,659	4,132
Appeals by HRDC	253	32	43	89	17
Appeals by Appellants	2,640	2,854	3,355	2,676	1,251

Between a quarter and a third of Review Tribunal decisions are appealed to the PAB. The vast majority of these appeals originate with Appellants as opposed to HRDC. It may be argued that the tendency of Appellants to appeal arises from their perception they did not receive a fair hearing. However, there is also the fact that, in contrast to earlier phases of decision-making, the Review Tribunal process is highly personalized and educational and serves to inform Appellants as to the kinds of evidence they must provide in order to make a successful case, with the result that they feel more confident to appeal to the PAB.

7. Includes all decisions by Review Tribunals, both allowing and those dismissing the appeal.

Table 6 shows graphically how frequently Appellants appeal dismissals by Review Tribunals.

	1997/98	1998/99	1999/00	2000/01	2001/02
RT Decisions/ Dismissals	5,744	6,594	6,745	3,898	2,470
PAB Request- Appellant	2,640	2,854	3,355	2,676	1,251
As Percentage of Dismissals	46.0%	43.3%	49.7%	68.7%	50.7%

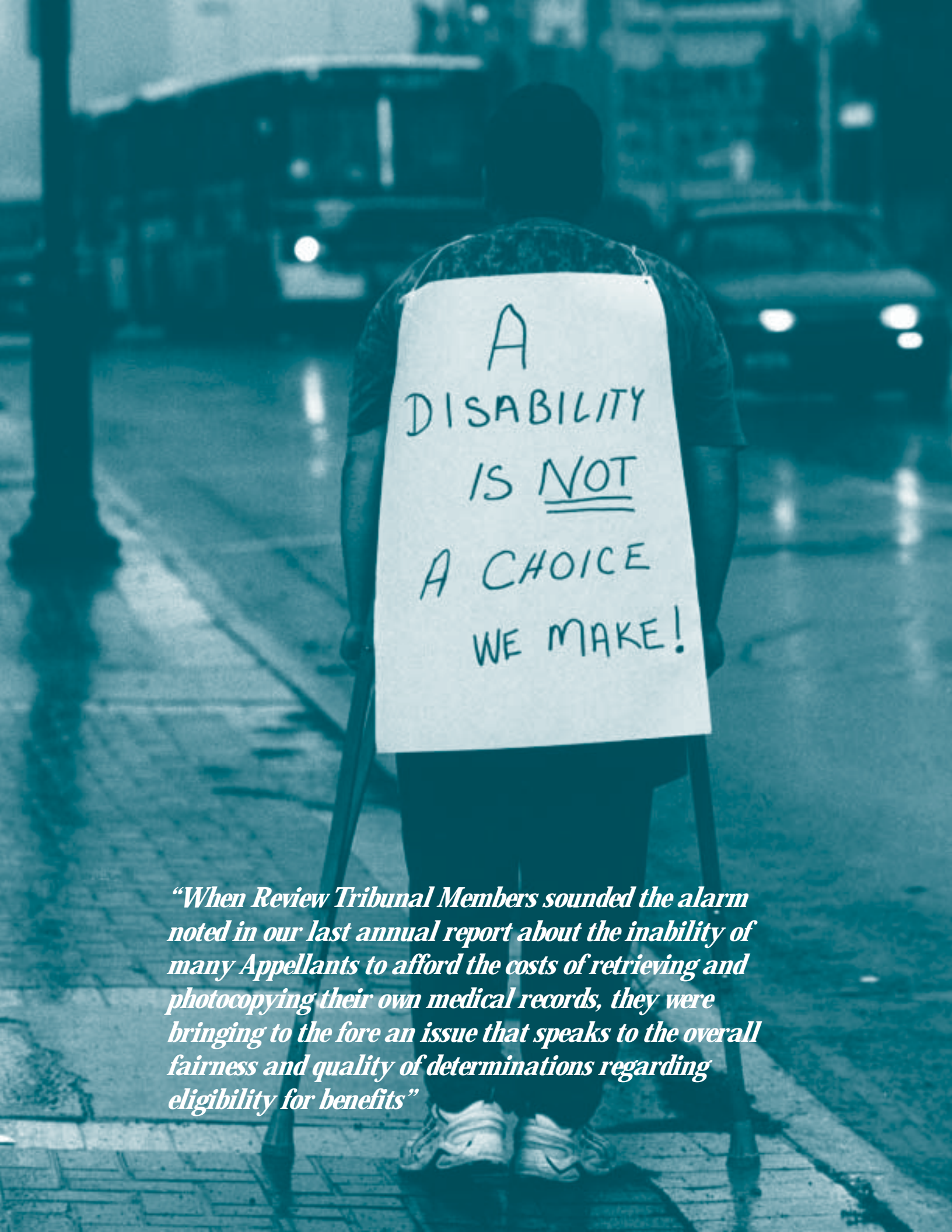
It should be noted that, in contrast to the OCRT, the PAB could decide not to grant a request for an appeal. Until 1999-2000, roughly half the requests to the PAB for an appeal were not accepted. In that year, the Federal Court broadened the grounds under which the PAB had to accept a request. As a consequence, the rate at which people appealed to the PAB rose significantly. It is interesting that the rate of Appellants' appeals to the PAB climbed at the same time as Review Tribunals were allowing many more appeals.

In such circumstances, one would expect that the Department would be increasingly inclined to appeal to the PAB, Review Tribunal decisions favouring the Appellant. In reality, the reverse is true, as Table 7 shows.

Table 7
Appeals of CPP Review Tribunal Decisions by HRDC to the
PAB, 1994/95 to 2001/02

	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02
RT Decisions- Allowed	522	771	1370	1863	2230	2594	1761	1662
PAB Request- HRDC	45	128	300	253	32	43	89	17
As % of Allowed Decisions	8.7%	16.6%	21.9%	13.6%	1.4%	1.7%	5.1%	1.0%

There would seem to have been a steady decline in the appeal rate by HRDC since the Department appealed in 1996-1997 a high of 21.9 per cent of Review Tribunal decisions to allow. Because the subsequent period corresponded with a consistent rise in the rate of allowed appeals by Review Tribunals, it might be argued that HRDC's growing reluctance to pursue the appeal route reflects the increasing quality of Review Tribunal decisions.

A person is standing on a city street, viewed from behind. They are holding a large white sign that reads: "A DISABILITY IS NOT A CHOICE WE MAKE!". The person is wearing a dark t-shirt and dark pants. They are using two black canes to support themselves. The background shows a city street with cars and buildings, all in a blue-tinted color scheme.

A
DISABILITY
IS NOT
A CHOICE
WE MAKE!

“When Review Tribunal Members sounded the alarm noted in our last annual report about the inability of many Appellants to afford the costs of retrieving and photocopying their own medical records, they were bringing to the fore an issue that speaks to the overall fairness and quality of determinations regarding eligibility for benefits”

5. THE WAY AHEAD

The last OCRT annual report mentioned three major issues Panel Members had raised:

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

All three of these issues speak to larger concerns we have made significant progress in meeting through quality improvements in the appeal process during this reporting period. But much remains to be done.

Eligibility Requirements

The question of contributory requirements for a disability benefit is one aspect of the larger question of eligibility requirements for such benefits.

As Section Two makes clear, the OCRT has taken significant steps to improve Appellants’ understanding of contributory requirements, other eligibility criteria for benefits, and the appeal process itself – all well before the hearing takes place. In cooperation with HRDC, we are making sure that Appellants receive the Department’s detailed explanation of their case well before the hearing. We have also intensified and improved our communication and counselling effort and aim to raise the bar further in 2002/03.

Despite such achievements, there are still Appellants who arrive at hearings with little grasp of how contributory and other eligibility requirements colour their case. We intend to continue reducing that number.

However, some Members also suggest that some Appellants’ understandable sense of entitlement causes them to challenge the requirements themselves. These Members have pointed out that many Appellants have found it very difficult to qualify for CPP disability benefits since the requirements were made more restrictive in 1998. Some are men who have performed manual labour all their

lives and developed in their mid-50s chronic conditions – such as back problems – from the wear and tear of the job that increasingly makes it impossible for them to work. As female participation in the labour force has grown, increasing numbers of women in their mid-40s have appeared at hearings with conditions such as chronic pain, chronic fatigue, clinical depression or fibromyalgia. Because of the nature of these chronic conditions, these men and women are often forced to work ever more sporadically and thus frequently do not have recent enough CPP contributions to qualify for a benefit.

It is for this reason that some Panel Members have proposed a full policy review of the changes made to the Plan in the middle to late 1990s, particularly those relating to disability benefits.

Quality and Fairness of the Appeal System

When Review Tribunal Members sounded the alarm noted in our last annual report about the inability of many Appellants to afford the costs of retrieving and photocopying their own medical records, they were bringing to the fore an issue that speaks to the overall fairness and quality of determinations regarding eligibility for benefits.

In this reporting period, the OCRT adopted a policy of paying the often considerable fees charged to Appellants for the retrieval and photocopying of existing medical records (though not of new medical assessments to be submitted as evidence). We have also taken a number of other steps to improve the balance of advantages between the two main parties to an appeal. As noted in Section Two, we have begun the process of revising our nine-year-old Procedural Guidelines for hearings to improve both the fairness and quality of the process. In 2002-03, we shall be holding extensive consultations before issuing these new guidelines.

As shown in Section Three, we have undertaken in the last two fiscal years a number of important initiatives to raise the quality and fairness of the appeal system by providing enhanced training for Tribunal Members. Through our educational workshops, we have equipped Members with a better understanding of the

“When Review Tribunal Members sounded the alarm noted in our last annual report about the inability of many Appellants to afford the costs of retrieving and photocopying their own medical records, they were bringing to the fore an issue that speaks to the overall fairness and quality of determinations regarding eligibility for benefits.”

legislation, eligibility requirements, rules of evidence and alternative techniques for dispute resolution. A special emphasis in 2001/02 was the development and implementation of training and information programs to increase Members' capacity to evaluate and weigh medical evidence. We have also designed and delivered training modules to sensitize Panel Members to the diversities in perception and circumstances arising from the cultural heritage of visible minorities so that the adjudication process can be as equitable as we can make it.

In order to provide an information base for further improvements to the quality and fairness of the appeal system, the OCRT commissioned in March 2002 a survey to explore the perceptions and attitudes of 1,400 Appellants, as well as 200 people who had not appealed to a Review Tribunal. The results will be available in 2002/2003.

These steps constitute useful and important advances, but there still remains much to be done. For example, during 2001/02, we examined the accessibility of legal aid to Appellants across Canada. We discovered that seven out of 10 provinces allowed their legal aid programs to support Appellants seeking CPP disability or Old Age Security benefits. But even in these provincial jurisdictions, enormous variation existed in funding and the terms and conditions for legal aid. The issue here is not just that Appellants have a right to representation at Review Tribunal hearings. It is that ill and troubled Appellants often truly need such representation to mount an effective case and many are too financially pressed to afford anything other than legal aid or some form of cost-free voluntary representation. We will pursue this matter further in 2002/03.

Another dimension of fairness is the adjudicator's impartiality, which depends in part on the independence of the adjudicator from the parties to an appeal. Though some progress has been made during this reporting period in codifying the arm's-length relationship between the OCRT and HRDC, further advances are needed in 2002/03.

In connection with this broader issue of fairness, it should be noted that some Tribunal Members have wondered aloud whether sick, financially stressed people seeking CPP disability benefits should be plagued with three levels of appeal. Others point out that the multi-level appeal system offers more avenues for recourse against an unfavourable decision. It is an excellent question whether a more streamlined appeal system would be more appropriate.

The Context of the CPP Disability Benefit

When Members point to a significant number of Appellants admitting at the start of hearings that they appealed only because of pressure from their insurance company, one issue indirectly raised is the appropriate relationship between CPP Disability and other kinds of disability insurance and income support, both private and public.

In response to these concerns, we have established a Disability Insurance Complaints Desk to track complaints about both private and public providers of disability insurance. Though we have no powers to investigate such complaints beyond our mandate under the CPP, we do intend in 2002/03 to undertake this monitoring in a more systematic fashion and pass complaints with comments on to the appropriate insurance regulators, as well as related public bodies such as workers' compensation and welfare.

The obvious difficulty is that, for tax or benefit reasons, it may not be in the financial interest of people with disabilities to pursue further avenues for getting benefits – absent the financial penalty threatened by their insurer if they do not. The larger issue is the policy-sanctioned relationship between CPP Disability and private insurance companies, provincial workers' compensation boards and welfare authorities. Outside Quebec, CPP has become in practice the “first payer” of benefits to contributors in the case of disability, even if the disabling condition arose in the workplace. A very different model prevails in Quebec. It is an excellent question whether the Canadian public interest requires an integrated approach to disability income support in which the interrelationship between its different providers is clearly and properly delineated.

Cooperation on Policy Development

In recent years courts and scholars have vigorously debated questions about the fundamental role of administrative tribunals and agencies and the nature of their relationship to the various branches of government - parliament, executive, and judiciary. The issue is complex, reflecting the great diversity of functions performed by thousands of tribunals and agencies across Canada. Yet given their central role in the administration of justice, tribunals can, and arguably should, contribute to policy making as well as to its implementation.

The Privy Council Office (PCO) seems to accept this argument. In *A Guide Book for Heads of Agencies (1999)*, PCO sets out a policy advisory role for tribunals and other arm's-length agencies at times of policy review and change. According to Page 15 of the *Guide*, tribunals should be engaged in the "sharing of expertise in ensuring relevance on any proposed legislative changes." The *Guide* also makes reference to the expectation that tribunals will provide "appropriate cooperation on policy development."

"The OCRT has encouraged Panel Members to ensure that their concerns, analyses and views are made known throughout the organization. As the preceding pages have shown, Panel Members have responded to this encouragement both individually and in groups at hearings and workshops by continuing to report frankly on issues of concern to Appellants."

In 2002/03, a statutory review of the *Canada Pension Plan* will occur.

After collectively handling well over 50,000 appeals and anywhere from 5,000 to 12,000 appeals a year, Review Tribunal Members have had more direct, in-person contact with claimants for CPP disability benefits than either officials at HRDC or judges on the Pension Appeals Board. In short, Members are qualified to comment on the policies, regulations and practices affecting claimants for disability benefits under the CPP.

The OCRT has encouraged Panel Members to ensure that their concerns, analyses and views are made known throughout the organization. As the preceding pages have shown, Panel Members have responded to this encouragement both individually and in groups at hearings and workshops by continuing to report frankly on issues of concern to Appellants.

As a contribution to the statutory review, the OCRT will be consulting with Panel Members in 2002/03 on their suggestions for change, with particular reference, though not limited, to their views on:

- ⦿ Eligibility requirements for CPP disability benefits,
- ⦿ The quality and fairness of the appeal system, and
- ⦿ The appropriate relationship between CPP Disability and other programs and plans provided by both the private and public sectors.

The results of this work will be widely circulated.



GLOSSARY

Added Party: A person who is not the Appellant but who is affected by a decision concerning the Appellant's CPP or OAS benefits. For example, a former spouse may be involved in CPP credit splitting with the Appellant. This person is considered to be an Added Party to the appeal.

Adjournment: A decision of a Review Tribunal to reschedule the hearing to another date and time. This usually occurs at the hearing.

Appellant: A person who has received a reconsideration decision from the Minister of HRDC concerning their application for CPP or OAS benefits, and who has filed an appeal to the Commissioner of Review Tribunals (CPP/OAS).

Governor-in-Council: Governor-in-Council appointments are those made by the Governor General on the advice of Cabinet. Recommendations for appointments originate from many sources, including the political, commercial and academic and professional communities, senior public servants, and advocacy groups. In addition, for most full-time fixed term appointments, qualified candidates are actively sought through publicized notices of vacancy that appear in the *Canada Gazette*.

Hearing Case File: The Hearing Case File contains copies of all the papers the OCRT receives from the Appellant, from HRDC and from any Added Party. These papers include all the information that HRDC used to arrive at their reconsideration decision, including application for benefits (CPP or OAS), decision letters, etc.

HRDC: Department of Human Resources Development Canada. This department is responsible for the administration of CPP and OAS programs.

HRDC Explanation of Decision Under Appeal: A detailed explanation for denial of benefits to Appellants.

HRDC Representative for CPP Disability (or OAS, GIS):
An HRDC employee that presents the reasons for the reconsideration decision by the Minister of HRDC at the Review Tribunal.

Minimum Qualifying Period or MQP: To be eligible for a disability benefit under the *Canada Pension Plan*, a person must have made valid contributions for a certain number of years to the *Canada Pension Plan*. This is referred to as the Minimum Qualifying Period (MQP). Currently, the MQP for a disability benefit is four (4) years of valid contributions within the last six (6) years.

Postponement: A decision of the Office of the Commissioner of Review Tribunals to reschedule a hearing to a different date and time. This occurs before the hearing takes place.

Reconsideration: A written request by a person who has applied for benefits to the Minister of Human Resources Development Canada to review the decision made about those benefits. A government officer reviews the case and makes a reconsideration decision.

Representative: A person retained by an Appellant to help represent their claim at the Review Tribunal hearing.

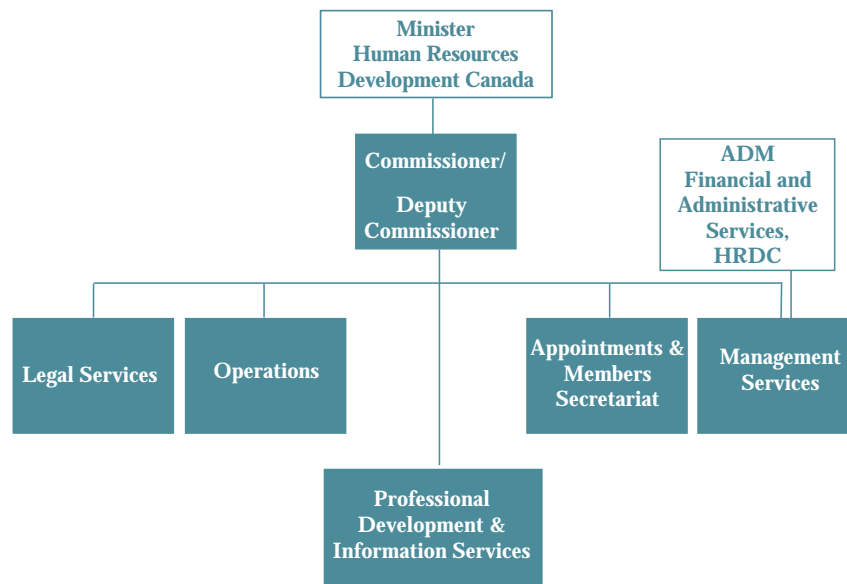
Review Tribunal: A group of three people who are Panel Members, including a Chairperson who is a lawyer and two other Members. The Review Tribunal conducts hearings and makes a decision concerning an appeal involving CPP or OAS benefits.

ANNEX A INSIDE THE OFFICE OF THE COMMISSIONER OF REVIEW TRIBUNALS

As pointed out in Section One, overall responsibility for the Review Tribunal appeal system rests with the Commissioner, who is appointed by the Governor-in-Council and reports to the Minister of Human Resources Development. Responsibility for day-to-day operations rests with the Deputy Commissioner, who is also appointed by the Governor-in-Council.

As set out in Figure 9 below, the Commissioner and Deputy Commissioner have five OCRT divisions reporting to them: Legal Services, Operations, Professional Development and Information Services, Appointments and Members Secretariat, and Management Services. The mandates of each are described below. At the time of writing, this organizational arrangement was under review.

**Figure 9
Organization**



Legal Services

In contrast to federal government departments, the Office of the Commissioner of Review Tribunals is an arm's-length body and thus 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.

The Senior Counsel provides legal and policy advice to the Commissioner, Deputy Commissioner, Tribunal Members and Senior Management in the OCRT. She is also responsible for overseeing the legal component of professional development programs for Panel Members and OCRT staff, such as orientation for new Members and advanced educational workshops on the legislation, eligibility requirements, rules of evidence and dispute resolution.

The staff of lawyers provides legal advice to Panel Members and staff on daily operations and works closely with Members on the quality of decisions. The lawyers 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 coordinate OAS appeals to the Tax Court of Canada and undertake projects on legislative and policy issues. Paralegal staff members coordinate relations with the Pension Appeals Board, review post-hearing correspondence and carry out other administrative support duties.

OCRT lawyers continue to be actively involved in outreach efforts with HRDC staff, Appellants' representatives and professionals in related sectors in a quest for improvements to the appeals process.

Operations

The Operations Division is responsible for planning and coordinating the hearing process and working to ensure that all parties to an appeal receive the highest quality service. Thus, the Division carries out duties related to both the preparation for a hearing and its follow-up.

Before the hearing, the Division coordinates all correspondence with the parties to an appeal. It is also responsible for preparation of the hearing case file containing the documentation for a given appeal, as well as its delivery to the Appellant,

HRDC and any added parties. It was this Division that worked closely with the Department to implement the new policy to deliver to Appellants, four to six weeks before a hearing, the HRDC Explanation of Decision Under Appeal. It is this Division's Client Services Officers who provide pre-hearing counselling to an ever larger majority of Appellants. Division staff members also answer the 1-800 line used by Appellants, their representatives and other parties to contact the OCRT. Staff also manages a similar 1-800 line for Tribunal Members.

The Division is also responsible for the scheduling of appeals at times and locations suitable to all parties to an appeal. It also manages the arrangements for such hearings, including the renting of a suitable venue and ensuring the availability of translation or security services as needed.

After Tribunals send in a decision, it is Division staff members who review it to ensure consistency in language and compliance with legislative requirements.

Professional Development and Information Services (PDIS)

The Professional Development and Information Services Division has responsibility for training and information at the OCRT.

The Division is largely responsible for communicating with the general public, Appellants, the parties to an appeal and Panel Members, overseeing the preparation of a wide variety of fact sheets, newsletters, bulletins and information brochures for different target audiences.

As part of these activities, PDIS has taken the lead in the design, development and improvement of the OCRT website, which is largely targeted at Appellants, their representatives and the general public. In the future, the site will become much more interactive and capable of providing more customized and even individualized information and services.

The Division also attends to the continuous learning needs of Panel Members and OCRT staff. In 2000/01 and 2001/02, PDIS managed a variety of orientation sessions, workshops, conferences and training sessions for both Panel Members and OCRT staff. The Division took the lead in developing and implementing the medical information strategy, including the advanced workshops designed to improve Members' capacity to assess and weigh medical evidence and deepen their understanding of frequently encountered medical conditions.

Appointments and Members Secretariat

The Appointments and Members Secretariat ensures that Panel Members are available to carry out their duties across Canada each month. This goal is met by:

- Coordinating the assignment of Panel Members to hearings and educational workshops; and
- Ensuring that appointments authorities are aware of the requirements for new Panel Members across the country.

Every Panel Member is asked to be available 10 times a year for three days of hearings each time. Some Panel Members sit more often than others, depending upon the volume of cases in their particular region. The Secretariat coordinates the assignment of Members for each individual hearing, spreading the work as equitably as possible. It is also responsible for coordinating the assignment of Members to educational workshops.

The Secretariat prepares monthly reports, indicating where and when hearings take place. This information provides a picture of Members' workloads in every region and can indicate when reallocations of work are advisable.

As well, the Secretariat carries out more analytic work, developing every month a Summary of Needs by Province for the staffs of the Minister and Deputy Minister of Human Resources Development. The summary provides information on the requirements for more Panel Members because of workload or vacancies, as well as the qualifications candidates for appointment should have.

The Secretariat also receives and helps investigate complaints against Panel Members or other parties at hearings in cooperation with the Commissioner and Senior Counsel.

Management Services:

The Management Services Division is responsible for:

- Provision of financial, administrative, human resources and information technology services to the OCRT,

- Delivering financial, logistical and administrative services to Panel Members, Appellants and Added Parties to an Appeal, and
- Offering program administrative services and support to tribunal operations.

The Division provides a full range of financial and human resources services to the OCRT, including financial advice and assistance to senior management. Management Services also looks after Panel Members' remuneration and expenses associated with travel and attendance at hearings and educational workshops. In 2001/02, the Division implemented a new policy that linked payments to Panel Members with receipt of Tribunal decisions to provide an incentive for the more timely preparation and completion of decisions and their justifications.

The Division also processes Appellants' and added parties' expenses associated with travelling to and attending hearings. In 2001/02, Management Services provided the financial services to support the new policy of payments to Appellants for the retrieval and photocopying of existing medical records.

The Division is responsible as well for the maintenance and enhancement of the Appeals Management System (AMS), the official database of all appeals received and/or processed by the OCRT. The AMS provides instantaneous, detailed, bilingual information on all aspects of an appeal and offers a range of services such as appeal status, correspondence generation, file tracking and performance reporting. The AMS also supplies statistical reports on performance and serves as the foundation for information-sharing among the OCRT, the Pension Appeals Board and Human Resources Development Canada.

In close liaison with the Operations Division and Human Resources Development Canada, Management Services provides key administrative supports for the appeals process. This responsibility, covering everything from receipt of the original request for an appeal to dissemination of the letter informing parties of a Tribunal decision, includes data capture, file registration, word processing, receipt of Rule 5 documentation, correspondence review, photocopying and binding services and mail and courier services. With the Operations Division, Management Services began in this reporting period to exchange information with HRDC on deficiencies in Rule 5 documentation.

ANNEX B EXPENDITURES

Year Ending March 31, 2001	
Table 8 Salary and Non-Salary Expenditures April 1, 2000 to March 31, 2001	
Salaries	\$ 3,663,891
Per Diems to Panel Members	\$ 3,834,665
Operating Costs – Non-Salary	\$ 4,239,277
Total	\$11,737,933

Year Ending March 31, 2002	
Table 9 Salary and Non-Salary Expenditures April 1, 2001 to March 31, 2002	
Salaries	\$ 3,997,468
Per Diems to Panel Members	\$ 4,284,260
Operating Costs – Non-Salary	\$ 4,368,166
Total	\$12,649,894

ANNEX C CODE OF CONDUCT FOR REVIEW TRIBUNAL MEMBERS

Preamble

The Office of the Commissioner of Review Tribunals is an independent administrative agency responsible for the administration of appeals from decisions of the Minister of Human Resources Development pursuant to section 82 of the Canada Pension Plan and section 28 of the Old Age Security Act. Appeals are heard by Review Tribunals consisting of three qualified members chosen from a panel of between 100 and 300 members appointed by the Governor-in-Council.

The Commissioner, Deputy Commissioner, and Panel Members are bound by the Canada Pension Plan legislation and regulations, the Old Age Security Act and regulations and, in carrying out their responsibilities, they are guided by the policies, practice notes, and guidelines issued by the Office of the Commissioner.

Commitment to Mission Statement

Panel Members and the Office of the Commissioner are committed, in their 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.

Conflict of Interest Code

As full-time Governor-in-Council appointees, the Commissioner and Deputy Commissioner are bound by the Conflict of Interest and Post-Employment Code for Public Office Holders, while Panel Members, all of whom are part-time Governor-in-Council appointees, are subject to the Principles set out in Part 1 of the Conflict of Interest Code.

Guidelines for Professional Conduct

In addition to the Mission Statement and the Principles of the Conflict of Interest Code, the Commissioner has established the following guidelines for professional conduct of Panel Members:

1. Promotion of Integrity and Independence

Members shall participate in establishing, maintaining, and enforcing high standards of conduct and act to promote and preserve the integrity and independence of Review Tribunals and the Office of the Commissioner.

Members shall not use their position on the Panel or a Review Tribunal to advance any personal or private interests.

2. Collegiality

Members shall adopt a collegial approach in performing their duties and responsibilities through the exchange of views, information, and opinions in a spirit of respect for each other's special skills and qualities.

3. Decision-Making

Members shall render decisions in a timely, reasoned, and appropriately documented manner, in compliance with the Canada Pension Plan and Old Age Security Act, other applicable statutes, the policies of the Office of the Commissioner, the Canadian Charter of Rights and Freedoms, and consistent with the principles of natural justice and the duty to act fairly.

Decisions shall be independent, impartial, and objective, and made without regard to partisan or special interests, or fear of criticism.

Members are reminded of their obligation to return to the Commissioner all documents in their possession relating to an appeal when a decision has been reached, pursuant to section 13 of the Review Tribunal Rules of Procedure.

4. Conduct during Proceedings

In all proceedings, members shall conduct themselves in a manner that is courteous, attentive, patient, fair, and respectful to all participants, their language, customs,

rights, opinions, and beliefs, while ensuring that the proceedings are orderly, efficient, and as informal as the circumstances permit.

Members shall require similar conduct of all others present during the proceedings.

5. Bias

During the course of a hearing, Review Tribunal members should not talk, in private or public other than in the hearing room, to any of the parties, counsel, witnesses or agents involved in the hearing. All communications between these individuals and Review Tribunal members should occur only in the presence of all parties and their counsel.

It is not appropriate for Review Tribunal members to discuss any aspect of a case with any of the hearing participants at any time other than during a hearing.

While recognizing that there will be circumstances where information or statements must be tested, members shall always avoid:

- Words, phrases, or actions that could be understood to manifest bias or prejudice based on race, national or ethnic origin, colour, religion, sex, sexual orientation, age, mental or physical disability, or other personal abilities, characteristics or beliefs;
- Statements or questions that would be demeaning to any person, or that would manifest bias or prejudice for or against an individual or group.

All members, and particularly those with medical or legal practice backgrounds, shall refrain from offering medical diagnoses or legal advice to parties to an appeal.

6. Discussion of Cases

To preserve the integrity of the decision-making process, and out of respect for the duty to act fairly and the privacy interests of those involved in any case, members shall not disclose information about a case or discuss any matter that may be or has been decided by them with any person, including family members, relatives, friends, business associates, the media, Members of Parliament or other political representatives, except as required in the performance of, and in circumstances appropriate to, the formal conduct of their duties.

Nor shall members receive or consider information about a case that they must decide, except as provided by the Office of the Commissioner and the parties pursuant to the Canada Pension Plan and Old Age Security Act.

7. Contact with the Media or Government

Review Tribunal Members shall not communicate with the media. All inquiries from the media should be referred to the Commissioner of Review Tribunals, who is the spokesperson and chief executive officer responsible for the administration of appeals to Review Tribunals.

Likewise, the Commissioner has overall responsibility for relations with the government. All inquiries from Members of Parliament, Ministers, and political staff on any matters relating to the work of Review Tribunals should be referred to the Commissioner.

8. Gifts and Benefits

Notwithstanding Principle (6) - Gifts and Benefits - of the Conflict of Interest Code, members are advised that they must scrupulously guard against creating even the perception of bias. Members are advised not to accept any gifts, favours, or benefits, even those of nominal value, from persons who have or may have official dealings with a Review Tribunal.

9. Disqualification and Reporting

Before accepting an appointment to a particular Review Tribunal, members shall review their individual circumstances to ensure that their participation does not raise a reasonable apprehension of bias or conflict of interest based on the circumstances of the case or with reference to any parties involved in the proceedings. In the event of any actual or potential bias or conflict of interest, a member shall decline the appointment.

If the member perceives that there may be an apprehension of bias or conflict of interest after appointment but before contact with other members of the Review Tribunal, the member shall disqualify himself or herself immediately. The member shall not communicate about the case directly with any member or other person who may participate in the hearing. The member shall immediately advise the Commissioner of the self-disqualification and the reasons for that action.

If the member perceives that there may be an apprehension of bias or conflict of interest after contact with other members of the Review Tribunal or when a hearing is underway, the member shall declare the bias or conflict to the participants, and decide, after receiving submissions from the parties, whether to continue on the case.

In case of doubt, the member should contact the Commissioner of Review Tribunals at the earliest opportunity.

10. Post-Appointment

Without limiting the generality of Principle (10) - Post-Employment - of the Conflict of Interest Code, a former Member shall not represent, provide expert evidence, or otherwise act on behalf of a party to an appeal before a Review Tribunal, or the Pension Appeals Board, for a period of six (6) months following the expiry of his or her appointment as a Panel Member