



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

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REVIEW TRIBUNALS
BIENNIAL REPORT 2002–2004



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



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

July 27, 2004

The Honourable Ken Dryden, P.C., M.P.
Minister of Social Development Canada
House of Commons
Ottawa, Ontario
K1A 0A1

Dear Mr. Dryden:

I am pleased to submit to you the Biennial Report of the Canada Pension Plan/Old Age Security Review Tribunals for the period April 1, 2002, to March 31, 2004.

During this time, we have continued to take important steps towards improving the quality of the Review Tribunal appeal process. Reform measures set in motion during the last four fiscal years have kept raising the standard of fairness by ensuring Appellants are much better prepared for hearings and have access to resources that ensure a more level playing field at appeal hearings. We have also continued training initiatives for Tribunal Members to make them 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 we have also taken steps to strengthen the effectiveness and efficiency of our organization and the appeal process. Through these measures and effective communications with all parties to an appeal, we hope to sustain and even improve upon our efforts to offer quality service to clients and provide value for money.

Our staff at headquarters in Ottawa and our Panel Members across the country have been crucial to the success of these initiatives, and I would like to acknowledge their contribution here. The inspiration for many of their efforts lay in the energy, compassion and wisdom of our late Commissioner, G. Peter Smith, who died in January 2004. In him, we have all lost a rare friend and colleague - a true visionary to whom the term, public servant, had everything to do with meeting the needs of the most vulnerable among us.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Guy H. Arseneault".

Guy H. Arseneault
Deputy Commissioner



G. PETER SMITH, 1943-2004

G. Peter Smith, from his appointment as Commissioner in 1998 to his untimely death in January 2004, brought a special passion and commitment to the task of managing the Review Tribunal appeal system.

In little more than five short years, his visionary leadership and compassion for people with disabilities have transformed the Office of the Commissioner of Review Tribunals (OCRT) and dramatically improved the fairness and responsiveness of the appeal system. The memory of his imagination, wisdom and determination will remain an inspiration to all who knew him here in Ottawa and across the country.





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I. OUR MISSION, ROLE AND OPERATIONS

The primary responsibility of the Office of the Commissioner of Review Tribunals (OCRT) is to manage the convening of hearings and the making of determinations on appeals by individual Canadians of decisions by “the Minister” of Social Development. These decisions revolve around entitlement to benefits under the Canada Pension Plan (CPP) and the Old Age Security Act (OAS).

This report tells how the OCRT has carried out this responsibility in fiscal years 2002/03 and 2003/04.

The focus in these years has been upon initiatives to:

- level the playing field between Appellant and Department,
- improve the fairness of Review Tribunals, and
- enhance the performance of the Review Tribunal appeal system.

“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.”

As an introduction to these subjects, this first section of our report describes our mission, our role, who we are, what we do and our key priorities.

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*.



SECTION 1

ROLE WITHIN THE APPEAL SYSTEM

The role played by the OCRT within the appeal system differs, depending upon whether the appeal takes place under the *Canada Pension Plan* or the *Old Age Security Act*.

Under the *Canada Pension Plan*, there are three levels of appeal after the initial decision made by Social Development Canada (SDC) 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 SDC under section 81 or subsection 84.2 of 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 SDC, he or she may, within 90 days of the reconsideration decision, make a request to the Commissioner of Review Tribunals for an appeal under section 82 of the *Canada Pension Plan*. The OCRT will then organize a Review Tribunal hearing.

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 SDC.

As Figure 2 shows, the first level of appeal is a reconsideration by SDC 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 SDC, 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. 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.

Figure 1

APPEAL SYSTEM UNDER THE CANADA PENSION PLAN

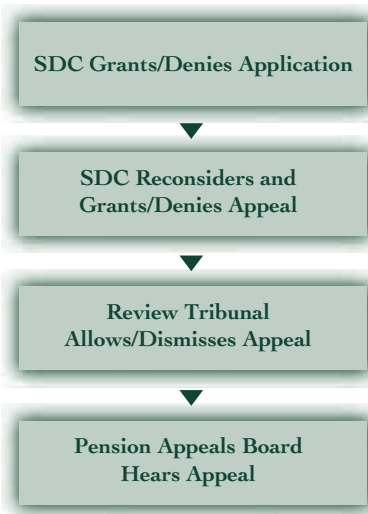
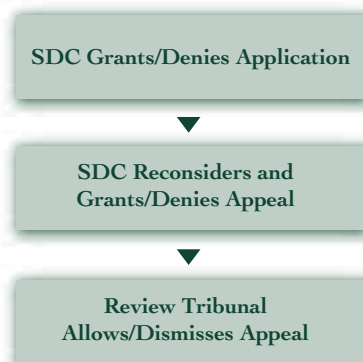


Figure 2

APPEAL SYSTEM UNDER THE OLD AGE SECURITY ACT

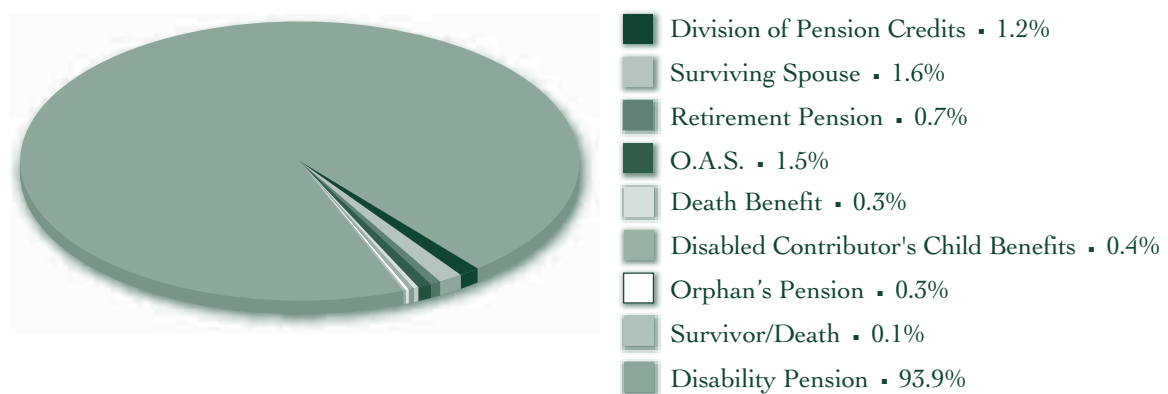


BENEFITS ADDRESSED BY REVIEW TRIBUNALS

Review Tribunal appeals pertain to entitlement to benefits under the *Canada Pension Plan* (CPP) and the *Old Age Security Act* (OAS). As Figure 3 illustrates graphically, some 94 per cent of appeals relate to disability benefits under the CPP.

Figure 3

APPEALS BY REVIEW TRIBUNALS BY BENEFIT TYPES



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 relate to a decision concerning:

- Old Age Security pensions,
- Guaranteed income supplements,
- Allowances, and
- Allowances 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*.

SECTION 1

WHO WE ARE

The OCRT, because of its responsibility for managing Review Tribunal hearings that result in determinations on appeals of decisions by Social Development Canada, has to be at arm's length from the Department. Because Social Development Canada is a party to the appeal

“Because SDC is a party to the appeal and has a representative at most hearings and because the decisions of Review Tribunals can be of profound importance to Appellants, an arm's-length relationship between the OCRT and SDC constitutes an important guarantee of impartiality.”

and usually has a representative at most hearings, and because the decisions of Review Tribunals can be of profound importance to Appellants, an arm's-length relationship between the OCRT and SDC constitutes an important foundation for impartiality.

The appointment by the Governor-in-Council of the OCRT's two chief executives and Review Tribunal Members constitutes one aspect of that arm's-length relationship. Further steps to codify it, and thus place the agency on a proper footing, have been under discussion for some time with

Social Development Canada and its predecessor, Human Resources Development Canada.

The two components of the OCRT are the Office of the Commissioner in Ottawa and Review Tribunal Members across the country.

THE OFFICE OF THE COMMISSIONER OF REVIEW TRIBUNALS

The Office of the Commissioner of Review Tribunals is a quasi-judicial body charged with ensuring that individual hearings are carried out by Review Tribunal Members in communities across Canada. The OCRT is also responsible 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.

The chief executives of the OCRT, the Commissioner and Deputy Commissioner, are appointed by the Governor-in-Council for fixed terms. Neither they nor the OCRT 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 and replaces the Commissioner when necessary. The two work closely together.

A complement of public servants supports the Commissioner and Deputy Commissioner in carrying out their duties. The roles of the five divisions within the OCRT – Legal Services, Tribunal Operations and Communications, Professional Development and Technical Services, Corporate Services and the Appointments and Members Secretariat – are described in Annex A.

Social Development Canada provides support for systems, human resources and financial and administrative services.



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 officials of the Department, public servants or judges. Because Members are appointed from communities across the country, the Review Tribunal appeal system can be described as community-based.

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, 2004, 290 Panel Members were available to serve at hearings; 300 were available on the same date in 2003.

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 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 on entitlement to disability pensions under the *Canada Pension Plan*. In appeals involving issues under the *Canadian Charter of Rights and Freedoms* it is 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, but is at best part-time work involving no more than a few weeks of hearings a year.

SECTION 1

WHAT WE DO

The OCRT process for appeals under the CPP and *Old Age Security Act* can be broken down into three phases:

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

I. PREPARATIONS FOR A HEARING

The appeal process starts with a letter to the Commissioner from a person (the “Appellant” or “Contributor”) 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 Social 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 person lives. The OCRT will also schedule and make the necessary arrangements for a hearing at a location convenient to the parties.

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

“The appeal process starts with a letter to the Commissioner from a person (the ‘Appellant’ or ‘Contributor’) 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 Social Development Canada.”

As well, the OCRT will request from the Department a copy of the reasons for the decision under appeal and copies of all the documents that formed the basis for that 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. The OCRT combines all these documents into a “hearing file” that is sent out in advance of the hearing to all the parties, their representatives and Tribunal Members.

2. THE HEARING

Generally, the parties to an appeal are:

- The person who has been denied a benefit (the Appellant or Contributor),
- A Departmental official representing “the Minister”, and
- Any person (usually termed an “added party”) who is not the Appellant but who may be affected by a decision concerning the Appellant’s CPP or OAS benefits.



SECTION 1

In most regions of the country, the appearance of a person 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 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.

“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.”

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 the case 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 the 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.

“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 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 procedures are usually flexible enough to take into account the needs of the parties, especially those of the Appellant. Where necessary, the OCRT will provide an interpreter at the hearing.

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, the parties present evidence supporting their claim and the Members of the Tribunal ask questions.

Hearings are closed to the public to protect the privacy of the parties.



SECTION 1

3. DECISION AND DISSEMINATION

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

The OCRT is responsible for ensuring that all parties to the appeal and their representatives are provided with the Review Tribunal's decision and the reasons for it. As well, the OCRT updates the official file on the case with the exhibits from the hearing.

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 community-based approach is appropriate for a tribunal dealing with the reality of matters affecting some

of the most vulnerable people in communities right across the country. Because the decision-makers in these cases are community-based, the appeal system itself tends to be knowledgeable about and responsive to the difficult situation of Appellants.

“The Review Tribunal system is a community-based appeal process that presents a significant contrast to those dominated by judges or public servants. This community-based approach is appropriate for a tribunal dealing with the reality of matters affecting some of the most vulnerable people in communities right across the country.”

It was with such concerns in mind that the OCRT sponsored in April 2002 a *Client Satisfaction Survey* by Environics of 1,406 Appellants (to a Review Tribunal) and 202 non-Appellants (Contributors who had been denied CPP pensions, but had not

appealed to a Review Tribunal). Upon receiving the final results of this survey, the OCRT developed an action plan that shaped many of the initiatives taken during 2002/03 and 2003/04. The reality revealed in the survey reinforced the priorities that have guided the OCRT since its creation in 1991.



The first priority derives from the plain fact that Appellants are often sick and financially pressed – not, in short, in the best condition to contest their denial of a benefit – especially in the CPP disability pension appeals that make up about 94 per cent of Review Tribunal cases. 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. Level the playing field 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 adjudicators be representative of the community, responsive to 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 informed about legal, evidentiary and relevant medical issues and responsive to Canada's cultural diversity.

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

Given that justice delayed is often justice denied, it is important to ensure that there are no undue delays in the appeal process and that it operates in an effective and efficient manner as possible. Thus, the OCRT's third priority is to:

3. Ensure that the Review Tribunal appeal system operates in as effective and efficient manner as possible.

Section Four analyzes our changing workload and describes the measures we have taken to improve our performance.

Section Five presents statistics on appeal decisions.

Section Six shows how the achievements of the last several fiscal years have laid the basis for advances that will address all three of these priorities in the next few years.

Annexes A to C contain, respectively, an organizational overview of the OCRT, a picture of its finances and the code of conduct for Review Tribunal Members.



2. LEVELING THE PLAYING FIELD

In the 94 per cent of Review Tribunal appeals involving disability benefits, many of the Appellants are ill and experiencing psychological stress because of their condition and financial pressures. In most cases, Appellants – like most members of the general public – start off far less expert than Departmental officials on both the factors affecting their eligibility for benefits under the legislation and how to conduct themselves during a Review Tribunal hearing. This situation does not make for a level playing field.

For this reason, it remains a key OCRT priority to raise the standard of fairness by:

- Better preparing Appellants for their hearing, and
- Ensuring a fair balance of advantage in the hearing process.

PREPARING APPELLANTS FOR THEIR HEARING

Budgetary restraint in the Income Security Programs Branch of the Department of Human Resources Development – now Social Development Canada (SDC) – during the middle and late 1990s resulted in fewer resources for dealing with CPP disability applicants in person or even in a somewhat personalized way by telephone. As a consequence, many Appellants learned only at the Review Tribunal hearing itself why the Department had 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. Fortunately, during the last several fiscal years, both the Department and the OCRT have taken important steps to make sure that Appellants are much better prepared in advance of a hearing.

After a successful pilot project, Social Development Canada and the Office of the Commissioner now cooperate in ensuring the more timely release of the Department's detailed reasons for the denial of the benefit. The OCRT encourages individual interaction with Appellants through counselling and a toll-free telephone line. Continual improvements have also taken place in the information tools the OCRT uses to inform Appellants, their representatives and added parties. Taken together, these initiatives form an integrated information, counselling and communication strategy that is continually being reassessed to provide a foundation for ongoing improvement.

“...during the last several fiscal years, both the Department and the OCRT have taken important steps to make sure that Appellants are much better prepared in advance of a hearing.”



SECTION 2

EARLY RELEASE OF DEPARTMENTAL EXPLANATION OF DECISION UNDER APPEAL

Until a few years ago, Appellants generally received only a short and rather general letter from the Department, notifying them that it had denied them benefits. A more detailed explanation for the denial was usually provided only at the Review Tribunal hearing.

Because this situation put Appellants at a disadvantage, Human Resources Development Canada (HRDC), the predecessor of Social Development Canada (SDC), decided a few years ago to work with the OCRT on a pilot project to determine when would be the best time to release to Appellants detailed explanations of the decision under appeal. The project ended in March 2001 and the response was overwhelmingly positive.

By March 2002, the Department had implemented across the country a policy of sending to the OCRT, six to eight weeks before a hearing, the Departmental explanation of the decision under appeal. This information would then be sent by the OCRT to Appellants and any added parties. Although this policy represents a vast improvement over earlier practice, the OCRT notes that the CPP requires written reasons to be provided with the reconsideration decision.

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. The lack of such detailed information at these earlier stages was one of the issues raised most frequently by Appellants responding to the OCRT Client Satisfaction Survey.

As in previous years, the OCRT has worked closely with the Department to improve the appeal system. Between January and April 2003, the OCRT took part in a pilot project to evaluate the role at Review Tribunal hearings of Departmental representatives. Review Tribunal Members recommended that the presence of Departmental representatives is critical to a fair and credible hearing. The OCRT also participated in a British Columbian pilot project to test procedures for settling cases between the Department and a Contributor.

COUNSELLING AND SUPPORT

The OCRT provides both counselling and a toll-free line so that Appellants have an opportunity to interact on an individual basis with people who are knowledgeable about the appeal process, hearing procedures and eligibility requirements.

“By early 2002/03, virtually all Appellants were 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.”

Counselling: By early 2002/03, virtually all Appellants were 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.

The counselors, who are OCRT client service officers, have all received crisis management training so that they have the skills to deal with stressed people over the telephone.



It is important to understand that around eight percent of Appellants simply can't be reached by telephone. 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.

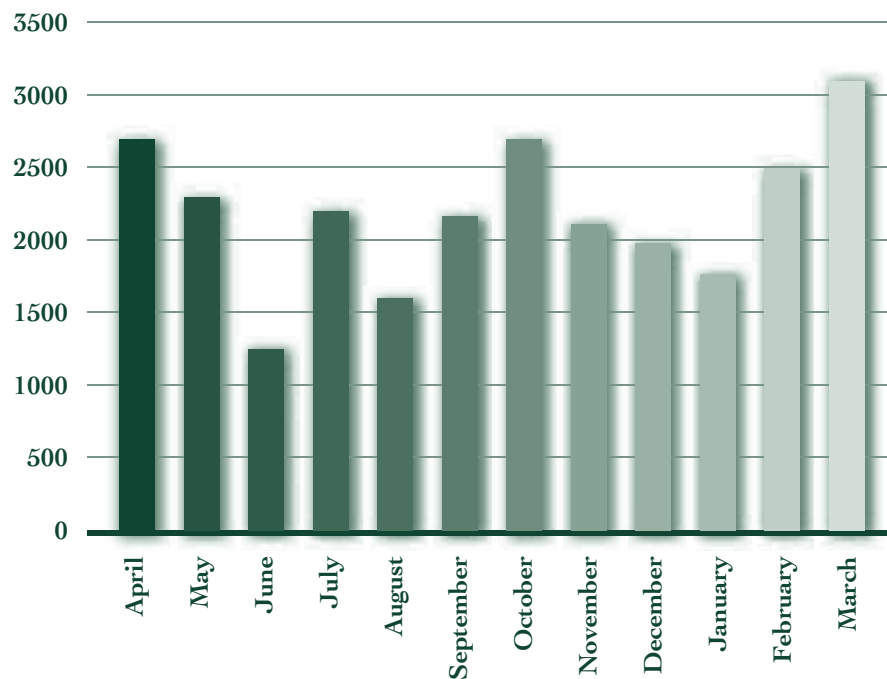
In the coming fiscal year, the OCRT plans to increase the coverage of its counselling effort and further "customize" its approach to take into account the individual needs of Appellants.

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 service officers or ask questions about the Review Tribunal process. The 1-800 telephone staff has also received training in crisis management.

As Figure 4 shows, the OCRT receives almost 2,500 calls a month on this 1-800 line.

Figure 4

INCOMING TELEPHONE CALLS BY MONTH (2003/04)



Of these calls, 46 per cent are for client service officers providing counselling. About 30 per cent involve inquiries about the appeals and hearing process, while another 11 per cent want to know about Review Tribunal decisions affecting them. Only 13 per cent of callers make general enquiries.

SECTION 2

INFORMATION TOOLS

The OCRT uses a variety of other tools to inform Appellants, Representatives and others about the Review Tribunal appeal system, the hearing process and eligibility requirements under the *Canada Pension Plan* and the *Old Age Security Act*. These include:

- The OCRT website,
- Brochures,
- Hearing files and correspondence, and
- A new video soon to be released.

In fall 2001, the OCRT asked more than 600 representatives of Appellants to comment on the effectiveness of its website, brochures and other information tools. An analysis of the results led to a number of improvements to the OCRT's communications effort.

OCRT Website: For some years now, the OCRT has had its own website at <http://www.ocrt-bctr.gc.ca/> and <http://www.bctr-ocrt.gc.ca/>. Partly in response to the analysis of the representatives' survey, the OCRT added in 2002/03 a second set of more user-friendly addresses – <http://www.reviewtribunals.gc.ca> and <http://www.tribunauxderevision.gc.ca>.

“The OCRT website is designed to be as helpful as possible to Appellants and their representatives. It offers a wide range of information 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. Electronic versions of a number of frequently used forms – everything from Notices of Appeals to Appellant Travel Expense Claims – can be downloaded from the site and printed.”

The OCRT website is designed to be as helpful as possible to Appellants and their representatives. It offers a wide range of information 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. Electronic versions of a number of frequently used forms – everything from Notices of Appeals to Appellant Travel Expense Claims – can be downloaded from the site and printed.

In keeping with suggestions from the representatives' survey, we have reviewed and changed the website to make sure it is accessible to all visitors. Similarly, the language used on the

site has been assessed and changed to ensure that is as plain and jargon-free as possible. We have also revised the home page to facilitate quick access to the most pertinent information on appeals, including the timeline for the appeal process. The site now also contains key Federal Court decisions bearing on appeals, as well as links to the site of the Pension Appeals Board, the next level of appeal in CPP cases.

Brochures: With the letter acknowledging a request for an appeal, the OCRT sends out brochures that provide critical information on the appeal process, the hearing and key eligibility requirements for pensions under the Canada Pension Plan and Old Age Security (OAS) legislation. These brochures clearly describe the standards of service to which the OCRT has committed itself.



The OAS brochure was changed in light of recommendations in the representatives' survey for plainer language and the prominent display of information indicating the brochure is available in Braille and as an audiocassette. A similar process of review is now complete with the Canada Pension Plan brochure, and it will be reissued in revised form during 2004/05.

Correspondence and Hearing File: As a matter of routine, the OCRT writes letters to all Appellants, acknowledging their request for an appeal, explaining the appeal process in outline, notifying them of their hearing date and location, providing the OCRT's 1-800 number, giving the name of the Client Service Officer assigned to their individual case and responding to many different questions about the appeal. In the last two fiscal years, all of the some 90 form letters relating to the appeal process were reviewed to ensure that they were written in plain, jargon-free language.



Upon accepting an appeal, the OCRT also formally requests from the Department all the documentation of its decision on an application and the reconsideration of the application. OCRT staff then chronologically organizes this basic documentation for the appeal and sends copies by courier to Review Tribunal members and all parties to the case. The OCRT continues to work at improving the organization of this documentation.

BALANCING ADVANTAGES AT HEARINGS

The Office of the Commissioner has a number of policies and measures in place to ensure a fairer balance of advantages between the parties in the Review Tribunal process. These aim at helping Appellants to:

- gain access to their medical records,
- pay travel and accommodation costs associated with their hearing,
- find effective representation,
- make themselves understood at the hearing in the language of their choice, and
- communicate complaints and concerns to the OCRT.

ACCESS TO MEDICAL RECORDS

Medical records can be vital evidence for an appeal in the 94% of appeals involving eligibility for disability benefits under the *Canada Pension Plan*. For this reason, the OCRT in fall 2002 implemented a procedure whereby Client Service Officers would, during counselling sessions, help Appellants identify such records. Similarly, in 2003/04, the OCRT reviewed its policy for assisting Appellants in CPP Disability cases to gain access to their medical records.

Such a review became necessary because, 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 hard 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

SECTION 2

“Effective April 1, 2004, the Office of the Commissioner will reimburse Appellants for the costs of photocopying and getting existing medical records from their doctors and hospitals, up until the day of the hearing and if receipts are provided.”

amount to hundreds of dollars. SDC 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 these times. In such circumstances, since Appellants in Review Tribunal disability cases are already financially pressed because they are no longer working, the retrieval and photocopying fees can prevent

them from submitting medical records as evidence.

Effective April 1, 2004, the Office of the Commissioner will reimburse Appellants for the costs of photocopying and getting existing medical records from their doctors and hospitals, up until the day of the hearing and if receipts are provided.

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 levels.

TRAVEL AND ACCOMMODATION COSTS

For people with disabilities and the elderly, special arrangements are sometimes necessary to get to a hearing. For several years now, the Office of the Commissioner has had a policy of making travel arrangements if required. The OCRT will also pay reasonable travel and accommodation costs incurred in order to attend the hearing. These costs must be approved by the OCRT prior to the hearing date.

ACCESS TO EFFECTIVE REPRESENTATION

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

“...according to reports from Tribunal Members over the past several years, more Appellants would benefit from representation than actually do so. Many 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.”

However, according to reports from Tribunal Members over the past several years, more Appellants would benefit from representation than actually do so. Many 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 many 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.



SECTION 2

In fiscal year 2001/02, the OCRT initiated discussions on Appellant access to legal aid with Justice Canada, which has been assessing unmet needs in this area. In 2003/04, the Department of Justice conducted a study on access to legal representation in CPP, OAS and Employment Insurance appeals.

In the absence of other ways to meet these unmet needs, OCRT has developed lists of legal aid resources and legal referral services in almost every province and territory and placed these on its website. The OCRT has also begun compiling for the website a list of community and advocacy organizations that provide free assistance in CPP and OAS cases.

PROVIDING INTERPRETERS AT HEARINGS

At the Appellant's choice, Review Tribunals will be held in English or French. If Appellants need an interpreter or other assistance in communicating at the hearing, then they should notify the OCRT. It will arrange to have someone at the hearing to translate or provide other services (such as signing), if required. Over the last five years, such arrangements have been made for 12 to 15 per cent of hearings.

COMPLAINT PROCESSES

Appropriate complaint processes not only ensure that specific wrongs and lapses in fairness are addressed, 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 complaint process to receive and review issues raised by Appellants and others relating to tribunal processes.

Each and every complaint is reviewed. Each complainant receives a response from the OCRT.

Disability Insurance Complaints Desk: Many Tribunal Members have reported over the past several years that growing numbers of Appellants were pursuing appeals only at the request of insurers who threatened a reduction in benefits if they did not comply. 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.

In September 2001, the OCRT created a 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. This desk continued to collect complaints during this reporting period, communicating them to and following up with the appropriate federal and provincial authorities.

DUPE

Timeline

- a) Prior to 1978. No division (no law)
- b) 1978 to December 31, 1986. Division following divorces only
- c) January 1987 and after. Division following divorce, separation and separation of common-law
- d) July 31, 2000. Division for same sex couples

PGNAP

Historique

- pas de partage (pas de loi)
- décembre 1986 : Partage à divorce seulement
- 1987 : Partage à la suite d'une séparation ou d'une séparation de fait
- juillet 2000 : Partage pour les couples



3. ENSURING INFORMED AND RESPONSIVE REVIEW TRIBUNALS

Review Tribunal Members bring an impressive skill set to their work. They are actively engaged in the economic and social life of their communities and many have been extensively involved with non-profit and charitable organizations devoted to helping disabled and other disadvantaged individuals in their communities. Further, because of the statutory requirements of the CPP, two-thirds of them bring substantial legal or medical expertise to the job.

However, when first appointed most still need to acquire the specialized knowledge and skills required to hear and decide CPP and OAS appeals. The importance of training has long been recognized by the OCRT and a variety of educational programs and tools has been developed since 1991.

In fiscal years 2002/03 and 2003/04, the OCRT continued its ambitious training program for Review Tribunal Members. Newly appointed Members received week-long orientation program on the many facets of performing their duties on Review Tribunals. The number of Members taking advanced training rose to 270 in this period, up from 258 in the previous two fiscal years. This training took place at medico-ethical workshops focusing on the assessment of medical evidence and sensitizing Members to cultural differences among Appellants, their circumstances and a number of fairness and ethical issues. A new Members' Manual setting out procedures for hearings has also been developed and will soon be released.

ORIENTATION OF NEW PANEL MEMBERS

As noted in Section 1, roughly 94 per cent of Review Tribunal appeals pertain to disability benefits under the *Canada Pension Plan*. The emphasis in the OCRT's orientation effort has, therefore, been very much on preparing new Review Tribunal Panel 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*.



SECTION 3

CANADA PENSION PLAN

Every newly appointed Review Tribunal Panel Member is expected to take part in an orientation session focusing largely on eligibility requirements for benefits under the CPP. In 2002/03, the OCRT held four such workshops and three in 2003/04.

“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.”

These training sessions address the policy context of the Canada Pension Plan, the mission of Review Tribunals, the workings of the appeal system, the eligibility requirements for various CPP benefits and the relevant jurisprudence. The workshops involve presentations as well as exercises and mock hearings to help new Panel Members acquire an understanding of eligibility requirements and the hearing process.

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 a case. For this reason, there is no need for all new Review Tribunal Panel 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 region there are Members knowledgeable about appeals under the *Old Age Security Act* and capable of working in both official languages.

After piloting a new curriculum for OAS orientation, the OCRT held a workshop in November 2003. After the session, Panel Members had an understanding of the *Old Age Security Act* and regulations and the Review Tribunal appeal process in this area.

STRENGTHENING PANEL MEMBERS' CAPACITY TO ASSESS MEDICAL EVIDENCE

Because the vast majority of Review Tribunal cases relate to disability benefits, many decisions turn on the medical evidence presented before or at the hearing. The assessment of medical evidence is, thus, an important skill for Review Tribunal Panel Members. For this reason, Review Tribunals hearing disability cases must have one Member who is a qualified health professional.

The assessment of medical evidence is not always easy. Cases often reach the Review Tribunal level of appeal because the medical evidence has not provided clear guidance to decision makers. With the continuing explosion in medical knowledge, it is also more difficult to remain up-to-date.

For these reasons, the OCRT has had in place a series of programs 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.



INCREASING MEDICAL INFORMATION RESOURCES FOR MEMBERS

The OCRT continues to make 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.

If Members have specific questions about medical issues, they can call a 1-800 number to gain access to the well-furnished OCRT library. The Office of the Commissioner provides every Review Tribunal Member with copies of several basic medical reference texts.

DEEPENING MEMBERS' UNDERSTANDING OF FREQUENTLY ENCOUNTERED CONDITIONS

In 2002/03 and 2003/04, the OCRT completed an advanced training program intended to provide all Members with a better understanding of how to assess evidence and adjudicate in relation to the two medical conditions - chronic back problems and fibromyalgia - most frequently encountered in CPP disability cases.

In this reporting period, 270 Members participated in seven of these advanced workshops. At each workshop, after presentations by Medical Members and outside medical experts on fibromyalgia and chronic back problems, workshop participants held mock hearings involving fictitious Appellants with these conditions, made determinations on the cases, gave their reasons and then held a general discussion in which the experts would have an opportunity to comment on the Members' assumptions and reasoning.

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 2002/03 and 2003/04, the OCRT continued to monitor developments in these fields through Health Canada and the Canadian Institute for Health Information.



¹An analysis of 494 disability cases in summer 2001 had determined that the problems most often encountered in appeals were muscular-skeletal difficulties - particularly back problems and fibromyalgia.

SECTION 3

ENSURING RESPONSIVENESS AND FAIRNESS

The Office of the Commissioner continues to work closely with all Review Tribunal Members to ensure that 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 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.

“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 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 offered at its advanced educational workshops for Members training sessions to sensitize them to:

- cultural differences,
- Appellants’ perceptions of their condition in disability cases, and
- fairness and ethical issues.

RESPONDING TO CULTURAL DIVERSITY

By the end of 2003/04, virtually every Review Tribunal Member had participated in OCRT advanced training sessions intended to impart 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 people grow up in cultures other than English and French.

These individuals face challenges in gaining access to culturally appropriate medical care. Misunderstandings may result because these people often have different ways of expressing themselves, as well as different attitudes towards disability and the hearing process.

The OCRT invited presentations from representatives of organizations serving these cultural minorities – especially people with disabilities – in the communities where OCRT educational workshops took place. Within broad parameters set by the OCRT, the organizations themselves determined how best, using volunteer workers, to raise Members’ awareness of these issues.

In the last two fiscal years, the participating organizations have included: the Metropolitan Immigrant Settlement Association, Halifax; the Surrey Delta Immigrant Services Society, Surrey; Costi, Toronto; the Edmonton Mennonite Centre for Newcomers, Edmonton; the Association for New Canadians – Newfoundland, St. John’s; the Settlement and Integration Services Organization, Hamilton; and the Catholic Immigration Centre, Ottawa.



ENCOURAGING BETTER APPRECIATION OF APPELLANTS' CIRCUMSTANCES

By February 2004, virtually every Member had participated in advanced training sessions intended to deepen their understanding of the situation of many Appellants, particularly those seeking disability benefits under the Canada Pension Plan.

At these sessions, representatives of 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. In 2002/03 and 2003/04, the participating organizations included the Arthritis Society, the Canadian Diabetes Association, Parkinson Society Canada, the Heart and Stroke Foundation, the Nova Scotia Environmental Sensitivities Centre and the Canadian Cancer Society, the Canadian Psychiatric Association and the Canadian Alliance on Mental Illness and Mental Health.

REVIEWING ETHICAL AND FAIRNESS ISSUES

In 2002/03 and 2003/04, some 270 Members participated in seven advanced training sessions on ethical and fairness issues. Virtually all Members have now received this training. The focus in these sessions was on the ethical and fairness dilemmas that may arise in the hearing process.

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

PROCEDURAL FAIRNESS

Review Tribunals must exercise their powers in a procedurally fair way. Some OCRT rules and guidelines exist to ensure fairness. For matters not covered by these rules, Review Tribunals must rely on 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.

When the OCRT was first created in 1991, Review Tribunal Members could find some rules on appeal procedures in the *Review Tribunal Rules of Procedure*. These are regulations made under the *Canada Pension Plan*. In order to provide more specific guidance, the OCRT developed its own *Procedural Guidelines* in 1993.

In the 10 years since the previous *Procedural Guidelines* for Review Tribunals were developed, both the Office of the Commissioner and Review Tribunal Members have had an extraordinary amount of direct experience as to what works and doesn't work and what is fair and unfair at hearings.

In 2001/02, the OCRT prepared new draft procedural guidelines built on this experience. In 2002/03, the OCRT actively solicited input from Members, seeking their comments on these draft guidelines. A final document will be released in fall 2004.

SECTION 3

COMPOSITION OF THE NATIONAL PANEL

As noted in Section One, individual tribunals are selected from a National Panel of up to 400 (290 at the end of 2003/04) Members appointed by the Governor-in-Council.

Table 1

PANEL MEMBERS BY PROVINCE AND CATEGORY, MARCH 31, 2003 AND 2004

PROVINCE	TOTAL MEMBERS		LEGAL		MEDICAL		GENERAL	
	2003	2004	2003	2004	2003	2004	2003	2004
NFLD	15	17	5	4	5	7	5	6
PEI	5	4	1	-	2	2	2	2
NS	32	29	10	10	10	8	12	11
NB	18	18	6	5	7	7	5	6
QUE ¹	11	10	4	4	4	4	3	2
ONT	148	147	53	52	45	46	50	50
MAN	10	10	4	4	3	3	3	3
SASK	7	5	3	2	2	2	2	1
ALTA	17	17	5	5	6	5	6	7
BC	37	32	11	11	14	11	12	10
TOTAL	300	290	102	97	98	95	100	98

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. For this reason, most hearings can 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. Table 1 shows the distribution of Legal, Medical and General Members by province as of March 31, 2003 and 2004.

¹Quebec has its own Quebec Pension Plan. As a consequence, far fewer appeals take place under the Canada Pension Plan in Quebec and there is a need for far fewer Review Tribunal Members from the province.

Table 2

PANEL MEMBERS BY GENDER AND CATEGORY
AS OF MARCH 31, 2002, 2003 AND 2004

PANEL MEMBERS AT YEAR END (MAR 31)	2001/02		2002/03		2003/04	
	NUMBER	% WOMEN	NUMBER	% WOMEN	NUMBER	% WOMEN
Legal	90	19%	102	19%	97	19%
Medical	92	67%	98	70%	95	69%
General	95	47%	100	49%	98	49%
ALL MEMBERS	277	44%	300	45%	290	46%

Although the OCRT has not formally tracked the employment equity profile of Panel Members, the OCRT encourages Panel Member appointments that increase the representation of persons with disabilities, members of visible minorities and Aboriginal peoples.



4. WORKLOAD AND PERFORMANCE

The initiatives described in the previous two sections have raised the quality of service provided by the OCRT to a standard beyond what was offered in earlier years. This improvement became both possible and necessary because of substantial changes in our workload and increases in the complexity of appeals. In response to this situation, the OCRT has in place a number of measures to enhance accountability to clients and improve the effectiveness and efficiency with which it manages the appeal process.

A CHANGING WORKLOAD

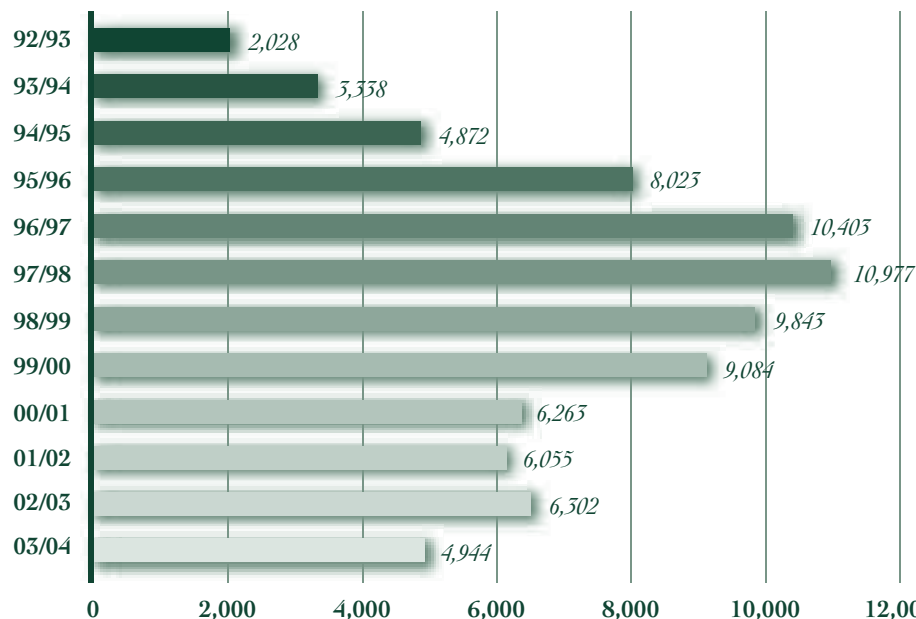
Since the late 1990s, though fewer cases have advanced to Review Tribunals, the proportion of Departmental decisions being appealed to Review Tribunals continues to grow. Among these has also been a higher percentage of complex cases.

APPEALS DECLINE TO A PLATEAU

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 2003/04



SECTION 4

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.

Since 1997/98, the number of appeals has declined. This change corresponds to a similar fall in the number of applications to the Department (SDC and its predecessor, HRDC) and a rise in the proportion of cases where the Department has granted benefits.

The decline has now slowed and SDC has projected that the number of applications will likely reach a plateau at about the level attained in 2002/03. The fall to 4,944 appeals in 2003/04 would seem to be an anomaly since the number of applications to the Department rose significantly in that year. A similar pattern of rise, decline and then stabilization in the number of cases is apparent in Table 3, which shows the annual balance of CPP and OAS cases over the last seven years.

In order to appreciate Table 3, it is important to understand that the scheduling of a hearing usually involves consultation with all the parties and well before the hearing the OCRT must gather from and disseminate to all parties 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 the middle to late 1990s, the number of cases remaining at the end of the year was considerable, essentially because of the unexpectedly large number of appeals coming forward. For this reason, as Table 3 shows, the OCRT faced a backlog of cases between 1997/98 and 1999/2000. In 1999/2000, the OCRT convened a record 10,326 hearings, clearing much of this backlog. In subsequent years, it has been virtually eliminated.

Table 3

Balance of Cases - CPP and OAS (1997/98 to 2003/04)

FISCAL YEAR	97/98	98/99	99/00	00/01	01/02	02/03	03/04
Balance of Cases, April 1st	6,130	8,998	7,925	4,891	3,916	4,548	4,924
New Appeals Received	10,977	9,843	9,084	6,263	6,055	6,302	4,944
Reversals, Withdrawals, Refused ¹	477	1,996	2,646	1,439	1,168	1,326	1,425
Potential Hearings ²	16,630	16,845	14,363	9,715	8,803	9,524	8,443
Hearings Held	7,950	9,528	10,326	6,442	4,856	5,270	5,387
Adjournments ³	318	608	854	643	601	670	757
Multiple Adjournments	4	10	37	23	17	18	23
Total Adjournments	323	618	891	666	618	688	780
Balance of Cases, March 31st	8,998	7,925	4,891	3,916	4,548	4,924	3,813

¹Includes a number of decisions reversed by "The Minister" prior to hearings, plus cases withdrawn by the Appellant prior to hearings, as well as late appeals refused, plus cases referred to Review Tribunals in error and redirected to the Department for reconsideration or the Pension Appeals Board.

²Includes outstanding appeals at the end of the previous fiscal year and the number of new appeals received during the current year - minus reversals, withdrawals and refused cases.

³These figures differ from those for previous years because duplicate adjournments for the same case are now counted as one.

SECTION 4

MORE COMPLICATED CASES

Despite the reduction in backlogs, a higher proportion of complex cases would seem to be proceeding to Review Tribunals, causing significantly more work for OCRT staff. In

a recent pilot study evaluating the presence of Departmental representatives at Review Tribunal hearings, the Department found that about 60 per cent of cases could be deemed “complex.”

This conclusion is borne out by anecdotal reports from Panel Members and OCRT staff, stating that the size of hearing files has increased substantially in the past few years. Hearing files contain the evidence considered by the Department in its decision, as well as any of the documents sent in to the OCRT by the parties before the hearing file is sent out by courier. Generally, the more voluminous hearing files are, the more complex the case is, the more processing required by OCRT staff and the greater the challenge faced by Panel Members in assessing the evidence.

Similarly, between 1997/98 and 2003/04, the proportion of cases in which documentary evidence was added over and above that considered by the Department in its decision grew four-fold. The introduction of new documentation by one party usually prompts other parties to add new documents in response, often leading to a reply in documentary form by the original party. This accumulation of additional documentation can complicate a case and increase the demand for counselling by the OCRT. As well, because these documents must be copied and distributed to Panel Members and to all parties to an appeal in advance of a hearing, the processing of these documents adds substantially to the workload and costs of the OCRT.

Since the late 1990s, there has also been a sizeable rise in the number of appeals involving multiple applications for benefits for the same person that have been adjudicated at different levels. Such cases can raise complex questions. For example, Review Tribunals may need to deal simultaneously with two separate appeals and apply two different legal tests set out in the legislation. In addition, the legal doctrine of *res judicata* may come into play. All of these complexities mean a heavier demand is placed on the OCRT.¹

“...between 1997/98 and 2003/04, the proportion of cases in which documentary evidence was added over and above that considered by the Department in its decision grew four-fold. The introduction of new documentation by one party usually prompts other parties to add new documents in response, often leading to a reply in documentary form by the original party. This accumulation of additional documentation can complicate a case and increase the demand for counseling by the OCRT. As well, because these documents must be copied and distributed to Panel Members and to all parties to an appeal in advance of a hearing, the processing of these documents adds substantially to the workload and costs of the OCRT.”

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“The OCRT views shorter wait times for hearings, greater access by Appellants to health and medical information, their increasing use of representatives and early provision of the Department’s explanation of the case under appeal as positive developments that can only result in a fairer, more equitable appeal system. If these advances mean more complicated cases, then the resources required for managing their consequences are simply the price one pays for greater fairness and a quality appeal system.”

¹To assist with these cases, OCRT’s legal services researched the case law and development guidelines for Panel Members and training programs for OCRT client service officers.



Recent court decisions have also made determinations in CPP cases more complicated by enriching the interpretation of the criteria for benefits.

As well, an ever growing majority of Canadians (and Appellants) is able to use the Internet as a research tool and thus gain access to a continually expanding pool of health and medical information, in addition to more information on CPP and OAS eligibility requirements. This development may have meant a significant increase in the amount and complexity of evidence to be managed by OCRT staff and assessed by Review Tribunals, especially in the 94 per cent of appeals revolving around eligibility for CPP disability benefits.

Finally, the new HRDC/SDC policy, introduced in March 2002, of providing before the Review Tribunal hearing the Department's explanation of the case under appeal has significantly increased the penchant of the parties to an appeal to submit additional documents for consideration at the hearing. As noted above, processing additional documents adds considerably to the work of the OCRT.

The OCRT views shorter wait times for hearings, greater access by Appellants to health and medical information and early provision of the Department's explanation of the case under appeal as positive developments that can only result in a fairer, more equitable appeal system. If these advances mean more complicated cases, then the resources required are simply the price one pays for greater fairness and a quality appeal system.

RESPONDING TO THE CHALLENGE

In order to ensure that Canadians receive value for money, the OCRT has responded to the challenge of a changing workload through a sustained commitment to performance by:

- communicating performance targets to Appellants and the other parties to an appeal;
- ongoing planning to improve processing of appeals in light of changing circumstances;
- informing Appellants and enhancing the proficiency of Panel Members and its own staff;
- continual improvement to the Appeals Management System, a key tool for OCRT management and staff in tracking the progress of appeals; and
- effective utilization of information and communications technology in all its operations.

ACCOUNTABILITY TO CLIENTS

The OCRT, on its website and in brochures sent out to Appellants at the start of the appeal process, sets out a schedule for the steps that will occur over the course of the appeal. These performance goals ensure that Appellants have a clear idea as to the timing of the different phases of an appeal and a basis for planning preparation of their own case.

SECTION 4

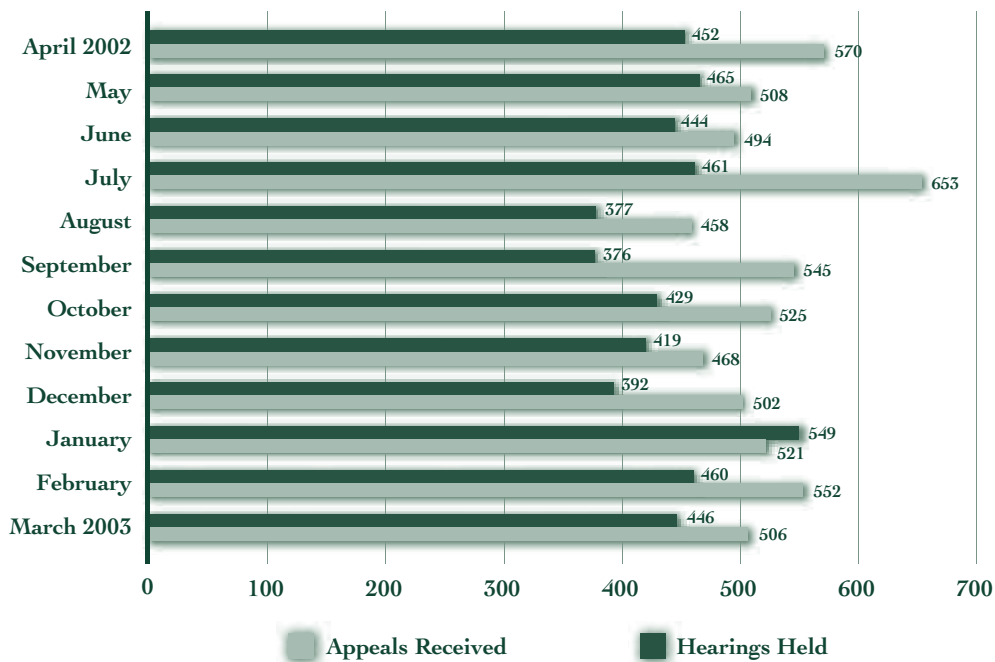
BETTER SCHEDULING METHODS FOR HEARINGS

In the past, the OCRT set annual targets for hearings, with the result that a large number of hearings always took place at the end of the fiscal year. This situation meant that both Review Tribunal Members and OCRT staff faced excessive workloads at particular times of the year.

In 2002/03, the Office of the Commissioner adopted more flexible scheduling methods and improved approaches to planning the timing and location of hearings across the country. Plans are reviewed twice in the course of the fiscal year to allow timely adjustments. As a consequence, Panel Members, OCRT staff and Departmental officials now know up to fourth months in advance of a hearing when and where it has been tentatively scheduled. Figures 6 and 7 show the monthly distribution of appeals received and hearings held in 2002/03 and 2003/04, respectively.

Figure 6

APPEALS RECEIVED AND HEARINGS HELD BY MONTH, 2002/03



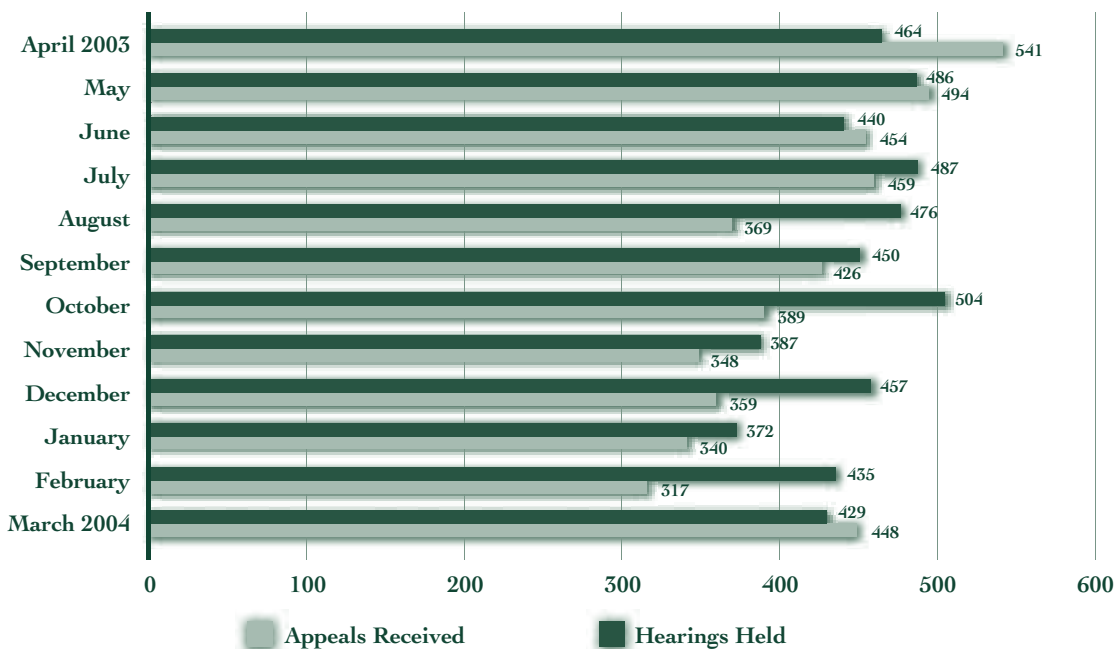
SECTION 4

The more evenly distributed the hearings are over the year, the less the burden 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. In 2001/02, when the OCRT first began trying to achieve a more even flow of hearings, the low was 169 in April and the high was 553 hearings in October. As Figure 6 shows, the variation had fallen significantly by 2002/03, with a low of 376 hearings in September and a high of 549 in January. Figure 7 reveals a yet more even monthly distribution of hearings, with a high of 504 hearings in October and a low of 372 in January.

Figure 7

APPEALS RECEIVED AND HEARINGS HELD BY MONTH, 2003/04



SECTION 4

INFORMING APPELLANTS AND TRAINING PANEL MEMBERS AND OCRT STAFF

With the elimination of backlogs and an ensuing rise in the proportion of Appellants comparatively uniformed about the appeal process and eligibility requirements, it has become ever more important in terms of performance as well as fairness for the OCRT to make sure through counselling and effective communications that Appellants are as informed as possible. This information effort, which is described in Section 2, helps to reduce adjournments and other delays that can occur because Appellants simply do not understand the process or eligibility requirements. Similarly, with more complicated cases coming forward, it has become ever more critical to increase Panel Members' capacity to assess evidence, conduct hearings and make determinations. These efforts have been described in Section 3.

The OCRT views staff orientation and professional development as equally crucial to overall performance and runs an ambitious training program at its Ottawa headquarters. This program includes:

- language training on site for all staff;
- training for the client service officers who counsel Appellants;
- orientation on the appeal process under the *Canada Pension Plan* and *Old Age Security Act* for all staff;
- training on how to deal with appeals involving multiple applications;
- training for the Decision Officers who proofread Review Tribunal decisions;
- medical workshops and sessions with medical advocacy groups;
- cultural sensitivity training; and
- training in the OCRT's computerized Appeals Management System.

During this reporting period, the OCRT also offered professional development opportunities in the form of a workshops on crisis intervention skills, stress management briefings, an English grammar and proofreading course and "lunch and learn" sessions devoted to diversity issues, time management training and software instruction. The OCRT also actively supports staff engaged in part-time post-secondary education at the college and university level.



EFFECTIVE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

During 2002/03 and 2003/04, the OCRT has continued to enhance the information and communications systems that are so critical to its effectiveness and efficiency.

Perhaps the most important of these is the **Appeals Management System (AMS)** created in 1997. It is in many ways the central nervous system of the appeals process. This event-driven, computerized case management tool tracks every appeal and supplies statistical information for OCRT management. The AMS provides instantaneous, detailed, bilingual information on the status of every appeal, as well as generating all appeals-related correspondence and measuring performance at every stage of the appeal process. It is a dynamic and adaptable system which has set a standard in systems design for federal tribunals.

In spring 2002, the OCRT began to design and develop for the AMS a Web-based financial services module to enable a much more precise tracking of financial expenditures at different stages of the appeals process.

In December 2003, the module could process the expense claims of Panel Members, Appellants and other parties to an appeal. Because this new component is linked to the OCRT's corporate management system, it can be employed to create and update regular cheques, thereby streamlining this aspect of the process.

In keeping with the guiding principles of **Government On-Line**, a Treasury Board initiative to promote electronic government services, the OCRT has continued to increase the quality and quantity of information and services available through its website (www.reviewtribunals.gc.ca), as shown in Section 2. During this reporting period, the OCRT also sponsored three studies to increase the functionality of its website, Internet/Intranet use and the Appeals Management System:

- The first of these studies, OCRT *Government On-Line Internet/Intranet Requirements*, completed in December 2002, identified the key on-line services the OCRT could consider for implementation because they would markedly improve the OCRT's service to Appellants, representatives and Panel Members.
- The second, *GOL Business Requirements Assessment*, completed in September 2003, examined various technologies for providing these on-line services and re-evaluated their impact on clients, OCRT internal operations and the quality of service provided to stakeholders.
- The third, *Office of the Commissioner of Review Tribunals (OCRT): Government On-Line (GOL) Tier Two Plan*, finished in November 2003, summarized the key services the OCRT will be providing on-line, as well as providing a funding strategy and target dates for implementation. Much of this work will be completed in 2004/05 and 2005/06.

"The AMS (Appeals Management System) provides instantaneous, detailed, bilingual information on the status of every appeal, as well as generating all appeals-related correspondence and measuring performance at every stage of the appeal process. It is a dynamic and adaptable system, which has set a standard in systems design for federal tribunals."



5. TRENDS IN DECISIONS

Since 2000/01, the rate at which appeals – in disability cases, which represent some 94 per cent of cases – have been allowed has risen at all levels of the CPP process. There has also been a growing penchant among Appellants to appeal decisions in CPP cases at all levels.

TRENDS IN REVIEW TRIBUNAL DECISIONS

Table 4 shows in absolute numbers the outcomes of Review Tribunal decisions over the last seven years.

Table 4

APPEALS TO REVIEW TRIBUNALS, 1997/98 TO 2003/04

	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Adjourned	322	618	891	666	618	688	780
Allowed	1,864	2,244	2,607	1,778	1,684	2,176	2,335
Dismissed	5,756	6,640	6,790	3,959	2,526	2,378	2,244
Withdrawal at Hearing	8	26	38	39	28	28	28
Total Hearings Held ¹	7,950	9,528	10,326	6,442	4,856	5,270	5,387

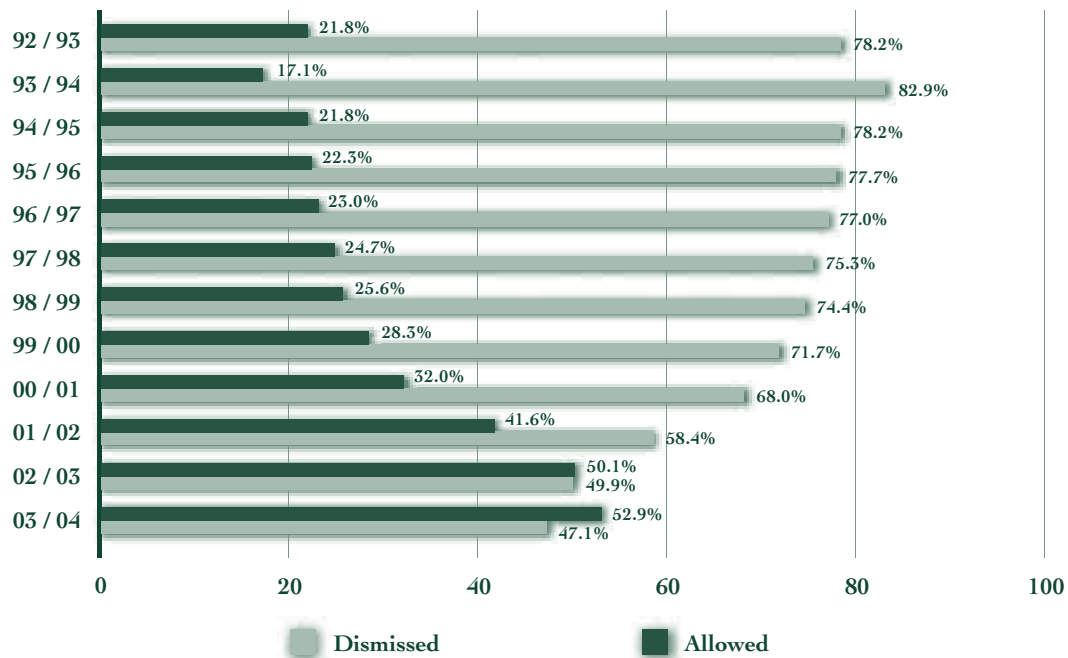
Though not readily apparent from the absolute numbers above, the rate at which Review Tribunals are allowing appeals in CPP disability cases is climbing. This trend is very apparent in Figure 8, which shows “allowed” and “dismissed” rates in percentage terms over time for CPP disability cases.

¹Does not include re-hearings under Section 84(2) of the Canada Pension Plan.

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Figure 8

HEARING OUTCOME RATES (CPP DISABILITY ONLY), 1992/93 TO 2003/04



The rising rate at which Review Tribunals are allowing appeals on CPP disability benefits echoes similar trends in decisions by the Department and the Pension Appeals Board. This sharp increase in the proportion of decisions in favour of Applicants and Appellants by Review Tribunals, SDC/HRDC and the PAB after 2001/02 is partly attributable to a Federal Court of Appeal judgment that same year. The Court interpreted in a less restrictive manner the requirement that a disability be “severe”.

The picture is very different for Review Tribunal decisions under the *Old Age Security Act* (OAS). In the last three years, OAS appeals represented between three and four per cent of all appeals received by the OCRT. Review Tribunals allowed 24.4 per cent of OAS appeals in 2002/03 and 30.3 per cent in 2003/04. Aside from the courts, Review Tribunals represent the second and final level of appeal in OAS cases.

APPEALS OF REVIEW TRIBUNAL DECISIONS IN CPP CASES

Under the *Canada Pension Plan*, Review Tribunal decisions may be appealed to the Pension Appeals Board (PAB). Between a quarter and a third of Review Tribunal decisions in CPP cases are appealed to the PAB, as Table 5 shows.

Table 5

APPEALS OF CPP REVIEW TRIBUNAL DECISIONS TO THE PENSION APPEALS BOARD, 1997/98 TO 2003/04

FISCAL YEAR	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Tribunal Decisions ¹	7,607	8,824	9,339	5,659	4,132	4,476	4,503
Appeals by Department	253	32	43	89	17	31	81
Appeals by Appellants/ Others	2,640	2,854	3,355	2,676	1,251	1,192	1,101

The majority of these appeals originates with Appellants as opposed to the Department. 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 about appealing to the PAB.

¹Includes all decisions by Review Tribunals, both those allowing and those dismissing the appeal.

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Table 6 vividly illustrates how frequently Appellants appeal dismissals by Review Tribunals in CPP cases.

Table 6

APPEALS OF CPP REVIEW TRIBUNAL DECISIONS BY APPELLANTS TO THE PAB, 1997/98 TO 2003/04

	1997/98	1998/99	1999/2000	2000/01	2001/02	2002/03	2003/04
RT Decisions-Dismissals	5,744	6,594	6,745	3,898	2,470	2,319	2,191
PAB Request -Appellant / Others	2,640	2,854	3,355	2,676	1,251	1,192	1,101
As Percentage of Dismissals	46.0%	43.3%	49.7%	68.7%	50.6%	51.4%	50.3%

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 Appellants appealed to the PAB rose significantly the following year, but then fell back to a slightly higher plateau.

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Table 7 shows the rate at which the Department appealed decisions in CPP cases by Review Tribunals to the PAB between 1995/96 and 2003/04.

Table 7

APPEALS OF CPP REVIEW TRIBUNAL DECISIONS BY
DEPARTMENT TO THE PAB, 1995/96 TO 2003/04

	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
RT Decisions - Allowed	771	1,370	1,863	2,230	2,594	1,761	1,662	2,157	2,312
PAB Request - Department	128	300	253	32	43	89	17	31	81
As Percentage of Allowed Decisions	16.6%	21.9%	13.6%	1.4%	1.7%	5.1%	1.0%	1.4%	3.5%



6. THE WAY AHEAD

In the view of the OCRT, the way ahead must be shaped by sound policy and unstinting effort to improve the quality and fairness of the Review Tribunal appeal system. The second, third and fourth sections of this report have described the many measures taken in 2002/03 and 2003/04 to provide a level playing field for all parties to an appeal, ensure informed, responsive and representative Review Tribunals and improve the efficiency and effectiveness of the appeal system.

Here we will, first of all, portray some of the efforts in this reporting period by Panel Members themselves to bring their own extensive experience as adjudicators to bear on the future evolution of the Canada Pension Plan, particularly with respect to disability benefits. Second, we will describe the goals and priorities and some of the initiatives that will shape our activities in 2004/05 and beyond as we continue our efforts to manage and enhance this unique community-based appeal system.

COOPERATION ON POLICY DEVELOPMENT

In recent years courts and scholars have vigorously debated questions about the roles 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 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.

In *A Guide Book for Heads of Agencies (1999)*, the Privy Council Office (PCO) set 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.”

After collectively handling some 60,000 appeals and anywhere from 5,000 to 12,000 appeals a year, Review Tribunal Members collectively have had an extraordinary amount of direct, in-person contact with claimants for CPP disability benefits. Members, therefore, have some experiential basis for commenting on the policies, regulations and practices affecting claimants for disability benefits under the CPP.

“As a contribution to the statutory review of the Canada Pension Plan in 2002/03, three task forces of experienced Panel Members were formed in winter 2002 to examine:

- core policy issues facing CPP disability;*
- CPP legislation and regulations concerning disability benefits; and*
- the relationship between the CPP and private group disability insurance.*

Members were invited from across the country to contribute to the deliberations of these task forces. The resulting reports contained about 50 recommendations for modernization of the CPP and were tabled before the Subcommittee on the Status of Persons with Disabilities in March 2003.”

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In this reporting period, the OCRT encouraged Panel Members to ensure that their concerns, analyses and views were made known throughout the organization. Panel Members 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 a Parliamentary review of the *Canada Pension Plan* in 2002/03, three task forces of experienced Panel Members were formed in winter 2002 to examine:

- core policy issues facing CPP disability;
- CPP legislation and regulations concerning disability benefits; and
- the relationship between the CPP and private group disability insurance.

Members were invited from across the country to contribute to the deliberations of these task forces. The resulting reports contained about 50 recommendations for modernization of the CPP and were tabled before the Commons Sub-Committee on the Status of Persons with Disabilities in March 2003.

In April 2003, the three chairs of the Panel Member task forces presented their conclusions to the Sub-Committee. Though many of their recommendations were very specific and aimed at the OCRT, roughly half were reflected wholly or partly in those made by the Sub-Committee in its June 2003 report. The task force reports have since been circulated to OCRT stakeholders in Ottawa and across the country. They are also available on the OCRT website.

GOALS FOR THE FUTURE

In 2004/05 and 2005/06, the OCRT will continue much of the work it began during this reporting period. It will be guided by four general goals as it strives to improve the Review Tribunal appeal system and modernize Canadian income support programs for people with disabilities. These goals are to:

- level the playing field between the Department and Appellants;
- increase greatly our effectiveness, efficiency and fairness;
- build a model federal government workplace at the OCRT; and
- cooperate with stakeholders on improving the system.

I. LEVEL THE PLAYING FIELD BETWEEN THE DEPARTMENT AND APPELLANTS

This goal has been a central concern of the OCRT and the Review Tribunal appeal system since the early 1990s. The balance of advantage generally lies with Departmental officials who usually possess a better understanding of the appeal process and eligibility requirements. Section 2 delineates the measures we took in 2002/03 and 2003/04 in this regard. In the next two fiscal years, these measures will continue and many will be strengthened.

The most important improvements will occur in OCRT efforts to help Appellants prepare for their hearings. At present, Client Service Officers (CSOs) make one phone call to Appellants four to six weeks before the hearing to provide counselling on the appeal process and answer questions. In 2004/05 and 2005/06, we intend to take a case management approach to counselling. This will involve:



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- *Earlier and More Flexible Counselling:* Hearing files will be sent out earlier to Appellants and immediately followed up by a call from a client service officer (CSO) to provide counselling. As a consequence of these earlier contacts, Appellants will have more time to prepare their cases and will likely be better prepared for their hearings. Another objective is to determine if cases are ready to be scheduled.
- *Follow-up after Adjournments and Postponements:* In the case of all adjournments, CSOs will call Appellants to determine the time required to reschedule cases and discuss any issues arising from the adjournment. With respect to postponements of hearings or postponement requests that are denied, confirmations in writing will go to all parties to the appeal and Panel Members.

“Hearing files will be sent out earlier to Appellants and immediately followed up by a call from a Client Service Officer to provide counselling. As a consequence of these earlier contacts, Appellants will have more time to prepare their cases and will also likely be readier for their hearings. It will also be possible to drop from the schedule cases not ready to be scheduled, thereby reducing unnecessary work as well as hearing postponements and adjournments.”

It is our hope that this more customized approach to counselling will better prepare Appellants for their hearings.

We will also continue to press Social Development Canada to provide its explanation of the case under appeal soon enough to be sent out to Appellants by courier with the hearing file - that is, several months before the hearing. We will keep encouraging the Department to provide a more personal and detailed explanation of its reasons for denying an application during the reconsideration phase - a major difficulty identified by many former Appellants in our 2002 Client Satisfaction Survey.

In 2004/05, we will also be releasing new information tools for Appellants and representatives. An updated version of our brochure on the Canada Pension Plan will be sent to every Appellant with our acknowledgements of requests for an appeal. To Appellants wishing additional information or having difficulty incorporating written material, we will also be sending upon request a half-hour video that uses drama to illustrate eligibility requirements, the hearing process and the kinds of questions that might be asked at a hearing.

Finally, in order to respond to the needs of Canadians whose first language is neither English nor French, we will start developing basic information in other languages, probably in the form of one-pagers and possibly some mode of audio communication for use in conjunction with our 1-800 toll-free telephone service.

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2. INCREASE OUR EFFECTIVENESS, EFFICIENCY AND FAIRNESS

Many of the measures described in Sections 2, 3 and 4 have significantly enhanced the effectiveness, efficiency and fairness of the Review Tribunal appeal system. In 2004/05 and 2005/06, we intend to build on these achievements with efforts to:

- clarify our relationship with Social Development Canada,
- improve the proficiency and fairness of Panel Members,
- eliminate unnecessary legalisms from the appeal process,
- raise service and performance standards, and
- make more effective use of information and communications technology.

The effectiveness of the Review Tribunal appeal system depends in part on the perception that it is impartial and at arm's length from Social Development Canada, which is, of course, one of the parties to appeals. As Section 1 explains, this independence derives from the fact that the Commissioner, the Deputy Commissioner and Panel Members are not appointed by the Department but by the Governor-in-Council. However, the OCRT is treated financially and administratively as part of Social Development Canada. In 2004/05 and 2005/06, the OCRT will continue to urge a further clarification and codification of its relationship with the Department.

The OCRT virtually from its inception has taken the view that there is no incompatibility between a community-based appeal system such as Review Tribunals and the goal of meeting the highest standards of fairness in the conduct of hearings and decisions. For this reason, the OCRT has for many years operated an ambitious orientation and professional development program for Panel Members, as Section 3 illustrates. In 2004/05 and 2005/06, the OCRT will subject this program to a critical evaluation.

Monitoring of hearings has always been an ongoing responsibility of the OCRT, and in 2004/05 it will begin monitoring hearings across the country on a much more systematic basis. The OCRT has also started developing detailed profiles of the competencies that Legal Members, Medical Members and General Members should possess in order to adjudicate effectively. These profiles and the monitoring will provide some of the basis for a thorough and rigorous evaluation of the orientation programs for Panel Members. In 2004/05 and 2005/06, the OCRT will also be developing and holding orientation sessions and advanced workshops covering a variety of adjudication skills, including decision-writing.

In the same years, we will be developing and providing to Panel Members compendia of the insights offered by cultural groups, patient advocacy groups and medical experts at our Medico-Ethical Workshops. By distributing this information widely to Members, we hope to deepen their appreciation of the importance of fairness, equity, impartiality and a better understanding of frequently encountered medical conditions in the conduct of hearings and in determinations of eligibility for pension benefits.

“The OCRT will also continue to raise the bar on service and performance by making more effective use of information and communications technology to transform and improve its services.”

Many Appellants, who generally lack legal training, find the legalistic nature of the appeal process both intimidating and confusing – a situation that can undermine fairness and reduce the effectiveness of the appeal system. In order to alleviate this situation, the OCRT has always insisted that the



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Review Tribunal hearings should be conducted with a level of informality consonant with a fair and orderly proceeding. The new Members' Manual to be released in 2004 will be consistent with this goal. Similarly, as described in Section 2, the OCRT carried out a review and rewriting of all its information materials for Appellants and appeal-related correspondence to eliminate legalisms and ensure that they were in plain and simple language anyone can understand. In 2004/05, this project will be completed, and some 90 pieces of appeal-related correspondence will be going out in plain but precise language to Appellants, representatives and others as a matter of course.

The OCRT will also continue to raise the bar on service and performance by making more effective use of information and communications technology to transform and improve its services.

The Appeals Management System (AMS) will continue to be improved and upgraded through the addition of new financial modules and links to the OCRT's computerized financial information and control system. As Section 4 pointed out, a module for handling expense claims was added in 2003/04. In 2004/05 and 2005/06, this module will be joined by others that will handle payroll, travel and accommodation arrangements and invoices. The addition of these new capabilities should significantly streamline the performance of a range of financial and appeal management functions at the OCRT. As well, once a new capability for providing financial reports is in place, it will be possible to develop detailed cost/performance reports on almost every aspect of the appeal process.

In this same period, new information and functionality will be added to the OCRT website. In early 2004/05, summaries of Review Tribunal decisions and overviews of court judgments under the *Old Age Security Act* are being placed on the website. In 2004/05 and 2005/06, some integration between the website and the Appeals Management System will enable a transformation of services to Appellants and Panel Members. This enhancement will allow Appellants and other parties to an appeal to gain secure access to information on the status of their own appeal, as well as fill out required forms on line. Similarly, Panel Members will be able to visit a Member's area of the web-site to fill out expense forms on line and discover the time and location of appeals to which they have been assigned.

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3. BUILD A MODEL FEDERAL GOVERNMENT WORKPLACE

The OCRT has an ongoing commitment to building a model federal government workplace by accenting selected government-wide initiatives for the public service.

Effective April 1, 2004, the OCRT implemented the government's new directive on official languages policy to support the delivery of quality services to the public through institutional bilingualism and the creation and maintenance of a work environment conducive to the use of both official languages.

The OCRT is also implementing the continuous learning policy announced by Treasury Board in 2002 and intended to build a culture of lifelong learning in the federal public service. In 2003/04, the OCRT held workshops for managers and middle managers to assist them in developing their own personal learning plans and prepare them for supporting their staff in such an undertaking. Already, the OCRT has supported three employees enrolled in a University of Ottawa program to receive a Certificate in Public Management and Governance. In 2004/05, the OCRT will begin holding learning plan workshops for interested staff and put in place an agency-wide learning initiative to give effect to these plans.

In 2003/04, the OCRT began a series of initiatives to adapt its management of human resources to the new environment created by the Public Service Modernization Act passed in November 2003. An important emphasis in its implementation has been on streamlined staffing procedures and the promotion of lifelong learning and career development for employees. These efforts will continue in 2004/05, with, for example, workshops to help managers develop coaching and mentoring skills so that they will be able to help employees evolve and plan their careers.

In 2003/04, the OCRT also became one of the few federal departments and agencies to take action in response to the results of the 2002 Public Service Survey focusing on morale issues. After discussing the issues raised in the survey with staff, the OCRT developed an action plan calling for new policies and actions by management in a variety of areas. This plan will be put into effect in 2004/05, and many of the new policies have already been developed.



4. COOPERATE WITH STAKEHOLDERS TO IMPROVE THE SYSTEM

The OCRT has a long tradition of cooperating with the Pension Appeals Board (PAB) and Social Development Canada (and its predecessor, Human Resources Development Canada) in pilot projects and information exchanges to improve the operation of the appeals system and service to clients. To the same end, we have also reached out to a range of stakeholders. More recently, as the earlier part of this section has shown, we have worked with federal agencies and other stakeholders to develop suggestions for improvement to Canada's system for providing income support to people with disabilities.

In the coming years, these activities will continue. More specifically, through the interagency working group, we will continue to work closely with SDC and the PAB to improve service to clients, participating in pilot projects and sharing information with both agencies. We will also be strengthening our relations with other Canadian administrative tribunals. Finally, we will continue to work with our own Panel Members, a range of stakeholders and Social Development Canada to improve the appeal process and modernize the existing Canadian system for providing income support to people with disabilities and the elderly.

GLOSSARY

GLOSSARY

Added Party: A person who is not the Appellant but who may be 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. The statutory definition appears in Subsection 82(10) of the *Canada Pension Plan* legislation.

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

Appellant: A person who has received a Reconsideration decision from Social Development Canada concerning his/her application for CPP or OAS benefits, and who has filed an appeal to the Commissioner of Review Tribunals (CPP/OAS). The statutory definitions appear in Subsections 82(1) and 84(2) of the *Canada Pension Plan*.

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. For most full-time fixed term appointments, qualified candidates are actively sought through publicized notices of vacancy that appear in the *Canada Gazette*.

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

Minimum Qualifying Period or MQP: To be eligible for a 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). For example, the MQP for a disability benefit is four (4) years of valid contributions within the last six (6) years. The statutory definition for the MQP appears in Section 44 of the *Canada Pension Plan*.

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: Upon a written request by a person who has applied for benefits to the Minister of Social Development Canada, the Department, on the Minister's behalf, will undertake a review or "reconsideration" of the decision made about his/her eligibility for benefits. A government official reviews the case and makes a "reconsideration" decision. The statutory definition appears in Section 81 of the *Canada Pension Plan*.



GLOSSARY

Representative: A representative, as used in this report, is a person retained by an Appellant to help represent his/her claim in 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. A statutory definition appears in Subsection 82(7) of the *Canada Pension Plan*.

SDC: Department of Social Development Canada. The federal Department responsible for the administration of CPP and OAS programs after December 12, 2003. Before then, it was Human Resources Development Canada (HRDC).

SDC Representative: An SDC employee that presents the position of the Minister of SDC at a Review Tribunal hearing.



ANNEX A: INSIDE THE OCRT

As pointed out in Section 1, 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 Social 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, Tribunal Operations and Communications, Professional Development and Technical Services, Appointments and Members Secretariat, and Corporate Services. The mandates of each are described below.

Figure 9

ORGANISATION CHART



ANNEXES

LEGAL SERVICES

In contrast to federal departments, the Office of the Commissioner of Review Tribunals is an arm's-length body and does not receive its legal services from the Department of Justice. The OCRT has developed an in-house division of lawyers, legislative/policy and paralegal staff who perform a wide range of legal, policy and operational activities.

The General Counsel provides legal and policy advice to the Commissioner, Deputy Commissioner, Tribunal Members and senior management in the OCRT. The General Counsel is also responsible for overseeing the legal component of orientation and professional development programs for Panel Members and OCRT staff.

Lawyers offer legal advice to Panel Members and OCRT staff on daily operations and work closely with Members on the quality of decisions. The lawyers also manage all appeals involving constitutional issues and OAS/CPP re-hearings.

Legal Services staff also reviews post-hearing correspondence and carries out research on complex legal issues and legislative and policy concerns as a basis for advice to the Commissioner and changes to OCRT operations. To this end, they are actively involved in outreach efforts with SDC staff, Appellants' representatives, advocacy organizations and professionals in related sectors.

TRIBUNAL OPERATIONS AND COMMUNICATIONS

In addition to developing strategies for the OCRT's external communications, the Tribunal Operations and Communications division is responsible for planning, coordinating and improving the hearing process, with a view to ensuring 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.

The division is responsible for the scheduling of appeals at times and locations suitable to all parties to an appeal.

After the appeal has been scheduled, division staff coordinates the correspondence with the parties to an appeal. It is also responsible for verifying the content of the hearing file containing the documentation for a given appeal, as well as for its delivery to the Appellant, the Department and any added parties.

Client service officers from the division provide pre-hearing counselling to virtually all Appellants, added parties and representatives. Its toll-free inquiries representatives answer the OCRT's 1-800 lines and respond to questions from Appellants, representatives and any added parties. Its staff also manages a similar 1-800 service for Tribunal Members.

The Division also identifies needs related to hearings - for example, for interpretation, assistive devices and teleconferencing equipment.

After Review Tribunals send in a decision, staff members review it to ensure accuracy of references. The division is also responsible for media and stakeholder relations and developing communications strategies and policies for the OCRT.



PROFESSIONAL DEVELOPMENT AND TECHNICAL SERVICES

The Professional Development and Technical Services division (PDTS) provides timely information on the appeal process to Appellants, their representatives, added parties and other stakeholders, as well as enriched learning for Panel Members and OCRT staff.

PDTS plans and coordinates orientation sessions and advanced workshops for Panel Members on CPP/OAS legislation and regulations, the appeal and hearing process, eligibility requirements and a range of medical and ethical issues. The division took the lead in developing and implementing the advanced workshops designed to improve Members' capacity to assess and weigh medical evidence and deepen their understanding of frequently encountered medical conditions. PDTS also operates a medical resource center for Panel Members.

To OCRT staff, the division offers job orientation, ongoing training and refresher courses, as well as providing programs covering CPP/OAS legislation, the appeal process, career development, entry-level job requirements, stress management and interpersonal skills, to mention only a few.

The division is largely responsible for the development and publication of information materials aimed at the general public, Appellants, the parties to an appeal and Panel Members. This task involves overseeing the preparation of a wide variety of information such as fact sheets, newsletters, bulletins, videos and information brochures for different target audiences, as well as answering external inquiries.

As part of these activities, PDTS has taken the lead in the design, development and improvement of the OCRT website, which is largely aimed at Appellants, their representatives and the general public.

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.

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 Social Development. The summary provides information on the requirements for more Panel Members because of workload or vacancies, as well as the qualifications that candidates for appointment should have.

In cooperation with the Commissioner and General Counsel, the secretariat also receives and helps investigate complaints against Panel Members or other parties at hearings.

ANNEXES

CORPORATE SERVICES

The Corporate Services division supports the appeals process and provides services to the OCRT and its staff, Panel Members and Appellants and added parties. These services can be broken down into:

- human resources, financial, logistical and administrative services, information technology, and planning & analysis to the OCRT;
- administrative support to the appeals process, as well as arranging interpretation, security other special services for hearings;
- counsel and support on financial matters to Panel Members, Appellants, added parties and OCRT staff.

In 2004, Corporate Services created a new corporate planning and analysis unit to ensure modern comptrollership practices are fully followed in keeping with the emphasis in the 2004 federal Budget. The unit will support and coordinate activities in the OCRT's planning and accountability process; offer expert advice to senior management on operational planning; monitor performance and issue reports on performance and accomplishments; and develop operational plans and priorities.

Corporate Services provides staffing, contracting and procurement services for the OCRT, as well as key administrative services in support of the OCRT's internal operations and Appellants, representatives and Panel Members. This last responsibility covers activities such as exchanging documentation with the public and the Department. It also includes in-house services such as filing, data capture, security, accommodation, mail, word processing, copying and binding, access to information and privacy requests.

The division is responsible for maintaining and improving the Appeals Management System (AMS) - the official database of all appeals received and/or processed by the OCRT.



ANNEX B: EXPENDITURES

Table 8

SALARY AND NON-SALARY EXPENDITURES, 2002/03

Year Ending March 31, 2003	
Salaries	\$ 4,312,126
Per Diems to Panel Members	\$ 5,006,452
Operating Costs - Non-Salary	\$ 5,564,460
Total	\$ 14,883,038

Table 9

SALARY AND NON-SALARY EXPENDITURES, 2003/04

Year Ending March 31, 2004	
Salaries	\$ 4,538,389
Per Diems to Panel Members	\$ 5,182,472
Operating Costs - Non-Salary	\$ 5,115,736
Total	\$ 14,836,597

ANNEXES

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 400 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:

I. 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.

ANNEXES

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.