



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Canada

Social Security Tribunal of Canada

Achievements Report 2013-2016

Social Security Tribunal of Canada

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Cat. No.: Em24-1/2016E-PDF

ISBN: 978-0-660-06346-1

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MESSAGE FROM THE CHAIRPERSON



As Chairperson of the Social Security Tribunal of Canada, it is my pleasure to report on the Tribunal's activities and accomplishments during its first three years of operation.

I believe that to build public trust and confidence in the organization, it is important to highlight the work of the Tribunal, its performance and its priorities in an Annual Report. I intend to continue this practice.

Even though the Tribunal remains in its infancy, we have made significant progress since the start of its operation on April 1, 2013. At the beginning, the Tribunal consisted of 28 members and 21 staff and our infrastructure and case management system were rudimentary. Through ongoing hard work and dedication, the Tribunal took shape and by the end of March 2016, it counted 86 active members and 150 employees to manage its activities. Significant and impressive strides were made in developing the case management system and adapting it to the four appeal streams and we now have the benefit of a solid infrastructure.

It is a pleasure to be supported by the three Vice-chairpersons and work with such a dedicated team of colleagues and staff who are devoted to public service. The Tribunal members and staff are committed to implementing the initiatives outlined in this report and to ensuring excellence in the services provided to Canadians. In the coming year, we will continue to build the Tribunal, engage stakeholders, review our activities and consult clients to gauge their level of satisfaction as we also implement the recommendations of the Auditor General.

Murielle Brazeau
Chairperson
Social Security Tribunal of Canada

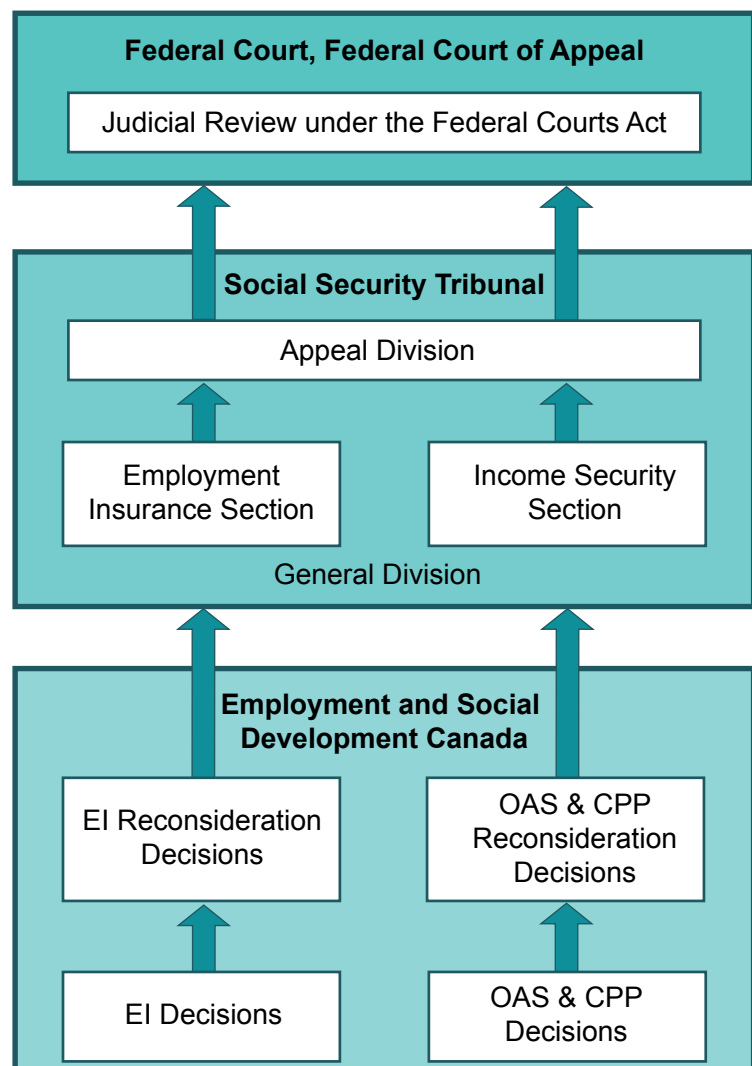
1. WHO WE ARE AND WHAT WE DO

Operating since April 1, 2013, the Social Security Tribunal of Canada is an independent administrative tribunal that makes quasi-judicial decisions on matters relating to the *Canada Pension Plan*, the *Old Age Security Act* and the *Employment Insurance Act*.

The Tribunal replaced four legacy tribunals: the Office of the Commissioner of Review Tribunals, the Pension Appeals Board, the Board of Referees and the Office of the Umpire. The Tribunal was created to simplify and streamline Income Security and Employment Insurance appeals by offering a single point of contact for submitting an appeal.

The Tribunal consists of a General Division and an Appeal Division. The General Division has an Employment Insurance and an Income Security Section. The Appeal Division decides matters on appeal from the General Division. All decisions are made by a single member.

The Tribunal considers appeals from individuals who disagree with a decision pertaining to Employment Insurance and Income Security matters.



These individuals or “parties” may include clients who were found not to be entitled to benefits, employers, the Canada Employment Insurance Commission, the Minister of Employment and Social Development Canada¹ or by other parties affected by a decision. The work of the Tribunal is governed by the following legislation:

- The *Department of Employment and Social Development Act*
- The *Department of Employment and Social Development Regulations*
- The *Social Security Tribunal Regulations*
- The *Canada Pension Plan* and its Regulations
- The *Old Age Security Act* and its Regulations
- The *Employment Insurance Act* and its Regulations

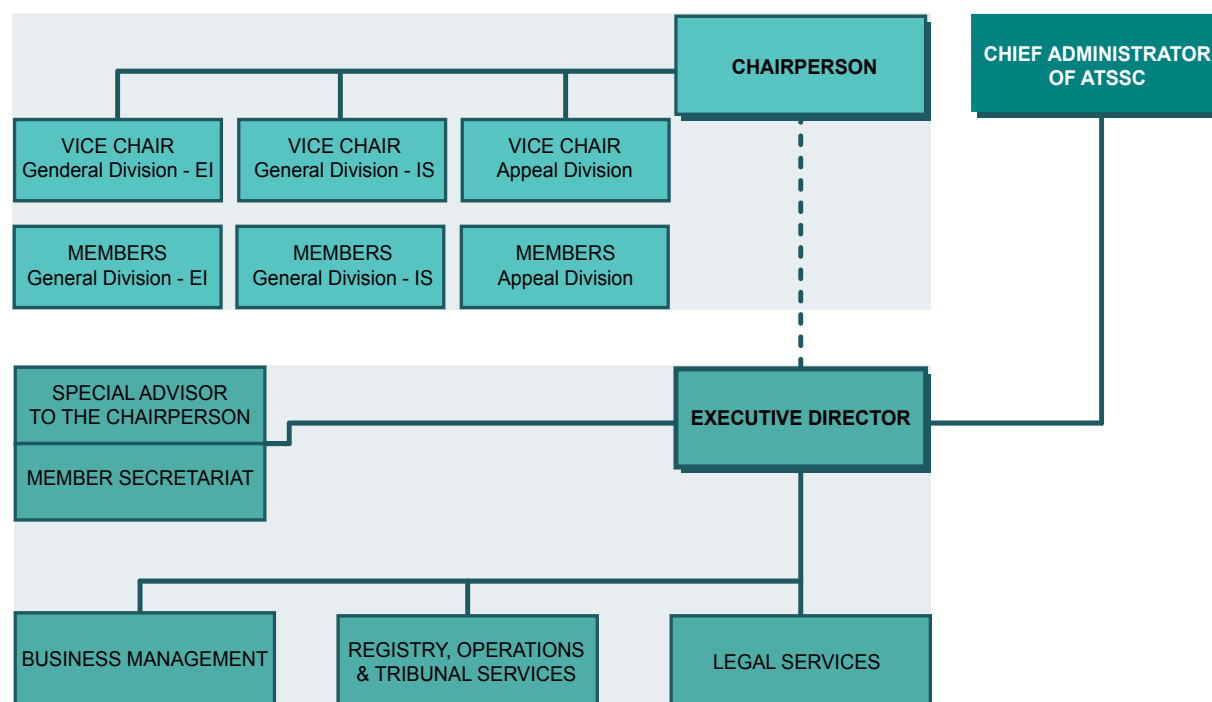
The Tribunal’s mandate is to offer fair, impartial and efficient appeal processes for Canadians.

The chart on page 4 illustrates the structure of the Tribunal which consists of individuals appointed by the Governor in Council. The Chairperson, who is responsible for directing the work of the Tribunal, is supported by 3 Vice-chairpersons who oversee the work of their respective members. At the end of March 2016, the Tribunal consisted of 86 members (64 working full-time and 22 working part-time).

The Tribunal is one of the 11 tribunals supported by the Administrative Tribunal Support Services of Canada (ATSSC). The ATSSC is a separate organization, led by a Chief Administrator and its mandate is to provide support services and facilities to 11 federal administrative tribunals. An Executive Director, reporting to the Chief Administrator and taking substantive direction from the Chairperson, is responsible for supporting all aspects of the daily activities of the Tribunal through approximately 150 public servants.

¹ The *Department of Employment and Social Development Act* defines “Minister” as the Minister of Employment and Social Development. Therefore, for the purposes of this report, we will refer to the Minister of ESDC, notwithstanding that as of November 4, 2015, The Honourable Jean-Yves Duclos was appointed as Minister of Families, Children and Social Development.

SOCIAL SECURITY TRIBUNAL



1.1. Tribunal Members

1.1.1. Appointments

All Tribunal members were appointed from an eligibility list established following rigorous selection processes concluded in 2012 and 2014, which included a written test, an interview and references.

In January 2015, the Tribunal had 95 active members, the highest in the Tribunal's history. During fiscal year 2015-2016, some members left for professional and personal reasons and others were transferred from the Income Security Section to the Employment Insurance Section to help with the increased intake in Employment Insurance appeals. At the end of March 2016, the Tribunal had a total complement of 90 members, which include the Chairperson, 3 Vice-chairpersons, 53 (full-time and part-time) members in the General Division – Income Security Section, 27 in the General Division - Employment Insurance Section and 6 Appeal Division members. Members of the General Division are located across the country and work from their home office, while the Appeal Division members work from the Tribunal's office in Ottawa.

On February 25, 2016, the Prime Minister announced a new Governor in Council appointment process that will apply to all federal boards, commissions, Crown corporations, agencies and tribunals. All new appointments and reappointments to the Tribunal will now follow this new process.

1.1.2. Member Training and Professional Development

The Tribunal's training program is very important to ensure quality decisions. Once members are appointed, they receive detailed training material and they attend an intensive training program. Afterwards, the Vice-chairperson pairs the new member with an experienced member who acts as a mentor. Members also receive ongoing support from the Tribunal's legal services.

Members regularly participate in conference calls or meetings with their respective Vice-chairperson where they discuss legal and operational issues, receive ongoing training and share best practices.

In addition, members attend a 3-day intensive training session every year to stay current on developing jurisprudence and to improve their decision-writing skills.

Finally, the Vice-chairpersons assess members' performance by reviewing the quality of decisions, the number of decisions completed and other related aspects such as their performance at hearings.

2. KEY AREAS OF PROGRESS

When the Tribunal opened its doors, it was understaffed and under resourced. There were limited systems or operational processes to manage the appeal backlogs inherited from the former tribunals and the new appeals. As a starting point, we had to put in place a solid foundation for the future, while at the same time dealing with all these appeals. Adding to the complexity is the fact that the Tribunal has four different appeals streams with their own particularities and challenges. Nevertheless, the Tribunal achieved important milestones and the key ones are addressed in more detail below.

2.1. Members and Staff

The Tribunal started with a limited number of members; however, more were gradually appointed and trained to ensure the Tribunal could address its inventory in a timely manner.

The Tribunal initially had 21 employees, the majority of them working in Legal Services or in senior management positions. Staff in various groups and levels were gradually hired and trained and we now have 150 employees to support the work of the Tribunal.

2.2. System and Processes

The case management system and operational processes required to manage, assign, hear and decide appeals were gradually developed and implemented. The case management system is now sufficiently developed to provide accurate data that allows us to monitor and manage the caseloads and member performance; however, the Tribunal will continue to upgrade its system to respond to its needs.

In addition, the Tribunal developed procedural directions and operational processes to provide direction to staff to ensure consistent approaches.

2.3. Stakeholders

The Tribunal recognizes the importance of communicating with and listening to its stakeholders to provide improved client service and it has adopted a proactive approach to stakeholder relations. In the past three years, the Tribunal had the opportunity to meet and consult with various individuals, parties and representatives working for profit and non-profit organizations, legal aid clinics, unions, law societies, private law firms, the Canada Employment Insurance Commission and the Department of Employment and Social Development.

In its first year in operation, the Tribunal held more than 20 information sessions for stakeholders on the key amendments to the legislation, the structure of the Tribunal and the new appeal process.

In the following years, the Tribunal continued to provide numerous information sessions and started having more direct contact with various stakeholders who helped the Tribunal improve the quality of its services by providing comments and suggestions, most of which we have been able to implement. The Notice of Appeal forms and the toll free line described below illustrate the results of the collaboration between the Tribunal and its stakeholders.

2.4. Notice of Appeal Forms

The Tribunal recently consulted stakeholders on the Notice of Appeal form and really appreciated the detailed comments and suggestions it received from its stakeholders. As a result, new simplified forms will soon be available and will make it easier for parties to file their appeal.

2.5. Toll Free Line

From April 1, 2013 to June 2015, agents from the Canada Enquiry Centre (CEC) answered the Tribunal's toll free line. The agents answered questions of a general nature; however, they could not answer file specific questions because they did not have access to the Tribunal's appeal files. Tribunal staff was responsible for returning calls from individuals who had questions relating to a specific file. This situation was very frustrating to appellants and representatives seeking information about their appeal or the Tribunal processes.

The Tribunal concluded that it could offer a better service to its clientele by having Tribunal staff answer the toll free line.

Since November 2015, Tribunal staff has been handling all telephone enquiries. On average, the Tribunal receives more than 2,800 calls a month from individuals seeking information or clarification on how to appeal and the status of their appeal.

The Tribunal has received positive feedback about its improved telephone services. Callers are now assisted from 7:00 a.m. to 7:00 p.m. (Eastern Standard Time) by officers who not only have access to the appeal files but are knowledgeable in all aspects of Tribunal operations, there is little wait time if any, and urgent last minutes calls regarding a hearing are addressed immediately.

2.6. Publication of Decisions

The Tribunal publishes, on its website, all the Appeal Division decisions and a selection of relevant decisions from the General Division. The Tribunal decisions are also available on the Canadian Legal Information Institute (CanLII) website and on the *Société québécoise d'information juridique* (SOQUIJ), both of which allow searches by keywords. As of March 31, 2016, the Tribunal had published a total of 2,070 decisions. The Tribunal publishes new decisions on a monthly basis.

2.7. Resource Tools

The Tribunal published a research tool to help parties find relevant decisions from different courts and tribunals relating to the *Canada Pension Plan* (CPP). The tool is searchable by subject and benefits and it includes hyperlinks to the full text of the decisions. This tool was available on the Tribunal's website at the end of 2015. The Tribunal received very positive feedback for this initiative.

Similarly, in February 2016, the Tribunal published a web research tool for Employment Insurance (EI) matters which is searchable by subject and by court decisions. It also includes a link to relevant sections of the legislation.

As part of its ongoing commitment to improve the quality of its service and building fair, efficient and effective appeal processes, the Tribunal will continue to update these tools and develop new ones.

3. APPEALS PROCESSES

The *Social Security Tribunal Regulations* stipulate that the Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit. In addition, the Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of an appeal and application.

3.1. General Division

3.1.1. Appeal to the General Division

Individuals who disagree with the reconsideration decision made by the Canada Employment Insurance Commission (CEIC) or the Minister of Employment and Social Development Canada (ESDC) can appeal to the Social Security Tribunal of Canada. Subsection 52(1) of the *Department of Employment and Social Development Act* (DESD Act) provides the time limit for an appellant to file an appeal before the General Division. In the case of a decision made under the *Employment Insurance Act* (EI Act), an appellant has 30 days after the day on which the decision was communicated to the appellant to appeal to the General Division. The time limit to appeal decisions relating to the *Canada Pension Plan* (CPP) and the *Old Age Security Act* (OAS Act) is 90 days.

3.1.2. Late Appeal – Extension of Time to Appeal

Subsection 52(2) of the DESD Act states that the General Division may extend the time limit of 30 or 90 days, as the case may be, as long as the request for extension is not made more than one year after the communication of the reconsideration decision.

3.1.3. Summary Dismissal

Subsection 53(1) of the DESD Act provides that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

For example, a member of the General Division would likely summarily dismiss an appeal where the claimant does not have the required insurable hours to qualify for EI benefits or where an individual does not have sufficient valid contributions to the CPP to qualify for a disability pension..

3.1.4. Forms of Hearing

The *Social Security Tribunal Regulations* provide that General Division members can hold a hearing by written questions and answers, by teleconference, by videoconference or the personal appearance of the parties. General Division members make this quasi-judicial interlocutory decision by considering a number of factors including, but not limited to:

- the complexity of the case;
- the number of anticipated parties/participants;
- if credibility is a prevailing issue;
- if videoconference is available close to the area where the appellant lives;
- if there are gaps in the information in the file; and
- if a request to address specific needs has been made.

General Division members who hear matters relating to the CPP or the OAS Act have an additional option. They can make a decision based on the evidence in the file if they consider that a hearing is not required.

3.1.5. Tribunal Hearings

Hearings before the General Division are open to the public. However, all or part of a hearing may be held in private if the Tribunal member is of the opinion that the circumstances of the case so require.

3.1.6. Written Reasons

Members review all the information provided by the parties and consider their arguments and the relevant legislation. Members are required by law to prepare written reasons to inform the parties of how and why they reached their decision. Members must make decisions without delay, and members try to issue their decisions within 30 days after the conclusion of the hearing. The Tribunal then sends the written reasons to the parties to the appeal and advises them of the time limit to appeal to the Appeal Division.

3.2. Appeal Division

3.2.1. Appeal to the Appeal Division

The Appeal Division represents the first level of appeal for the Department on behalf of the Canada Employment Insurance Commission or Minister in instances where they disagree with a decision made by the General Division. Other parties who are dissatisfied with the General Division decision can also file an appeal with the Appeal Division.

Parties do not have an automatic right to appeal the decision of the General Division to the Appeal Division. First, a party must obtain leave (permission) to appeal a decision of the General Division. There is one exception – leave to appeal is not required when a party is appealing the General

Division's decision to summarily dismiss an appeal.

To obtain leave to appeal, a party must demonstrate to the Appeal Division that their appeal has a reasonable chance of success by showing that the General Division:

- a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Generally, members of the Appeal Division decide the application for leave to appeal based on their review of the application and the information in the General Division file. There is no requirement for the respondent to file submissions at this stage. If leave is granted, parties have 45 days after the day on which the appeal is granted to file written submissions or file a notice stating that they have no submissions to file. Afterwards, the Appeal Division must make a decision on the appeal or, if a hearing is required, send a notice of hearing to the parties.

3.2.2. Late Appeal – Extension of Time to Appeal

According to section 57 of the DESD Act, an appeal before the Appeal Division must be brought within 30 days (for EI matters) or 90 days (for CPP and OAS matters) of the communication of the decision of the General Division.

The Appeal Division may extend such time as long as it is not more than one year after the communication of the General Division decision.

3.2.3. Forms of Hearing

The *Social Security Tribunal Regulations* provide that Appeal Division members hearing a case on the merit can hold a hearing by written questions and answers, by teleconference, by videoconference or the personal appearance of the parties. They make this quasi-judicial interlocutory decision by considering a number of factors including, but not limited to:

- the complexity of the case;
- the number of anticipated parties/participants;
- if credibility is a prevailing issue;
- if videoconference is available close to the area where the appellant lives;
- if there are gaps in the information in the file; and
- if a request to address specific needs has been made.

Appeal Division members who hear matters relating to the CPP or the OAS Act have an additional option. They can make a decision based on the evidence in the file when a hearing is not required.

3.2.4. Tribunal Hearings

Hearings before the Appeal Division are open to the public. However, all or part of a hearing may be held in private if the Tribunal member is of the opinion that the circumstances of the case so require.

3.2.5. Written Reasons

Appeal Division members are required to give written reasons. This applies to decisions to grant or refuse leave to appeal and to decisions on the merit.

3.3. Framework of Tribunal Communication Instruments

The Tribunal is committed to improving its efficiency and ensuring transparency and access to justice. Therefore, it has developed a series of instruments to ensure efficient caseload management and to provide direction to members and parties. The following instruments are published on the Tribunal's website:

- a) **Code of Conduct for Members** – Sets out the conduct members are expected to comply with to support the Tribunal's commitment to provide fair, transparent, credible and impartial appeal processes that are efficient and effective.
- b) **Chairperson's Guidelines** – Instruments that provide guidance, advice or explanations to Tribunal members while preserving their independence.
- c) **Practice Directions** – Instruments used to inform parties of the Tribunal's procedures in the absence of a specific regulatory provision or to interpret existing regulatory provisions.

The Tribunal relies on the Chairperson's Directives to members to communicate mandatory operational and administrative instructions. To manage the day to day operations of the Tribunal, staff refers to procedural directions and operational processes that guide their actions and the steps to complete in various scenarios.

The Tribunal will continue to develop these different instruments that guide staff, parties and members and ensures efficient and effective appeal processing.

4. CASELOADS

The Tribunal has now concluded the significant backlogs inherited from the former tribunals. The few cases remaining have been adjourned at the request of parties or are in abeyance for reasons beyond the Tribunal's control and will be concluded as soon as possible.

4.1. General Division – Employment Insurance Section (GD-EI)

4.1.1. Caseload

The Social Security Tribunal of Canada started receiving appeals immediately upon opening its doors in April 2013.

The Tribunal manages and tracks group appeals and regular appeals separately because group appeals tend to be more complex and require more time to complete.

The Tribunal considers an appeal to be part of a group appeal when more than one claimant appeals Canada Employment Insurance Commission's (CEIC) decision concerning the same or a similar situation. For example, where multiple claimants with the same former employer lost their employment under similar or identical circumstances file appeals to the Tribunal.

The chart below provides the breakdown of the number of new appeals received, appeals concluded and the inventory remaining for both group appeals and regular appeals. During its first three years of operations, the Tribunal received a total of 10,185 new appeals and concluded 8,390.

GD-EI - NEW INVENTORY									
	FY 13-14			FY 14-15			FY 15-16		
	Regular	Group	Total	Regular	Group	Total	Regular	Group	Total
Beginning Inventory	0	0	0	1,189	473	1,662	1,299	842	2,141
Received	2,491	477	2,968	3,040	523	3,563	3,510	144	3,654
Concluded	(1,302)	(4)	(1,306)	(2,930)	(154)	(3,084)	(3,145)	(855)	(4,000)
Ending Inventory	1,189	473	1,662	1,299	842	2,141	1,664	131	1,795

In addition, in October 2013, the Tribunal received 321 appeals from the Board of Referees. The Board of Referees had been granted 6 months, after the Tribunal started its operations, to complete its active workload. However, the Board of Referees was unable to conclude the appeals that were held in abeyance pending decisions from the Canada Revenue Agency or the Tax Court of Canada and transferred these appeals to the Tribunal. The Tribunal has been dealing with these cases as soon as the decisions from the Canada Revenue Agency and the Tax Court of Canada are issued.

The chart below provides the breakdown of the number of backlog appeals the Tribunal received from the Board of Referees, appeals concluded and the remaining inventory. Of the remaining 78 backlog appeals, 55 are scheduled to be heard in the summer/fall 2016. The remaining appeals will be scheduled as soon as they are ready to proceed.

GD-EI – BOARD OF REFEREES – BACKLOG INVENTORY									
	FY 13-14			FY 14-15			FY 15-16		
	Regular	Group	Total	Regular	Group	Total	Regular	Group	Total
Beginning Inventory	0	0	0	61	258	319	33	251	284
Received	63	258	321						
Concluded	(2)	0	(2)	(28)	(7)	(35)	(29)	(177)	(206)
Ending Inventory	61	258	319	33	251	284	4	74	78

During its first three years of operations, the Tribunal received a total of 10,506 new and backlog appeals and concluded 8,633 appeals. Its total remaining inventory on March 31, 2016 was therefore 1,873 appeals.

4.1.2. Outcomes

During its first three years of operations, the Tribunal concluded a total of 8,633 appeals, which includes new appeals and the backlog appeals the Tribunal received from the Board of Referees. The chart below demonstrates the outcomes for all group appeals and regular appeals for each fiscal year.

GD-EI – OUTCOMES FOR ALL APPEALS												
	Allowed		Dismissed		Late Appeal Denied		Summary Dismissal		Withdrawn / Other		Total	
	#	%	#	%	#	%	#	%	#	%		
FY 13-14	243	19%	712	54%	61	5%	188	14%	104	8%	1,308	100%
Groups		0%		0%	1	25%		0%	3	75%	4	100%
Regular	243	19%	712	55%	60	5%	188	14%	101	8%	1,304	100%
FY 14-15	760	24%	1,820	58%	148	5%	201	6%	190	6%	3,119	100%
Groups	112	70%	23	14%		0%		0%	26	16%	161	100%
Regular	648	22%	1,797	61%	148	5%	201	7%	164	6%	2,958	100%
FY 15-16	1,156	27%	2,454	58%	110	3%	100	2%	386	9%	4,206	100%
Groups	360	35%	497	48%	4	0%	1	0%	170	16%	1,032	100%
Regular	796	25%	1,957	62%	106	3%	99	3%	216	7%	3,174	100%

4.1.3. Forms of Hearing

As noted in section 2, titled Appeal Processes, Tribunal members decide the form of hearing. In the General Division – Employment Insurance, members can proceed in person, with questions and answers, by teleconference, or by videoconference.

The chart below illustrates the forms of hearing for decisions on the merits, by fiscal year for all new and Board of Referees appeals for both group and regular appeals.

GD-EI - FORMS OF HEARING										
	In person		Questions and answers		Teleconference		Videoconference (*)		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14	124	13%	6	1%	820	86%	5	1%	955	100%
Regular	124	13%	6	1%	820	86%	5	1%	955	100%
Groups		0%		0%		0%		0%		100%
FY 14-15	478	19%	3	0%	1,999	77%	100	4%	2,580	100%
Regular	355	15%	3	0%	1,987	81%	100	4%	2,445	100%
Groups	123**	91%		0%	12**	9%		0%	135	100%
FY 15-16	1,149	32%	5	0%	2,267	63%	189	5%	3,610	100%
Regular	319	12%	5	0%	2,240	81%	189	7%	2,753	100%
Groups	830***	97%		0%	27***	3%		0%	857	100%

*The use of videoconference has increased every year as it became available in more Service Canada Centres across Canada.

**In 2014-2015, the Tribunal heard 4 group appeals in person which totaled 123 appeals. In the same period, the Tribunal heard 2 group appeals by teleconference which totaled 12 appeals.

***In 2015-2016, the Tribunal heard 3 group appeals in person which totaled 830 appeals. In the same period, the Tribunal heard 5 group appeals by teleconference which totaled 27 appeals.

4.1.4. Service Standards

On September 1, 2015, the Tribunal implemented the following service standard – 85% of final decisions will be made within 90 days of the appeal being filed.

The Tribunal’s capacity to meet its service standards depends on the number of incoming appeals, the number of available members and members’ productivity levels. The Tribunal is monitoring the situation closely and will be reporting its performance in the next annual report.

4.1.5. Time it Takes to Receive a Decision

According to the *Social Security Tribunal Regulations*, the General Division – Employment Insurance Section must make its decision without delay after the conclusion of the hearing. The Tribunal strives to issue decisions within 30 days after the day of the hearing; however, this objective cannot always be met due to circumstances outside the Tribunal’s control. For example, it takes more time to write a decision in complex and voluminous files such as a group appeals and those relating to complex legal matters. As well, in some instances, members have to wait for the parties to submit additional information before rendering their decision.

The chart below demonstrates how much time it took for the General Division – Employment Insurance Section to issue all its decisions after the hearing had taken place.

GD-EI – TIMELINES BETWEEN HEARING AND DECISION										
	0 - 30 Days		31 - 60 Days		61 - 90 Days		91+ Days		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14	679	81%	136	16%	16	2%	4	0%	835	100%
Groups		0%		0%		0%		0%		100%
Regular	679	81%	136	16%	16	2%	4	0%	835	100%
FY 14-15	1,419	61%	487	21%	233	10%	197	8%	2,336	100%
Groups	14	11%	100	76%	17	13%		0%	131	100%
Regular	1,405	64%	387	17%	216	10%	197	9%	2,205	100%
FY 15-16	1,785	55%	890	26%	175	5%	473	13%	3,323	100%
Groups	23	3%	476	57%		0%	353	41%	852	100%
Regular	1,762	71%	414	17%	175	7%	120	5%	2,471	100%

4.2. General Division - Income Security Section (GD-IS)

4.2.1. Caseload

According to the legislative transition rules, the former Office of the Commissioner of Review Tribunals (OCRT) remained seized of any appeal that was filed and heard before April 1, 2013. However, the General Division – Income Security Section was responsible for appeals that the OCRT had not heard by April 1, 2013. As a result, the Tribunal inherited a backlog of 7,255 appeals when it started its operations.

Appeals before the General Division – Income Security Section are subject to a “notice of readiness process.” According to the *Social Security Tribunal Regulations*, parties have 365 days after the day on which the appeal is filed to file additional documents or submissions, or file a notice that they have no additional documents to file. After 365 days, parties are deemed to be ready to proceed.

There were very few of the 7,255 backlog cases where all parties confirmed that they were ready to proceed; therefore, the Tribunal could not schedule these appeals until the spring 2014, when the 365 days had expired. In addition to the 7,255 backlog cases, the Tribunal received over 3,000 new files in its first year. Most of these could not be scheduled before the expiry of the 365 days.

As a result, on April 1, 2014, thousands of appeals became ready to proceed. The Tribunal also temporarily stopped asking parties to new cases if they wanted to proceed before the end of the one year period as it had more cases that could be assigned than it had members available to decide them. The Tribunal started assigning oldest cases first. However, by December 2015, as the caseload became more manageable, the Tribunal resumed asking parties if they were ready to proceed before the end of the one year period. If all parties confirm readiness before the one year period is over, the Tribunal assigns the case and a decision is rendered.

The chart below provides the breakdown of the number of appeals the Tribunal inherited from the OCRT on April 1, 2013, the appeals concluded and the inventory remaining at the end of each fiscal year. The remaining 45 backlog appeals have been delayed for valid reasons such as adjournment requests by appellants and will be concluded as soon as possible.

GD-IS – OFFICE OF THE COMMISSION OF REVIEW TRIBUNALS - BACKLOG INVENTORY			
	FY 13-14	FY 14-15	FY 15-16
Beginning Inventory	7,255	6,302	3,122
Received	0	0	0
Concluded	(953)*	(3,180)	(3,077)
Ending Inventory	6,302	3,122	45

The chart below provides the breakdown of the number of new appeals the Tribunal received, the appeals concluded and the inventory remaining at the end of each fiscal year.

GD-IS – NEW INVENTORY			
	FY 13-14	FY 14-15	FY 15-16
Beginning Inventory	0	3,584	7,475
Received	3,740	4,476	4,142
Concluded	(156)*	(585)	(6,206)
Ending Inventory	3,584	7,475	5,411

**Since the Social Security Tribunal Regulations provides that parties have up to 365 days to file additional documents before the Tribunal schedules a hearing, in 2013-2014 the majority of appeals were not ready to proceed.*

The important increase in the number of concluded appeals in 2015-2016 (3,077 and 6,206) is due to the increase in the number of Tribunal members and to the increase in the number of settlements between the Department and appellants. This increase in settlements is the result of ESDC's new

practice of reviewing new documents submitted by parties after the filing of appeals, to determine if appellants now meet the criteria for a pension or benefit. The Department has committed to continuing this practice which will help prevent future backlogs and ensure that applicants receive benefits as soon as they qualify.

During its first three years of operations, the Tribunal received a total of 19,613 appeals and concluded 14,157. These numbers include the backlog appeals the Tribunal received from the Office of the Commissioner of Review Tribunals and the new appeals.

4.2.2. Outcomes

The chart below illustrates the outcomes of the new appeals and the backlog appeals for each fiscal year.

GD-IS – OUTCOMES FOR ALL APPEALS														
	Allowed		Agreements		Dismissed		Late Appeals Denied		Summary Dismissals		Withdrawn / Others		Total	
	#	%	#	%	#	%	#	%	#	%	#	%		
FY 13-14	83	7%	595	54%	103	9%	27	2%	104	9%	197	18%	1,109	100%
FY 14-15	777	21%	1,300	35%	940	25%	37	1%	171	5%	540	14%	3,765	100%
FY 15-16	1,811	20%	3,543	38%	2,626	28%	160	2%	695	7%	448	5%	9,283	100%

4.2.3. Forms of Hearing

As noted in section 3, titled Appeal Processes, Tribunal members decide the form of hearing. In the General Division – Income Security, members can make a decision based on the documents and submissions filed or hold a hearing by way of questions and answers, by teleconference, by videoconference or in person.

The chart below illustrates the forms of hearing for all appeals heard on the merits by fiscal year.

GD-IS - FORMS OF HEARING												
	In person		On the Record		Questions and answers		Teleconference		Videoconference		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
FY 13-14	19	10%	19	10%	3	2%	143	77%	2*	1%	186	100%
FY 14-15	469	27%	191	11%	57	3%	659	38%	341*	20%	1,717	100%
FY 15-16	1,107	25%	484	11%	131	3%	1,537	35%	1,178*	27%	4,437	100%

**The use of videoconference has increased every year as it became available in more Service Canada Centres across Canada.*

4.2.4. Service Standards

On December 1, 2015, the Tribunal implemented the following service standard - 85% of cases will be decided within 5 months of the appeal becoming ready to proceed.

It is too soon to report on the service standards; however, the Tribunal remains committed to reducing its inventory and will report on its performance in its 2016-2017 Annual Report.

4.2.5. Time it Takes to Receive a Decision

According to the *Social Security Tribunal Regulations*, the General Division – Income Security Section must make its decision without delay after the conclusion of the hearing. The Tribunal strives to issue decisions within 30 days after the day of the hearing; however, this objective cannot always be met due to circumstances outside the Tribunal’s control. For example, at times members have to wait for the parties to submit additional information before rendering their decision. In addition, it may take more time to write a decision that involves complex legal issues.

The chart below demonstrates how much time it took for the Tribunal to issue all the General Division – Income Security decisions once the hearing had taken place.

GD-IS – TIMELINES BETWEEN HEARING AND DECISION										
	0 - 30 Days		31 - 60 Days		61 - 90 Days		91+ Days		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14	138	89%	12	8%	3	2%	2	1%	155	100%
FY 14-15	966	70%	238	17%	90	7%	90	7%	1,384	100%
FY 15-16	2,230	63%	557	16%	344	10%	411	12%	3,542	100%

Note: The chart excludes some appeals that have data integrity issues caused by the Tribunal's early operational challenges.

Note: These figures do not include appeals that were concluded without a hearing, such as, appeals that were settled by agreement or withdrawn appeals.

4.3. Appeal Division – Employment Insurance (AD-EI)

4.3.1. Caseload

According to the legislative transition rules, the Office of the Umpire remained seized of any appeal filed and heard before April 1, 2013. However, the Appeal Division was responsible for appeals the Office of the Umpire had not heard by April 1, 2013. As a result, the Tribunal inherited 1,071 EI backlog appeals when it started its operations.

The chart below provides the breakdown of the number of appeals the Tribunal inherited from the Office of the Umpire on April 1, 2013, the appeals concluded and the inventory remaining at the end of each fiscal year. The Appeal Division concluded the last appeal transferred from the Office of the Umpire in May 2015.

AD-EI – OFFICE OF THE UMPIRE BACKLOG INVENTORY			
	FY 13-14	FY 14-15	FY 15-16
Beginning Inventory	1,071	370	2
Received	0	0	0
Concluded	(701)	(368)	(2)
Ending Inventory	370	2	0

Note: The Tribunal is unable to differentiate group and regular appeals inherited from the Office of the Umpire because of its early operational challenges.

The chart below provides the breakdown of the number of new appeals the Tribunal received, the appeals concluded and the inventory remaining at the end of each fiscal year.

AD-EI – NEW INVENTORY									
	FY 13-14			FY 14-15			FY 15-16		
	Regular	Group	Total	Regular	Group	Total	Regular	Group	Total
Beginning Inventory	0	0	0	401	556	957	453	647	1,100
Received	426	650	1,076	334	93	427	426	831	1,257
Concluded	(25)	(94)	(119)	(282)	(2)	(284)	(633)	(33)	(666)
Ending Inventory	401	556	957	453	647	1,100	246	1,445	1,691

The Appeal Division members gave priority to older cases first and as such, in 2013-2014 and 2014-2015, focused on concluding the appeals that were transferred from the Office of the Umpire. In 2013-2014 they concluded 701 appeals on the merit from the Office of the Umpire and 119 new appeals for a total of 820 appeals on the merit. In 2014-2015, they concluded 368 Office of the Umpire files and 284 new appeals, totaling 652 appeals. In 2015-2016, they concluded 2 Office of the Umpire files and 666 new appeals. Overall, during its first three years of operations, the Appeal Division received a total of 3,831 Employment Insurance appeals and concluded 2,140.

4.3.2. Outcomes

The great majority of the appeals at the Appeal Division followed a two-step process.

- 1) **Leave to appeal** - Unless a party is appealing the General Division’s decision to summarily dismiss an appeal, leave to appeal is required before an appeal of the General Division decision can be considered on the merit.
- 2) **Decision on the merit** - If the Appeal Division grants leave to appeal, the Appeal Division then decides the form of hearing and the merit of the appeal.

The legislative transition rules provided that the Tribunal was deemed to have granted leave to appeal on April 1, 2013, with respect to any appeal filed and not heard before that date. Therefore, the Appeal Division members did not have to decide leave to appeal for the 1,071 backlog appeals that were transferred from the Office of the Umpire to the Tribunal.

The chart below illustrates the outcome of appeals inherited from the Office of the Umpire.

AD-EI – OUTCOMES FOR BACKLOG FROM THE OFFICE OF THE UMPIRE								
	Withdrawn/ Other		Allowed on the Merit		Dismissed on the Merit		Total	
	#	%	#	%	#	%	#	%
FY 13-14	226	32%	231	33%	244	35%	701	100%
FY 14-15	24	7%	146	39%	198	54%	368	100%
FY 15-16		0%		0%	2	100%	2	100%

Note: The Tribunal is unable to separate groups and regular appeals transferred by the Office of the Umpire because of its early operational challenges.

The chart below illustrates the outcome of appeals for new groups and regular appeals by fiscal year.

AD-EI – OUTCOMES FOR NEW APPEALS										
	Leave to Appeal Denied		Withdrawn/ Other		Allowed on the Merit		Dismissed on the Merit		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14		0%	118	99%	1	1%		0%	119	100%
Groups		0%	94	100%		0%		0%	94	100%
Regular		0%	24	99%	1	1%		0%	25	100%
FY 14-15	195	69%	36	13%	50	17%	3	1%	284	100%
Groups		0%	2	100%		0%		0%	2	100%
Regular	195	69%	34	12%	50	18%	3	1%	282	100%
FY 15-16	248	37%	62	10%	248	37%	108	16%	666	100%
Groups	2	6%		0%	24	73%	7	21%	33	100%
Regular	246	39%	62	10%	224	35%	101	16%	633	100%

Note: As appeals to the Appeal Division can be filed by the claimant, the employer or the Canada Employment Insurance Commission, there is no clear correlation between outcomes of appeals and the granting of benefits.

In three years, the General Division – Employment Insurance Section concluded 7,377 regular appeals of which 1,186 decisions were appealed to the Appeal Division. Only 275 of those were allowed, representing an overturn rate of 3.7% of General Division – Employment Insurance concluded appeals.

4.3.3. Forms of Hearing

The chart below illustrates the forms of hearing chosen for decisions on the merit, by fiscal year for new group and regular appeals.

AD-EI –FORMS OF HEARING FOR NEW APPEALS										
	In person		On the Record		Teleconference		Videoconference		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14		0%	1	100%		0%		0%	1	100%
Groups		0%		0%		0%		0%		100%
Regular		0%	1	100%		0%		0%	1	100%
FY 14-15		0%	48	91%	5	9%		0%	53	100%
Groups		0%		0%		0%		0%		100%
Regular		0%	48	91%	5	9%		0%	53	100%
FY 15-16	27	8%	113	32%	201	56%	15	4%	356	100%
Groups	22	71%	9	29%		0%		0%	31	100%
Regular	5	2%	104	32%	201	62%	15	5%	325	100%

Note: The Tribunal is not able to capture the forms of hearing for appeals that were transferred from the Office of the Umpire because of early operation challenges; therefore they are excluded from this chart.

4.3.4. Service Standards

On September 1, 2015, the Tribunal implemented the following service standards for Appeal Division cases received on or after that date:

- 85% of decisions on leave to appeal will be made within 60 days from filing of complete leave application; and
- 85% of final decisions will be made within 7 months from the date leave to appeal was granted.

Members are working diligently to complete the new Employment Insurance caseload within the Tribunal's service standards while also completing the cases received before the service standards came into effect within reasonable timelines.

4.4. Appeal Division – Income Security (AD-IS)

4.4.1. Caseload

According to the legislative transition rules, the Pension Appeals Board remained seized of any appeal filed and heard before April 1, 2013. However, the Appeal Division was responsible for appeals that the Pension Appeals Board had not heard by April 1, 2013. As a result, the Tribunal inherited 466 backlog appeals when it started its operations.

The chart below provides the breakdown of the number of Pension Appeals Board appeals received, the appeals concluded and the inventory remaining at the end of each fiscal year. The Appeal Division concluded the last appeal transferred from the Pension Appeals Board in June 2015.

AD-IS – PENSION APPEALS BOARD BACKLOG INVENTORY			
	FY 13-14	FY 14-15	FY 15-16
Beginning Inventory	466	136	3
Received	0	0	0
Concluded	(330)	(133)	(3)
Ending Inventory	136	3	0

The chart below provides the breakdown of the number of new appeals the Tribunal received, the appeals concluded and the inventory remaining at the end of each fiscal year.

AD-IS - NEW INVENTORY			
	FY 13-14	FY 14-15	FY 15-16
Beginning Inventory	0	169	62
Received	197	158	646*
Concluded	(28)	(265)	(445)
Ending Inventory	169	62	263

**In the latter half of 2015-2016, the Tribunal noticed a significant increase of new appeals due to the increase in the number of decisions in the General Division – Income Security stemming from the backlog of appeals.*

In 2013-2014, the Appeal Division members focused on concluding the backlog appeals that were transferred from the Pension Appeals Board. They concluded 330 appeals from the Pension Appeals Board and 28 new appeals for a total of 358 appeals. In 2014-2015, they concluded 133 appeals from the Pension Appeals Board and 265 new appeals, totalling 398. In 2015-16, they concluded 3 appeals on the merit from the Pension Appeals Board and 445 new appeals, for a total of 448 appeals. Overall, during its first three years of operations, the Appeal Division received a total of 1,467 Income Security appeals and concluded 1,204.

4.4.2. Outcomes

The great majority of the appeals at the Appeal Division follow a two-step process.

- 1) **Leave to appeal** - Leave to appeal is required before an appeal of the General Division decision can be considered on the merit unless a party is appealing the General Division's decision to summarily dismiss an appeal.
- 2) **Decision on the merit** - If the Appeal Division grants leave to appeal, the Appeal Division then decides the form of hearing and the merit of the appeal.

The legislative transition rules provided that the Tribunal was deemed to have granted leave to appeal on April 1, 2013, with respect to any appeal filed and not heard before that date. Therefore, the Appeal Division members did not have to decide leave to appeal for the 446 appeals that were transferred from the Pension Appeals Board to the Tribunal.

The chart below illustrates the outcomes of appeals inherited from the Pension Appeals Board.

AD-IS - OUTCOMES – BACKLOG FROM THE PENSION APPEALS BOARD								
	Withdrawn/ Other		Allowed on the Merit		Dismissed on the Merit		Total	
	#	%	#	%	#	%	#	%
FY 13-14	80	24%	198	60%	52	16%	330	100%
FY 14-15	25	19%	50	38%	58	43%	133	100%
FY 15-16		0%	2	67%	1	33%	3	100%

The chart below illustrates the outcome of new appeals concluded by fiscal year.

AD-IS – OUTCOMES FOR NEW APPEALS											
	Leave to Appeal Denied		Withdrawn/ Other		Allowed on the Merit		Agreements		Dismissed on the Merit		Total
	#	%	#	%	#	%	#	%	#	%	#
FY 13-14	22	79%	6	21%		0%		0%		0%	28
FY 14-15	182	69%	12	5%	17	6%	35	13%	19	7%	265
FY 15-16	232	52%	30	7%	68	15%	52	12%	63	14%	445

Note: As appeals to the Appeal Division can be filed by the claimant or Employment and Social Development Canada, there is no clear correlation between outcomes of appeals and the granting of benefits.

In three years, the General Division – Income Security Section concluded 14,157 appeals, of which 1,001 were filed with the Appeal Division. Only 335 of those were allowed, representing an overturn rate of 2.4% of General Division – Income Security concluded appeals.

4.4.3. Forms of Hearing

The chart below illustrates the forms of hearing chosen for decisions on the merits by fiscal year.

AD-IS – FORMS OF HEARING FOR NEW APPEALS										
	In person		On the Record		Teleconference		Videoconference		Total	
	#	%	#	%	#	%	#	%	#	%
FY 13-14		0%		0%		0%		0%		100%
FY 14-15	5	14%	26	73%	2	6%	3	8%	36	100%
FY 15-16	7	5%	96	74%	4	3%	24	18%	131	100%

Note: The Tribunal does not have the capacity to capture the forms of hearing for appeals that were transferred from the Pension Appeals Board because of its early operational challenges; therefore this information is not captured in this chart.

4.4.4. Service Standards

On September 1, 2015, the Tribunal implemented the following service standards, for Appeal Division cases received by the Appeal Division on or after that date:

- 85% of decisions on leave to appeal will be made within 60 days from filing of complete leave application; and
- 85% of final decisions will be made within 7 months from the date leave to appeal was granted.

Members are working diligently to complete the new Income Security caseload within the Tribunal's service standards while also completing the cases received before the service standards came into effect within reasonable timelines.

5. COURT DECISIONS AND OVERTURN RATES

Individuals wishing to seek judicial review of an Appeal Division decision may apply to the Federal Court of Appeal or the Federal Court. While most decisions of the Appeal Division are subject to judicial review by the Federal Court of Appeal, paragraph 28(1)(g) of the *Federal Courts Act* lists decisions that must be judicially reviewed by the Federal Court. For example, decisions of the Appeal Division regarding an appeal of a decision that was summarily dismissed by the General Division and Appeal Division decisions granting or refusing an application for leave to appeal are judicially reviewed by the Federal Court.

Between April 1, 2013 and March 31, 2016, the Appeal Division rendered 4844 decisions that could have been judicially reviewed. During this period, the Federal Court of Appeal and the Federal Court considered 66 applications for judicial review, which represents 1.4% of decisions the Appeal Division rendered. In addition, the Supreme Court of Canada refused an application for leave to appeal a decision of the Federal Court of Appeal that overturned an Appeal Division decision on an Employment Insurance matter.

This section presents the overturn rate of Appeal Division decisions by the Federal Court of Appeal and by the Federal Court, for each fiscal year and for both Employment Insurance and Income Security matters.

5.1. Overturn Rates

5.1.1. Judicial Reviews in 2013-2014

In 2013-14, the Federal Court of Appeal and the Federal Court did not decide applications for judicial review concerning the Appeal Division's decisions. Therefore, the Appeal Division was not overturned.

5.1.2. Judicial Reviews in 2014-2015

Federal Court of Appeal

The Federal Court of Appeal dismissed 8 applications for judicial review: 3 in relation to the Income Security matters and 5 regarding Employment Insurance issues. Therefore, the Appeal Division was not overturned.

Federal Court

The Federal Court addressed 3 applications for judicial review regarding Income Security matters. Of these, 2 were dismissed and 1 was discontinued. Therefore, the Appeal Division was not overturned.

5.1.3. Judicial Reviews in 2015-2016

Federal Court of Appeal

The Federal Court of Appeal considered 26 applications for judicial review: 8 in relation to Income Security matters and 18 in relation to Employment Insurance matters. Of these applications, 12 were discontinued, 5 were dismissed and 9 were allowed.

In 2015-2016, the Appeal Division rendered 186 decisions relating to Income Security that could have been judicially reviewed by the Federal Court of Appeal. As only 3 judicial reviews were allowed, this represents an overturn rate of 1.61%.

That same year, the Appeal Division rendered 358 decisions relating to Employment Insurance matters that could have been judicially reviewed by the Federal Court of Appeal. The Federal Court of Appeal allowed 1 judicial review in relation to 6 files that were part of a group appeal. This represents an overturn rate of 1.68%.

Federal Court

The Federal Court considered 29 applications for judicial review in Income Security matters and 16 in relation to Employment Insurance. Of these applications, 12 were discontinued, 11 were dismissed and 6 were allowed.

In 2015-2016, the Appeal Division made 422 decisions relating to Income Security matters that could have been judicially reviewed by the Federal Court. As only 5 were allowed this represents an overturn rate of 1.18%.

That same year, the Appeal Division rendered 1420 decisions relating to Employment Insurance matters that could have been judicially reviewed by the Federal Court. As only 1 was allowed this represents an overturn rate of 0.07%.

Being in its infancy, the Tribunal is proud that decisions of the Appeal Division have been overturned so infrequently and that the overturn rates align with those of more seasoned tribunals. The Tribunal recognizes that such impressive results speak of the quality and expertise of its members and confirms the effectiveness of our ongoing and specialized legal training program.

5.2. Ongoing Monitoring of Decisions

To ensure members have the required knowledge and information to make legally sound decisions, the Tribunal's Legal Services conduct an ongoing review of all relevant decisions from the Federal Court of Appeal and the Federal Court. The Court decisions are summarized and the link to the full decision is sent to members within a few days of the Court's decision being issued.

In addition, to reduce errors, learn from our mistakes, and promote consistent decision-making among the members, the Tribunal's Legal Services reviews all Appeal Division decisions that overturn General Division decisions and prepares a monthly summary report. The Vice-chairpersons of the General Division use this report to guide their discussions with members and identify training needs. The ultimate objective is to promote quality decision-making.

5.3. Court Decisions that Guided the Tribunal's Procedures

A number of key decisions have guided and clarified the Tribunal's practices and procedures. These decisions are summarized below.

5.3.1. Filing New Evidence Before the Appeal Division to Obtain Leave to Appeal

An applicant must obtain leave to appeal from the Appeal Division before the appeal can be considered on the merit. The only exception is when the appeal before the General Division was summarily dismissed, in which case the Appeal Division can consider the case on the merit without deciding leave to appeal. Where leave is granted, the Appeal Division decides the form of hearing and determines if the appeal should be allowed or dismissed.

As the Federal Court noted in *Belo-Alves v. Canada (A.G.)* 2014 FC 1100, this is similar to what existed for appeals involving the *Canada Pension Plan* before the Pension Appeals Board, prior to the creation of the Social Security Tribunal of Canada. At that time, the Federal Court and the Federal Court of Appeal had confirmed that the Pension Appeals Board could grant leave to appeal on the basis of new evidence.

As a general rule, the Appeal Division does not consider new evidence. The Federal Court noted in *Belo-Alves v. Canada (A.G.)* 2014 FC 1100 that, since the legislative requirements before the Appeal Division are different, an applicant cannot file new evidence to obtain leave to appeal. The Federal Court also confirmed decisions of the Appeal Division that dismissed requests for leave to appeal based on new evidence in *Tracey v. Canada (A.G.)* 2015 FC 1300 and *Bergeron v. Canada (A.G.)* 2016 FC 220.

5.3.2. Whether the General Division Must Refer to All Medical Reports on File

In cases involving a disability benefit under the *Canada Pension Plan*, parties to the appeal often file numerous medical reports. When a leave to appeal request is filed of a General Division decision before the Appeal Division, one argument that is often relied upon is that the General Division failed to refer to all medical reports filed by the parties.

In *Yantzi v. Canada (A.G.)* 2014 FCA 193, the Federal Court of Appeal confirmed a decision of the Appeal Division stating that the Tribunal does not have to provide a detailed assessment of all the evidence filed by the appellant, provided the member did not fail to address the evidence to such a degree that no one would understand how the decision was made. The Federal Court also confirmed a decision of the Appeal Division refusing leave to appeal on the basis of this principle in *Tracey v. Canada (A.G.)* 2015 FC 1300.

5.3.3. Incomplete Appeals

In *Bossé v. Canada (A.G.)*, 2015 FC 1142, the Applicant was appealing the Appeal Division's decision to refuse leave to appeal. The Applicant had used the wrong form to apply for leave to appeal, and as a consequence, did not explain why leave should be granted.

The Federal Court criticized the Tribunal for accepting the incorrect form and for failing to request submissions from the Applicant before refusing the leave to appeal. The Court noted that the Tribunal's website did not provide helpful information on how to request leave to appeal.

As a result of this decision, the Tribunal modified its practices when appellants use the wrong form or file insufficient information. The Tribunal now immediately informs appellants that the information they submitted is incomplete and sets a new date by which the missing information should be provided. This practice allows appellants to provide all the relevant information; however, it increases the time required to conclude an appeal.

In addition, the Tribunal has significantly improved its website to ensure the information is accurate, up to date and written in plain language to assist parties in navigating the Tribunal processes. More information will continue to be included on the website to better inform parties of the appeal processes.

5.3.4. Application of the Standards of Review by the Appeal Division

The standard of review represents the deference that is given by a court in reviewing the decision of a lower court or tribunal. There are two standards of review: correctness and reasonableness.

Before the creation of the Tribunal, the Federal Court of Appeal had stated that when a decision of a Board of Referees was appealed before an Umpire, the Umpire had to apply the standards of review. This meant that if an appellant alleged that the Board of Referees made a perverse error

of fact, the Umpire had to determine if the decision was reasonable. However, if an appellant alleged that the Board of Referees failed to observe a principle of natural justice, the Umpire had to determine if the decision was correct.

Since subsection 58(1) of the *Department of Employment and Social Development Act* (which applies to the Appeal Division) is almost identical to former subsection 115(2) of the *Employment Insurance Act* (which applied to Umpires), the Appeal Division (which replaced the Office of the Umpire) originally applied the standards of review. In *Thibodeau v. Canada (A.G.)* 2015 FCA 167, the appeal before the Appeal Division was from a decision of a Board of Referees. The Appeal Division applied the standards of review and the Federal Court of Appeal confirmed this approach.

However, in *Jean v. Canada (A.G.)*, 2015 FCA 242, the Federal Court of Appeal commented that it was not convinced of the relevance of subjecting decisions of the Appeal Division to an analysis based on the standards of review. A similar comment was made in *Maunder v. Canada (A.G.)*, 2015 FCA 274. Leave to appeal of the *Jean* decision was later refused by the Supreme Court of Canada.

The Federal Court of Appeal later issued its reasons in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, an appeal of a judicial review from a decision of the Immigration Review Board. It confirmed that most administrative tribunals are not to use the standards of review. The discussions on this important legal interpretation are expected to continue, and the Tribunal will closely monitor all future court decisions.

6. GOING FORWARD – 2016-2017 PRIORITIES

The Auditor General of Canada's fall 2015 report examined the first two years of the Tribunal's existence, from April 2013 to May 2015.

The Auditor General concluded that the poor transition planning before the Tribunal opened its doors led to the transfer of a large backlog of appeals which the Tribunal was not ready to manage. He also noted that this large backlog contributed to the Tribunal's growing backlog and to the time it took to decide appeals.

The Tribunal agreed with the Auditor General's findings and recommendation that we review our policies and practices to ensure expeditious appeal decisions. The Tribunal continues to make progress on this front and has developed an action plan to implement the recommendations as part of its 2016-17 priorities. After 3 years in operation, the Tribunal has established a solid foundation to deliver on its mandate. As part of its ongoing commitment to serving Canadians, the Tribunal established the following priorities for 2016-2017:

A. Quality and Timely Decisions

The Tribunal will continue to issue decisions of quality by enhancing its member training program, developing new legal tools and analyzing and sharing new court decisions and those of our Appeal Division that can influence the content and quality of Tribunal decisions.

The Tribunal will continue to review its policies and practices to ensure expeditious decisions, as recommended in the Auditor General's fall 2015 report. The Tribunal will ensure the timeliness of decisions by focusing on meeting its service standards, by reviewing member and operational performance, and continuing to improve its statistical analysis of caseloads and trends.

B. Improving the Tribunal's Efficiency

The Tribunal will continue to develop new practice directions, guidelines, directives and operations processes to guide parties, members and staff concerning the Tribunal's procedures.

The Tribunal is in the process of contracting with an independent firm to conduct a second objective review of its activities to identify further efficiencies, to recommend a quality control framework and to confirm the appropriateness of its member performance expectations, client service standards and resource levels. The study is expected to be completed by the end of the fiscal year.

Furthermore, the Tribunal will focus on improving its case management system and the quality of statistics. The Tribunal will also start developing its electronic vision that will guide future technological improvements that will be necessary to achieve additional efficiencies.

C. Transparency and Access to Justice

As a result of suggestions from stakeholders, the Tribunal will simplify and reduce the number of forms required to appeal to the Tribunal and will continue to add relevant information and tools for parties, to its website.

As part of its client consultation exercise, the Tribunal is planning a survey to obtain information about the satisfaction level of its clientele including the Tribunal's use of different forms of hearings. The Tribunal will examine the results of the survey and determine the appropriate next steps.

7. CONCLUSION

The Tribunal has made tremendous progress in its first three years of operations. It now has a stable and trained workforce, experienced members and a case management system and operational processes adapted to its four different appeal processes. Having built a solid foundation, the Tribunal is well positioned to focus on its priorities, continue to reduce its inventory of cases and strive to meet its service standards.

8. CONTACT US

If you have any questions regarding this report or if you would like more information about the work of the Social Security Tribunal of Canada, please visit:

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