



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

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CANADA PENSION PLAN/  
OLD AGE SECURITY  
REVIEW TRIBUNALS

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ANNUAL REPORT 1998-1999



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**REVIEW TRIBUNALS**

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ANNUAL REPORT 1998-1999

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

October, 2000

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

Dear Ms Stewart:

I am pleased to submit to you the Annual Report of the Canada Pension Plan/ Old Age Security Review Tribunals. This Report covers the period April 1, 1998 to March 31, 1999, and also includes other information on our activities up to December 31, 1999.

This is my first Annual Report, and it follows the precedent set by my predecessor, Commissioner Ron K. Stuart, who has now retired. He left behind a very efficient organization and I am deeply grateful for his commitment to the reform and improvement of the CPP/OAS appeals process. I would also like to pay tribute to Deputy Commissioner Margaret McGrath and our headquarters staff, as well as all our Tribunal Panel Members across the country. They are a dedicated and motivated group of people who deserve recognition for their excellent work.

I sincerely hope that this report on our activities will assist you in your responsibilities as the Minister accountable to Parliament for openness and transparency in the conduct of the CPP/OAS appeals process.

Yours sincerely,

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

G. Peter Smith,  
Commissioner

## MISSION STATEMENT

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

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## OFFICE OF THE COMMISSIONER

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

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

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

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





## SECTION I: MAJOR ACHIEVEMENTS

The period covered by this report, (i.e., fiscal year 1998/99 plus additional information to the end of calendar year 1999) has been one of significant change and improvement. The achievements listed below are those which have had a positive impact in one or more of three main areas:

- the headquarters operations in Ottawa,
- the Panel Members and the operations across the country, and
- the stakeholders of the organization, particularly Appellants and their representatives.

### A. More Hearings Held

In order to address the growing volume of appeals, a target of 800 hearings a month, or 9,600 per year, was set for 1998-99. As shown in Table 4 on page 20, 9,528 hearings were held in that period. Another 77 hearings under the provisions of Section 84(2) of the Canada Pension Plan Act were also held, bringing the total number of hearings to just over the target number of 800 hearings per month. (It should be noted that in fiscal year 1997/98, an average of 664 cases were heard each month). A further target of 900 hearings per month (10,800 per year) was set for fiscal 1999/00. The high number of cases handled between April, 1999 and December 1999, indicates that that target will likely be met.

The increased number of cases required greatly increased efforts on the part of the staff, and virtually every staff member made a contribution that was above and beyond the call of duty. Their outstanding efforts in helping to provide speedier access to administrative justice for Appellants, deserves to be recognized.

## **B. Better Training for Panel Members**

As mentioned later in this report, training for Panel Members is important to ensure that hearings are conducted in a uniform fashion across the country, and that decisions are based on similar criteria.

The Office of the Commissioner of Review Tribunals (OCRT) provides two kinds of training. The first is orientation training for newly-appointed Panel Members. The second is professional development training for experienced Panel Members.

Over the reporting period, the model for training newly-appointed Panel Members was re-designed in order to place less emphasis on the lecture format and reduce the policy and regulatory content to the basics required for CPP Disability decision-making. In addition, a new emphasis was placed on the need for fairness and impartiality in the hearing process and in the preparation of the reasons for decisions. This improved model for Panel Member Orientation was introduced in two training sessions in July 1999.

For serving Panel Members, a major innovation called the “Advanced Workshop” was introduced at a Halifax session in August 1999, and repeated in Toronto in the fall of that year. Segments of this workshop were designed to stimulate the challenging of assumptions, to improve listening and questioning skills, and more generally to acquire useful skills from the Alternate Dispute Resolution approach. These workshops also focussed on issues such as the calculation of the Minimum Qualifying Period, how to better assess the credibility of witnesses and how to improve decision-writing.

## **C. Enhanced Staff Cohesion and Morale**

It has always been almost impossible to predict the volume of appeals and the workload placed on the staff at OCRT. Consequently, human resources planning in the short, medium and long-term has been very difficult.

As a result, a very high percentage of Ottawa staff were not indeterminate public servants, but rather a mix of “permanent”, term, contract, agency and casual.

Some of the significant steps taken to improve this situation over the reporting period include the completion of staffing for Legal Services and the Decisions Unit as well as work on staffing for Operations and Management Services as well as an Employee Recognition and Awards Program (ERAP) which was inaugurated in June 1999.

In addition, an enhanced in-house staff training program was designed and training and career planning was offered to all personnel.

A milestone in this effort was the “All-Staff Meeting”, a one-day first, where the ERAP was inaugurated and employee feedback solicited. Almost 100 questions and comments were tabled at the meeting, and the Senior Management Committee spent some time preparing detailed responses. In the Fall of 1999, a new internal computer bulletin board called “Review Tribunal News” was created and the document “Management Responses to Questions: All-Staff Meeting” became the first item posted.

This combination of permanent staffing, staff training, employee recognition, and enhanced internal communications is contributing to higher morale and cohesion, and increasingly positive attitudes to work.

#### **D. Improved “Throughput” Time**

One measure of OCRT performance is the time taken from the day of acceptance of the Appellant’s request for an appeal to the day of the hearing. This is referred to as the “throughput” time.

Average throughput time was 230 days in 1998/99, and it is projected that the average throughput time will be reduced to 161 days by the end of fiscal 1999/00. It should be noted that this includes two 20-day delays due to legislative requirements for the exchange of information.

If the OCRT’s projection is borne out by an analysis of the 1999/00 data, the average throughput time will have been cut by 30% in two years.

## **E. Greater External Communications**

An administrative tribunal under the Canadian system is not free to communicate or ‘promote’ its activities to outside stakeholders in the same way as federal government departments. The OCRT’s external communications are automatically limited by its requirement to be impartial and independent and to hold private hearings.

Most tribunals communicate to the public and to stakeholders through their decisions, through public hearings, and, usually, through annual reports.

In the case of OCRT, there is no requirement in the legislation or in the regulations to prepare an Annual Report, however, since its inception in 1991, it has been the practice to provide such reports in order to allow the government, stakeholders and the Canadian public to be aware of the activities of this organization.

In addition to this report, a number of other modest efforts at public communication have been undertaken. For example, in June, 1999, the Commissioner appeared before the House of Commons Sub-Committee on the Status of Persons with Disabilities to outline activities and respond to questions.

Other efforts include the preparation of a video called “A Fair Hearing” which is designed to help CPP advocates. Also, a new brochure has been prepared to guide Appellants, their representatives and other helpers through the appeal process and assist them in presenting the best case possible at hearings.

Plans have also been put in place for a pilot project to enlist the co-operation of legal clinics, union benefits committees, lawyers and other paid representatives who have extensive dealings with the OCRT, to provide better resources to Appellants.

## **F. Increased Resources for Panel Members**

Through most of its institutional life, the pressures of dealing with escalating hearings volumes often left insufficient time for regular communications between ORCT and Panel Members beyond the administration of the hearings process. Steps were taken in 1998 to more regularly provide Panel Members with certain “non-administrative” resources to assist them in their deliberations.

For example, concerns were raised by some Members of Parliament and Appellant representatives that Appellants were not being treated properly at some hearings. As a result, the first substantive Panel Member consultation was held during the Spring and Summer of 1999. An independent consultant, Leonard Shifrin, carried out an analysis of the reactions of Panel Members to the concerns raised. A draft practice note based on this research entitled “Treatment of Appellants at Hearings” was circulated to all Panel Members as a means of comparing his or her hearing practices to those of colleagues across the country.

In early 1999, a periodic “To All Panel Members” package was initiated. It is from the Commissioner and deals with selected policy, legislative, practice and personnel matters. Several “refresher videos” have also been prepared for the use of Panel Members wishing to review CPP legislation and regulations.

## SECTION II: MANDATE AND OPERATIONS

### A. Who We Are

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

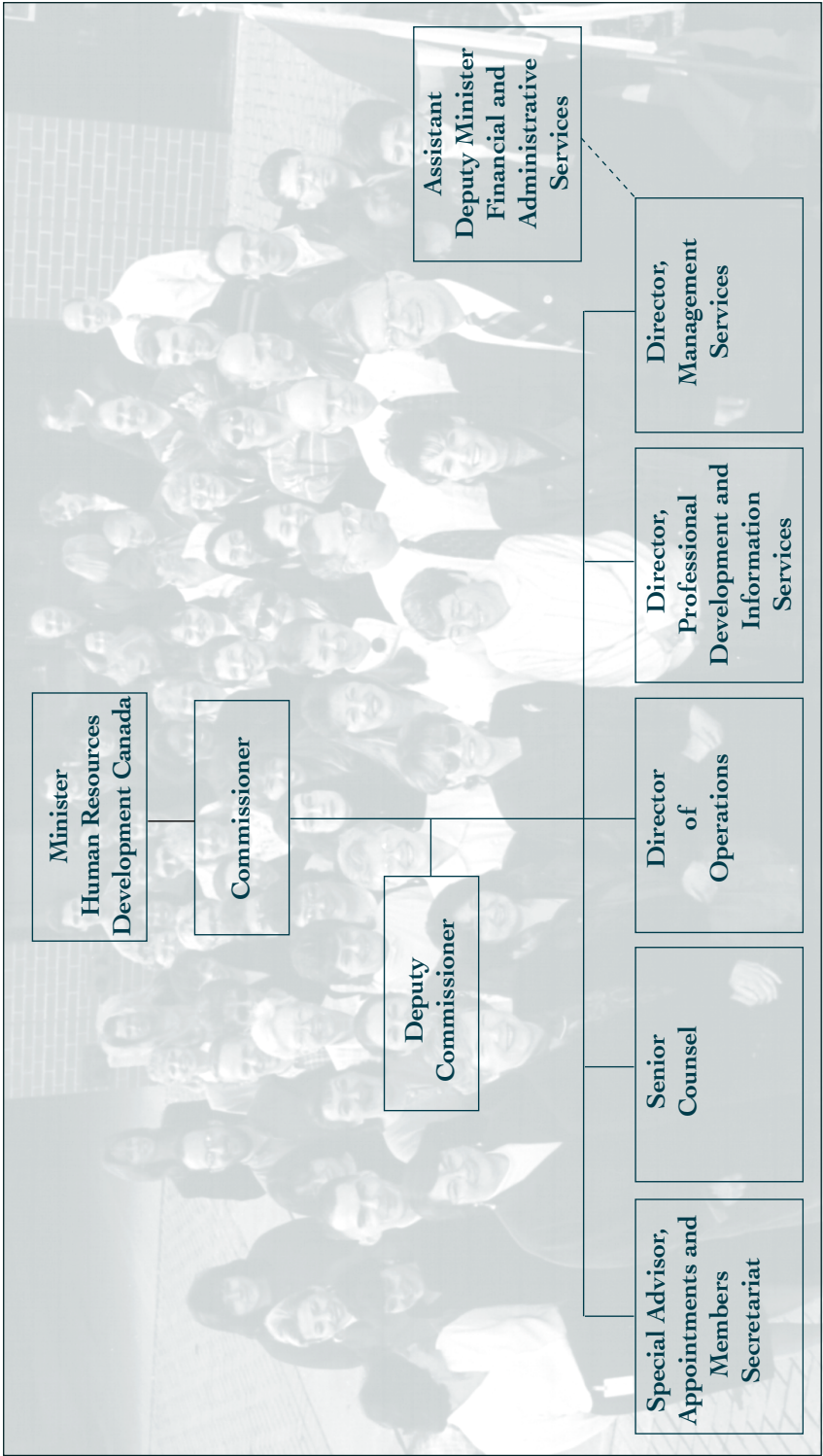
- A full-time Commissioner and Deputy Commissioner appointed by the Governor-in-Council for a fixed term.
- Up to 400 Panel Members who are also appointed by the Governor-in-Council for fixed terms and who serve on an ‘as-needed’ basis.
- A Public Service staff of 84 responsible for the day-to-day operation of the office.

### The Commissioner and Deputy Commissioner

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

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

CHART A: ORGANIZATION CHART





## Panel Members

Only a Review Tribunal can hear and decide the outcome of appeals. Such Tribunals do not act on behalf of the Minister or the Appellant or any other parties to an appeal. A Review Tribunal is made up of three people chosen by the Commissioner from a Panel of up to 400 Members appointed by the Governor-in-Council. At the end of December, 1999, 308 Panel Members were available for hearings.

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

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

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

Table 1 shows the distribution of Panel Members by category and by province as of March 31, 1999. Although the Province of Quebec administers its own equivalent of the Canada Pension Plan, Review Tribunal Members in that province are required to hear OAS appeals as well as CPP appeals of Appellants who now reside in that province.

TABLE 1: PANEL MEMBERS BY CATEGORY AND PROVINCE, MARCH 31, 1999

Province	Legal	Medical	General	Total
British Columbia	9	14	10	33
Alberta	7	8	8	23
Saskatchewan	3	2	2	7
Manitoba	5	3	3	11
Ontario	48	43	47	138
Quebec	4	5	3	12
New Brunswick	6	7	6	19
Nova Scotia	8	8	9	25
Prince Edward Island	2	2	1	5
Newfoundland	4	6	6	16
<b>Total</b>	<b>96</b>	<b>98</b>	<b>95</b>	<b>289</b>

### Employment Equity in Panel Membership

Since the creation of Review Tribunals, efforts have been made by the government to ensure that the number of women members in all categories of Tribunal Panel Membership reflects employment equity goals. As shown in Table 2, as of March 31, 1999, 46% of all members are now women, up from 43% the year before. Almost one quarter of the members in the legal category, almost half of the general membership and almost two-thirds of the medical membership are women.

Although the OCRT does not formally track the employment equity profile of Panel Members, representation on the panel of persons with disabilities, members of visible minority groups and Aboriginal peoples has increased over the past few years.

TABLE 2: *PANEL MEMBERS BY CATEGORY AND SEX*

Category	Men	%	Women	%
<i>March 31, 1999</i>				
Legal	73	76%	23	24%
Medical	35	36%	63	64%
General	49	52%	46	48%
<b>Total</b>	<b>157</b>	<b>54%</b>	<b>132</b>	<b>46%</b>
<i>(1998)</i>				
	150	57%	117	43%

### The OCRT Staff

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

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

### B. What We Do

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

An appeal starts with a letter to the Commissioner from a person (the "Appellant") who has been denied a benefit under section 81 of the *Canada Pension Plan* or section 27.1 of the *Old Age Security Act*. Departmental decisions that do not come under these sections of the Acts mentioned above cannot be appealed to a Review Tribunal. The

courts have ruled that Review Tribunals do not have the power to hear appeals involving allegations of administrative error or erroneous advice on CPP matters, or to forgive overpayments. Also, Review Tribunals do not have the power to disregard or change legislation. They must decide appeals on the basis of the evidence and the legislation as it stands.

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

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

- The person who has been denied a benefit — the Appellant.
- The Minister of Human Resources Development — represented by a public service employee.
- Any person who has a direct interest in the outcome of the appeal, such as a spouse or child — referred to as an ‘added party’.

Appeals to a Review Tribunal are *de novo*, meaning they are not limited by the issues and information available to the Minister and the Department when the earlier decision was made. Subject to some limitations in cases involving previous Review Tribunal or Pension Appeals Board (PAB) decisions, each appeal is decided as if it was being heard for the first time.

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

Each party has the right to be represented by legal counsel or by an agent, or they can represent themselves. The OCRT does not reimburse any party for legal expenses, or for witness fees, or for obtaining additional medical reports.

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

A hearing is, nonetheless, a legal proceeding with some structure. Typically, witnesses give evidence and the Panel Members on the Review Tribunal actively seek information and ask questions of witnesses.

After the hearing, the Panel Members of the Review Tribunal review and discuss all of the evidence provided, make a decision, and write detailed reasons. All of the information and the decision are then forwarded to the OCRT where the official file is updated with the information provided at the hearing.

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

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

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

### **C. Fairness and Impartiality**

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

These powers include:

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

In addition, Review Tribunals can even “re-open” their own decisions in some circumstances.

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

In the majority of cases, the appearance of an Appellant before a Review Tribunal is the first face-to-face meeting he or she will have with those making a determination concerning eligibility for benefits. For a significant number of Appellants, the Review Tribunal process may be the first opportunity to fully appreciate the eligibility requirements and the nature of the information required to succeed in an appeal. It may also be the first time that an Appellant receives the detailed reasons why he or she has been denied a pension benefit by the Department of Human Resources Development.

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

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

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

The Office of the Commissioner of Review Tribunals provides Panel Members with the training and resources that help them carry out their duties in a way that fosters public respect and confidence in the process. The goal is to ensure that all parties to an appeal receive equitable treatment no matter where in the country the hearing is held, or which particular Panel Members are hearing the case.

Section III of this report outlines the major activities of the five divisions within the Office of the Commissioner of Tribunals that are directed at achieving these goals.

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

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

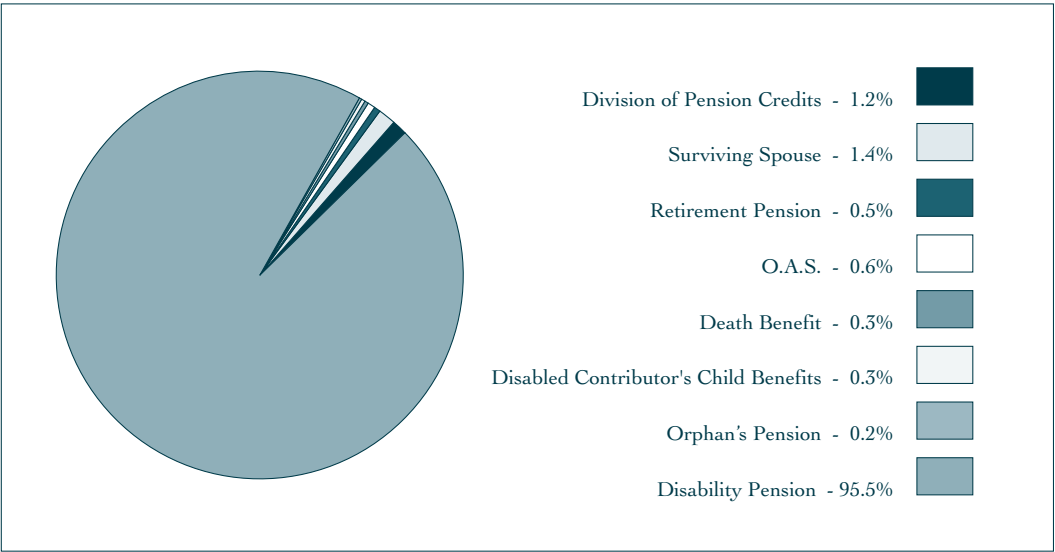
- Promotion of Integrity and Independence
- Collegiality
- Decision-making
- Conduct during Proceedings
- Bias
- Discussion of Cases
- Contact with Media or Government
- Gifts and Benefits
- Disqualification and Reporting
- Post-Employment/Appointment

D. The Hearings

Reasons For Appeals

As shown in Chart B, over 95% of cases heard by Review Tribunals are appeals from decisions made by the Minister of Human Resources Development regarding applications for CPP disability benefits. The proportions of cases shown on the chart have been virtually unchanged since OCRT was established.

CHART B: APPEALS TO REVIEW TRIBUNALS BY BENEFIT TYPE, CUMULATIVE TO MARCH 31, 1999

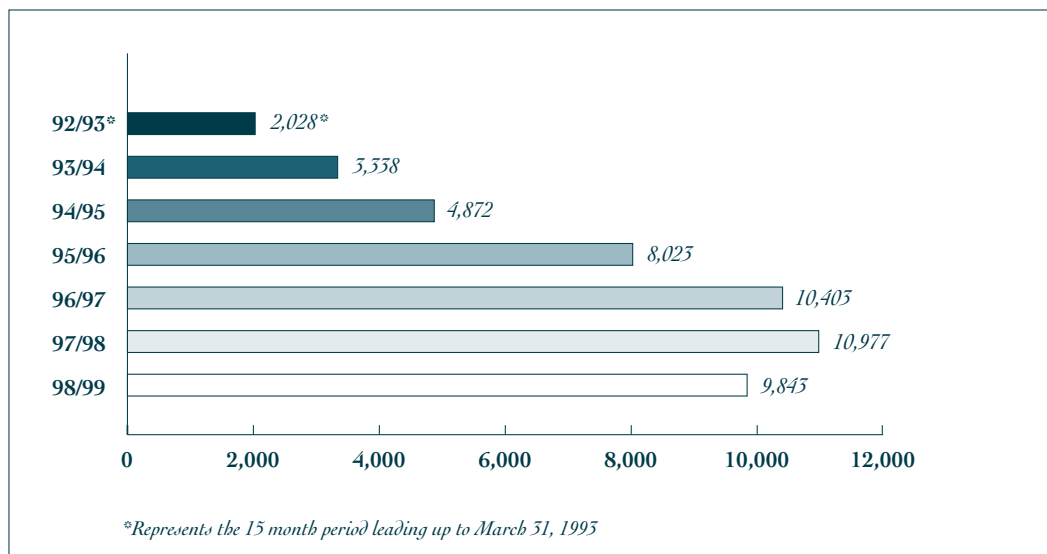




## Case Workload and Results of Appeals

When the Review Tribunal system was established in 1991, it was anticipated that approximately 1,800 appeals would be received each year. But, as shown in Chart C, that number increased exponentially every year thereafter.

*CHART C: APPEALS TO REVIEW TRIBUNALS, 1992/93–1998/99*



The 10,977 CPP and OAS appeals received in 1997/98, for example, represent an increase of 441% since the first year of operations! In fiscal year 1998/99, a total of 9,843 new appeals was received. As Table 3 shows, when new appeals received are added to the balance of cases that have not yet been finalized, (minus withdrawals and refusals) there were over 16,849 potential hearings.

TABLE 3: APPEALS TO REVIEW TRIBUNALS — CPP AND OAS,  
1997/98 AND 1998/99

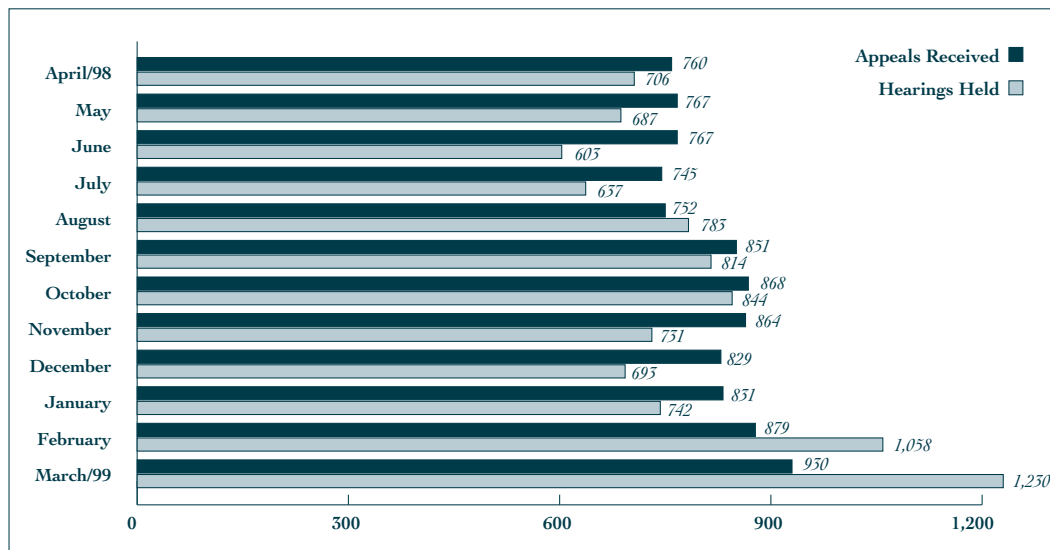
	1997/98	1998/99
Balance of Cases, April 1	6,130	9,002
New Appeals Received	10,977	9,843
Reversals/Withdrawals/ Refused /Referrals*	(477)	(1,996)
<b>Potential Hearings</b>	<b>16,630</b>	<b>16,849</b>
* Includes the number of decisions <u>reversed</u> by the Minister plus cases <u>withdrawn</u> by Appellants prior to hearings as well as late appeals <u>refused</u> plus cases <u>referred</u> to Review Tribunals in error and redirected to the Minister for reconsideration or to the Pension Appeals Board for action.		

In fiscal year 1998/99, special efforts were made to keep up with the volume of appeals. The goal was to try to match the number of hearings to the number of new appeals received in the course of the year.

As indicated in Tables 3 and 4, that goal has largely been met. A total of 9,843 new appeals were received, and 9,528 hearings were held.

Chart D shows a month-by-month breakdown of appeals received versus hearings held for the year.

CHART D: APPEALS RECEIVED AND HEARINGS HELD BY MONTH —  
OAS AND CPP 1998/99



As indicated in Table 4, over 1,500 more hearings were held in fiscal year 1998/99 than in the previous year. This meant that the number of outstanding cases at the end of the fiscal year 1999 was 7,939 versus 9,002 at the end of fiscal 1998.

TABLE 4: TRIBUNAL HEARINGS BY OUTCOME — CPP AND OAS,  
1997/98 AND 1998/99

Outcome	1997/98	1998/99
Adjourned	322	618
Allowed	1,864	2,244
Dismissed	5,756	6,640
Withdrawn at Hearing	8	26
<b>Total Hearings Held</b>	<b>7,950</b>	<b>9,528*</b>
Outstanding at end of Period	9,002	7,939

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

**N.B:** At the end of each of the years indicated, approximately 1,500 appeals could not be acted on because of insufficient documentation, requests for delays by Appellants and for other reasons.

Although a great deal of effort is made to process cases in a timely fashion, a number of factors must be considered by the Commissioner when scheduling hearings. For example, Appellants must be allowed time to prepare sufficient documentation and gather evidence for an appeal. In many instances, delays are sought by Appellants to obtain additional medical reports, or to obtain counsel or a representative. In addition, the Commissioner plans the hearing schedule to group cases for the same location in order to reduce costs and optimize the use of available Panel Members.

### E. Appeals of OCRT Decisions

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

TABLE 5: APPEALS OF CPP REVIEW TRIBUNAL DECISIONS TO THE PENSION APPEALS BOARD

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

As Table 6 indicates, in 1994, almost one quarter (24.7%) of all decisions of Review Tribunals, in which benefit claims were allowed, were appealed to the Pension Appeals Board by the Minister of Human Resources Development. By 1999, that figure had dropped to only 1.4%.

TABLE 6: PERCENTAGE OF CPP CASES "ALLOWED" BY REVIEW TRIBUNALS AND APPEALED BY MINISTER TO THE PENSION APPEALS BOARD

1994	1995	1996	1997	1998	1999
24.7%	8.7%	16.6%	21.9%	13.6%	1.4%

Over the same period the number of cases dismissed by Review Tribunals in which the Appellant or other parties sought leave to appeal to the Pension Appeals Board remained at roughly 35%-45%, and of those, approximately half were not accepted for appeal by the PAB.

As indicated earlier in this Report, the vast majority of all appeals brought to Review Tribunals have to do with disability and other benefit claims under the *Canada Pension Plan*. Fewer than 1% of all appeals to Review Tribunals have to do with *Old Age Security* eligibility claims.

## F. Resources

The Office of the Commissioner of Review Tribunals has 84 staff positions, excluding Governor-in-Council appointees such as the Commissioner, the Deputy Commissioner and the Panel Members. When overtime and short-term staffing initiatives are included for fiscal year 1998/99, the OCRT had the equivalent of about 88 staff positions. In fiscal year 1998/99, OCRT expenditures were divided as follows: 34% in non-salary operations, 40% in *per diem* payments, and 26% in salaries.

TABLE 7: EXPENDITURES

<i>Fiscal Year Ended March 31, 1999</i>	
Salaries	\$ 3,199,022
Per diems	\$ 4,779,178
Operating Costs — Non-salary	\$ 4,116,906
<b>Total</b>	<b>\$12,095,106</b>

## SECTION III: PROGRESS REPORTS BY OPERATING UNITS

### Legal Services

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

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

The staff of lawyers provides legal advice to Review Tribunals and headquarters staff on day-to-day operations. They work closely with Review Tribunal Members on the quality of decisions, manage all appeals involving constitutional issues and are responsible for the release of written decisions on all appeals.

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

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

During this fiscal year, the Legal Services Division has initiated a comprehensive review and revision of legal reference tools for Panel Members; expanded the CPP orientation program to provide more detailed training on procedural fairness, hearing skills and decision-writing; developed a post-orientation workshop for Panel Members; initiated a training module for Panel Members and staff in communications and interpersonal skills that is derived from alternate dispute resolution practices;

represented the OCRT in discussions with the Department of Human Resources Development on reform of the appeals system; participated in outreach activities involving HRDC staff as well as staffs of Members of Parliament and workers in community legal clinics; and joined with members and staff of other tribunals to provide training opportunities at the national and regional levels.

## Operations

The Operations Division is responsible for the planning and coordination of the appeals hearing process and works to ensure that all parties to an appeal receive the most efficient service possible. This includes the scheduling of appeals at times and locations suitable to all parties to appeals as well as efforts to counsel Appellants to ensure that they are aware of all aspects of the hearing process, including the medical and other documentation that will be required.

Keeping up with growing appeal volumes has been a priority of the Operations Division. These special efforts allowed Tribunal Members to hear current appeals by the end of 1999.

The Operations Division coordinates the preparation of the hearing case file containing all the documentation for a given appeal and its delivery to the Appellant, the Minister and added parties. The division is also responsible for handling the approximately 2,100 telephone calls that are received each month from Appellants and others.

Approximately 62% of all appeals are now processed through the Advanced Booking System (ABS) put in place last year. This new system provides for appeals to be scheduled approximately four months in advance thus allowing all parties to an appeal more time to prepare. It also gives the Office of the Commissioner of Review Tribunals more time to process the data and appoint Tribunal Members. Another advantage is that the workload of cases can be more evenly distributed throughout the year. ABS also helps reduce the overall cost of hearings because the time of Tribunal members is used more efficiently.

The Operations Division, along with Management Services will also be looking at the feasibility of permanent hearing sites in some parts of the country. These would be of particular benefit in larger urban centres which have the greatest volume of appeal hearings.

The Decisions Unit within Operations, together with Legal Services, ensures that all parties to an appeal receive decisions that are timely, well-reasoned, and effectively communicated.

With the help of additional employees in fiscal year 1998-99, OCRT achieved its workload objective of having 9,600 appeals heard. The number of appeals heard in a year tells only part of the story. In a significant number of cases, all of the preparatory work by the Operations Division is done but the hearing is not held due to settlements or withdrawals. For fiscal year 1999/00, the workload planning model objective is to have 10,800 appeals finalized (heard, settled or withdrawn), while also ensuring the highest quality of service to all parties to appeals and the highest quality of life for its own employees.

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

The Professional Development and Information Services (PDIS) group has responsibility for training and communications. It is responsible for the continuous learning needs of all OCRT staff as well as that of Tribunal Panel Members. In addition, this division is responsible for communications to the general public as well as government employees and all others involved with the hearing process.

The PDIS group prepares orientation sessions, workshops and conferences as well as videos, fact sheets, newsletters and information brochures for Tribunal Members, headquarters staff and the general public.

All Panel Members must attend an orientation and training session on *Canada Pension Plan* issues before they can be called upon to sit at a hearing involving CPP issues. Because of the relatively low number of cases involving OAS issues, a small number of Panel Members also complete an OAS training and orientation session in addition to the CPP session. OAS training is now under revision.

Regional workshops for Panel Members are also carried out by PDIS.

Over the past year, several staff training sessions were also prepared and completed for client service officers and other members of headquarters staff. These sessions reviewed the requirements of the legislation as well as specific tasks such as the preparation of hearing books, and other process issues.



A photo-essay of headquarters staff which included brief descriptions of the various roles of individuals and groups within the organization was developed by PDIS and has been sent to Panel Members and others. Its goal is to 'humanize' the connection between Panel Members and headquarters staff since over 95% of Panel Members across the country have not had the opportunity to meet with headquarters staff even though they interact with each other on a daily basis, usually by telephone.

PDIS has also taken the lead in the development of in-house training on the counselling of parties to an appeal. The manual produced helps guide Client Service Officers in their counselling responsibilities with regard to the "right to know" of parties. The objective is to ensure that Appellants, added parties and representatives are better prepared for the hearings, which means fewer delays and postponements and a more efficient hearing process.

A series of new training videos was produced on CPP benefits and related legislation to meet the continuous learning needs of Panel Members and staff.

For next fiscal year, PDIS is developing a training program designed to ensure that the clerical staff at headquarters are more conversant with all aspects of the appeal process.

The coming year will also see the conversion of the OCRT Library into an in-house Learning Centre where Panel Members and staff can have access to training courses as well as books, videos, CD-Roms and other data on the hearing process, as well as material to assist in the personal development of staff.

PDIS will also continue 'needs assessment' surveys among members to locate potential problems and provide information bulletins with up-to-date information on medical and other issues that are relevant to many of the claims being pursued.

PDIS is also preparing plans for the creation of an Internet website to improve communications between headquarters and Panel Members, and also to provide information to the public.

## Management Services

The Management Services Division provides the necessary infrastructure to support the appeals process. This includes assisting Panel Members, Appellants and headquarters staff with financial and administrative matters including human resources services and staffing, systems implementation, materiel management and operational issues. It also includes remuneration to Panel Members and the payment of reasonable travel and living expenses to staff, Panel Members and parties to an appeal where necessary.

The support provided includes records management, data entry, systems administration, facilities management, health and safety issues, and security concerns.

The division is also involved with ongoing negotiations with key service providers to support the hearing process. These include couriers, travel agencies, interpretation services and security firms.

One of the major preoccupations of this division is the continued improvement of the Appeals Management System. This system now provides instantaneous, detailed, bilingual information on the status of appeals and related correspondence as well as comprehensive file tracking and performance measurement. It continues to be updated to meet the day-to-day challenges of the OCRT.

Over the past year, Management Services have also introduced measures to reduce delays in the transfer of documentation on individual decisions from the department to OCRT. This information forms a major part of the “docket” in each case and contains whatever evidence the department has relied on for their decision to deny benefits.

In addition, Management Services has made the necessary internal adjustments to accommodate the decentralization of the appeals process by the Income Security Programs Branch (ISP) of HRDC. Thirteen regional decision-making offices have replaced one central point of contact, and although there were communication and other problems in the early months, the system is now operating efficiently.

Over the past year, Management Services was also responsible for ensuring that the Office of the Commissioner would meet the Year 2000 challenges. Steps were taken to

ensure that the infrastructure supporting the office and its operation were Y2K ready. The transition into the new millennium went smoothly, with no interruptions in service.

Along with its ongoing responsibilities, Management Services has also initiated projects to address Access to Information and Privacy matters and continues to work with other divisions in the ORCT to ensure that staff receive the proper training to deal with such requests.

### **Appointments and Members Secretariat**

The primary responsibility of the Appointments and Members Secretariat is to ensure that Review Tribunal members are available to carry out the approximately 900 hearings in roughly 120 different locations across Canada every month. Each of the approximately 300 Review Tribunal Panel Members is asked to be available for hearings for three days at a time, ten times each year. Some Review Tribunal Panel Members sit much more often than others depending upon the volume of cases in their particular region. The Appointments and Members Secretariat coordinates the appointment of Review Tribunal members for each individual appeal and attempts to spread the caseload as evenly as possible among Panel Members.

The division prepares monthly reports indicating where and when hearings have taken place. Information in these reports is then used to suggest the creation of new regions based on the history and volume of cases heard in a given area as well as the workload of Panel Members. This information is also used to inform the Minister's Office of the areas where more Panel Members may be required to ensure that vacancies are filled, and also provides the Minister's Office with advice on the types of qualifications potential appointees should have.

The Secretariat has also been very involved with others in OCRT in the implementation of the Advanced Booking System. As mentioned above, the goal is to improve scheduling and reduce delays and adjournments.

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

## SECTION IV: CURRENT ISSUES AND THE WAY AHEAD

The period covered by this report saw the retirement of founding Commissioner Ron K. Stuart, the reappointment of the Deputy Commissioner, Margaret McGrath, and the appointment of the present Commissioner, G. Peter Smith. Senior managers continued in their posts and were joined by the new Director of Operations, Mr. Pat Iannitti.

The major issues currently faced by OCRT are very similar to those which have preoccupied OCRT management since the creation of the tribunals in the early 1990s. They continued to require attention and further action in 1998/99.

While these issues can best be examined and subjected to proper detailed analysis through policy papers and other means, they are outlined below to ensure that OCRT stakeholders understand that the Commissioner and senior management consider the resolution of these issues to be critical to the continued effective and impartial operation of the CPP/OAS appeals process.

The three major issue areas are:

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

With regard to number one, it is clear to all who are familiar with the Review Tribunals process that most Appellants have markedly fewer resources to call on in preparation for their hearing than does the Department whose decision they are challenging.

This is a situation to which OCRT's response is, by definition, tempered by the requirements of impartiality. The office cannot support impartial hearings while at the same time act as an advocate for one of the parties. The constant challenge for OCRT is to ensure that the line between providing information and counselling to help Appellants prepare the best case possible, and Appellant advocacy, is not crossed. It is equally important that the line between administrative cooperation with HRDC and the provision of fair and impartial hearings is also not crossed.

In the 1998/99 fiscal year, and up to the end of 1999, the OCRT has been able to make several improvements in its services to Appellants, and more is planned. The Review Tribunal level of appeal would be more efficient and fair if a person applying for a benefit was consistently provided with detailed reasons for a decision to deny benefits at the earliest opportunity. This would include providing that individual with all of the eligibility requirements related to the application and an assessment of the information gathered and relied on in making the decision.

There is, in fact, a legislative requirement that reasons be given at the reconsideration level, and that the Department provide the Office of the Commissioner of Review Tribunals with a copy of the relevant documentation and reasons for the previous decision on receipt of the notice of appeal.

However, since the creation of the OCRT, full reasons for the denial of a benefit have been given only at the Review Tribunal hearing, usually in the form of a written submission. The Department has agreed to consider providing this document prior to a Review Tribunal hearing (i.e. when an Appellant first gives notice of appeal). This partly addresses the procedural fairness concerns expressed above and would be a substantial improvement over the current situation.

While the OCRT has had considerable operational success, it has had some significant difficulties with infrastructure and administrative matters. This has been due, in part, to the need for an appropriate process with the Department to resolve budget, personnel/staffing, and other issues.

In the future, the OCRT will increase its efforts to complete negotiations on a series of Memoranda of Understanding with the branches of HRDC which touch on OCRT issues, namely Income Security Programs, Finance, Systems and Human Resources.

The goal will be to regularize relations in these areas in a way consistent with the requirement that the OCRT be impartial, independent, and effective.

This is entirely consistent with the practices of other quasi-judicial bodies, which have “codified” their working relationships with their respective departments.