



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

SOCIAL SECURITY TRIBUNAL OF CANADA

Achievements Report 2016–2017

Social Security Tribunal of Canada

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TABLE OF CONTENTS

MESSAGE FROM THE CHAIRPERSON	3
1. WHO WE ARE AND WHAT WE DO	5
2. MAJOR ACCOMPLISHMENTS FOR 2016–2017	7
3. CASELOADS.....	11
3.1 General Division – Income Security Section.....	11
3.1.1 Caseload Inventory.....	11
3.1.2 Outcomes.....	12
3.1.3 Forms of Hearing.....	12
3.1.4 Time it Takes to Issue a Decision	13
3.2 Appeal Division – Income Security Section.....	14
3.2.1 Caseload Inventory.....	14
3.2.2 Outcomes.....	14
3.2.3 Forms of Hearing.....	16
3.2.4 Time it Takes to Issue a Decision	16
3.3 General Division – Employment Insurance Section	17
3.3.1 Caseload Inventory.....	17
3.3.2 Outcomes.....	18
3.3.3 Forms of Hearing.....	19
3.3.4 Time it Takes to Issue a Decision	20
3.4 Appeal Division – Employment Insurance Section.....	21
3.4.1 Caseload Inventory.....	21
3.4.2 Outcomes.....	21
3.4.3 Forms of Hearing.....	24
3.4.4 Time it Takes to Issue a Decision	25
4. SERVICE STANDARDS	26
5. COURT DECISIONS.....	29
5.1 Judicial Reviews in 2016–2017.....	29
5.2 Overview of Court Decisions.....	31
5.2.1 Filing New Evidence Before the Appeal Division.....	31
5.2.2 Weighing Evidence	31

5.2.3	Forms of Hearing.....	32
5.2.4	Interventions Before the Tribunal	33
6.	GOING FORWARD: 2017–2018 PRIORITIES.....	34

MESSAGE FROM THE CHAIRPERSON

I am pleased to present the Social Security Tribunal of Canada Achievements Report 2016–2017. This report provides an overview of the Tribunal’s major accomplishments of this past fiscal year, along with caseload and performance information and a description of the Tribunal’s 2017–2018 priorities.

With respect to its caseloads, the Tribunal had a very busy year. It received a total of 8,728 appeals and completed 10,716 appeals. The Tribunal is also very pleased to report that the inventory of appeals from the four legacy tribunals is all but eliminated.

Major accomplishments in 2016–2017 include the launch of the Tribunal’s new website, which has been redesigned to be easier to understand through the use of plain language, is more accessible and more informative. In addition, all published decisions are searchable by use of a Tribunal-specific database. As part of its commitment to improving transparency and access to justice, the Tribunal simplified and reduced the number of forms required to start an appeal. In addition, the Tribunal conducted satisfaction surveys of its appellants, representatives, stakeholders and members to identify additional ways to bring about overall efficiencies and improvements.

The Tribunal also commissioned an independent third party to conduct a comprehensive operational review, which resulted in a costing model, a confirmation of the number of members required and the identification of potential areas of improvement. The Tribunal is currently reviewing these findings.

Significant progress has been made in implementing the 2015 Auditor General of Canada’s recommendations and the Tribunal’s commitments. In particular, the Tribunal has further developed its case management system, resulting in an increased capacity to develop and generate statistical reports, and it has continued to develop quality control measures and improve its operational processes.

Finally, a Governor in Council selection committee, which includes the Chairperson of the Tribunal, established pools of highly qualified candidates from which the Minister responsible for Employment and Social Development Canada makes Governor in Council appointment recommendations. These ongoing appointments will support the Tribunal in delivering on its mandate and continuing to render appeal decisions in an efficient, effective and timely manner.



I want to sincerely thank the Vice-chairpersons, Tribunal members and staff for their support and hard work. None of the accomplishments described in this report could have been achieved without your important contributions.

Murielle Brazeau

1. WHO WE ARE AND WHAT WE DO

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's mandate is to offer fair, transparent, credible and impartial appeal processes that are efficient and effective.

The Tribunal's practices and procedures align with the requirements of the following laws and regulations that govern its work:

- The *Department of Employment and Social Development Act* and its *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*

As illustrated in the chart below, the Tribunal consists of a Chairperson, three Vice-chairpersons and members, all of whom are appointed by the Governor in Council.

The Tribunal comprises a General Division and an Appeal Division. The General Division has an Employment Insurance Section and an Income Security Section. The General Division – Employment Insurance Section (GD-EI) hears appeals and makes decisions on appeals of reconsideration decisions that were made by the Canada Employment Insurance Commission. The General Division – Income Security Section (GD-IS) hears appeals and makes decisions on appeals of reconsideration decisions that were made by the Minister of Employment and Social Development Canada regarding the *Canada Pension Plan* and the *Old Age Security Act*. The Appeal Division (AD) decides matters on appeal from the General Division (GD). Each decision is rendered by a single member.

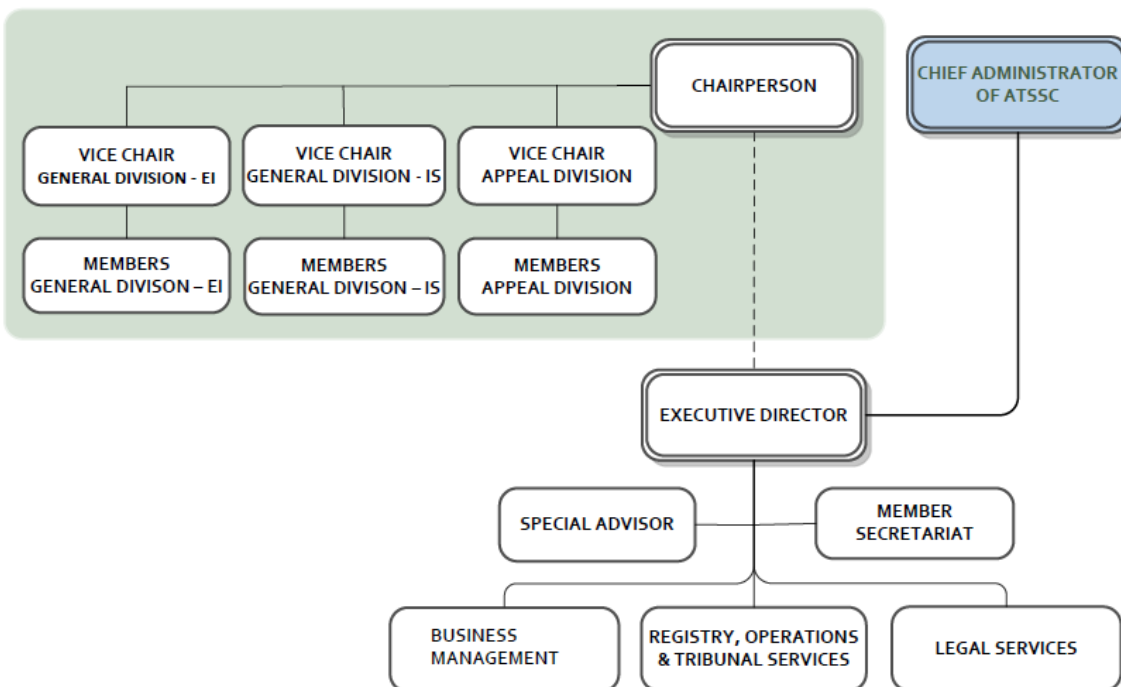
Through the implementation of the *Administrative Tribunals Support Service of Canada Act* on November 1, 2014, the Government consolidated the provision of support services to 11 administrative tribunals—including the Social Security Tribunal—into a single organization: the Administrative Tribunals Support Service of Canada (ATSSC).

The role of the ATSSC is to provide these administrative tribunals with the support services and facilities needed to exercise their powers and perform their duties and functions in accordance with their statutory responsibilities. However, the tribunals preserve their independence in making adjudicative and case-related decisions. The tribunals continue to guide the work of the

dedicated ATSSC employees, and they remain actively involved in the day-to-day operations to ensure their priorities and mandates are met.

This administrative structure does not affect the Tribunal's mandate. Appeals continue to be filed, managed and safeguarded in accordance with existing Tribunal procedures. Reporting to the ATSSC Chief Administrator and with ongoing direction from the Tribunal's Chairperson, the Executive Director oversees approximately 150 public servants who support the Tribunal's day-to-day activities.

SOCIAL SECURITY TRIBUNAL



2. MAJOR ACCOMPLISHMENTS FOR 2016–2017

At the outset of the year, priorities were identified and initiatives were developed, designed, and aligned to meet these priorities. This work—and more—transformed into the Tribunal’s major accomplishments for the year.

Quality and Timely Decisions

On April 1, 2016, the Tribunal had 90 members, including the Chairperson, the three Vice-chairpersons and 86 full-time and part-time members. The General Division – Income Security (GD-IS) had 53 members, the General Division – Employment Insurance (GD-EI) had 27 members, and the Appeal Division (AD) counted 6 members.

During the fiscal year, the Governor in Council selection committee established pools of highly qualified candidates from which the Minister of Employment and Social Development Canada makes Governor in Council appointment recommendations. As a result, the Governor in Council approved the reappointment of 11 members and the appointment of 25 new members. Thirteen other members received term extensions of 6 months, and the terms of 14 members were not extended. By March 31, 2017, the Tribunal had a complement of 87 members, which included the Chairperson, 3 Vice-chairpersons, 37 members at the GD-IS, 37 members at the GD-EI and 9 members at the AD. These appointments, reappointments and extensions will help the Tribunal render decisions in an efficient, effective, and timely manner.

The Tribunal strives to issue quality decisions that align with applicable laws and regulations. To achieve this objective, the Tribunal delivers an intensive 3 week training program to its new members. Training covers the relevant laws, regulations and case law, decision making and decision writing, as well as the Tribunal’s case management system. This fiscal year, the Tribunal delivered 4 of these comprehensive training sessions.

As part of their ongoing training, members regularly participate in conference calls with their respective Vice-chairperson and Legal Services during which they discuss legal matters, operational issues and best practices. In February 2017, the Legal Services unit delivered a dedicated training session to the GD members who will be called upon to hear appeals in which a party is challenging the constitutional validity, applicability or operability of the Tribunal’s governing legislations and regulations. A similar training session was also offered to members AD members.

After a comprehensive review, the Tribunal developed and implemented a revised, more rigorous member performance evaluation framework that clearly sets out very specific expectations regarding the quality of hearings and decisions, as well as member productivity and professionalism. This framework supports members by articulating Tribunal expectations. In addition, the Tribunal committed to reporting on its performance on the Tribunal's service standards for each of its four caseloads. Please see the Service Standards section of this report for more information on the Tribunal's performance.

To improve the quality and consistency of decisions, the Tribunal introduced a proofreading process whereby an in-house editor revises all AD decisions before issuance to parties and publication. The success of this initiative is driving the Tribunal to look at how this process might be implemented for the GD decisions to be published.

This past year, the Tribunal also enhanced its case management system to provide more accurate and fulsome data and performance metrics. With improved metrics collection and report automation, the Tribunal is now better able to monitor its caseloads and the performance of its members to identify and address any problematic issue in a timely manner.

Improving the Tribunal's Efficiency

In 2016–2017, the Tribunal issued four Chairperson's Guidelines, two Chairperson Directives, and a Practice Direction to assist members and parties in navigating the Tribunal's various processes and, in particular, to deal with challenging issues such as post-hearing documents and requests for adjournments.

To simplify and facilitate the application process for parties, and to process its cases faster and more efficiently, the Tribunal developed new application forms and instructions for both the GD and the AD. These forms are expected to significantly reduce the number of incomplete appeals received by the Tribunal.

At the GD, where the new forms were introduced in November 2016, sufficient data is now available to analyze and determine their success. For GD-EI matters, using the old form, 59% of appeals were filed complete. Using the new and improved form, 70% of appeals have been filed complete; an improvement of 11%. As for GD-IS matters, the same change in forms resulted in complete Notice of Appeals received increasing, from 68% to 73%: an improvement of 5%. The new forms have clearly assisted appellants in providing the information required so that the Tribunal can proceed to hear appeals and make decisions in a timely fashion.

The Tribunal commissioned a second, independent operational review to support a future sustainable funding model, to confirm resource requirement levels, member performance expectations and service standards, and to identify prospective improvement opportunities. The costing model data resulting from this operational review will inform a funding request to ensure that the Tribunal can continue to deliver on its mandate. The *Member Requirements and Potential Efficiencies* report confirms the number of members required to meet the Tribunal's mandate, validates the service standards and member performance expectations and suggests some potential improvements.

In addition, the Tribunal recently conducted satisfaction surveys among its appellants, representatives and members in an effort to identify potential areas of improvement and additional ways to bring about overall efficiency. Moving into 2017–2018, the Tribunal will review the results of the surveys and implement recommendations where feasible. The Tribunal also launched an e-enablement initiative to assess possible options for strengthening the Tribunal's online engagement so that it can maximize efficiency and better meet the needs of parties, representatives and stakeholders. The e-enablement initiative looked at the best practices of other federal departments, security considerations, costing and legislative imperatives to identify options for consideration.

Between April 1, 2016, and March 31, 2017, the Tribunal launched five new releases of its case management system, resulting in an increased capacity to develop and generate performance reports. Tribunal capacity was also enhanced with new features, such as assignment tools. Efficiency was further improved with the development of decision templates pre-populated with legislative texts related to the issues at hand, as determined by members, as well as the development of an offline mode, thus allowing members to access and synchronize files when network or virtual private network (VPN) access is unavailable.

Transparency and Access to Justice

In support of transparency, the Tribunal has published over 4,200 decisions since April 1, 2013. In 2016–2017, 1,833 decisions were published: 1,352 AD decisions and 481 GD decisions. The Tribunal publishes all its AD decisions and a broad selection of GD decisions on its own website, in full compliance with the Government of Canada's accessibility standards. To expand access to justice, the Tribunal also publishes all its AD decisions and a broad selection of GD decisions on the Canadian Legal Information Institute (CanLII) and the *Société québécoise d'information juridique* (SOQUIJ) websites.

The Tribunal also published its first achievements report, covering the years 2013 to 2016, and has committed to reporting annually on its performance and results. In addition, the Tribunal updated its *Code of Conduct for Members*, emphasizing the Tribunal's expectations of members and providing clarity on the conduct of hearings.

As part of its commitment to improving access to justice, the Tribunal simplified and reduced the number of forms required to start an appeal. The new forms now also include more comprehensive instructions.

In addition, the Tribunal fully revamped its website to make it more user-friendly and intuitive to navigate. The revised and additional content, layout and structure of the Tribunal's new and improved website are organized to make it easier for users to locate and access useful information, such as forms and Tribunal decisions. A unique Tribunal-specific search tool was developed and added as a feature to the new website to make it easier than ever to find Tribunal decisions.

In support of access to justice, the Tribunal's dedicated call centre responded to 27,714 calls between April 1, 2016, and March 31, 2017. Finally, the Tribunal developed and published on its website a feedback form for stakeholders, parties and other Canadians to provide comments and suggestions that the Tribunal will consider in outlining future projects and priorities to ensure that concerns are addressed and resolved.

3. CASELOADS

This chapter looks in detail at how the Tribunal handled its four caseloads over 2016–2017, by reviewing caseload inventory, outcomes, forms of hearing and the time taken to issue a decision. The Tribunal received a total of 8,728 appeals and concluded 10,716 appeals.

3.1 General Division – Income Security Section

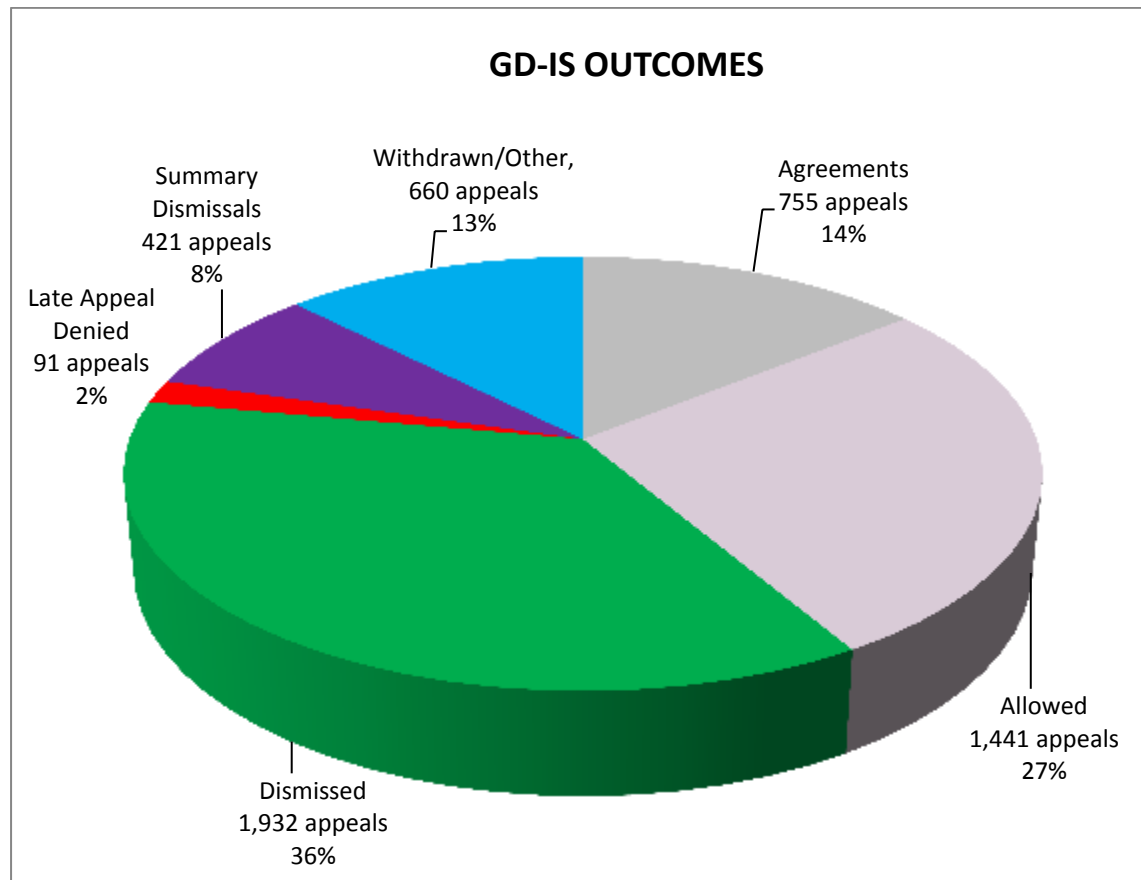
3.1.1 Caseload Inventory

During the fiscal year 2016–2017, the Tribunal significantly reduced its inventory of General Division – Income Security (GD-IS) appeals. The Tribunal started with an inventory of 5,455 appeals (including 46 appeals originally inherited from the Office of the Commissioner of Review Tribunal (OCRT)) and received another 3,628 new appeals. The Tribunal concluded a total of 5,300 appeals in 2016–2017 (including 45 appeals from the OCRT) and had an ending inventory of 3,783 appeals on March 31, 2017. The Tribunal reduced its GD-IS inventory by 31%. At the end of the fiscal year, the Tribunal had only 1 OCRT Charter appeal to conclude. The GD-IS reduced the average age of its active caseload from 321 days on April 1, 2016, to 251 days on March 31, 2017. This result is impressive considering that the *Social Security Tribunal Regulations* stipulate that parties have up to 365 days after the appeal is filed to either file additional documents or submissions, or to file a notice stating that they have no documents or submissions to file.

GD-IS INVENTORY	
	FY 16–17
Beginning Inventory	5,455
Received	3,628
Concluded	(5,300)
<i>Agreements Between Parties Accepted</i>	(755)
<i>Allowed</i>	(1,441)
<i>Appeals Concluded for Other Reason(s)</i>	(27)
<i>Dismissed</i>	(1,932)
<i>Late Appeal Denied</i>	(91)
<i>Summary Dismissals</i>	(421)
<i>Withdrawals</i>	(633)
Ending Inventory	3,783

3.1.2 Outcomes

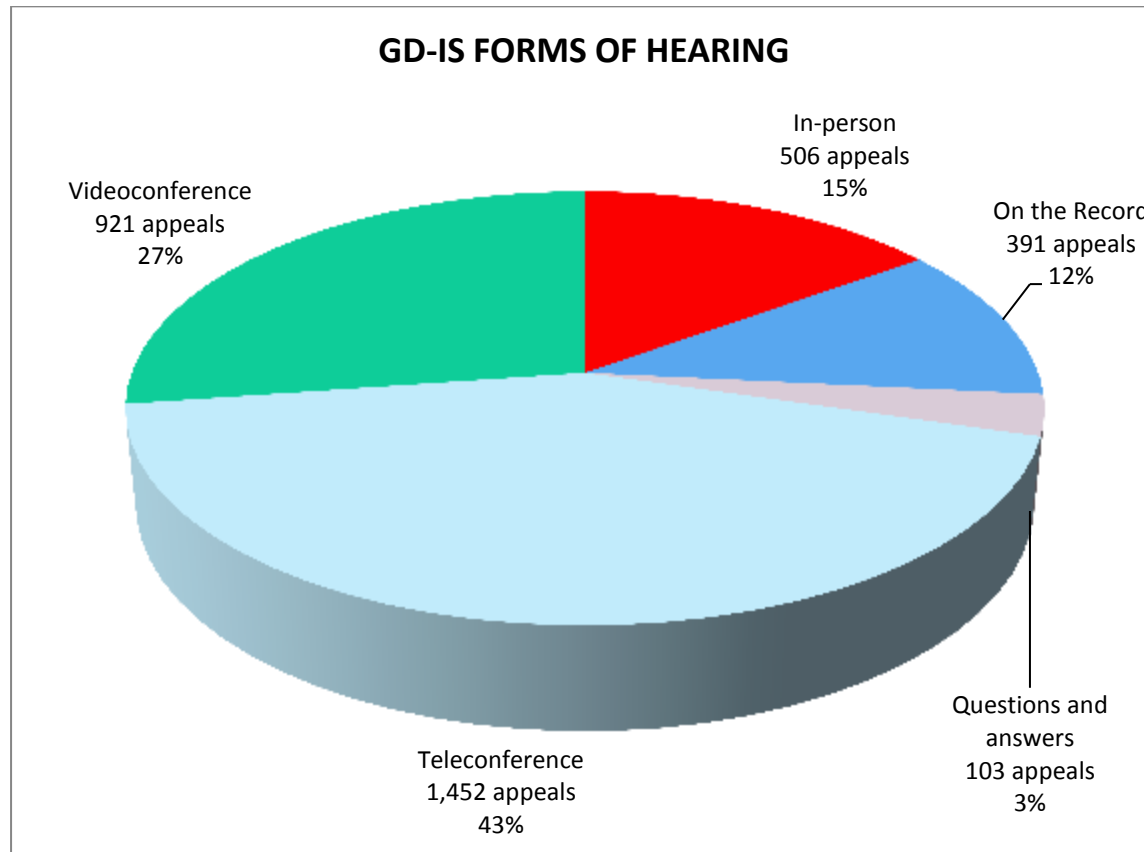
The chart below illustrates the outcomes of the 5,300 appeals the GD-IS concluded in 2016–2017. Of the 5,300 appeals concluded, 2,196 appellants received a positive outcome through an agreement with ESDC or by having their appeal allowed by formal decision.



3.1.3 Forms of Hearing

In accordance with the *Social Security Tribunal Regulations*, Tribunal members decide on the form of hearing. In GD-IS, members can make a decision based on the documents and submissions filed (on the record) 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 the 3,373 GD-IS appeals that were allowed or dismissed in 2016–2017. Note that the remaining 1,927 appeals are not included in the chart below (agreements between the parties, late appeals denied, summary dismissals, withdrawals and other reasons) because they were concluded without a hearing.



3.1.4 Time it Takes to Issue a Decision

To align with the *Social Security Tribunal Regulations*, which require the Tribunal to issue decisions without delay, the Tribunal strives to issue its decisions within 30 days after the day of the hearing. However, due to circumstances beyond the Tribunal's control, this objective cannot always be met. 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.

In 2016–2017, the Tribunal issued 72% of its GD-IS decisions within 30 days of the hearing having taken place. Only 2% of GD-IS decisions were issued beyond 90 days.

3.2 Appeal Division – Income Security Section

3.2.1 Caseload Inventory

The Tribunal's inventory at the Appeal Division-Income Security (AD-IS) increased significantly during the fiscal year 2016–2017. The Tribunal started with an inventory of 267 appeals and received 645 new appeals. The Tribunal concluded a total of 430 appeals in 2016–2017 and had an ending inventory of 482 appeals on March 31, 2017. The AD-IS's inventory has increased by 81%. This increase can be explained by the high number of appeals the GD-IS concluded in 2015–2016 and the fact that, on average, 15% of GD-IS decisions are appealed to the AD. Further, the AD-IS lost two experienced full-time members. The average age of the active caseload at the AD-IS increased from 101 days on April 1, 2016, to 195 days on March 31, 2017. By the end of the fiscal year, 1 new full-time GD member and 4 new part-time members were appointed and trained, and the inventory has been decreasing steadily since.

AD-IS INVENTORY	
	FY 16–17
Beginning Inventory	267
Received	645
Concluded	(430)
<i>Agreements Between Parties Accepted</i>	(35)
<i>Allowed</i>	(85)
<i>Appeals Concluded for Other Reason(s)</i>	(2)
<i>Dismissed</i>	(66)
<i>Late Appeal Denied</i>	(18)
<i>Leave to Appeal Refused</i>	(217)
<i>Withdrawals</i>	(7)
Ending Inventory	482

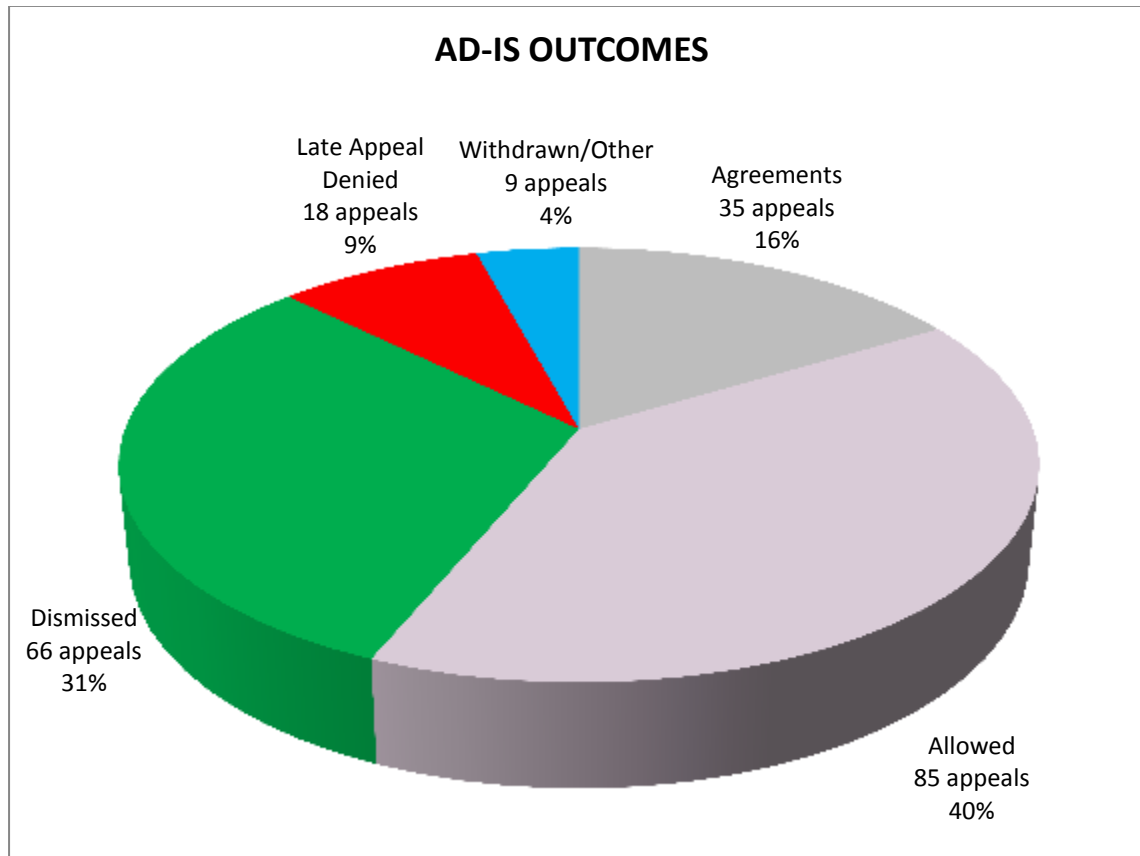
3.2.2 Outcomes

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

- 1) Leave to appeal: Leave to appeal is required before an appeal of a GD decision can proceed to the AD, unless a party is appealing the GD's decision to summarily dismiss an appeal.
- 2) Decision on the merit: If the AD grants leave to appeal, the AD then decides on the form of hearing and the merit of the appeal.

In 2016–2017, the AD-IS decided a total of 374 leave to appeal applications. Of those, 157 (42%) were granted and 217 (58%) were refused.

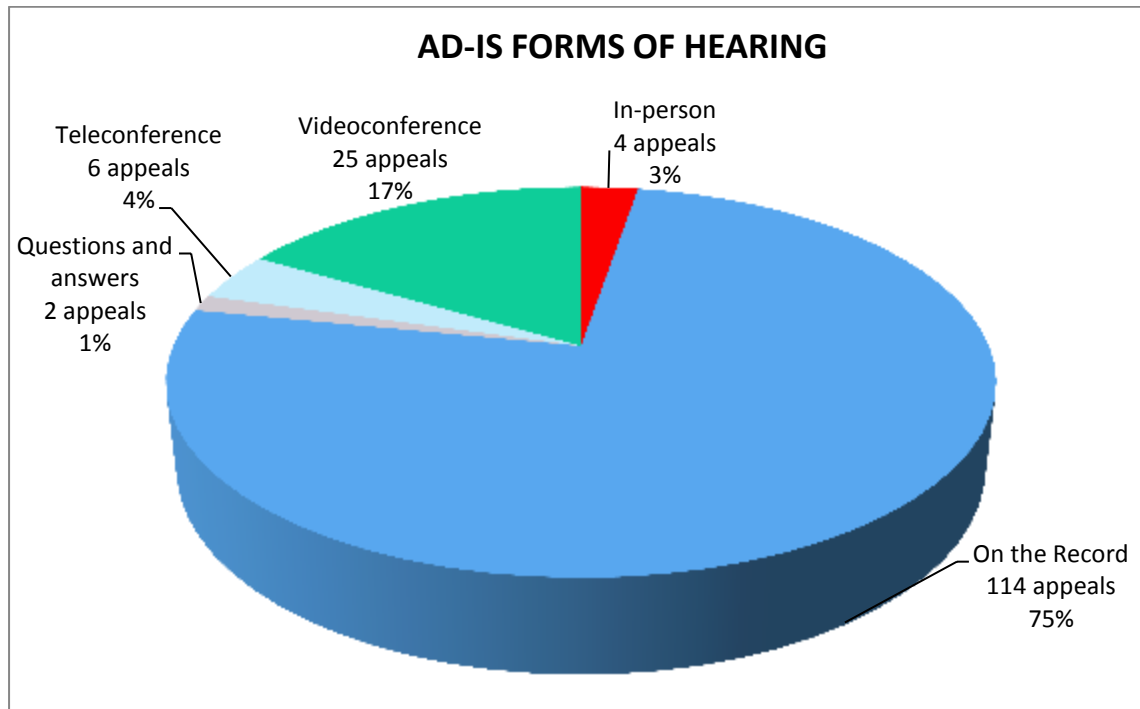
The chart below illustrates the outcomes of the 213 appeals where leave to appeal was either granted or not necessary (where a GD decision was summarily dismissed). Leave to appeal was refused for the remaining 217 appeals that the AD-IS concluded in 2016–2017.



Note: As appeals to the AD can be filed by the claimant, Employment and Social Development Canada (ESDC) or an added party, there is no clear correlation between outcomes of appeals and the granting of benefits.

3.2.3 Forms of Hearing

The chart below illustrates the forms of hearing for the 151 AD-IS appeals that were allowed or dismissed in 2016–2017. Note that the remaining 279 appeals are not included in the chart below (agreements between parties, late appeal denied, leave to appeal refused, withdrawals and other reasons) because they were concluded without a hearing.



3.2.4 Time it Takes to Issue a Decision

To align with the *Social Security Tribunal Regulations*, which require the Tribunal to issue decisions without delay, the Tribunal strives to issue its decisions within 30 days after the day of the hearing. However, due to circumstances beyond the Tribunal's control, this objective cannot always be met, especially at the AD. 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.

In 2016–2017, the Tribunal issued 46% of the AD-IS decisions on the merits within 30 days of the hearing having taken place.

3.3 General Division – Employment Insurance Section

3.3.1 Caseload Inventory

The Tribunal manages and tracks Employment Insurance appeals in two categories: regular and group appeals.

A group appeal occurs when more than one claimant appeals the Canada Employment Insurance Commission 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, the Tribunal will consider these appeals as part of a group appeal. Group appeals tend to be more complex and require more time to complete.

During the fiscal year 2016–2017, the Tribunal saw its inventory of General Division–Employment Insurance (GD-EI) appeals increase by 27%. The Tribunal started with an inventory of 1,893 appeals (including 78 appeals originally transferred from the Board of Referees (BoR)) and received 4,116 new appeals. The Tribunal concluded a total of 3,600 appeals in 2016–2017 (including 69 appeals from the BoR) and had an ending inventory of 2,409 appeals on March 31, 2017. At the end of the fiscal year, the Tribunal had only 9 BoR appeals to conclude. Of these, 7 appeals could not be scheduled until the Tax Court of Canada rendered a decision and 2 are waiting for a decision from the Federal Court. The average age of the active caseload at the GD-EI increased from 95 days on April 1, 2016, to 117 days on March 31, 2017.

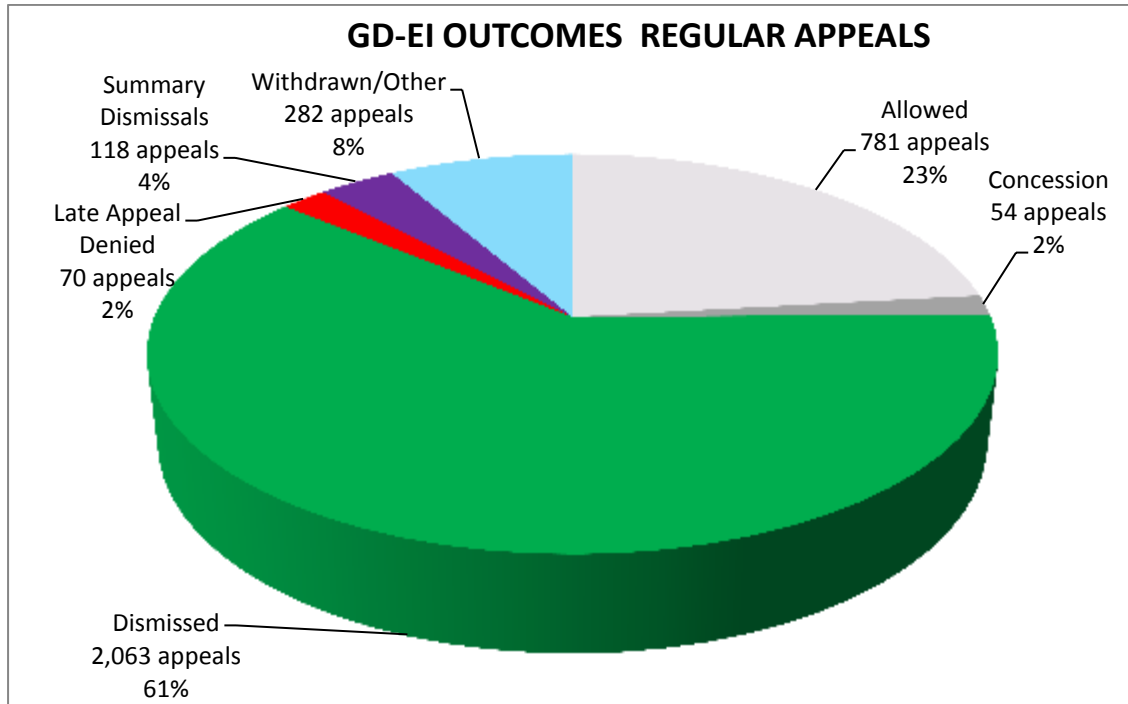
GD-EI INVENTORY			
	FY 16–17		
	Regular	Group	Total
Beginning Inventory	1,673	220*	1,893
Received	3,924	192	4,116
Concluded	(3,368)	(232)	(3,600)
<i>Allowed</i>	<i>(781)</i>	<i>(156)</i>	<i>(937)</i>
<i>Appeals Concluded for Other Reason(s)</i>	<i>(32)</i>	<i>0</i>	<i>(32)</i>
<i>Concession</i>	<i>(54)</i>	<i>(5)</i>	<i>(59)</i>
<i>Dismissed</i>	<i>(2,063)</i>	<i>(23)</i>	<i>(2,086)</i>
<i>Late Appeal Denied</i>	<i>(70)</i>	<i>0</i>	<i>(70)</i>
<i>Summary Dismissals</i>	<i>(118)</i>	<i>0</i>	<i>(118)</i>
<i>Withdrawals</i>	<i>(250)</i>	<i>(48)</i>	<i>(298)</i>
Ending Inventory	2,229	180**	2,409

* 220 Beginning Group Inventory is based on 12 different groups.

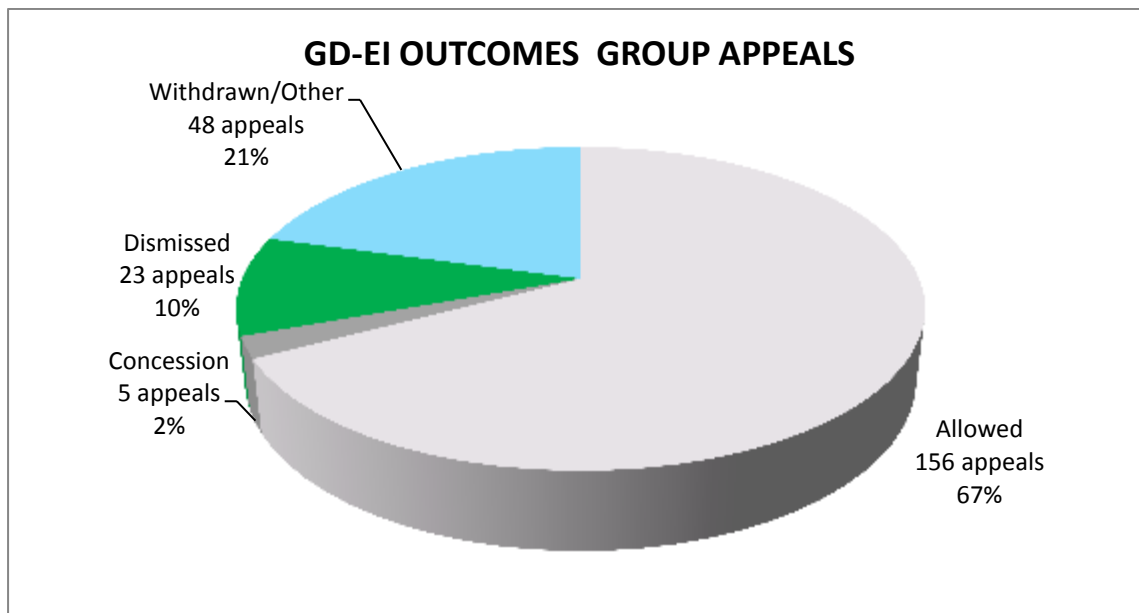
** 180 Ending Group Inventory is based on 8 different groups.

3.3.2 Outcomes

The chart below illustrates the outcomes of the 3,368 regular appeals the GD-EI concluded in 2016–2017.



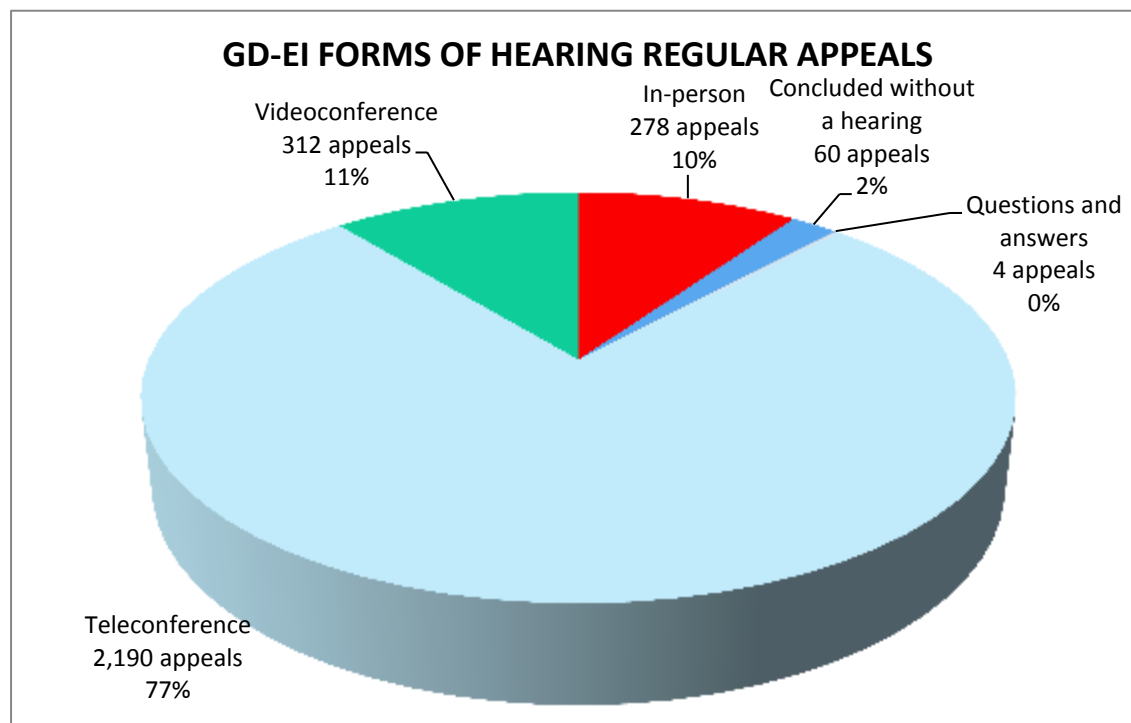
The chart below illustrates the outcomes of the 232 appeals part of group appeals the GD-EI concluded in 2016–2017.



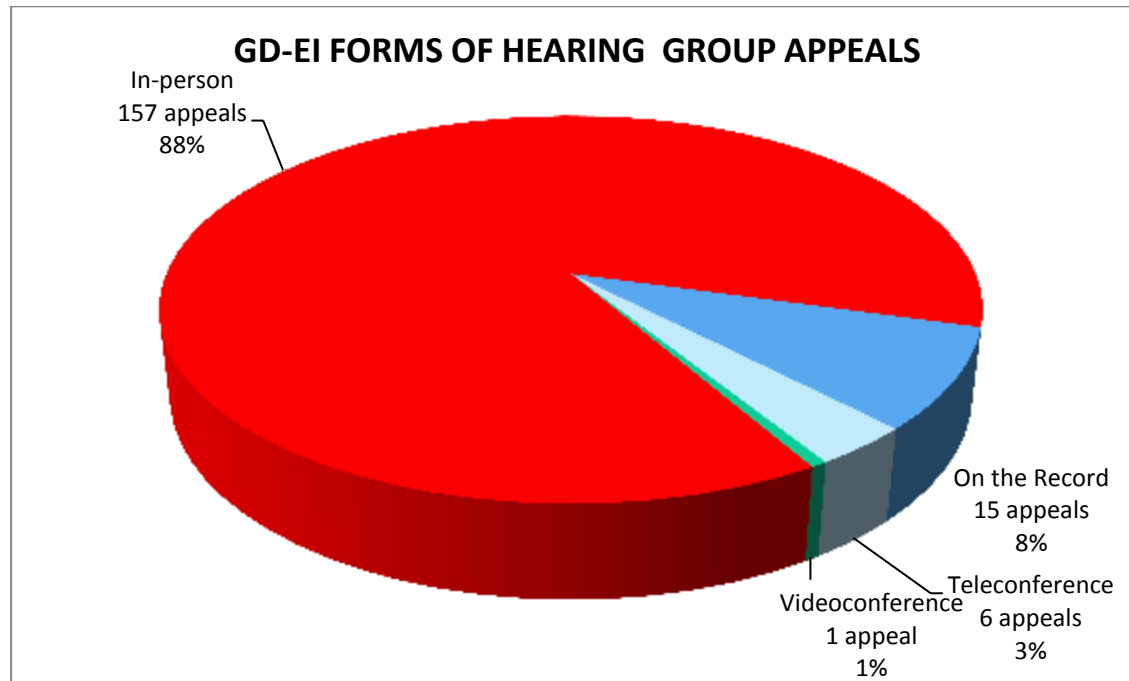
3.3.3 Forms of Hearing

In accordance with the *Social Security Tribunal Regulations*, Tribunal members decide on the form of hearing. In GD-EI, members can 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 the 2,844 GD-EI regular appeals that were allowed or dismissed in 2016–2017. Note that the remaining 524 appeals are not included in the chart below (appeals concluded for other reasons, concession, late appeal denied, summary dismissals, and withdrawals) because they were concluded without a hearing.



The chart below illustrates the forms of hearing for the 179 GD-EI group appeals that were allowed or dismissed in 2016–2017. Note that the remaining 53 appeals are not included in the chart below (concession, late appeal denied, summary dismissals and withdrawals) because they were concluded without a hearing.



3.3.4 Time it Takes to Issue a Decision

To align with the *Social Security Tribunal Regulations*, which require the Tribunal to issue decisions without delay, the Tribunal strives to issue its decisions within 30 days after the day of the hearing. However, due to circumstances beyond the Tribunal's control, this objective cannot always be met. 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.

In 2016–2017, the Tribunal issued 71% of its GD-EI decisions within 30 days of the hearing having taken place. Only 3% of GD-EI decisions were issued beyond 90 days.

3.4 Appeal Division – Employment Insurance Section

3.4.1 Caseload Inventory

During the fiscal year 2016–2017, the Tribunal significantly reduced its inventory of Appeal Division-Employment Insurance (AD-EI) appeals. The Tribunal started with an inventory of 1,692 appeals and received 339 new appeals. The Tribunal concluded 1,386 appeals in 2016–2017 and had an ending inventory of 645 appeals on March 31, 2017. The Tribunal reduced its AD-EI inventory by 62%. The AD-EI reduced the average age of its active caseload from 233 days on April 1, 2016, to 172 days on March 31, 2017.

AD-EI INVENTORY			
	FY 16–17		
	Regular	Group	Total
Beginning Inventory	247	1,445*	1,692
Received	331	8	339
Concluded	(415)	(971)	(1,386)
Allowed	(173)	(372)	(545)
Appeals Concluded for Other Reason(s)	(3)	0	(3)
Dismissed	(68)	(377)	(445)
Late Appeal Denied	(4)	0	(4)
Leave to Appeal Refused	(145)	0	(145)
Withdrawals	(22)	(222)	(244)
Ending Inventory	163	482**	645

* 1,445 Beginning Group Inventory is based on 3 different groups

** 482 Ending Group Inventory is based on 3 different groups

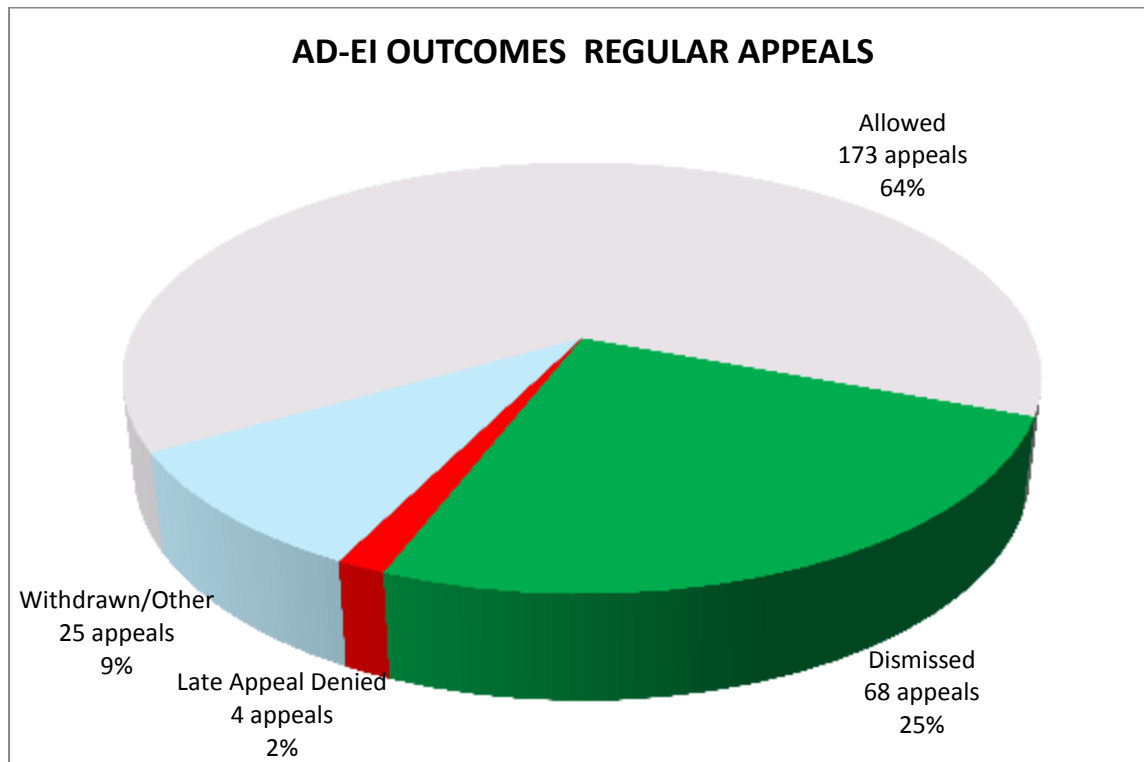
3.4.2 Outcomes

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

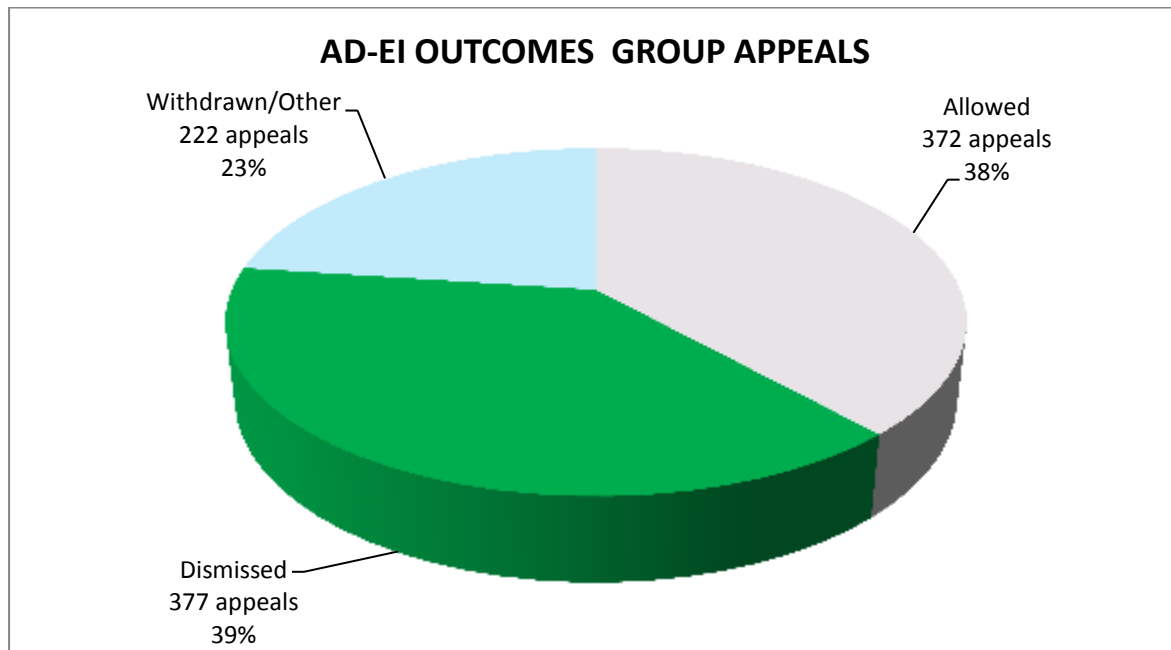
- 1) Leave to appeal: Unless a party is appealing the GD's decision to summarily dismiss an appeal, leave to appeal is required before an appeal of the GD decision can be made to the AD.
- 2) Decision on the merit: If the AD grants leave to appeal, the AD then decides on the form of hearing and the merit of the appeal.

In 2016–2017, the AD-EI decided a total of 847 leave to appeal applications. Of those, 483 were group appeals and all were granted leave to appeal. Of the remaining 364 regular appeals, 60% were granted leave to appeal and 40% were refused leave to appeal.

The chart below illustrates the outcomes for the 270 regular appeals the AD-EI concluded (where leave to appeal was granted or not required) in 2016–2017.



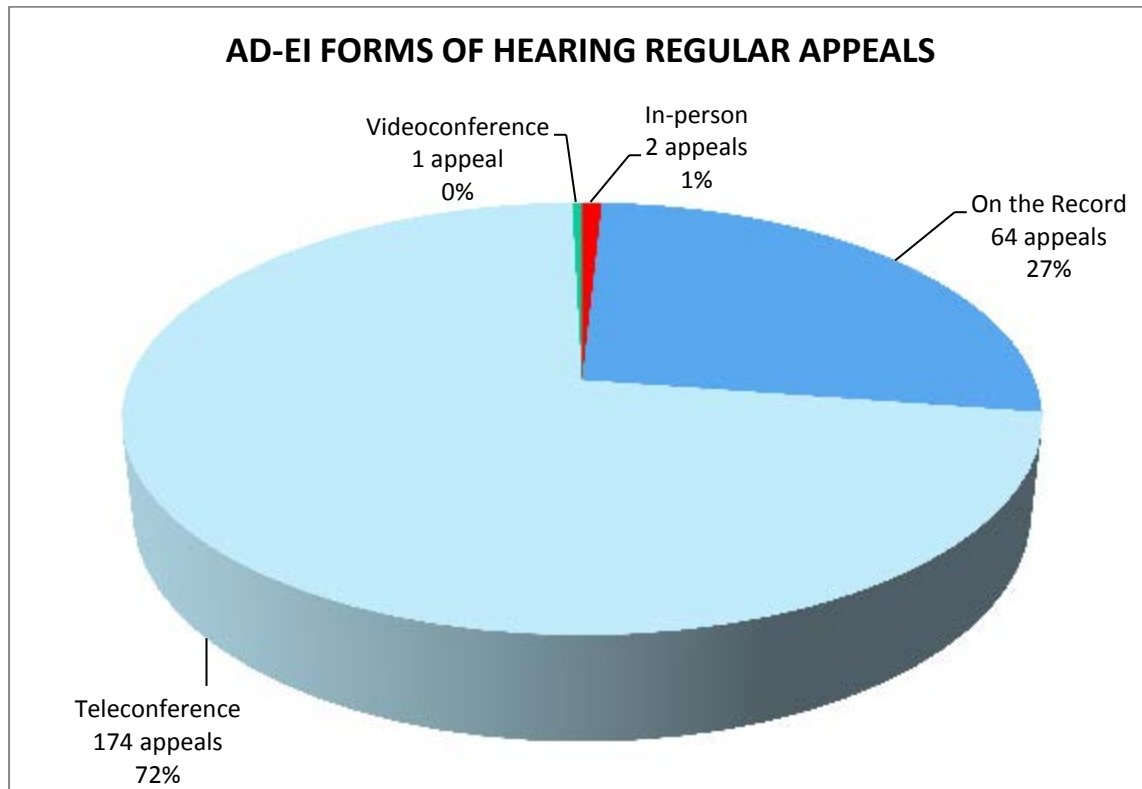
The chart below illustrates the outcomes for the 971 group appeals the AD-EI concluded (where leave to appeal was granted or not required) in 2016–2017.



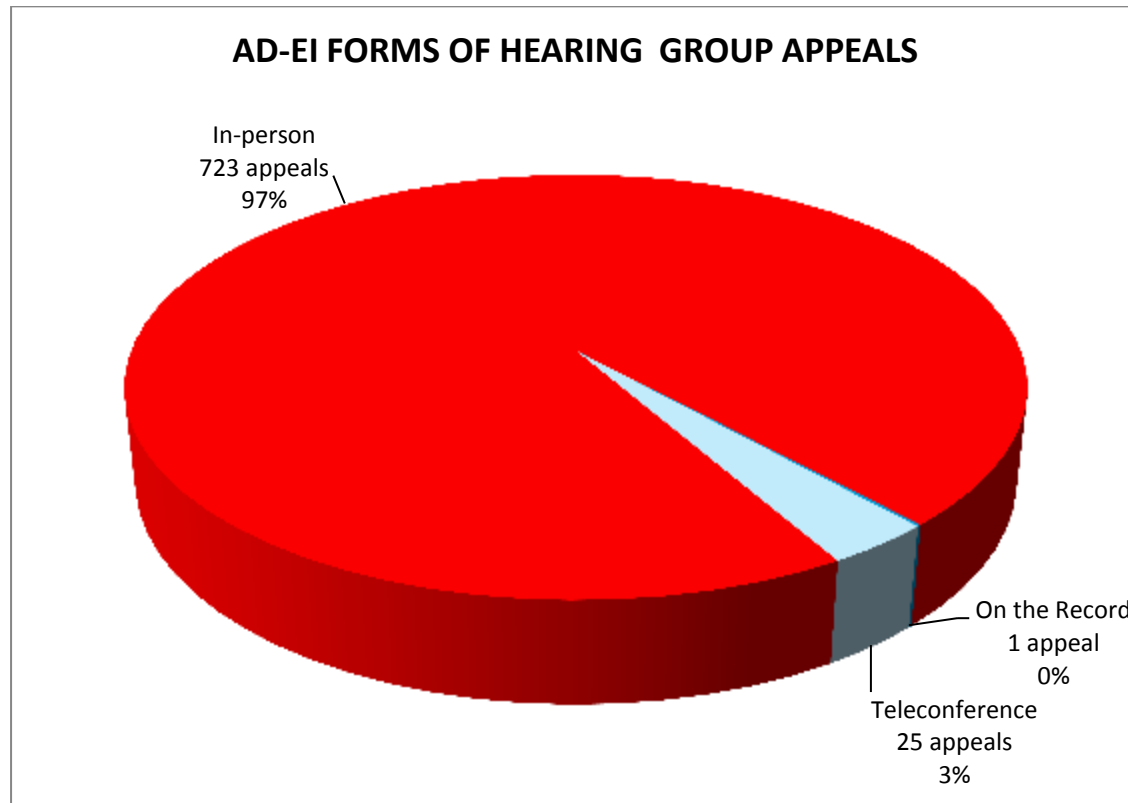
Note: As appeals to the AD can be filed by the claimant, the Commission, or an employer, there is no clear correlation between outcomes of appeals and the granting of benefits.

3.4.3 Forms of Hearing

The chart below illustrates the forms of hearing for the 241 AD-EI regular appeals that were allowed or dismissed in 2016–2017. Note that the remaining 174 regular appeals are not included in the chart below (appeals concluded for other reasons, late appeal denied, leave to appeal denied and withdrawals) because they were concluded without a hearing.



The chart below illustrates the forms of hearing for the 749 AD-EI group appeals that were allowed or dismissed in 2016–2017. Note that the remaining 222 group appeals are not included in the chart below (appeals concluded for other reasons, late appeal denied, leave to appeal denied and withdrawals) because they were concluded without a hearing.



3.4.4 Time it Takes to Issue a Decision

To align with the *Social Security Tribunal Regulations*, which require the Tribunal to issue decisions without delay, the Tribunal strives to issue its decisions within 30 days after the day of the hearing. However, due to circumstances beyond the Tribunal's control, this objective cannot always be met, especially at the AD. 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.

In 2016–2017, the Tribunal issued 64% of its AD-EI decisions (regular appeals) within 30 days of the hearing having taken place. Only 7% of AD-EI (regular appeals) were issued beyond 90 days. Considering the complexity of group appeals and the number of appeals involved, the Tribunal is proud to report that 747 of the 748 group appeal decisions were issued within 61 to 90 days of the hearing having taken place.

4. SERVICE STANDARDS

The Tribunal first published its service standards for each section and division in late 2015. The service standards inform parties of the time the Tribunal expects it will take to conclude an appeal. The service standards were developed based on a series of assumptions, an analysis of the Tribunal's capacity (in terms of both members and staff), specific caseload volumes in each section and division, and the evolving state of the Tribunal's operational systems, current legislation and regulations, parties' reasonable expectations and experience to that date. The Tribunal committed to publicly reporting against the service standards.

The Tribunal's service standards apply to standard cases. Exceptional cases, such as group appeals, constitutional cases, late appeals, appeals in abeyance or those with added parties are not subject to the service standards.

The Tribunal's capacity to meet its service standards is directly dependant on the volume of the incoming cases, the complexity of cases and the number of experienced members.

General Division – Income Security

On December 1, 2015, the Tribunal implemented the following service standard:

For all new cases received as of December 1, 2015:

- *85% of cases will be decided within 5 months of the appeal becoming ready to proceed.*

Of the General Division – Income Security (GD-IS) appeals that are subject to the service standard, the Tribunal met its GD-IS service standard¹ in 94% of the applicable appeals. The Tribunal is very proud of these results and will continue to work hard to ensure that this service standard continues to be met.

Appeal Division – Income Security

As of September 1, 2015, the Tribunal implemented the following service standards:

Decisions on Leave to Appeal:

- *85% of decisions on leave to appeal will be made within 60 days from filing of leave application.*

¹ Due to the parameters of the service standard, not all GD-IS cases were subject to the standard. For example, an appeal must have been received on or after December 1, 2015, and have been concluded (decision on merit issued) by March 31, 2017, to have the service standard apply.

Final Decisions — where leave to appeal has been granted:

- *85% of final decisions will be made within 7 months from the date leave to appeal was granted.*

In 2016–2017, decisions on leave to appeal were made within 60 days from filing of the leave to appeal application in 94 of 351 requests, or 27% of the time. For those 94 appeals, the decision on leave to appeal was rendered, on average, within 23 days. This is due to a deficit of Appeal Division – Income Security (AD-IS) members in light of the size of the caseload, which challenged the Tribunal in meeting the service standard. Despite the appointment of 5 new part-time members between January and March 2017, more members were still required. Members are trained without delay upon appointment; however, it can take between 6 to 12 months for a member to meet an experienced member's performance expectations. The Tribunal will continue to look at enhancing operational efficiencies and member performance to improve this result in the future.

Final AD-IS decisions, that is, decisions on the merit, were issued within 7 months of leave to appeal being granted in 97 of 112 appeals, or 87% of the time. For those 97 appeals, it took an average of 2.5 months (77 days) to issue a final decision. Overall, for all appeals measured against the service standard, the average was 109 days, or less than 4 months. In the circumstances, the Tribunal is proud of these positive results.

It is expected that new member appointments will be announced early in the new fiscal year. This enlarged complement will support the Tribunal in improving its performance against these service standards.

General Division – Employment Insurance

On September 1, 2015, the Tribunal implemented the following service standard:

For all new cases received as of September 1, 2015:

- *85% of final decisions will be made within 90 days of the appeal being filed.*

During the fiscal year, the Tribunal met the service standard 12% of the time.

This is due to a number of factors. Over the fiscal year the General Division – Employment Insurance (GD-EI), saw a significant month-over-month increase in its caseload. In addition, the Tribunal faced an unexpected deficit of GD-EI members in light of the size of the caseload. To address this shortfall as it was occurring, the Chairperson reassigned 5 GD members from IS to EI. On April 1, 2016, the Tribunal had 27 full-time members. However, the Tribunal calculated

the ideal member complement as 37 full-time members and 9 part-time members. This deficit challenged the Tribunal in meeting the service standard. Despite the appointment of 7 new part-time and 12 new full-time members, more members are still required. Members are trained without delay upon appointment; however, it can take between 6 to 12 months for a member to meet an experienced member's performance expectations.

It is expected that new member appointments will be announced early in the new fiscal year. This enlarged complement will support the Tribunal in improving its performance against these service standards.

Appeal Division – Employment Insurance

As of September 1, 2015, the Tribunal implemented the following service standards:

Decisions on Leave to Appeal:

- *85% of decisions on leave to appeal will be made within 60 days from filing of leave application.*

Final Decisions — where leave has been granted:

- *85% of final decisions will be made within 7 months from the date leave to appeal was granted.*

In respect of the first service standard for the Appeal Division – Employment Insurance (AD-EI), that is, decisions on leave to appeal requests, the Tribunal is proud to report that the service standard was met in 280 of 313 appeals, or 89% of the time. In fact, for the 280 appeals that met the service standard, the average time frame to render the leave to appeal decision was only 17 days.

Final AD-EI decisions, that is, decisions on merit, were made within 7 months of leave to appeal being granted in 106 of 141 appeals, or 75% of the time. The Tribunal is proud of this achievement and is dedicated to improving this result going forward. For those 106 appeals, it took an average of 132 days (approximately 4.5 months) for the final decision to be issued from the date leave to appeal was granted. The overall average, for all appeals measured against the service standard, is 166 days, or 5.5 months.

5. COURT DECISIONS

Parties wishing to seek judicial review of an Appeal Division (AD) decision may file an application to either the Federal Court of Appeal or the Federal Court, depending on the type of decision under judicial review. While most AD decisions 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, AD decisions granting or refusing an application for leave to appeal are judicially reviewed by the Federal Court.

Between April 1, 2016, and March 31, 2017, the AD concluded 1,525 appeals that could have been judicially reviewed. During this period, the Federal Court of Appeal and the Federal Court considered a total of 41 applications, which represents 2.69% of decisions the AD rendered.

The tables below illustrate the breakdown of the AD decisions that were judicially reviewed by the Federal Court of Appeal and the Federal Court for both Employment Insurance and Income Security matters.

5.1 Judicial Reviews in 2016–2017

Federal Court of Appeal

During the 2016–2017 fiscal year, the Federal Court of Appeal reviewed 14 AD decisions. Of those, 12 were dismissed and 2 were allowed on the parties' consent and remitted to the Tribunal to be heard by a different AD member.

Federal Court of Appeal	Dismissed	Allowed	Total
Employment Insurance	7	0	7
Income Security	5	2	7
Total	12	2	14

In 2016–2017, the AD made 983 decisions relating to Employment Insurance matters that could have been judicially reviewed by the Federal Court of Appeal. None of the AD-EI decisions was overturned on judicial review, representing a 0% overturn rate. The AD made 111 decisions relating to Income Security matters that could have been judicially reviewed by the Federal Court of Appeal. Only 2 decisions were allowed (on consent), which represents an overturn rate of 1.8% for AD-IS.

Federal Court

In the last fiscal year, the Federal Court reviewed 27 AD decisions. Of those, 16 were dismissed and 11 were allowed. Four of the allowed applications were on the parties' consent. In the remaining 7 cases, the Federal Court disagreed with the decision and returned them to the AD for reconsideration. In 6 of those cases, the AD had refused leave to appeal. For example, in one case, the Federal Court concluded that the General Division (GD) had misapprehended critical and essential evidence concerning the claimant's attachment to the workplace, thereby basing its decision on an erroneous finding of fact made without regard for the material before it. In another matter, the Federal Court concluded that the GD had failed to address a new diagnosis and its impact on the claimant's employability.

In one instance, the Federal Court concluded that, because there was no medical evidence to suggest that the claimant was disabled before starting to receive a retirement pension, it was unreasonable for the AD to have granted leave to appeal.

Federal Court	Dismissed	Allowed	Total
Employment Insurance	7	1	8
Income Security	9	10	19
Total	16	11	27

In 2016–2017, the AD made 156 decisions relating to Employment Insurance matters that could have been judicially reviewed by the Federal Court. Only 1 was allowed, which represents an overturn rate of 0.64% for AD-EI. The AD made 275 decisions relating to Income Security matters that could have been judicially reviewed by the Federal Court. Only 10 were allowed, which represents an overturn rate of 3.64% for AD-IS.

To ensure that the Tribunal learns from the Courts' decisions, the Legal Services unit conducts an ongoing review of all relevant decisions from the Federal Court of Appeal and the Federal Court. These decisions are summarized and shared with all Tribunal members.

Vice-chairpersons and Legal Services discuss key decisions in greater detail during regular conference calls with their members and at training sessions.

5.2 Overview of Court Decisions

Key court decisions that have influenced the Tribunal's practices are summarized below.

5.2.1 Filing New Evidence Before the Appeal Division

As a general rule, parties cannot file new evidence before the AD; they must rely solely on the documents that were before the GD.

The Federal Court of Appeal confirmed in *Mette v. Canada (A.G.)*, 2016 FCA 276, that, generally, new evidence cannot be filed before the AD.

The Federal Court set out three exceptions to this general rule in *Marcia v. Canada (A.G.)*, 2016 FC 1367, and explained that new evidence could be presented if it was necessary: (1) as general background information; (2) to establish procedural defects; and (3) to highlight that there was no evidence before the GD.

In *Daley v. Canada (A.G.)*, 2017 FC 297, the Federal Court stated that a medical report that had not been filed before the GD could not be considered general background information, since such a document goes to the merit of the matter.

The Federal Court held in *Paradis v. Canada (A.G.)*, 2016 FC 1282, that new evidence could not be filed, since the Court could not establish a possible breach of procedural fairness or a reasonable apprehension of bias.

5.2.2 Weighing Evidence

The GD examines and weighs the evidence presented. It is not the AD's role to reweigh that evidence.

In *Hussein v. Canada (A.G.)*, 2016 FC 1417, the Federal Court held that the weighing and the assessment of evidence lie at the heart of the GD's mandate and jurisdiction. When there is an allegation that the GD failed to properly consider a fact, the GD is entitled to significant deference on such a finding.

In *Johnson v. Canada (A.G.)*, 2016 FC 1254, and *Marcia v. Canada (A.G.)*, 2016 FC 1367, the Federal Court confirmed earlier decisions to the effect that the AD's role is not to reweigh evidence originally weighed by the GD. As a result, it was reasonable for the AD to have dismissed the requests for leave to appeal.

5.2.3 Forms of Hearing

The Tribunal decides on the form of hearing; however, it must be reasonable according to the particular facts of each case.

In *Robbins v. Canada (A.G.)*, 2017 FCA 24, the Federal Court of Appeal confirmed that the Tribunal can decide appeals on the basis of the record.

However, the Federal Court held that, in certain situations, it is unreasonable for the GD to make a decision on the basis of the record. In *Murphy v. Canada (A.G.)*, 2016 FC 1208, the Applicant filed an application for disability benefits under the *Canada Pension Plan*. The Federal Court questioned whether the GD had been able to properly assess the factors enumerated in *Villani v. Canada (A.G.)*, 2001 FCA 248, without a hearing. The Court noted that the appellant had limited education, a speech impediment, difficulty expressing her thoughts and a limited ability to make written representations. In this case, it was unreasonable not to hold an in-person hearing.

In *Bélanger v. Canada (TSSC)*, T-1287-16, the applicant applied for disability benefits under the *Canada Pension Plan* and the GD rendered a decision on the basis of the record. The Federal Court found that the GD should not have made a decision on the basis of the record because: (1) an in-person hearing had initially been scheduled; (2) the appellant opposed the interlocutory decision on the form of hearing; (3) the disability determination was complex, since some medical reports required clarification; (4) the appellant was living with chronic pain, therefore a credibility determination needed to be assessed through either a teleconference, videoconference or in-person hearing; and (5) the appellant needed to explain his side of the story in relation to one medical report.

The Federal Court confirmed that the GD had not erred when it made a decision on the basis of the record in *Daley v. Canada (A.G.)*, 2017 FC 297. The Canada Employment Insurance Commission refused to extend the time within which Mr. Daley could request a reconsideration decision. The GD had scheduled a teleconference hearing, which Mr. Daley failed to attend, and the member therefore decided on the basis of the record. Before the AD, Mr. Daley was unable to explain why he had missed the hearing. Therefore, the Federal Court held that the GD could decide on the basis of the record.

5.2.4 Interventions Before the Tribunal

In *Income Security Advocacy Centre v. Mette*, 2016 FCA 167, the Applicant filed an application for judicial review of an AD decision denying intervener status before the AD. The Federal Court of Appeal noted that the AD had failed to address the real issue of whether the Tribunal had the implicit power to allow public interest intervener status. In response to the Court's decision, the Tribunal developed two communication instruments to provide instructions on the Tribunal's practices where someone seeks intervener status: the Chairperson's Guideline to Members and a Practice Direction for the general public.

6. GOING FORWARD: 2017–2018 PRIORITIES

The Tribunal has identified three overarching priorities for 2017–2018. These priorities will guide the Tribunal in delivering on its important mandate to provide fair, transparent, credible and impartial appeal processes that are efficient and effective.

Quality and Timely Decisions

The Tribunal will strive to improve the quality of decisions with on going investments in its member training program. This year, the Canadian Institute for the Administration of Justice will develop and deliver Tribunal specific, comprehensive, specialized decision writing courses to support all members in the drafting of their decisions. New member training modules and materials will be reviewed to ensure the most relevant, accurate and accessible training material is available. In addition, the Tribunal will continue to improve the quality of its decisions by analyzing and implementing lessons learned from new court decisions and from the AD. Overturn rates will be closely monitored, and lessons learned and new jurisprudence will be shared with the members. New legal tools for members will be developed, and existing tools will be updated which will support quality decision writing.

In addition, an analysis of data in key areas of work, such as reasons for adjournments, will be used to identify strategies to improve the timeliness of decisions. The Tribunal will also examine how alternative dispute resolution mechanisms might be used to improve the timeliness of settlements between parties. Moreover, the Tribunal will assess and address connectivity issues and downtime that may affect timeliness of decisions.

The Tribunal will continue to strive to meet its service standards for all four caseloads. To meet this priority, the Tribunal will continue to work with the Governor in Council selection committee to establish a pool of qualified candidates that can be appointed as Tribunal members. Members' work will be guided by the Tribunal's service standards, and ongoing monitoring will support members in meeting expectations.

The Tribunal will also carefully monitor and analyze caseload trends in both sections and divisions to make sure the necessary member resource complement and operational strategies are in place to ensure the timeliness of Tribunal decisions.

Improving the Tribunal's Efficiency

In 2016–2017, an operational review of the Tribunal was undertaken by an independent third party. The Tribunal will analyze the findings and recommendations identified in the operational

review and will assess the viability and feasibility of implementing recommendations where appropriate.

Appellant, representative and member satisfactions surveys were conducted in 2016–2017. This year, the Tribunal will study the findings of these surveys and implement recommendations and solutions where appropriate.

The Tribunal will review user metrics to measure the efficiency of the new website and the new Notice of Appeal forms, and make improvements where warranted. The Tribunal will assess initiatives to improve the electronic responsiveness of its operations, including measures to promote increased electronic communications with parties. Recommendations put forward in an e-enablement report commissioned by the Tribunal will be reviewed to identify potential future-state opportunities to better communicate with, and better inform, parties.

The Tribunal will fully collaborate with the consulting firm engaged at the request of the Minister of Families, Children and Social Development to conduct a review of Tribunal operations.

Transparency and Access to Justice

Issuance of this report supports Tribunal transparency, as the Tribunal has made an annual commitment to reporting on its achievements. To support easier access to the Tribunal, a number of forms and template letters will be reviewed to ensure content alignment, and that they best reflect, in plain language, the processes and procedures to follow. More streamlined forms and letters will serve to improve operational efficiency. Feedback received from Tribunal stakeholders and parties regarding the quality of Tribunal services—including feedback pertaining to the new website—will be reviewed, and recommended suggestions or modifications will be implemented as required.

The Tribunal will continue to review its suite of practice directions, guidelines, directives and operational processes to help parties, members and staff navigate through the Tribunal’s legislative and regulatory processes, and it will develop and communicate new instruments as required.

In collaboration with other federal tribunals, the Tribunal will, in implementing the open court principle, determine its appropriate course of action. Finally, the Tribunal will continue to include more information on its website and to post all AD decisions and a broad selection of GD decisions in support of transparency and access to justice for Canadians.