Social Justice Tribunals Ontario

Providing fair and accessible justice

2010 - 2011 Annual Report

Child and Family Services Review Board
Custody Review Board
Human Rights Tribunal of Ontario
Landlord and Tenant Board
Ontario Special Education (English) Tribunal
Ontario Special Education (French) Tribunal
Social Benefits Tribunal

Disponible en français

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SOCIAL JUSTICE TRIBUNALS ONTARIO

Executive Chair's Message

Michael Gottheil, Executive Chair
Social Justice Tribunals Ontario

I am pleased to present the first annual report of Social Justice Tribunals Ontario (SJTO), the second cluster of adjudicative boards and tribunals formed under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009.*

The regulation creating the SJTO took effect on January 25, 2011, and I was appointed Executive Chair on March 7, 2011. Since then, we - the Associate Chairs of the constituent tribunals and I - have been working to ensure a smooth transition to the new structure.

That new structure deserves some comment. The concept of clustering adjudicative tribunals, rather than amalgamating them as has been done in other jurisdictions, is unique to Ontario. It brings together a specific group of adjudicative tribunals within a single organization, but maintains each tribunal's unique statutory mandate and membership.

There are many benefits to clustering. For example, moving responsibility for the tribunals to the Ministry of the Attorney General positions the adjudicative process firmly within the justice community. Opportunities to add services to regional offices that previously housed only one tribunal should improve public access to SJTO services. Clustering will also ensure the most efficient use of resources, and while that is important in and of itself, efficiency is also a key component of access to justice, since inefficient use of resources means that members of the public who seek to access the tribunals may be delayed or denied. And last but not least, smaller tribunals may find they have access to more resources, as the larger clustered community creates opportunities for innovation and professional or career development.

Over time, the new system should produce clearer, more consistent decisions, and the long term benefit to the public should be a more accessible, more easily understood and more predictable system for resolving disputes.

Elsewhere in this report, you will find a more detailed description of how we intend to manage the transition in the coming 12 months, along with reports from the constituent tribunals on their operations in 2010-2011. For more information, please visit our web site: sjto.ca.

July 2011

The Role of the Cluster

Section 15 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (the Act) states that the government may designate a cluster when "the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone."*

Social Justice Tribunals Ontario (SJTO) is the second such cluster to be designated under the Act, following the 2009 creation of Environment and Land Tribunals Ontario. The government announced its intention to form the social justice tribunals cluster in August 2010 and passed the necessary regulation in January 2011, bringing together the Child and Family Services Review Board, Custody Review Board, Human Rights Tribunal of Ontario, Landlord and Tenant Board, Social Benefits Tribunal, the Special Education (English) Tribunal and the Special Education (French) Tribunal.

In addition to the broad goal of achieving efficiency and effectiveness in the way constituent tribunals deal with their respective and collective subject matters, the Act also requires that the cluster develop a mandate and mission statement as one of several public accountability documents.

The Act also requires the cluster to develop a consultation policy, a service standard policy, an ethics plan and a membership accountability framework. By April 1, 2012, these documents must all be presented for approval to the Attorney General, with the exception of the ethics plan, which must be approved by the province's Conflict of Interest Commissioner.

The cluster is also subject to other policies set out by the Management Board of Cabinet, such as requiring the cluster to develop an accessibility plan, provide annual business plans and reports, and comply with other regulations, that ensure public accountability within a framework of adjudicative independence.

For more on the role of the cluster, please see Executive Chair Michael Gottheil's message at the start of this report.

The Year in Review

In just over three short months, SJTO has:

- Established a web site sjto.ca to provide information to stakeholders and the broader public about the activities of the new cluster
- Met with internal and external stakeholders to explain the clustering initiative as it applies to SJTO
- Established an executive office and started coordinating and consolidating corporate functions such as information technology, finance and communications
- Created a working group to examine ways of adding services to regional offices that previously housed only one tribunal
- Started the process of developing the SJTO vision, mission and mandate statements.

Coincident with the appointment of SJTO Executive Chair Michael Gottheil, the chairs of the constituent tribunals were appointed as Associate Chairs of their former boards or tribunals. They are:

- Céline Allard, Associate Chair, Ontario Special Education (French) Tribunal
- Suzanne Gilbert, Associate Chair, Child and Family Services Review Board and Custody Review Board
- Lilian Ma, Associate Chair, Landlord and Tenant Board
- Marilyn Thain, Associate Chair, Ontario Special Education (English) Tribunal
- David A. Wright, Associate Chair, Human Rights Tribunal of Ontario
- Gary Yee, Associate Chair, Social Benefits Tribunal

Lilian Ma and Gary Yee were also appointed as SJTO Alternate Executive Chairs. A complete listing of tribunal members may be found starting on page 90 of this report.

Performance Targets

From the public's point of view, one of the most important documents required by the Act is the service standard policy. Most of the constituent tribunals have had formal or informal methods for measuring performance, but the Act makes such standards mandatory. Section 5 of the Act states that the service standard policy must contain:

- "A statement of the standards of service that the tribunal intends to provide;
- "A process for making, reviewing and responding to complaints about the service provided by the tribunal; and
- "Any other matter specified in the regulations or in a directive of the Management Board of Cabinet."

In the coming months, SJTO will develop a common set of service standards, including a complaints policy, that will take into account the diversity of subject matter and the complexity of issues dealt with by the constituent tribunals.

French Language Services

SJTO's constituent tribunals provide services to the public in both official languages in accordance with the French Language Services Act (FLSA). Regional offices in areas designated by the FLSA have bilingual staff available.

Additional information about French language services may be found in the individual reports of the constituent tribunals contained in this report.

CHILD AND FAMILY SERVICES REVIEW BOARD / CUSTODY REVIEW BOARD

Associate Chair's Message

Suzanne Gilbert, Associate Chair
Child and Family Services Review Board/Custody Review Board

I am pleased to present the 2010-2011 Annual Report of the Child and Family Services Review Board (CFSRB) and Custody Review Board (CRB)[1].

This year was marked by a very significant change that will shape the future of the Board. The Child and Family Services Review Board and the Custody Review Board became part of the newly designated Social Justice Tribunals Ontario cluster on January 25, 2011. By the end of this fiscal year, we were just beginning to appreciate the work that lies ahead with this very important structural change for administrative justice in Ontario. A lot of work remains to accomplish this transition, and the Board has embarked on this journey with enthusiasm.

In this fiscal year, the Board continued to see growth in the overall number of applications. A more noticeable increase was observed in CRB applications. However, the number of applications received and processed by the Board under sections 68 and/or 68.1 of the *Child and Family Services Act* (CFSA) was less than anticipated.

I am proud of what the Board accomplished this year. The Board has built a solid foundation and become a stable, efficient and effective administrative tribunal. Most notably, the Board's settlement facilitation program continues to evolve and has proven to be a success in assisting parties to resolve complaints and concerns in a more meaningful way.

I want to thank the Board members and staff who continue to contribute daily to the excellence of the Board's work. The Board's success in achieving a high standard of adjudicative excellence would not be possible without a committed team of Board members and staff.

[1] CFSRB and CRB are referred to collectively and individually as the Board.

The Year in Review

Challenge to the jurisdiction of the Board: Waterloo v. D.D.

The work of the Board has been impacted by the decision of the Divisional Court in *The Children's Aid Society of Waterloo v. D.D.*, 2010 ONSC 3328 (CanLII) (Waterloo v. D.D.).

On July 20, 2010, the Divisional Court released its decision on a judicial review of a Board decision regarding the Board's jurisdiction under section 68.1(8) of the CFSA, which prohibits the Board from dealing with a complaint when the subject of the complaint is an issue that has been decided by the court or is before the court. In this particular case, the Board claimed it had jurisdiction to proceed with an application when there are child protection proceedings, while the children's aid society claimed it did not. The Court found in favour of the society.

The Board appealed this decision and the hearing before the Court of Appeal for Ontario was heard on March 1, 2011. As of March 31, 2011, the Divisional Court's ruling binds the Board. The Board has continued to accept new applications under section 68 and 68.1 but placed on hold new and active applications impacted by the Divisional Court decision[2].

Volume of Work

The Board experienced an increase of 15% in the overall number of applications. The increase is less than the one observed in the 2009/2010 fiscal year but is consistent with the yearly increase in the number of applications received since 2006. The number of CRB applications received increased by 21%. Communication materials provided in January 2010 by the Board to all youth justice facilities in Ontario has continued to contribute to a better understanding of the Board's mandate and may explain the increase observed during this fiscal year.

The Board also experienced increases in emergency secure treatment applications and in school board expulsion appeals. Additionally, the number of applications related to reviews of children's aid societies' decisions saw a slight increase of 3%. An analysis of the intake of section 68 and 68.1 applications prior to and following the release of the decision of the Divisional Court reveals that the Board received 30% fewer applications than it had forecasted in 2010-2011.

[2] The Board's appeal was granted by the Court of Appeal for Ontario on June 9, 2011, in *Children's Aid Society of Waterloo v. D.D.*, 2011 ONCA 441 (CanLII).

The following chart provides a summary of the Board's caseload for the last two fiscal years.

Applications	2009/10	2010/11
Child and Family Services Review Board		
Review of certain CAS decisions and complaints	233	246
Review of Emergency Secure Treatment admissions	30	39
Review of Residential Placement Advisory Committee recommendations	3	6
Appeals of School Board Expulsion decisions	9	13
Review of a Director's Refusal to Approve a Person to Adopt or to Approve an Adoption Placement	0	0
Custody Review Board		
Review of Decision of a Provincial Director Regarding the Placement of a Youth in Custody	159	192
Total	**434**	**496**

The overall number of applications that proceeded to a hearing decreased from 66 in 2009-2010 to 41 in 2010-2011, a 38% decrease. However, the average number of hearing days scheduled for sections 61 and 144 doubled in this fiscal year. The increase can be attributed to the complexity of the issues involved in these applications.

Settlement Facilitation

Settlement facilitation (mediation) has been offered to the parties since July 2008 as part of the Board's hearing process for complaints made under sections 68 and 68.1 of the CFSA. The settlement facilitation program continues to provide an opportunity for applicants and children's aid societies to arrive at a mutually agreed upon outcome. This model is consistent with alternative dispute resolution models used in Ontario's administrative tribunals and courts to settle matters in a non-adversarial manner. The settlement facilitation program has evolved into a major component of the Board's adjudicative process.

The Board has developed a performance appraisal for members involved in the settlement facilitation team. This was a unique initiative undertaken by the Board as almost no other board has developed a similar tool. The goals of having a performance appraisal are to provide the Associate Chair with a sound process for assessing the performance of members when conducting facilitation, to allow the identification of training needs for members, to identify Board members who could mentor other members engaged in Settlement Facilitation, and to provide information pertinent to the operation of and potential improvement of the Settlement Facilitation Program.

An analysis of the settlement facilitation program for 2010-2011 found that parties have continued to participate in the program and the vast majority of applications were settled. For further information, please see the analysis of section 68 applications.

This year's analysis of the terms of settlement agreements revealed that the Board's settlement facilitation program continues to address complaints such as a society's refusal to investigate allegations of abuse, apprehension of children, the care of children in a society's custody or supervision, and services provided to children in care. Terms also addressed ongoing services provided to children and families, complaints about caseworkers and access issues/arrangements between children and parents. The settlement facilitation program continues to provide an opportunity for applicants to be heard in a non-adversarial setting.

Ongoing Board Training

The Board continued to provide focused and in-depth training for Board members and staff. Three days of general training were held in May 2010. Topics included child witnesses, self-represented applicants, learning disabilities and literacy. Other subjects discussed included the effects of child abuse and maltreatment on children, and parental alienation. The Board invited expert guest speakers to provide information and their insights on these important subjects. Staff was invited for part of this training session.

Additional training was organized to address specific areas of Board members' responsibilities. In October 2010 the Board's settlement facilitation team participated in a one day training session. In December 2010 training was provided on writing reasons for decision or recommendations. This session also included a presentation by an expert on plain language writing who conveyed the importance of communicating with the parties and the public in clear language.

On-Site Hearings and Settlement Facilitation Conferences

In February 2010, the Board obtained approval from the Ministry of Children and Youth Services (MCYS) to acquire additional space to build a hearing room and settlement facilitation room at its current location. Construction for this project began in March 2010 and all renovations were completed in July 2010. Following completion of the project the Board began scheduling on-site proceedings for all applications received from the Greater Toronto Area (GTA). Renting hotel meeting rooms or other public facilities to conduct hearings and settlement facilitation conferences in the GTA is no longer necessary. This ensures the privacy of the proceedings and reduces costs. The Board is also able to host training sessions and various meetings on site.

Self-Represented Applicants

Again this year, the vast majority of applicants were not represented by legal counsel. In order to respond adequately to the needs of those applicants, the Board produced two pamphlets entitled Useful Information for Self-Represented Applicants, which provides general information about the Board, and Hearing Information for Self-Represented Applicants, which provides information on how to prepare for the hearing. The material is also accessible through the Board's website at sjto.ca/cfsrb.

Case Management System Upgrade

The Board completed its upgrade to a web-based case management system in 2010-2011.

This advanced system has refined the Board's business functions including the processing of applications, case inquiries scheduling of pre-hearings, settlement facilitation conferences and hearings and document management.

Board Membership

At the end of the fiscal year, Board membership included one full-time Associate Chair, two full-time Vice-Chairs and 24 part-time Board members for a total of 27 members. All Board members are also appointed to the Custody Review Board. Six new part-time Board members were appointed to the Board in this fiscal year.

The Board continued to ensure that the hearing panels comprised Board members who have professional experience related to the type of application being heard. The composition of the panels often included a combination of members who are lawyers and professionals from the social work, mental health or education fields.

Who We Are

Board members come from a variety of backgrounds in the legal, social services, mental health and education fields. The Board's membership is diverse, with representation from many different communities. Bilingual Board members are available to conduct hearings in both official languages.

The CFSA sets out the following requirements to become a member of the Board: a degree, diploma or certificate granted by a university or other post-secondary institution authorized to grant such credentials in Ontario or equivalent qualifications, as determined by the Chair of the Board, and at least one year's experience working in or volunteering in children's services or social services; or at least five years' experience working in or volunteering in children's services or social services.

With the implementation of the settlement facilitation program, mediation skills and experience are also assets.

To become a member of the Board, potential candidates apply to the Public Appointments Secretariat. The selection process for both Boards includes a review of applications to determine if candidates meet the requirements, followed by structured interviews.

In consultation with the Associate Chair, the Executive Chair recommends candidates to the Minister of the Attorney General for consideration. Board members are appointed by the Lieutenant Governor in Council for terms of two, three and five years.

The adjudicative process was supported by 11 qualified and dedicated staff.

What We Do

The Child and Family Services Review Board

The Board's legislative responsibilities continue to be wide and varied as reflected by the different pieces of legislation summarized below:

Under the Child and Family Services Act, the CFSRB is mandated to review:

- Residential placements of children in care pursuant to section 36
- A children's aid society decision to remove a Crown ward, where the child has resided continuously with the foster parent for two years or more pursuant to section 61
- Certain client complaints related to children's aid societies pursuant to sections 68 and 68.1
- Emergency admission of a child to a secure treatment program pursuant to section 124
- A Director's decision to refuse to approve a proposed adoption placement, or to impose a term or condition on an approval pursuant to section 142
- A decision of a children's aid society to refuse an application to adopt a particular child or a decision of a society or licensee to remove a child from an adoption placement pursuant to section144.

Under the Education Act, the Board hears appeals of:

- School Board expulsion decisions pursuant to section 311.7.

Under the Intercountry Adoption Act, the Board reviews:

- A Director's refusal to approve a person as eligible and suitable to adopt for the purpose of an intercountry adoption or the attachment of conditions to a Director's approval pursuant to section 5
- A Director's refusal to approve a proposed intercountry adoption or the attachment of conditions to a Director's approval pursuant to section 6.

Custody Review Board

The Custody Review Board hears applications and makes recommendations to Provincial Directors who make decisions with respect to youth in custody regarding the following:

Under the Child and Family Services Act:
Pursuant to section 97(1):

- A particular placement where a young person is being held or to which the young person has been transferred
- A Provincial Director's refusal to authorize the young person's temporary release or reintegration leave
- The young person's transfer from a place of open custody to a place of secure custody.

Statistics, Analysis and Comments

Child and Family Services Review Board

The following information provides the Board's statistics for each type of application, as well as analysis and comments. It is noted that some applications are finalized over two fiscal years and this may result in statistics that do not consistently balance. A description of each type of application can be found on the Board's website.

Section 61 of the CFSA (Removal of a Crown ward)

Section 61	
Applications Received	21
Eligible Applications	17
Ineligible Applications	5
Pre-Hearings	19

Hearings	5
Decisions Issued	2
Applications Withdrawn	11
File Closed due to No Contact	0

Analysis

- The number of applications increased from 16 in the last fiscal year to 21 in 2010-2011.
- Five oral hearings were conducted over 20 days.
- Two decisions were issued by the Board. The children's aid society's decision was rescinded in one decision. In the second decision, the Board determined that the application was moot as the child was returned to the applicants by the children's aid society.
- In one application the Board made an order on consent of the parties.
- Eleven applications were withdrawn. Seven withdrawals occurred prior to a hearing and four applications were withdrawn at the pre-hearing stage of the Board's process. In three applications the Board was informed at the hearing that the matter was settled.
- In one application the parties engaged in the Board's mediation process to settle the application.
- Two applications involved Native children and the child's Band did not exercise its statutory right to participate as a party.
- Children were represented by the Office of the Children's Lawyer (OCL) in 11 applications.

Comments

The number of section 61 applications showed a modest increase in this fiscal year, while the number of hearings increased from two in 2009-2010 to five in 2010-2011. There was also a significant increase in the number of hearing days from three to 20 in this fiscal year. The complexity of issues raised in the applications received under section 61 has resulted in the increased number of hearing days.

The pre-hearings allowed the Board to be better prepared for hearings, and also assisted the parties in resolving matters outside of the hearing process.

Nine of the 17 eligible section 61 applications received in this fiscal year pertained to situations where the society removed children from the foster home due to alleged risk of harm or concerns regarding level of care. Three of the eligible applications pertained to situations where the society removed the child from the foster home for treatment and/or to address the needs of the child. In two of the eligible applications, the removal was to place the child in the care of family members.

Section 144 of the CFSA (Refusal to Adopt)

Section 144	
Applications Received	16
Eligible Applications	9
Ineligible Applications	3
Pre-Hearings	12

Hearings	7
Decisions Issued	10
Applications Withdrawn	7

Analysis

- The number of applications increased from 14 in the last fiscal year to 16 in 2010-2011.
- Seven oral hearings were conducted over 29 hearing days.
- Of the 10 decisions issued, the children's aid society's decision was confirmed in three applications and rescinded in five applications. Two of the decisions only addressed jurisdiction.
- The OCL represented a child in one application.
- One application involved a Native child and the child's Band exercised its statutory right to participate as a party.

Comments

There was a slight increase in the number of section 144 applications in 2010-2011. While the number of hearings decreased from nine in 2009-2010 to seven in this fiscal year, there was an increase in the number of hearing days from 17 to 29 in 2010-2011. The increase can be attributed to the complex nature of the issues presented to the Board.

One application was withdrawn during the pre-hearing and four applications were withdrawn before the eligibility decision.

Consistent with the past three fiscal years, all the applications received challenged decisions made by children's aid societies. There were no applications requesting a review of decisions made by licensees.

Section 68 of the CFSA (Complaints against a Children's Aid Society)

Section 68	
Applications Received	210
Eligible Applications	169
Ineligible Applications	22
Decisions to Proceed to Oral Hearing	111
Written Reviews	10
Pre-Hearings (includes settlement facilitation conferences)	106
Pre-hearing reports issued	134
Hearings	15
Decisions Issued	17
Applications Withdrawn	22

Files Closed - No Contact	16

Analysis

- The number of applications increased from 203 in the last fiscal year to 210 in 2010/2011.
- Fifteen applications proceeded to a hearing in this fiscal year and 18 hearing days were completed.
- The Board's jurisdiction was challenged in seven (47%) of the 15 applications that proceeded to a hearing. After holding a hearing, the Board determined that it had jurisdiction to proceed with two of those seven applications.
- Seventeen decisions were issued in 2010-2011. One decision was issued on jurisdiction only and the application was dismissed. Orders were made in favour of applicants either in whole or in part in 11 cases. In three cases the Board issued an order to dismiss the application. In addition, two decisions regarding compliance with the Board order were issued where the Board remained seized over the implementation of its order.
- Of 22 applications that were withdrawn, five applications were withdrawn because the parties resolved the matter themselves, and one application was withdrawn because the applicant chose to address his complaint through the Children's Aid Society's Internal Complaint Review Panel. There is no requirement for applicants to provide the Board with reasons for their decision to withdraw. Applications were withdrawn at various stages of the process.
- Sixteen applications were closed due to no contact between the applicant and the Board. The Board lost contact with applicants either following a request for more information or for dates of availability to schedule their files.
- At the end of this fiscal year, 60 files had been put on hold, waiting for the Court of Appeal to release its decision on the Board's jurisdiction.
- In summary, 90 applications were settled after either a pre-hearing or settlement facilitation conference; 17 reasons for decisions on jurisdiction and/or merits as well as 10 written reviews and 134 pre-hearing reports were issued in this fiscal year.

Settlement Facilitation

- There were131 applications scheduled for settlement facilitation. A settlement facilitation discussion actually occurred in 106 applications.
- A settlement agreement was reached in 87 applications. This includes four applications where the terms of settlement will be implemented in 2011-2012. The settlement agreement rate was 82%.
- Parties reached a full agreement in 23 applications. This means that the file was closed at the pre-hearing stage and no further actions were required, as the applicants were satisfied with the explanations given during settlement discussions.
- Sixty-six applications proceeded to the implementation stage. This occurs when parties need additional time, usually about 20 days, to implement the terms of the settlement agreement.
- Of the 66 applications that proceeded to the implementation stage, compliance issues were raised in 12 applications (18%). Two of the 12 applications proceeded to a hearing as a determination was made that the terms of the settlement agreement were not complied with.
- In 16 applications (15%), a settlement agreement was not reached and 15 of those applications proceeded to an oral hearing in this fiscal year.

Comments

While there is a slight increase in the number of section 68 applications in this fiscal year, the Board had anticipated a more substantial increase based on trends observed over the last three years. The Board experienced a decrease in the number of sections 68 and 68.1 applications received in the months that followed the release of the Divisional Court decision in Waterloo v. DD.

The number of applications that proceeded to a hearing decreased from 37 in 2009- 2010 to 15 in 2010-2011. The Board assumes that more applications would have proceeded to a hearing if files impacted by the Divisional Court decision had not been placed on hold.

The number of ineligible applications remained unchanged from the previous fiscal year at approximately 10% of all applications received. The Board request to provide additional information in writing may have in the past discouraged some applicants from proceeding further with their application. Written communication may be challenging for some applicants. As a result of requesting less written information from applicants and by increasing contact by phone, the percentage of ineligible applications has remained stable at 10% in the last two fiscal years.

Children's aid societies and applicants were active participants in the settlement facilitation process. The settlement facilitation program has helped to finalize applications in a more timely manner. However, if an application proceeded to a hearing after a determination of non-compliance with the terms of the settlement agreement, the time for finalizing applications was lengthened. The percentage of applications finalized with a settlement agreement remained unchanged at 82% compared to the last fiscal year.

The number of applications that were direct complaints to the Board has remained consistent since 2006 at around 96%. Very few applicants requested a review of a decision made by a children's aid society's Internal Complaint Review Panel (ICRP). The Board does not have information to assess the reasons for the low number of applications requesting a review of a society's decision following an ICRP.

As in previous years, the reasons for dismissing applications at the written review stage included that the subject matter of the complaint was before or decided by the Court; that the applicant did not seek or receive a service from a children's aid society; and that the applicant was not a parent within the meaning of the Act, and therefore had no right to be heard. Written reviews were only completed when the facts were clear and there was no need for an oral hearing.

Once again this year, almost all applicants were self-represented and children's aid societies were represented by counsel. Consequently, staff was required to spend much time assisting applicants through Board processes. As mentioned earlier, specific information about the Board and its hearing process has been developed for self-represented applicants in the form of a pamphlet and has been made available on the Board's website. This information will enable self-represented applicants to have a better understanding of the Board's mandate and hearing process.

The number of cases closed because the applicant did not maintain contact, 16, is stable compared to 19 cases in 2009-2010. Again, the Board relied less on written correspondence and more on telephone contacts when further information was required to proceed with an application. This procedure is in keeping with the need for boards and tribunals to adequately address literacy issues.

Section 5& 6 of the Intercountry Adoption Act, 1998 (Refusal to Adopt Outside of Canada)

Section 5 & 6	
Applications Received	0

Section 311.7 of the Education Act (School Board Expulsion Appeal)

Section 311.7	
Applications Received	13

Ineligible Applications	0
Pre-Hearings	13
Hearings	3
Decisions Issued	1
Applications Withdrawn	6
No Contact	0

Analysis

- The number of school board expulsion applications increased from 9 in 2009-2010 to 13 in 2010-2011.
- Three hearings were held over three hearing days.
- The Board issued one decision. The school board's decision was overturned.
- Six applications were withdrawn following a settlement between the parties outside the Board's process. In these cases, the settlement occurred after a pre-hearing conference was held.
- In two applications the parties participated in the settlement facilitation process offered by the Board and entered into a settlement agreement.

Comments

There was a slight increase in the number of applications in 2010-2011. Nine applications out of 13 were settled after the pre-hearing was completed.

Statistics about the number of school board expulsions in Ontario for this fiscal year were unavailable at the time of this report. The most recent information available to the Board was provided for the 2007-2008 fiscal year, prior to the amendments to the *Education Act* of 2008.

Section 124 of the CFSA (Emergency Secure Treatment Application)

Section 124	
Applications Received	39
Hearings	13
Decisions Issued	13
Applications Withdrawn	24

Analysis

- The number of emergency secure treatment applications increased from 30 in 2009-2010 to 39 in 2010-2011.
- Of the 13 decisions that were issued, the Board denied the child's request for release in seven applications and granted the child's request for release in six applications.

Comments

The number of emergency secure treatment applications received by the Board increased from the previous fiscal year.

There are three emergency secure treatment facilities in Ontario. Consistent with last year, the vast majority of applications were from children admitted to Youthdale Treatment Centre.

Hearing dates must be set within five days of the Board receiving the application. Applications that are withdrawn represent approximately 60% of the applications received in this fiscal year. Withdrawals are often made at a final stage of the process and are unpredictable. A considerable amount of work is performed up to the time an application is withdrawn.

The Board does not have information to explain the high number of withdrawals as applicants are not required to provide an explanation to the Board. However, the Board has implemented a more comprehensive withdrawal process, which requires that the applicant sign a form before withdrawing the application. On four of the withdrawal forms received, the applicants indicated that their decision to withdraw was because the facility decided to discharge them.

Section 36 of the CFSA (Review of a Residential Placement)

Section 36	
Applications Received	6
Ineligible Applications	2
Pre-Hearings	6
Hearings	0
Decisions Issued	0

Analysis

- The number of applications related to residential placements increased from three in 2009-2010 to six in 2010-2011.
- There were no applications that proceeded to a hearing in 2010-2011.
- One application involved a Native child and the child's Band exercised its statutory right to participate as a party in this application.
- In all of the applications received by the Board, the child was supported by the Office of the Provincial Advocate for Children and Youth and in one application the child was represented by the OCL.

Comments

The Board continues to receive a very low number of applications in relation to the current number of children in care.

Two applications were determined to be ineligible because the applicant had not requested a review of the placement to the Residential Placement Advisory Committee (RPAC) prior to the application. This is a requirement before the Board may proceed with an application. Two applications were closed because the child was transferred from the residential placement, resulting in the Board's loss of jurisdiction to proceed with the application. In two applications the Board was asked to facilitate settlement discussion and a settlement was reached by the parties.

The Board will explore ways to raise awareness about its jurisdiction over the review of residential placements. Outreach may include providing information to residential placement facilities, and working in collaboration with the OCL and the Office of the Provincial Advocate for Children and Youth. This may ensure better access to the Board's review process for youth who want a change in their residential placement. It is anticipated that this project will be completed in the next fiscal year.

Custody Review Board

Custody Review Board	
Applications Received	192
Hearings	1
No Jurisdiction	42
Applications Withdrawn/Resolved	26
Recommendations Issued	89

Analysis

- The CRB received 192 applications in 2010-2011, compared to 159 applications received in 2009-2010.
- The Board did not have or lost its jurisdiction in 42 applications. The Board does not have jurisdiction to review an application or to proceed further with an application if the youth has been transferred to another facility during the course of a review.
- Twenty-six applications were withdrawn during the review process.
- Of the 89 recommendations issued, the Board confirmed the Provincial Director's decision in 40 applications and made other recommendations in 49 applications.
- Eight applications will be finalized in the next fiscal year.

Comments

The Board has again seen another significant increase in the number of CRB applications this fiscal year, from 159 the previous year to 192 in 2010-2011. The number of applications has more than tripled since the 2008-2009 fiscal year. This could be attributed to the Board's continued efforts to inform youth about the CRB's mandate. As agreed between the Board and MCYS last fiscal year, facilities started to include in the youth's orientation package, a pamphlet containing information about the CRB application process. Also, every facility in Ontario has received posters informing the youth about the right to apply to the CRB.

Operational issues at facilities such as construction, re-organization and re-training of staff have continued to impact placements in the youth justice system. When a facility faced change that resulted in the need to close beds on a temporary basis, youth were often moved further away from their home community. This has led to an increase in the number of reviews related to the loss of family contact because of distance. Such transfers have also created situations where youth have alleged that they felt racially and culturally isolated.

The Board held one hearing. The applicant was a youth whose mother was seriously ill and lived many hours away from the Northern facility in which he was placed. The Board heard evidence about the racial isolation that this applicant and three other transferred youths experienced as African Canadians in a facility with no other African Canadian youth. The application also raised the issues that there was no African Canadian staff and there was a lack of appropriate cultural programming. The Board recommended that the youth be returned to a placement in his home community.

In general, applications to the CRB tend to focus on family contact. There were fewer applications this year relating to safety concerns and programming. In terms of youth with mental health needs, the Board made several recommendations this year for youth to be transferred to the relatively new, specialized mental health unit for males at Syl Apps Youth Centre. The Board has also dealt with issues relating to youth with medical needs.

Decisions

Section 144 (refusals of applications to adopt specific children)

D.M. & C.M. v. Family, Youth & Child Services of Muskoka

In *D.M. & C.M. v. Family, Youth & Child Services of Muskoka*, the society had refused the adoption application of foster parents of children aged 3 and 2 based on the findings of two home studies that did not approve the applicants for adoption, because the applicant was estranged from his adult daughters. The Board allowed the applicants appeal based on the evidence before it and not just on the assessment of whether the home study process had been fair. It found that it was in the best interests of the children that they be placed for adoption with the applicants.

C.S. & M.S. v. F&CS; of the Waterloo Region

A second noteworthy decision on a section 144 application involved two aunts whose application to adopt their nephew was refused by the society. Instead, the society's plan called for the child to be placed with a prospective adoptive family, the foster parents who had cared for the special needs.

The Board denied the request of the prospective adoptive parents to be added as party because their position was supported by and not different than the society's. The society called the prospective adoptive parents as witnesses. The Board then weighed the competing plans for adoption based on the evidence about the two families, finding in favour of the society and confirming the decision to refuse the aunts' application.

The aunts' application for judicial review of the Board's decision was dismissed by the Divisional Court in June 2011.

J.C. v. FCS of the Waterloo Region

In *J.C. v. FCS of the Waterloo Region*, involved the timing of the application and the Board's jurisdiction when there are ongoing protection proceedings. The society argued that the application to the Board about the adoption refusal relating to applicants' grandchild was late. The Board found that the application was not outside the ten day application period set out in the Act because the society's notice to the applicants about their right to a review under section 144 was inadequate. Therefore, time had not started to run against the applicants. The Board found that the notice must use the wording in the Act and accurately describe the time limitation.

The society also submitted that the Board lacked jurisdiction because the child was not yet available for adoption as she was not a Crown ward, and argued that there were ongoing proceedings that included the father's plan to place the child with the applicants. The Board held that the issue of the review of an adoption placement refusal was within the Board's jurisdiction and not that of the Court. The issues before the Board and the Court were different. The fact that the father put a plan forward to have the child live with the applicants did not deprive them of their right to a review of the society's decision to refuse their adoption application. The Board held further that the society could not argue that the Board did not have jurisdiction based on the fact that the child was not legally available for adoption when the society itself elected to begin adoption planning before the child was made a Crown ward.

Section 61

L.A.M & C.G v. Family & Children's Service of Renfrew County

The Board heard the merits of one application under section 61 of the Act in *L.A.M & C.G v. Family & Children's Service of Renfrew County*. This application involved the removal of a 12 year old boy from his foster parents' home for risk. The issue for the Board was whether the child should return to the care of his foster parents or whether the decision to remove the child should be confirmed. The alleged risk involved an incident with the child and the treatment of another foster child by one of the foster parents. The Board found that there was no risk to the child subject of the application. The other foster child who had posed challenges for the foster parents was no longer in their care. The child was 12 and wanted to return to the care of the applicants. The views and wishes of the child were taken into account by the Board and were a factor that led to the decision to rescind the decision to remove the child.

Emergency Secure Treatement Applications

S.I. v. Youthdale Treatment Centres

The Board hears numerous emergency secure treatment applications (ESTA) each year. This past year, the Board used the *Canadian Charter of Rights and Freedoms* ("*Charter*") for the first time in one of its ESTA hearings. In *S.I. v. Youthdale Treatment Centres*, the Board found that it had the authority to apply the *Charter* since it had the ability to decide questions of law and the ability to grant the remedy sought, which in this case was to exclude evidence. The Board ruled that the admission summary or the admitting form prepared by the facility's psychiatrist would not be admitted into evidence unless the psychiatrist was called as a witness and was made available for cross-examination. The documents contained the doctor's opinions that formed the basis for the child losing her liberty. The Board held that to admit the documents without making the psychiatrist available to the applicant to test that opinion would be a violation of the child's right under section 7 of the *Charter*, which protects against the deprivation of liberty in a manner that is not in accordance with the principles of fundamental justice. The Board also found that it could reach the same conclusion applying the principles of procedural fairness.

Expulsions

N.N. v. Rainbow District School Board (SS10-0009)

The Board also deals with appeals against school board expulsions. In N.N. v. *Rainbow District School Board*, a student had been expelled for cyber bullying, as permitted by Section 310(1)8 of the *Education Act*, which allows for expulsion when a pupil has violated a school board policy that provides for a mandatory suspension for an activity. The Board considered whether the school board had such a policy as a "threshold issue." The Board determined that since the policy gave a principal discretion as to whether to suspend for cyber bullying, there was no mandatory threshold to be met, and therefore no legal authority to expel the pupil. The school board was ordered to reinstate the student.

HUMAN RIGHTS TRIBUNAL OF ONTARIO

Associate Chair's Message

David A. Wright, Associate Chair
Human Rights Tribunal of Ontario

I am pleased to present the Human Rights Tribunal of Ontario (HRTO) section of the Social Justice Tribunals Ontario 2010-2011 Annual Report. This was a year of significant change, not only with the establishment of SJTO, but as the HRTO continued to adapt its processes to take into account the needs of our users, our experience in resolving applications gained since 2008, and the volume of applications filed. Our goal in all changes is to ensure that the process of resolving human rights applications is fair to all parties, expeditious, and proportionate to the issues raised.

Substantial amendments to the Rules of Procedure for new applications took effect on July 1, 2010. Most significantly, the amendments instituted a new summary hearing process. Summary hearings, which are typically scheduled for a half day by teleconference, may be ordered on the Tribunal's own initiative or following a request by a respondent. The issue in a summary hearing is whether the application should be dismissed, in whole or in part, on the basis that it has no reasonable prospect of success. Summary hearings reduce preparation costs for both parties in appropriate cases, assist in narrowing and clarifying issues where applications are unclear, lead to more expeditious resolution of applications that have no reasonable prospect of success, and ensure more effective use of Tribunal resources.

The HRTO also made changes to its mediation processes this year. Mediations are now scheduled for a half day rather than a full day. This has not had a significant impact on settlement rates, and has increased the number of mediations we can conduct. The rule changes also formalized mediation-adjudication: with the signing of an agreement by all parties, the hearing adjudicator may mediate and then continue with the hearing if no settlement is reached. Mediation-adjudication may be requested by the parties or suggested by the adjudicator, and participation is always voluntary. Many applications have been settled through this process.

We were pleased to welcome three new Vice-chairs and nine new part-time Members to the HRTO early in 2011, as well as the Executive Chair and Alternate Executive Chairs of SJTO. Our new adjudicators bring significant diversity in life and professional legal experience that enriches the expertise of the HRTO. Several come directly from legal practice, including both sides of the human rights bar, while others are experienced adjudicators in related fields.

As the number of decisions in new applications increases, we are developing a jurisprudence of substantive and procedural human rights law that clarifies and interprets the rights and obligations enshrined in the *Human Rights Code* for all Ontarians. I am proud of the quality of writing in HRTO decisions.

The staff and adjudicators of the HRTO are dedicated in dealing with a heavy volume of cases and consequent heavy workload. I commend them for their efforts as we continue to change to meet the needs and expectations of our users and the people of Ontario, now as part of SJTO, a larger administrative justice organization.

Mandate

The HRTO's mandate is to resolve applications brought under the *Ontario Human Rights Code*.

On June 30, 2008, the human rights system in Ontario changed. As of that date, all claims of discrimination under the *Human Rights Code* are dealt with through applications filed directly with the HRTO. The Ontario Human Rights Commission is no longer responsible for receiving discrimination complaints from individuals and then referring them to the Tribunal. A third organization, the Human Rights Legal Support Centre, provides legal assistance to individuals who may have experienced discrimination under the Code.

The HRTO's primary role is to provide an expeditious and accessible process to assist parties to resolve applications through mediation, and to decide those applications where the parties are unable to reach a resolution through settlement.

The Year in Review

Intake

The HRTO handled over 53,000 telephone and 890 in-person inquiries in fiscal 2010-2011. This represents a modest decrease in the number of telephone contacts and a significant increase in in-person inquiries.

As in the previous year, the majority involved questions about the HRTO's processes and the status of cases. These questions were answered by HRTO staff. However, a significant number of contacts - almost 15,000 - were referred to the Human Rights Legal Support Centre or its website for legal assistance.

Caseload

Since June 30, 2008, all claims of discrimination under the Code are filed directly with the HRTO under section 34 or 35 of the Code. In addition to these "New Applications," the HRTO is responsible for resolving two other types of cases that originated in the old system:

- Transitional Applications: These are applications filed with the HRTO between June 30, 2008, and June 30, 2009, based on complaints originally filed with the Ontario Human Rights Commission under the old system (section 53 of the Code); and
- Commission Referred Complaints: These are complaints filed under the old system where the Commission referred the matter to the HRTO for hearing.

New Applications

Applications: In fiscal 2010-2011, the HRTO received 3,167 applications, or an average of 264 per month. This was a reduction of 384 applications compared to the previous fiscal year.

A geographical breakdown of applications based on the first letter of the applicant's postal code shows:

Postal Code	2009-2010	2010-2011
K (Eastern)	11.4%	10.8%
L (Central)	38.2%	36.2%
M (Toronto)	24.2%	27.0%
N (Western)	17.4%	16.3%
P (Northern)	6.0%	5.9%
Other	2.7%	3.9%

The following chart shows the number and percentage of applications based on each of the five social areas covered by the Code. Note that while most applications only allege discrimination in respect of one social area, some are based on more than one, so the total exceeds 100% by a small amount.

Social Area	2009-2010	2010-2011
Employment	75.0%	76.9%
Goods, Services and Facilities	20.1%	20.5%%
Housing	5.7%	5.6%

Contracts	1.8%	1.8%
Membership in a vocation Ass'n	1.2%	1.4%
No Social Area	2.1%	1.2%

The following chart shows the number and percentage of applications in which each prohibited ground under the Code is raised. Because many applications claim discrimination based on more than one ground, the totals in the chart far exceed 100%.

Ground	2009-2010	2010-2011
Disability	52.2%	53.0%
Reprisal	25.2%	24.4%
Sex, Pregnancy and Gender Identity	23.5%	23.7%
Race	19.7%	21.6%
Colour	13.9%	16.2%
Age	13.7%	15.5%
Ethnic Origin	13.7%	15.7%
Place of Origin	12.3%	13.2%
Family Status	9.7%	10.1%
Ancestry	9.5%	10.6%
Sexual Solicitation or Advances	9.3%	5.6%
Creed	6.3%	6.4%
Marital Status	5.9%	5.7%
Sexual Orientation	4.0%	4.2%
Association	3.9%	4.8%
Citizenship	3.6%	4.6%
Record of Offences	3.5%	2.9%
Receipt of Public Assistance	1.4%	1.3%
No grounds	3.0%	2.2%

Mediation

As part of the HRTO's process, parties are asked whether they wish to engage in mediation as a way to resolve their dispute. Where parties do not indicate a willingness to participate in mediation, the HRTO may follow up to explore mediation as an option, but participation in mediation remains voluntary.

Mediation is conducted by an HRTO Vice-chair or Member who has expertise in human rights and alternative dispute resolution. The HRTO's role in mediation is to facilitate the parties' efforts in reaching a settlement. The HRTO does not approve settlements. Settlements are voluntary and require the agreement of all parties. The Vice-chair or Member may provide information on likely outcomes if the case does not settle, or what outcomes have been reached in other similar cases. If the case does not settle, another Vice-chair or Member is assigned to adjudicate the matter.

During fiscal 2010-2011, the HRTO fine-tuned its processes to capture more detailed and accurate information on mediation outcomes. Therefore, detailed mediation information is being reported for the last quarter, January 1, 2011, to March 31, 2011.

The HRTO held 433 mediations during the final quarter of fiscal 2010-2011. Applicants were represented in 50% of mediations: 27% by lawyers, 6% by paralegals; 13% by the HRLSC, and the remainder by some other type of representative. Respondents were represented in 83% of mediations: 77% by lawyers, approximately 1% by paralegals, and the remainder by some other type of representative.

Of the mediations held from January 1, 2011, to March 31, 2011, just over 60% resulted in a full settlement. This is somewhat lower than the settlement rate of approximately 67% reported for fiscal 2009-2010, but is not a significant change. The lower rate results, at least in part, from the stricter definition of settlement now being used in compiling statistics: all issues must settle to constitute a settlement at mediation. The settlement rate is particularly encouraging given the move this year from full-day to half-day mediations.

Hearings and Decisions

Where mediation does not result in a settlement, or the parties do not opt for mediation, the HRTO issues a Confirmation of Hearing notice. Hearings on the merits are usually in-person and are held in 12 regional centres across Ontario. Procedural and preliminary matters may be heard by conference call, in writing or in person. Decisions are available on-line at: http://www.canlii.org/en/on/onhrt/index.html.

The Tribunal's approach to hearings incorporates the following principles:

- The Adjudicator plays an active role in the hearing process; the procedure may vary from hearing to hearing.
- The Rules of Procedure allow the Adjudicator to adopt non-traditional methods of adjudication to best focus on the issues in dispute and to ensure the process is understandable and fair whether or not the parties are represented by lawyers or paralegals.
- The Adjudicator has the power to question witnesses, receive testimony not taken under oath and limit the evidence or submissions on any issue.
- The Adjudicator is a neutral decision-maker and cannot take responsibility for identifying and leading evidence.
- The Adjudicator will adopt the approach which facilitates the fair, just and expeditious resolution of the merits of the application, based on the facts and the law, in light of the nature of the issues in the case.
- Hearings are open, transparent and conducted in accordance with procedural fairness.
- With the consent of all parties and the signing of the Tribunal's standard mediation-adjudication agreement, the hearing adjudicator may engage in mediation and continue with the hearing if no

settlement is reached.
- Decisions are clear, well reasoned, and concise, and issued in a timely manner.

The following chart summarizes the 1,617 decisions issued in 2010-2011 involving new applications.

Type of decision	2009-2010	2010-2011
Final decision on the merits	75	104
Discrimination found	29	41
Discrimination not found	46	63
Dismissal on a preliminary basis*	301	562
Deferrals	147	233
Withdrawals**	212	38
Other procedural issues	931	570
Reconsideration	66	103
Breach of settlement decision	8	7
TOTAL DECISIONS	1,740	1,617

* This includes cases dismissed under the HRTO's new summary hearing procedure based on a finding that the application had "no reasonable prospect of success."
**The HRTO no longer prepares a decision for each withdrawal, and most withdrawals are now confirmed by letter.

Workload and Timelines

In last year's annual report, the HRTO reported an increase in its open cases - 1,719 at the start of fiscal 2009-2010 and 3,384 at the close. The HRTO took a number of steps in fiscal 2010-2011 to deal with this issue, including a move to halfday mediations, formalization of mediation-adjudication at the hearing stage and the shifting of adjudicative resources from the Transitional Applications to the New Applications.

The results have been dramatic. The growth of the open cases slowed considerably in the first half of fiscal 2010-2011 - from 3,384 to 3,918 - and in the last half of fiscal 2010-2011, the HRTO closed more cases than it opened - 1,707 applications received and 1,742 cases closed.

The HRTO had 3,910 open cases at the end of April 2011. Of those, approximately 230 are in abeyance because they have been deferred pending the outcome of another proceeding or placed in abeyance for another reason, leaving 3,680 active cases.

Performance Measure

The HRTO has established the following performance measure:

- 75% of applications that are accepted as complete will be resolved within one year.

Of the 2,032 accepted applications that were resolved in fiscal 2010-2011, 1,258, - or 62% - were resolved within one year. The average time from acceptance to closing was 336 days, with a median of 324.

This is a significant decline from the 95% reported last year. This is not surprising as some of the more demanding early cases work their way through the process, but improvements to address legitimate concerns about timeliness are being implemented. The Tribunal is optimistic that the steps taken this year will result in more cases being resolved within the one-year time frame. This will remain a focus for the Tribunal in the upcoming year, with close monitoring of time lines and continuing review of processes to ensure that cases are resolved expeditiously and effectively.

Transitional Applications

The new human rights legislation provided a mechanism for dealing with the roughly 4,000 open complaints pending with the Commission on June 30, 2008. For a period of one year - until June 30, 2009 - the complainant could bring the complaint to the HRTO by filing an application under section 53 of the *Code*.

By the end of last fiscal year, the number of Transitional Applications had been reduced to 731. The following chart shows the closures for fiscal 2010-2011. At the end of fiscal 2010-2011, the HRTO had 283 Transitional applications still open.

Cases at start of year	731
Total closures	448
Settled at mediation	40
Settled outside Mediation	108
Final decisions (including Reconsideration)	256
Withdrawn / administrative closures	44
Cases at end of year	283

Commission Referred Cases

Under the old system, the Commission decided which complaints would be referred to the HRTO for a hearing. Under the new legislation, this continued until December 2008, when the Commission referred its last group of complaints. This work is nearly complete. By the end of fiscal 2010-2011, there were 428 Commission Referred Complaints still open. However, because many of these complaints involve related issues, the effective number of active cases by fiscal year end was down to 37. Of these:

- 16 were at the hearing stage
- 11 were awaiting final decision
- 10 were being monitored for possible settlement or other reasons

Outreach Activities

Practice Advisory Committee

The HRTO Practice Advisory Committee (PAC) continued to meet during fiscal 2010-2011, led by its co-chairs, Mary Cornish and Patty Murray. The PAC comprises 11 members who appear regularly before the HRTO, four of whom regularly appear for applicants and four of whom regularly appear for respondents, and one member from each of the following organizations - the Ontario Human Rights Commission, the Human Rights Legal Support Centre and the Ontario Bar Association. The HRTO's Associate Chair and Counsel to the Chair are also members of the PAC. A list of the PAC's current members is available on the HRTO website.

The PAC met five times during fiscal 2010-2011 and provided advice on various aspects of the HRTO processes, including changes to the Rules of Procedure introduced in July 2010.

Speaking Engagements

HRTO adjudicators and staff were actively involved in speaking to various stakeholder groups. In fiscal 2010-2011, HRTO representatives attended approximately 30 meetings and conferences, speaking across the province to groups including judges, lawyers, paralegals, teachers, students, other administrative tribunals and delegations from outside Ontario.

Decisions

In fiscal 2010-2011, the HRTO issued approximately 2,000 decisions determining a wide variety of issues. The following are some of the significant decisions released this year.

Noble v. York University, 2010 HRTO 878 (April 22, 2010)

The complainant, a professor at York University, sought to end the university's longstanding policy of not scheduling classes on Jewish high holidays. He claimed his efforts were an exercise of his rights under the *Human Rights Code* and that the university took a series of retaliatory actions against him that amounted to reprisal under the Code.

The Tribunal emphasized that intention is necessary to establish reprisal under the Code. Based on the evidence presented, the Tribunal found that the university had not violated the Code. On the contrary, it had taken a cautious approach to the complainant's efforts to change and defy the policy. As a result, the complaint was dismissed.

Krieger v. Toronto Police Services Board, 2010 HRTO 1361 (June 16, 2010)

This case involved a police constable whose probationary employment was terminated because of work-related conduct. The applicant did not dispute that his conduct was inappropriate, but claimed it was caused by a traumatic stress disorder that had been successfully treated. The applicant argued that the respondent failed to consider or accommodate his disability, violating his right to be free from discrimination in employment based on disability.

The Tribunal found that the respondent had reason to believe that the applicant's conduct was caused by disability, but failed to engage in any meaningful process to determine whether the applicant could have been accommodated. Because the applicant's disability was amenable to treatment and could have been accommodated, the Tribunal held that the applicant experienced discrimination in employment and ordered the respondent to reinstate the applicant, pay him $35,000 for injury to his dignity, feelings and self-respect, and develop a policy or policies for accommodation of police officers with disabilities.

Pieters v. Peel Law Association, 2010 HRTO 2411 (December 3, 2010)

This case involved an incident in a courthouse library restricted to lawyers, articling students and law students. The applicants, two black lawyers, were working in the library when they were asked for identification to establish that they were entitled to be there. The applicants claimed they singled out based on racial profiling.

The hearing took place over three days, with 12 witnesses providing different versions of the incident. The Vice-chair found that the applicants had established a prima facie case of discrimination and the respondents had failed to provide a credible and rational explanation. As a result, he concluded that the applicants were questioned, in part, because of their race and colour.

The Tribunal found that the discrimination was at the less serious end of the spectrum and ordered the respondents to pay each applicant $2,000 for the injury to their dignity, feelings and self-respect.

Arunachalam v. Best Buy Canada, 2010 HRTO 1880 (September 16, 2010)

The decision includes a detailed discussion of the principles to be followed in determining the appropriate remedy under the *Human Rights Code* for injury to dignity, feelings and self-respect. It emphasizes the Tribunal's responsibility to the community and the parties appearing before it to ensure that the range of damages based on given facts is predictable and principled.

Dabic v. Windsor Police Services, 2010 HRTO 1994 (September 29, 2010)

This was the first decision under the HRTO's new summary hearing process, which was introduced through amendments to the Rules of Procedure on July 1, 2010. The question before the Tribunal was whether the application should be dismissed on the basis that it had no reasonable prospect of success.

In setting out the principles to be applied, the Tribunal noted that in some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her Code rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim.

In this case, the Tribunal concluded that there was no reasonable prospect the applicant could show a link to the grounds cited. As a result, the application was dismissed.

Whiteley v. Osprey Media Publishing, 2009 HRTO 2152 (October 26, 2010)

The issue in this case was whether the *Human Rights Code* governs the opinions expressed in a newspaper editorial. The applicant alleged that an editorial in a local newspaper disparaged those who moved into the area from elsewhere, amounting to discrimination on the basis of place of origin under the Code.

Citing the right to freedom of expression in the *Canadian Charter of Rights and Freedoms*, the Tribunal held that a newspaper editorial is not a "service" within the meaning of section 1 of the Code or a "notice, sign, symbol, emblem or other similar representation" and, therefore, concluded that the application was outside the Tribunal's jurisdiction.

Yuill v. Canadian Union of Pubic Employees, 2011 HRTO 126 (January 18, 2011)

The issue in this interim decision was whether the HRTO has the authority to appoint a litigation guardian to conduct an application on behalf of a person under a legal disability where there is someone willing to take on this role. The parties agreed that the applicant did not have the legal capacity to bring the application on his own. The question was whether his sister could file the application on his behalf.

The Tribunal departed from an earlier decision and held that the Tribunal's ability to control its own process granted in the *Statutory Powers Procedure Act* and the *Human Rights Code* includes the ability to appoint a litigation guardian to represent a person under a legal disability where there is a person willing to take on that role.

Toussaint v. Ontario (Health and Long Term Care), 2010 HRTO 2102 (October 18, 2010)

The applicant had lived in Canada since 1999, but had no legal status. She claimed that the denial of OHIP coverage based on her lack of status was discrimination on the basis of citizenship under the *Human Rights Code*.

The focus of this interim decision was the applicant's request for an interim remedy. She asked for an order that the respondent provide her with OHIP coverage pending the determination of her application based on her medical needs. The respondent argued that the Tribunal has no authority to make this kind of substantive interim remedy and that, even if it did, it should not do so in this case.

Departing from an earlier decision, the Tribunal held that although there is no specific authority in the Code for making substantive interim orders, section16.1 of the *Statutory Powers Procedure Act* provides sufficient authority. The Tribunal declined to make the requested order in this case because of the hurdles the applicant faced in establishing discrimination under the Code and the lack of any immediate urgency.

Mafinezam v. University of Toronto, 2010 HRTO 1495 (July 8, 2010)

The applicant alleged that the respondent discriminated against him on the basis of creed and place of origin when it banned him from a building. He also claimed he was threatened or intimidated by the University of Toronto police.

The respondent argued the application was out of time. In its submission there was one incident - the issuance of a Trespass Notice in July 2004 - and because the application was not filed until February 2010, it was too late. The applicant took the position that the incident was ongoing because of the continuing effects or consequences of the Notice and, therefore, his application was timely.

The Tribunal held that the incident of alleged discrimination was the issuance of the Trespass Notice in July 2004, rejecting the argument that the continuing effects of an act of alleged discrimination constitute further acts of discrimination. The Tribunal concluded that the applicant had failed to establish "good faith" within the meaning of the legislation. Therefore, the application was dismissed.

LANDLORD AND TENANT BOARD

Associate Chair's Message

Lilian Ma, Associate Chair Alternate Executive Chair
Landlord and Tenant Board Social Justice Tribunals Ontario

I am pleased to report that over the past year, the Landlord and Tenant Board has continued to function well in fulfilling its dual mandate: providing information to landlords and tenants about their rights and obligations and providing dispute resolution through adjudication and mediation. I am grateful to the Board Members and staff who work together so effectively as a team in delivering these important services to tenants and landlords.

My appreciation and thanks also go to Laura Bryce, Chief Operating Officer, and the senior management team of the Board, including Vice Chairs, Regional Managers and Managers of Customer Service, as well as the Legal Services Branch and Program Development Unit, who all play important roles in the management, policy, training and committee work they do for the Board.

I sincerely thank stakeholders from the landlord and tenant communities for their valuable feedback and input by way of regular meetings, correspondence and consultation. Our on-going dialogue ensures that both landlord

and tenant groups have a voice in the development of procedures, forms, Rules of Practice and Interpretation Guidelines.

I also acknowledge the valuable support of my Executive Assistant, Suzanne Evans, and my Administrative Assistant, Sue Woodland, for the excellent coordination of the many tasks of the Associate Chair's office.

The highlight of the past year for the Board occurred on January 25, 2011, when the LTB became part of Social Justice Tribunals Ontario. We are looking forward to opportunities to work with our other tribunal partners in a cluster setting, sharing our knowledge, expertise and resources, and working together to be even more effective for our clients.

As a result of the cluster initiative, in March 2011, we transitioned from the Ministry of Municipal Affairs and Housing (MMAH), the LTB's host ministry for many years, to the Ministry of the Attorney General. I would like to express my sincere appreciation to MMAH for its valuable corporate support to the Board throughout the years.

The key initiatives of the Board over the past year include a regional realignment of its offices, stabilizing and enhancing the Board's case management system (Cmore), and achieving Level 1 certification from the National Quality Institute. For information about these initiatives, please refer to the "Year in Review" section of this report.

Role of the Board

Section 1 of the *Residential Tenancies Act, 2006* (the RTA) sets out the purposes of the Act, as follows:

- provide protection for residential tenants from unlawful rent increases and unlawful evictions;
- establish a framework for the regulation of residential rent;
- balance the rights and responsibilities of residential landlords and tenants; and,
- provide for the adjudication of disputes and for other processes to informally resolve disputes.

Dual Mandate

The RTA, which establishes the Landlord and Tenant Board (LTB), confers a dual mandate on the Board.

Dispute Resolution

First, the LTB has a mandate to resolve disputes between landlords and tenants. The RTA confers the LTB with the power to exercise a quasi-judicial function under subsection 168(2) of the RTA, which provides that the Board has jurisdiction to determine all applications under the RTA, and section 174, which provides the Board with the authority to hear and determine all questions of law and fact with respect to all matters within its jurisdiction under the RTA.

The RTA also anticipates the role of mediators to augment the quasi-judicial function of adjudication.

From April 1, 2010, to March 31, 2011, the Board received 77,393 applications filed under the RTA.

When landlords and tenants are unable to resolve disputes on their own, they may choose to come to the LTB to have it resolved. Parties to an application are entitled to a hearing before a Board Member.

At the hearing, the parties present their evidence and arguments and the Member decides the outcome by applying the law to the evidence that is relevant to the issues in the dispute.

The decision is in the form of a written order that can be enforced through the court system. Thus, an order of the Board for eviction is enforced through the Sheriff's office; an order for the payment of money is enforced through the Small Claims Court.

Provision of Information

Second, pursuant to section 177 of the RTA, the LTB is required to give information to landlords and tenants about their rights and obligations. In fulfilling this mandate, the Board's Call Centre handles customer inquiries, in both English and French, through toll free lines.

In the Greater Toronto Area, the phone number is (416) 645-8080; outside Toronto the number is 1-888-332-3234. Customer Service Officers are available during regular business hours. An automated telephone service answers frequently-asked questions 24 hours a day, seven days a week. This year, the Board responded to approximately 500,000 telephone calls.

The Board has eight offices that offer full service to clients. At those offices, landlords and tenants can file applications and obtain information, as well as attend hearings and participate in mediation.

The Board also has 33 off-site hearing locations to which Board Members and mediators travel for hearings on a regular basis. There are also a number of locations in the northern parts of the province where the Board regularly holds hearings electronically.

Mission Statement

The mission of the Landlord and Tenant Board is to inform landlords and tenants about their rights and responsibilities under the *Residential Tenancies Act* and provide balanced and timely dispute resolution in accordance with the law.

The Year in Review

In 2010-2011, the Landlord and Tenant Board continued to deliver its services to Ontario landlords and tenants by providing information on their respective rights and obligations and resolving disputes filed as applications to the Board. The Board strives to improve service delivery to its clients. Over the past year, this has been demonstrated through a regional realignment, NQI certification, eGovernment initiatives and amendments to the Board's Rules and Guidelines. This section also looks at application processing trends over the past year.

Regional realignment

Effective July 1, 2010, the Board implemented a regional realignment as part of modernizing the LTB's regional office structure and focused on streamlining business processes to improve service levels. The new office structure enables the Board to make the best use of existing resources to achieve stability in the organization and remain responsive to stakeholder needs. These changes include merging the Toronto East, Toronto North and Toronto South regions into one Greater Toronto Region, reporting to a single Toronto Regional Manager. The three existing Toronto regional offices have been renamed as District Offices. The Board also created a centralized unit with the expertise needed to improve consistency and quality in the processing of applications for above-guideline rent increases (AGIs) and automatic rent reductions (A4s).

NQI Certification

On April 27, 2010, Dr. Lilian Ma, Associate Chair, and Laura Bryce, Chief Operating Officer, accepted the Level 1 certificate from the National Quality Institute (NQI) on behalf of the Landlord and Tenant Board. NQI is Canada's authority on organizational excellence. Founded in 1992 by Industry Canada, it is an independent, not-for-profit organization committed to advancing organizational excellence across Canada (www.nqi.ca).

eGovernment

The Board's bilingual website, sjto.ca/ltb, received approximately 1.5 million hits each month over the past fiscal year. All Board forms, Rules of Practice, Interpretation Guidelines, complaint procedures, Policy on Accessibility and Human Rights, and Selected Decisions are available on the website.

The Board has been developing five public education videos to improve accessibility to information about the Board's processes. These videos will be posted on the Board's website in English and French. Captioned versions will also be played in the waiting areas of the Board's offices.

In April 2009, the Board began phasing in its new case management system. At the beginning of the fiscal year covered by this report, the Board transitioned to the new system, and work began on improving its functionality and exploring opportunities for developing additional eServices for application filing. This work will continue throughout the next fiscal year.

Rules and Guidelines

Section 176 of the RTA provides that the LTB can make rules of procedure and nonbinding Interpretation Guidelines. While a Member may waive certain Rules in appropriate circumstances, some Rules have a non-waiver provision. Interpretation Guidelines, on the other hand, while not binding on Members in their decisionmaking, are generally to be followed unless there is valid reason not to do so.

On January 4, 2011, the Rules and Guidelines committee released revised versions of a number of rules and guidelines. These newly revised rules and guidelines can be identified by the release date on the Board's website. At the same time, two new Interpretation Guidelines were released: #18, "Restricting Public Access to InPerson and Electronic Hearings," and #19, "The Landlord's Right of Entry Into a Rental Unit."

Application Processing - Statistical Information

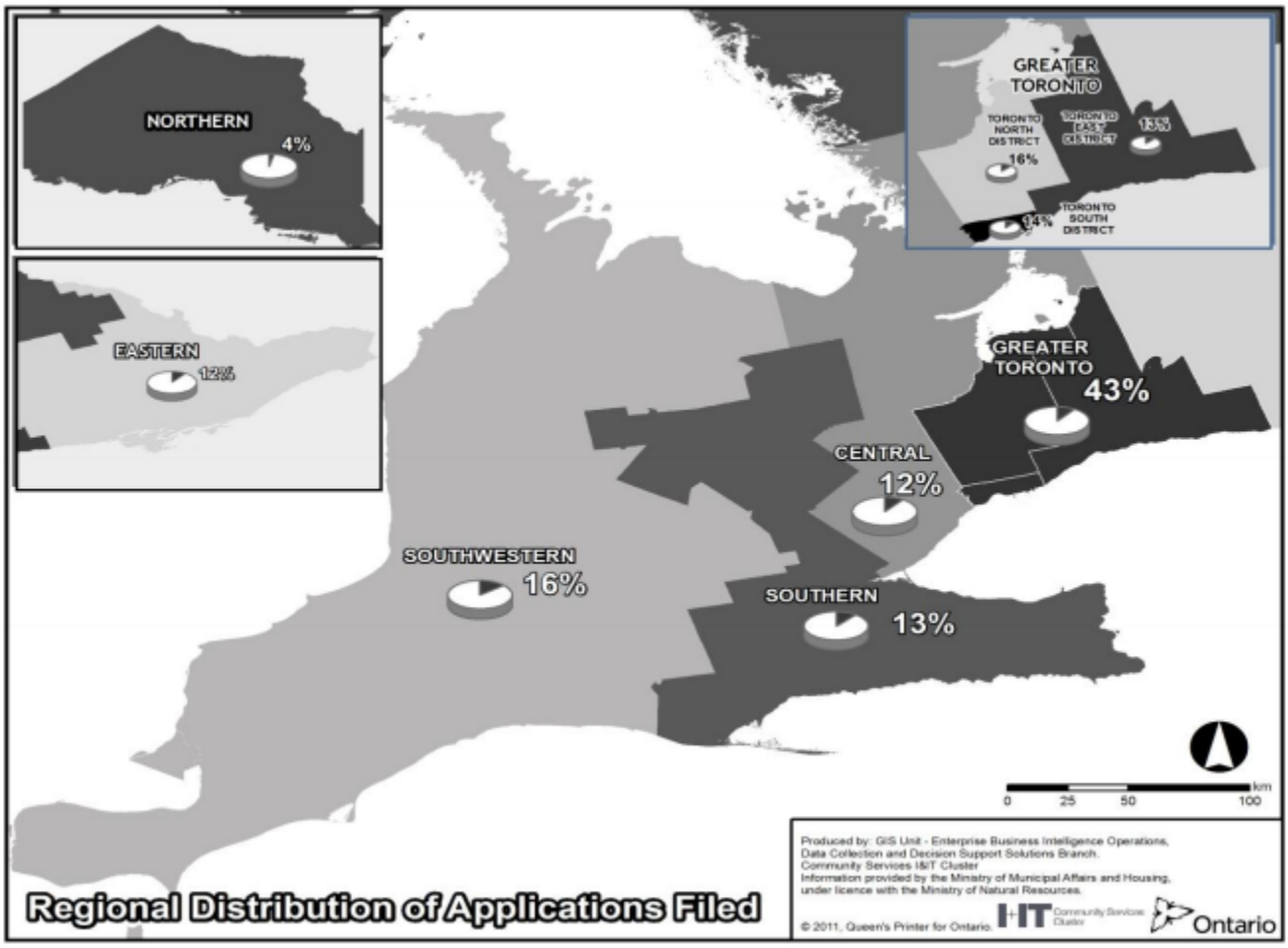
The following section provides statistical details about applications filed with the Board from April 1, 2010, to March 31, 2011, showing the distribution of applications by application type and by region, the number of applications filed and resolved, as well as the number of reviews and appeals.

Landlord vs. Tenant Receipts

As mentioned earlier, the Board received 77,393 applications this fiscal year, which represents a decrease of 678 applications (0.9%) from the 2009-2010 workload. The distribution of application receipts has remained relatively constant since 1998 when the resolution of landlord-tenant disputes was transferred from the provincial court system to the Board's predecessor, the Ontario Rental Housing Tribunal. This past year was no exception. Landlords filed 91% of the applications, and tenants filed 9%.

Regional Distribution of Applications

The regional distribution of applications filed with the Board is as follows:



Applications by Type

Terminations of tenancy and eviction applications continue to represent the bulk of the Board's workload. Of the total applications received by the Board, 71.8% were for termination of tenancy because of arrears of rent. The following charts show the distribution of the Board's workload, by type of application, for the 2010-11 fiscal year.

Landlord Applications by Type

Case Type	Application description	# of Cases
A1 (0.1%)	Determine Whether the Act Applies	48
A2 (0.3%)	Sublet or Assignment	199
A3 (4.3%)	Combined Application	3,066
A4 (0.3%)	Vary Rent Reduction Amount	182
L1 (75.3%)	Terminate & Evict for Non-Payment of Rent	53,182
L2 (8.7%)	Terminate for Other Reasons & Evict	6,158
L3 (1.5%)	Termination Tenant Gave Notice or Agreed	1,075
L4 (6.8%)	Terminate the Tenancy: Failed Settlement	4,805

L5 (0.6%)	Rent Increase Above the Guideline	391
L6 (0.01%)	Review of Provincial Work Order	7
L7 (0.001%)	Transfer Tenant to Care Home	1
L8 (0.04%)	Tenant Changed Locks	26
L9 (2.1%)	Application to Collect Rent	1,499
Total		70,639

Tenant Applications by Type

Case Type	Application description	# of Cases
A1 (0.44%)	Determine Whether the Act Applies	30
A2 (0.73%)	Sublet or Assignment	49
A3 (18.12%)	Combined Application	1,224
A4 (0.00%)	Vary Rent Reduction Amount	0
T1 (7.70%)	Rent Rebate (e.g. illegal rent)	520
T2 (53.10%)	Tenant Rights	3,587
T3 (0.64%)	Rent Reduction	43
T4 (0.01%)	Failed Rent Increase Above Guideline	1
T5 (1.89%)	Bad Faith Notice of Termination	128
T6 (17.34%)	Maintenance	1,171
T7 (0.01%)	Suite Meters	1
Total		6,754

Applications filed under the TPA

During the 2010-2011 fiscal year, in addition to its RTA workload, the Board continued to resolve applications that had been filed under the *Tenant Protection Act, 1997* (the TPA), the legislation in effect prior to the implementation of the RTA, but which remained unresolved on January 31, 2007, when the RTA was proclaimed. As of March 31, 2011, only three TPA applications are still outstanding. One case is being reheard as a result of a previous appeal to the Divisional Court, one case has been adjourned sine die and the remaining case is still being heard.

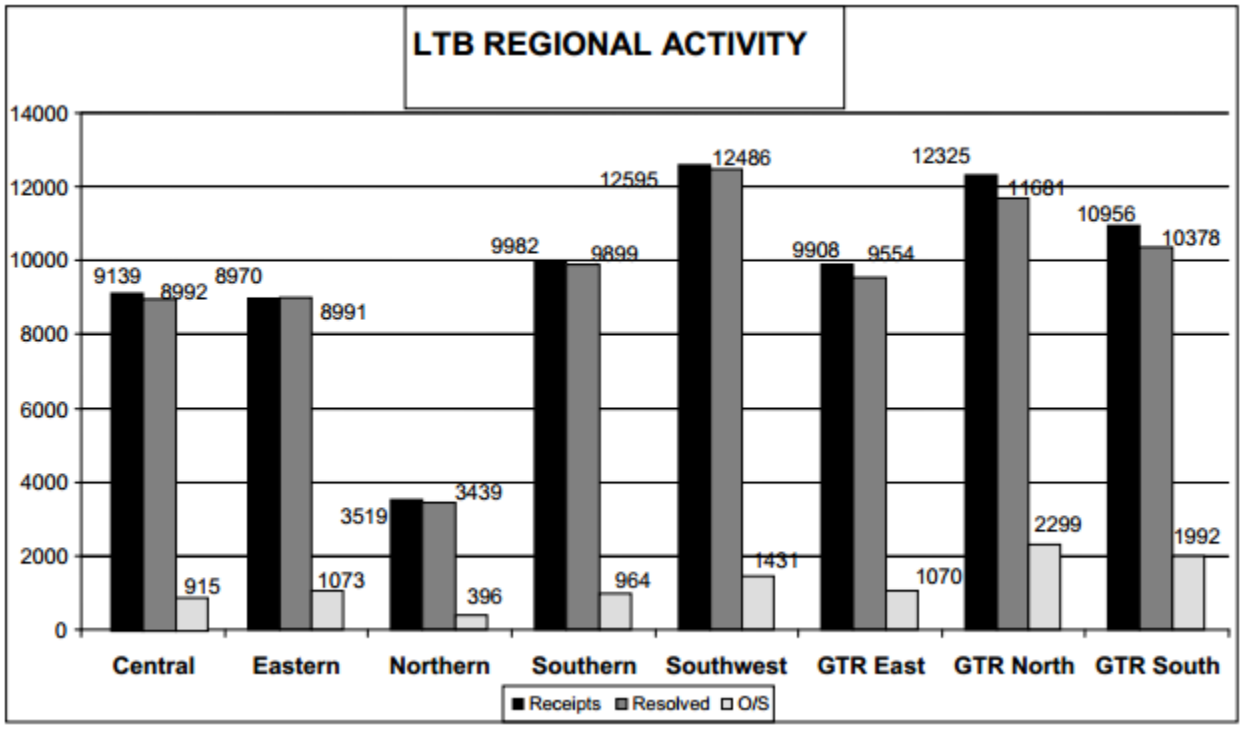
Performance Targets

The Board has begun preliminary work to develop performance targets for various aspects of service delivery to its clients. As a starting point the Board continues to track statistics on a number of its processes with consideration being given to the measures that can be put in place. This work will inform the development of both Board-specific and cluster wide service standards in the coming year.

Application Resolution

At the end of the last fiscal year, the Board had 8,166 pending applications. During the 2010-2011 fiscal year, the Board received a total of 77,393 applications and resolved 75,420 applications. As a result, on March 31, 2011, the number of unresolved RTA applications was 10,140. This number represents approximately seven weeks work at the Board, which is the workload appropriate to warrant smooth and continuous operation for the Board. The following chart shows how application receipts and resolutions have remained relatively constant during the year.

For the 2010-2011 fiscal year, the Board received 2,082 requests for review. Of the reviews resolved during this time period, approximately 65% were sent to a hearing. The Board also received 160 Notices of Appeal of Board orders.



Average Processing Times

The Board tracks the length of time from the date an application is filed to the initial hearing date that is scheduled, and the length of time from the final hearing date to the date the order is issued. While most cases are resolved during the initially scheduled hearing, some require more than one hearing appearance. A number of factors, some of which are beyond the Board's control (such as the availability of parties or their representatives, or the re-scheduling of matters that parties have consented to because they wish to continue their negotiations) can affect the length of time between the initial hearing date and the final hearing date.

The processing times generally correspond to the complexity of the application types. Over the past fiscal year, on average, hearings for L1 applications (evictions for non-payment of rent) were scheduled within approximately five weeks of the date they were filed, and the orders were issued within three days of the final hearings. L5 applications filed by landlords (for above-guideline rent increases) generally involve the lengthiest processes. As a result they were heard, on average, 26 weeks after the application was filed, and the orders were generally issued within three weeks after the hearing. T2 applications (about tenant rights), which tend to be more

complex, were heard, on average, within six weeks of their filing date, and the orders were generally issued within six days of the final hearing.

Mediation

The Landlord and Tenant Board employs 21 mediators throughout the province to provide voluntary mediation services to parties involved in applications before the Board. In the 2010-2011 fiscal year, approximately 40% (11,548) of all applications where both parties showed up at the hearing were successfully resolved through mediated agreements and/or resulted in consent orders.

Decisions

The following summaries are a sample of the decisions made on different types of applications filed with the Landlord and Tenant Board in various regions during the 2010-2011 fiscal year. The Board posts a number of decisions on its website at sjto.ca/ltb. These and other decisions are also available on the website of the Canadian Legal Information Institute (CANLII) at www.canlii.org/en/on/onltb/index/html.

TSL-28199

(April 13, 2010) - *s. 61, illegal act - s. 66, impaired safety - s. 83, relief from eviction denied*

The landlord applied to evict the tenant for committing an illegal act in the residential complex and seriously impairing the safety of others. The complex provides transitional housing for homeless people.

On several occasions the tenant was in a rage and threatened to kill the manager and blow up the complex. The police were called and the tenant was charged with uttering death threats and prohibited from being near the complex.

The Board found that the death threats are illegal acts and that the tenant's volatile and violent conduct impaired the safety of others. These acts have affected the character of the premises.

The Board also found that the tenant's death threats were not the result of a mental disorder, and therefore the landlord had no duty to accommodate him. The tenant was given six days to vacate.

TET-06241-10

(August 19, 2010) - *s. 31, vital service - s. 12, address for service - s. 191(2), deemed service*

The tenants applied for an order determining that the landlord withheld the supply of a vital service. As a preliminary matter, the Board determined that the landlord had not provided the tenants with an address for service, and tried to evade service of the application and notice of hearing after the tenants telephoned the landlord to ask where she could be served. The Board determined that the landlord was aware of the hearing and chose not to attend. The hearing proceeded in her absence.

The Board found that the gas to the rooming house was shut off because the landlord did not pay the bill. The tenants were without gas for 12 days. The Board determined that the landlord had withheld the supply of a vital service and ordered a 50% abatement of rent for the 12-day period of $198 per tenant, and an additional $100 for the inconvenience and mental suffering they endured.

EAL-05724-10

(April 28, 2010) - *s. 64, interference with lawful right or interest*

The landlord and tenants entered into a tenancy agreement that required the tenants to put the water bill for the rental unit in their name and pay for their water use. The tenants failed to do that. Because the water account remained in the landlord's name, the municipality sent the landlord numerous invoices and letters threatening to

cut off the water supply unless he paid the water bills. The landlord eventually paid the outstanding amount of $1342. The landlord applied to the Board to evict the tenants.

The Board determined that the tenants failed to comply with the term in the tenancy agreement requiring them to pay for their water use. This conduct substantially interfered with the landlord's lawful right or interest. The Board ordered the tenants' eviction.

SWT-08650-10-AM

- s. 135, money retained illegally - s. 19, Frustrated Contracts Act applies - s. 3 of FCA, sums paid before discharge are recoverable

The tenant applied for an order determining that the landlord collected or retained money illegally.

On September 13, 2009, the rental unit was destroyed by fire. In accordance with the *Frustrated Contracts Act* (FCA), the Board found that the parties were discharged from performance of the tenancy agreement after that date. Applying section 3 of the FCA, the Board determined that the landlord was permitted to retain a pro-rated portion of the rent for the period September 1 to 13; however, the landlord was not entitled to retain the balance of the September rent or the rent deposit.

The Board determined that the landlord had retained money illegally and ordered it to be paid to the tenant.

CEL-03708-10

(May 28, 2010) - *s. 82, adjournment - s. 183, Board to adopt most expeditious method of proceeding - Guideline 1, adjournment considerations*

At the hearing of the landlord's L1 application, the tenant raised issues under section 82 of the RTA. The tenant then requested an adjournment to prepare for the hearing of the section 82 issues.

The Board denied the adjournment request because the tenant should have been prepared to present his evidence. The Board found that to merely raise issues and then seek an adjournment to gather evidence in support of the issues is not the purpose of section 82. The Board noted that the Notice of Hearing states that parties should be ready to present their evidence and that if "you want to raise any issues that are not in the landlord's application, it is important to bring evidence to this hearing to support your claims."

The Board also considered Guideline 1 and section 183 of the RTA which provide that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords all persons affected an adequate opportunity to know the issues and be heard on the matter. The tenant had been given the opportunity to know the issues for both the landlord's application and under section 82, and should have been prepared to present evidence in support of the issues. After the adjournment was denied, the tenant elected to proceed with the issues raised under section 82.

SWT-09793-10

(September 7, 2010) - *s. 52, notice of conversion to nonresidential use - s. 52, compensation - s. 3, waiver or agreement contrary to Act*

The tenants applied for an order determining that the landlords collected or retained money illegally.

The landlords had given the tenants a notice of termination for conversion of the rental unit to non-residential use. The notice was void because the termination date in the notice was not the last day of the rental period as required by section 50(2) of the RTA. The tenants vacated based on the notice.

The landlords contended that they had an agreement with the tenants that would allow them to occupy the rental unit beyond the termination date in exchange for the tenants' waiving their right to compensation in an amount equal to three months rent, in accordance with section 52 of the RTA. The Board was not satisfied that there was an agreement because the terms were never settled and there was no specific offer and acceptance. Even if there was an agreement, it was contrary to section 3 of the RTA and the Divisional Court ruling in *1086891 Ontario Ltd. v. Barber*, preventing a landlord and tenant from bargaining away their statutory rights whatever the circumstances. In the result, the landlords were ordered to pay the tenants compensation.

SWL-15272-10

(November 10, 2010) - *s. 78, landlord not entitled to apply for ex parte eviction order after mediated settlement satisfied*

The settlement mediated by the Board provided that the tenant would pay the outstanding arrears and the regular monthly rent in instalments continuing up to February 2011. The tenant satisfied the mediated settlement by paying the full amount outstanding by September 2010. When the tenant failed to pay the rent for November 2010 the landlord applied ex parte for an order under section 78 of the RTA to evict her.

The Board determined that the tenant's early payment of the full amount satisfied the conditions imposed in the mediated settlement and ended the landlord's right to apply under section 78. The Board noted that this approach is consistent with section 74(2) of the RTA which requires that an application for eviction based on arrears be discontinued if, before an eviction order is issued, the tenant pays the full amount of rent that would have been due under the tenancy agreement. The Board stated that the landlord will have to give a new notice of termination and file a new application for any new arrears that arose after the mediated settlement was satisfied. The landlord's application was dismissed.

TNT-03488-10

(September 30, 2010) - *s. 107, collected money illegally - s. 135, refund*

The tenant applied for an order determining that the landlord retained money illegally.

The tenant had applied for a rental unit in the residential complex. The landlord gave him an application form that required the tenant to provide five items of information and a rent deposit. The tenant provided four items but was not able to provide an employment letter from his employer. Instead, he obtained a letter from the employer's trustee in bankruptcy, but it was not acceptable to the landlord. The tenant then advised the landlord that he would not continue with the application process, and requested a return of his rent deposit. The landlord offered to return the deposit if the tenant paid the landlord a $250 fee for doing the paper work associated with the application process.

The Board considered the Divisional Court decisions in *Opara v. Cook, Drewlo Holdings v. Custidio and Benedetto v. Dineen*. In the Opara and Drewlo cases, the tenant had entered into a tenancy agreement and therefore was not entitled to a refund of the rent deposit. In *Benedetto*, it was determined that the tenants had not entered into a tenancy agreement and the landlord was ordered to refund the deposit. The Board determined that, as in *Benedetto*, the tenant had not entered into a tenancy agreement because the prerequisites in the application had not been met, and ordered the landlord to refund the deposit.

TEL-27008

(April 7, 2010) - *s. 126, above guideline increase - s. 2, municipal taxes and charges - s. 2, utilities - s. 202, real substance*

In 2009 the City of Toronto removed the cost of garbage collection from the landlord's tax bill and placed it on the landlord's "Utility Bill." The landlord applied for an above guideline increase in rent to recover the increased

amounts it is now paying for garbage collection because of the change to a user-pay system. The tenants argued that the garbage collection fee is not a municipal tax and charge as defined in section 2 of the RTA and therefore should be disallowed as an extraordinary increase.

The Board determined that, despite the term "utility bill" used to describe the new charges, the charges fall within the definition of "municipal taxes and charges" in section 2 because they are "charges levied on a landlord by a municipality." They are not utilities which are defined as meaning "heat, electricity and water."

The Board determined that the garbage collection fee is properly recognized as a municipal charge and the landlord will receive the rent increase it applied for based on this expenditure.

SOT-08159-10

(December 21, 2010) - *s. 31, interference with enjoyment - tenants' association - administrative fine*

The tenant filed an application for an order determining that the landlord interfered with his enjoyment of the rental unit by interfering with his attempts to form a tenants' association. The tenant posted a recruitment note on the bulletin board in the lobby for the purpose of forming a tenants' association. The following events then occurred: the tenant received a notice of entry; the tenants' association sent a letter to the landlord requesting repairs; the tenants' association filed a complaint with the city; the landlord gave the tenant a notice of termination because the tenant had a washing machine, dryer and freezer in his unit; the landlord removed from the lobby the bulletin board on which the tenants' association notice was posted.

The Board determined that the notice of termination was given as a reaction to the formation of the tenants' association, and that it substantially interfered with the tenant's enjoyment of the rental unit.

By analogy to section 83(3) of the RTA, which directs the Board to refuse an application for eviction if the reason for the application is that the tenant is attempting to form a tenants' association, the Board held that the RTA is meant to protect tenants who participate in such associations. The Board ordered an abatement equal to one month's rent and an administrative fine of $500.

ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL
ONTARIO SPECIAL EDUCATION (FRENCH) TRIBUNAL

Associate Chairs' Messages

Marilyn Thain, Associate Chair
Ontario Special Education (English) Tribunal

As Associate Chair, I am proud of the Special Education English Tribunal's accomplishments and confident that as a member of the Social Justice Tribunals Ontario, we will continue to build on its current foundation and work hard to continue to provide a high standard of adjudicative excellence.

The English Tribunal adjudicates disputes between a parent and a school board concerning the identification and/or special education placement of an exceptional student. The establishment of an expert administrative tribunal to adjudicate such disputes is given curial deference by the courts and is unique to Ontario.

In 2010-2011, the English Tribunal welcomed one new part-time member, reviewed and revised the Tribunal's policies and procedural documents, responded in a timely way to inquiries from parents, school boards, and

stakeholder organizations, and continued to keep up-to-date with legislation, policy change and judicial decisions that affect special education in Ontario. We remain informed of issues related to special education to assist in fulfilling our mandate.

Two members successfully completed training in mediation. As a result, the English Tribunal now has eight members who are qualified to offer alternative dispute resolution services to parents and school boards. All parties are offered an opportunity to participate in mediation prior to proceeding to a hearing. The Tribunal's experience with mediation has been successful in resolving and simplifying some of the disputes.

The Tribunal has 11 part-time members; in spite of this small membership, two important documents were developed to enhance agency accountability: a member accountability framework which includes role descriptions for all members and positions, and a merit-based appointment process, which includes a telephone interview, a face-to-face interview and a written assessment component. The appointment process was implemented during 2010 and resulted in a recommendation to appoint one new member from the thirteen applications made to the Public Appointments Secretariat.

During the past few years, many of the appeals to the English Tribunal relate to the special education placement of students who have been identified with autism. Data about the number of appeals, the number of successful mediations and the number and outcome of hearings follows in this report.

The part time members of the Special Education (English) Tribunal have expertise in special education and are committed to providing timely, fair and effective decisions that are made in the best interest of exceptional students in Ontario.

The Tribunal has been fortunate to have Louise Sibbald as Secretary of the Tribunal. She has provided excellent support and service and has been especially helpful during the transition to the Social Justice Tribunals Ontario.

The Tribunal looks forward to the challenges and opportunities that it will face as a member of the new cluster of administrative tribunals. We look forward as well, to continue to co-operate and collaborate with the other constituent tribunals in order to work toward ongoing excellence and access to justice.

Céline T. Allard, Associate Chair
Ontario Special Education (French) Tribunal

I am very happy to announce that our Tribunal is now a part of Social Justice Tribunals Ontario, headed by Executive Chair Michael Gottheil.

This cluster brings together tribunals and boards that have a set of common goals and objectives. It will provide each of its members with the opportunity to take advantage of the extensive collective experience, and to thus be able to better serve the community in the context of their respective mandates.

Our Tribunal is very enthusiastic about being involved in this new initiative!

Role of the Tribunals

The Ontario Special Education Tribunals' (OSET) legislative mandate is found in section 57 of the *Education Act, R.S.O. 1990*, c. E. 2. Their primary role is to adjudicate appeals initiated by parents, regarding the identification and/or placement decisions made by school boards with respect to students with special needs (exceptional pupils) and to make decisions that are in the best interest of these pupils.

The Ontario Special Education (English) Tribunal hears appeals for students enrolled in the 60 English-language school boards, both public and Roman Catholic. Le Tribunal de l'enfance en difficulté de l'Ontario (français) hears appeals for students enrolled in 12 French-language school boards, both public and Roman Catholic.

Providing parents with the right of appeal without having to go to court was one of the unique features of the 1980 *Education Amendment Act*, which guaranteed universal access to public education for all students, "exceptionality notwithstanding." The right of appeal to an independent adjudicative body, whose members have a high level of expertise in both special education legislation and in their ability to determine what is in the best interest of students with exceptionalities regarding programs, services and accommodation in an educational setting, continues to be an integral part of Ontario's unique approach to providing natural justice and due process to these students, their families and the education system.

Adjudicating these complex cases requires extensive knowledge, sensitivity and understanding of exceptional children and the education system in relation to the legal framework, as well as knowledge of teaching and learning strategies. Expert witnesses often appear before the Tribunal and give opinions on key facts relating to a broad array of exceptionalities. The expertise of the Tribunal in these areas is evident in the background of the appointees and has been recognized and acknowledged by all levels of courts.

Geographical representation across Ontario is important when members are chosen. Hearing panels are always made up of three members, and hearings are held in a location that is convenient for both parties.

OSET differs from many other administrative tribunals in that it is an appeal tribunal, rather than a direct application tribunal. That means that appellants must first satisfy the prerequisites set out in the *Education Act* and its *Regulations*, before they are legally entitled to appeal. Because of the complex nature and length of the legislative scheme set out in the *Education Act* and the relevant *Regulation*, OSET renders its decisions promptly and only issues interim decisions if the timing of the school year makes this essential in the best interest of the student.

The OSET does not necessarily choose the school board's or the parents' preferred option, but rather makes its own determination based on the student's best interests.

The Tribunals were created to provide a final and binding decision on both parties. OSET's final decisions with reasons are always rendered within 90 days of the end of the hearing process. This is to reduce any further delay for the student, who must be provided access to the most appropriate and enabling educational placement as promptly as possible.

The appeal before the OSET is a hearing de novo, and typically involves lay and expert evidence led by both parties. The central focus of the OSET is the best interests of the student. The OSET is empowered to dismiss the appeal, grant the appeal or make any other orders it considers necessary with respect to the identification and placement of the child: *Education Act*, s. 57(4). As neutral adjudicators, and experts in special education, OSET must reach a decision consistent with the best interest of the student based on the facts and evidence presented.

Another factor that differentiates OSET's decisions from some other tribunal decisions is that the parties (the parents and boards) continue to have a relationship after the dispute is resolved. Parents do not have an easy option to move their child from the local school administered by the local board to another school in another jurisdiction.

OSET offers mediation to its appellants by its trained members. Mediation is frequently successful in resolving the dispute, without the parents having to go on to a hearing on the merits of the case. Mediation also assists with facilitating future cooperation between the parties. By offering mediation support to the parties in advance of the appeal hearing on the merits, the Tribunal further supports the goal of encouraging dialogue and dispute resolution between the parties.

Over the years, OSET has noted and reported on certain key challenges faced by parents. These included the following:

- parents are sometimes not informed about their due process rights by the boards;

- parents are sometimes denied access to the required pre-appeal steps, e.g., Identification, Placement and Review Committee (IPRC) meetings or Special Education Advisory Boards (SEABs); and
- parents are frequently self-represented. Boards are invariably represented by legal counsel, which often results in an uneven power balance between the parties.

OSET has responded to these challenges by ensuring that parties are well-informed about the appeal process, that hearings allow for as much flexibility as is legally permissible, and that there is no undue delay in hearing an appeal and rendering a decision in the best interest of the student.

Special education is a constantly evolving field. What that means is that while the legislation may remain the same, there are many new research findings that inform the identification of exceptionalities and the determination of what is in the best interest of an identified exceptional student. OSET members must ensure that they are well-informed about such matters, since their mandate is more complex than the simple application of the statute. Therefore, they regularly participate in ongoing professional development activities related to their role as adjudicators and work independently as well as collectively to maintain their level of special education expertise.

The Year in Review

Adjudication

As the operational statistics included below show, during the past three years OSET dealt with a total of 21 appeals. These were all appeals before the English Tribunal. There were no appeals to the French Tribunal.

Operational statistics for the past three fiscal years

	2008-2009	2009-2010	2010-2011
Cases on Register as of April 1	5	2	5
New cases	1	6	2
Total cases in year	6	8	7
Closed without a hearing on the merits	1	0	0
Withdrawn by parent	0	1	1
Consent Orders	1	0	0
Written decision on merits	0	0	2
Resolved through mediation	2	2	0
Resolved in year	4	3	3
Cases on Register as of March 31	2	5	4*

* Open cases as of March 31, 2011. Open cases include cases awaiting a hearing and cases where a decision has been issued, but the Tribunal remained seized of the case.

The current fiscal year opened with five cases on the register of the English Tribunal. This included two appeals where mediation had been successful, but the parties had not signed a settlement agreement by March 31, 2010. Once the parties signed the agreements, the cases were closed. In the remaining three cases, the parties participated in mediation, but the dispute was not resolved.

In one appeal initiated in 2010-2011, the parent withdrew the appeal, once she realized following the pre-hearing teleconference that her concern was not special education specific. There were two hearings on the merits of each case, with OSET remaining seized of both cases until June 30, 2011. Two more hearings were pending at fiscal year end. As shown in the above chart, at fiscal year-end OSET had four open cases.

Supporting OSET's adjudicative activities and member readiness

To ensure that OSET is accessible to parents and efficient and effective in its practices, it must be compliant with the relevant legislation, provide resources that support and clarify the appeal process, and ensure that the public is aware of the process and the rights of exceptional students and their families. Administrative justice, as delivered by OSET to Ontario's exceptional students and their families, must be accessible, accountable, independent and transparent in its procedures.

During the 2010-2011 fiscal year, OSET undertook a review of its resource documents that directly and indirectly support the adjudicative process. The following documents were revised and updated and are available on the OSET website at sjto.ca/oset.

- Rules of Procedure
- Practice Directions on the following topics:
    - Consent Orders;
    - Issuing a Summons;
    - Mediation;
    - Representation;
    - Seized Cases;
    - Student as Witness.

The website includes a detailed document, *Information for Parties*, which sets out the process that parties need to follow when appealing to OSET. This document has been revised during 2010/11, to provide more information and guarantee greater accessibility to parties before OSET.

All OSET documents are available in both English and French. This bilingual approach and the assurance that families whose children attend French language schools run by French language school boards have the right to appeal to a French language Tribunal is mandated in OSET's original Order-In-Council.

To ensure that members are up-to-date on their mandate and the administrative justice system's expectation of them as adjudicators and/or mediators, in the fall of 2010, OSET finalized its *Guide to the Tribunal Process* and the *Mediation Guide*. Members are provided with training on their content to ensure that they are ready to undertake their adjudicative tasks. These documents are a key part of OSET's succession planning.

In accordance with the previous year's Business Plan, during 2010-11 OSET held two all members' meetings. One was held in June 2010, and the other was synchronized with the Conference of Ontario Boards and Agencies conference in November 2010, which all members attended. Individual members also attended several relevant workshops, organized by the Ministry of Education and the Society of Ontario Adjudicators and Regulators. Two members participated in training and received certification as mediators. In accordance with the OSET's accountability practices, all members are provided with a written report on the contents of such conferences, workshops and training programs.

Responding to and compliance with new legislation

OSET, as a public body, complies with the legislation that governs administrative tribunals in Ontario. During 2010-2011, much of OSET's focus was on ensuring and enhancing this compliance, as listed below:

1. OSET developed an Accessibility and Accommodation Policy and as a result complies with the Customer Service Standard, developed under the *Accessibility for Ontarians with Disabilities Act*, 2006.
2. All documents and materials on the website have been reviewed and were appropriately adjusted to ensure compliance.
3. OSET developed a Freedom of Information policy and protocol, in cooperation with the Ministry of Education, its former host ministry. This was finalized in April 2010.

Decisions

All Special Education Tribunal decisions are anonymized before they are made public and posted on the Tribunal's website at sjto.ca/oset. The parties receive the decisions with the identifying information retained.

S. v. Halton Catholic District School Board (DSB)

In *S. v. Halton Catholic District School Board (DSB)*, a secondary school student was identified as both gifted and dyslexic. The Tribunal ordered a revised identification and the board complied. The student's placement is in a regular class with resource withdrawal. In that placement, the board is expected to provide specific programming, services and accommodation to meet the student's dual exceptionality. The parents complained that the board did not comply with the orders regarding the student's exceptionality-specific programming. The Tribunal issued a supplementary decision, confirming that the parents' complaint regarding non-compliance had merit as far as the student's gifted identification was concerned. A one-day supplementary hearing was held and the Tribunal issued a further decision, ordering the board to provide or purchase an appropriate program for the student, in accordance with its legislated mandate.

R. v. Halton DSB

In *R. v. Halton DSB*, a secondary school student was identified with developmental disabilities and had been out of school for much of the 2009-2010 school year. At the time of the hearing, the student was not attending school. The parents wanted the Tribunal to remove the student's identification as an exceptional student and to order the board to provide a placement in a regular Grade 9 class, so that the student could eventually graduate and go on to post-secondary education.

The Tribunal issued an interim decision to ensure the student's return to school at the earliest opportunity. It ordered the board to identify the student as exceptional without a specific exceptionality designation, pending the student undergoing an assessment to determine what exceptionality is the most appropriate. The Tribunal also ordered the board to arrange the assessment and to place the student in a special education program full time, until the assessment has been carried out and an IPRC can determine the most appropriate identification and placement.

SOCIAL BENEFITS TRIBUNAL

Associate Chair's Messages

Gary Yee, Associate Chair Alternate Executive Chair
Social Benefits Tribunal Social Justice Tribunals Ontario

The Social Benefits Tribunal became part of Social Justice Tribunals Ontario on January 25, 2011. As the fiscal year ended, a new administrative justice organization began. Michael Gottheil was appointed as the Executive Chair of the cluster, and in March of this year, the Chairs of the seven tribunals that comprise the cluster received new appointments as Associate Chairs of their respective tribunals. It is exciting to play a part in the creation of the cluster, and to contribute to the fulfilment of the potential and promise that is seen in the clustering of tribunals.

As the Chair and then Associate Chair of the Social Benefits Tribunal, I feel a sense of good fortune and tremendous pride to be leading this Tribunal. I see examples every day of the dedication and expertise of its members and staff. The tribunal world occupies a special place within the public service. We are drawn together by our common goal of fair and accessible dispute resolution, our passion for justice, and our awareness of the impact of our decisions on everyday lives.

In last year's Annual Report, we expressed our commitment to building an accountable, predictable and proactive tribunal. In pursuit of this goal, the main priorities for 2010 - 2011 were to review all aspects of how the Tribunal schedules its hearings and to expand opportunities for early resolution without a full hearing. The Tribunal focused much of the past fiscal year on actively promoting - to members, staff and counsel - the goal of predictability in scheduling. Scheduling timeframe guidelines were put in place after internal and external consultation. A series of Communiqués were sent out to all of our stakeholders with reminders or information about the changes in our procedures. One of the measurable results of our organized and strategic action in this area was a decline of 37% from the previous fiscal year in the number of hearings that had to be rescheduled.

In the area of proactive case management and dispute resolution, the Tribunal reinstituted its Early Resolution Program (ERP) in February 2011. The ERP process generally involves a telephone call between the two parties and the Tribunal's Appeal Resolution Officer (ARO), who acts as a facilitator to discuss possible ways to resolve the appeal without the need for a full hearing.

The Tribunal continues to have a constructive and cooperative relationship with the representatives of the appellants and the respondents. All stakeholders have essential roles to play in the tribunal's quest to be more accountable for its quality and productivity. A tribunal needs effective communication channels with its stakeholders in order to maximize the benefits of the tribunal's predictability. Ongoing communication with stakeholders is essential to develop and implement proactive approaches to case management and dispute resolution.

The SBT Consultative Committee was established and it held its first meeting in June 2010, followed by two more meetings during the fiscal year. This Committee discusses operational and procedural matters with representatives of appellants and respondents. I am grateful to the members of the Committee for their contributions in identifying and resolving major concerns and promoting best practices within the Tribunal.

In the coming year, while clustering will define the directions and identities of the clustered tribunals, each tribunal will continue to respond flexibly and effectively in order to carry out their individual legislative mandates. The new cluster brings great potential for building more accountable, predictable and proactive tribunals - utilizing the power of strategic and selective integration, through sharing resources (facilities, members, staff), improving best practices, increasing opportunities for professional development, and fostering more consistent approaches. In addition to contributing to the success of the cluster, the Social Benefits Tribunal will build on the strong gains that we have made on improving scheduling predictability, and we will continue to expand the work that has already been started on early resolution.

The year ahead promises to be eventful and exciting, and I look forward to working with everyone towards our common goal of providing fair and accessible dispute resolution.

Role of the Tribunal

The Social Benefits Tribunal is an independent tribunal that considers appeals by applicants for and recipients of social assistance who disagree with a decision that affects the amount of or their eligibility for social assistance. It was established in 1998 under Part IV of the *Ontario Works Act, 1997*. Appeals are heard under that Act and the *Ontario Disability Support Program Act, 1997*. The Tribunal has Members who are appointed by Order-in-Council. It is supported by legal counsel and administrative staff. The Tribunal's head office is in Toronto, with regional offices in London, Ottawa and Hamilton. In January 2011, the Social Benefits Tribunal became part of Social Justice Tribunals Ontario.

The Tribunal conducts hearings throughout Ontario. Because of the sensitive personal information involved in these cases, the legislation provides that all hearings must be held in private. Most hearings are conducted by a panel consisting of one member. The parties to the appeal are the appellant (the person who is appealing the decision of the ODSP or OW office) and the respondent (the Director of the ODSP or the municipal administrator of OW).

Most of the appeals before the Tribunal are about whether the appellant meets the definition of a person with a disability under the *Ontario Disability Support Program Act*. Other appeals are about many different issues - examples include whether the appellant is meeting all the requirements to look for work under the *Ontario Works Act*, or whether the appellant reported income or other information that is required by law to be reported. The Tribunal also considers issues regarding human rights as part of its mandate.

The Year in Review

Performance Highlights - Statistics

In the fiscal year 2010-2011, the Tribunal built on its success of the previous year. The Tribunal received 12,159 appeals in 2010-2011, which is a slight increase of 3% (379 appeals) compared to the previous fiscal year. The Tribunal completed 12,388 appeals, which exceeded the number of new appeals received, leading to a decline in the Tribunal's pending inventory. The overall average case processing time decreased to 8.7 months compared to 9.8 months the previous year. This resulted from more efficient and predictable scheduling practices.

Scheduling

In the previous fiscal year, the Tribunal established scheduling timeframe guidelines to provide parties with enough notice of a hearing so that they would have a reasonable time to prepare. This is especially important in hearings where the issue is whether an appellant is a person with a disability, since there is a regulation that prohibits adjourning such hearings for the purpose of obtaining additional medical reports.

In implementing these timeframe guidelines, it was necessary for the Tribunal to undergo a comprehensive review of its overall scheduling practices. The review included consultation with staff and external stakeholders to assess current practices and seek their input for improvement. This review resulted in the implementation of best practices for scheduling. A key element of the best practices included increasing the notice period for the first hearing to about six months. This was done to ensure consistency and to allow the Tribunal to fully schedule hearings into every available hearing slot while at the same time reducing the number of rescheduled hearings and adjournments. This resulted in increased scheduling predictability and positive feedback from representatives of appellants and respondents. The Tribunal reduced the number of hearings that had to be rescheduled by 37%, which meant that 2,000 fewer hearings were rescheduled in 2010-2011 compared to the previous fiscal year.

The Tribunal began working on revising Practice Direction 4 - Rescheduling of Hearings and Adjournments. This revision involves internal and external consultation, and it will reflect the changes that have been made in the improved practices of the Tribunal in this area.

Early Resolution Program

In keeping with the Tribunal's goal to be predictable and proactive, the SBT reinstituted the Early Resolution Program (ERP) in February 2011. It was first implemented in 2006, but it has not been fully utilized in the past couple of years. After intensive refresher training for staff, regular early resolution sessions for selected cases began in March 2011. The ERP process usually involves a telephone call between the two parties and the Tribunal's Appeal Resolution Officer (ARO), who acts as a facilitator to discuss possible ways to resolve the appeal without the need for a full hearing. The Tribunal already has a Practice Direction for the ERP, as well as a Practice Tips document. While the Program was developed with an initial focus on suitable Ontario Works (OW) cases, the Tribunal plans to expand the selection of cases to include suitable Ontario Disability Support Program (ODSP) cases.

Information Technology

Over the course of the last fiscal year, the Tribunal has made great strides in our continuing efforts to expand our technological capabilities. The Tribunal's caseload management system, including the reporting and letter generating application, was upgraded towards the end of the fiscal year. These upgrades not only increased our overall workload efficiency but also have greatly assisted our ability to monitor and improve our scheduling practices. In cooperation with stakeholders, the Tribunal also initiated a two-month pilot project for the use of the Electronic Attachment Transfer Service (EATS), which permits secure electronic filing of private documents with municipalities and legal clinics. With the Ontario Government's Green Initiative in place, the Tribunal continues to explore ways to shift towards electronic filing and electronic file transfers, which will decrease our dependency on paper, while increasing our effectiveness in distributing documents to both Tribunal personnel and parties or representatives.

Adjudication Strategies - Human Rights Cases

The Social Benefits Tribunal continued to adopt various adjudication strategies when dealing with human right cases, rather than simply dealing with them on an ad hoc or case by case basis.

The SBT continued to provide ongoing training to members on human rights, both in substance and best procedural practices. In the context of the social justice tribunals cluster, the SBT will benefit from sharing resources and expertise with the Human Rights Tribunal of Ontario.

Pre-hearing conferences held prior to a Stage 2 hearing have been very valuable. These conferences allow the issues to be narrowed, witnesses and evidence to be confirmed, and timeframe expectations to be set. This enables more predictable scheduling of the Stage 2 hearing and a more proactive and focused hearing.

The final decision in the case of *Ontario (Disability Support Program, Director) v. Tranchemontagne*, 324 D. L. R. (4th) 87 Ont. C.A. meant that a Stage 2 hearing for a *Human Rights Code* challenge was no longer needed in alcoholism or addiction cases. The SBT contacted parties whose cases were on hold pending the decision of the Ontario Court of Appeal. Many of those cases ended up being resolved without any further hearing by the SBT.

As an additional adjudication strategy, the SBT tried to ensure that human rights cases involving significant emerging legal issues or similar subject matter would be heard reasonably near to each other in time. Although fact situations often differ, this approach assists the SBT in building up its jurisprudence in a variety of areas.

The SBT continued to work with stakeholders to handle the more than 500 cases where appellants have submitted that the legislation governing special diet allowance cases contravened the *Human Rights Code*. Please refer to the Notable Decisions section for a SBT decision that adopted the analysis set out by the Human Rights Tribunal of Ontario in dealing with these special diet cases. The SBT plans to write to all appellants to remind them of what they will need to produce in the way of evidence as their cases move forward.

Accessibility Initiatives

In the past year, the Tribunal continued to monitor its policies and procedures, and complied with its new Customer Service Policy, to ensure that persons with disabilities have equal opportunity to access services and achieve the same benefit from services in a similar manner to other participants in the appeal process. This is part of meeting our commitments under the *Accessibility for Ontarians with Disabilities Act, 2005*, [AODA], and its regulations. The Tribunal's work in this area is particularly important because the vast majority of the appellants are applicants or recipients under the *Ontario Disability Support Program Act, 1997*. As a member of Social Justice Tribunals Ontario, the Tribunal looks forward to participating in the implementation of the new Integrated Accessibility Standards regulation under the AODA, which will provide standards in the areas of information and communications; employment; and transportation.

Professional Development

Focused and timely professional development for members and staff is important for every tribunal. In addition, the Tribunal also recognizes the value in staff and members coming together to share information about substantive, procedural and strategic issues. This sharing of best practices and expertise will be greatly enhanced with the clustering of social justice tribunals.

In this past year, Social Benefits Tribunal staff and members participated in a review of natural justice and procedural fairness principles. Additional staff training included dispute resolution training to support the Tribunal's reintegration of the Early Resolution Program, human rights procedures training, and training on changes in the Tribunal's adjournment and rescheduling practices.

The Tribunal's members from across the province gathered in Toronto for a three day annual training conference in April 2010. Further member training occurred throughout the year in a series of regularly scheduled mini-teleconference sessions on a broad range of procedural and substantive topics, including reviews of new relevant case law and changes to legislation. Almost all of the training is provided inhouse by the Tribunal's legal unit, with members and staff assisting as needed.

French Language Services

The Social Benefits Tribunal continued the work undertaken last year to improve and promote the delivery of its services in French, and meet its commitments under the *French Language Services Act*. The Tribunal posted its commitment to French Language Services on its website. There was further training and sharing of best practices for staff and members in regards to handling files and hearings in French language appeals. The Tribunal continued to ensure adequate levels of bilingual staffing.

The Tribunal also commenced work on two procedures that will positively impact the delivery of French language services. One is a complaint procedure which includes complaints regarding French language services. The other is a new practice direction on the process for French language appeals. These procedures may be coordinated with cluster-wide initiatives in this area as the new social justice tribunals cluster develops.

Communication and Stakeholder Engagement

The Social Benefits Tribunal continued to maintain its commitment to actively engage its stakeholders, as an important part of becoming a more accountable, predictable and proactive tribunal.

In June 2010, the Tribunal held the first meeting of the new SBT Consultative Committee. This was followed by two more Committee meetings for the fiscal year. The committee membership includes both senior and operational level representatives from the Social Benefits Tribunal; Ministry of Community and Social Services; municipal Ontario Works offices; and legal clinic representatives of appellants. It has been a constructive and productive process with a great exchange of information resulting in positive changes in the areas of scheduling, adjournment and rescheduling practises.

The Tribunal continued its use of the SBT E-Mail Communication List to send out regular SBT Communiqués quickly and efficiently.

The Tribunal also continued to participate in various stakeholder events, such as presentations at the Case Presenting Officers Professional Development Day in April 2010, the Ontario Native Welfare Administrator's Association Conference in October 2010 and the Northern Region Legal Clinics Training Conference also in October 2010.

Statistics 2010-2011

For additional statistical information, please refer to our website sjto.ca/sbt.

Table 1 - Summary

Fiscal Year	Intake	Completed	Pending Cases at End of Fiscal Year	Case Processing Time (Months)
2006-2007	13,926	10,516	10,721	8.6
2007-2008	12,700	11,729	11,692	9.4
2008-2009	11,669	13,716	9,645	10.6
2009-2010	11,780	12,565	8,860	9.8
2010-2011	12,159	12,388	8,631	8.7

Notes

1. Fiscal Year is April 1 to March 31.
2. Pending cases include all open files (appeal received but no final decision issued yet).
3. Additional funding contributed to increased productivity for fiscal year 2008 - 2009 and part of 2009 - 2010.

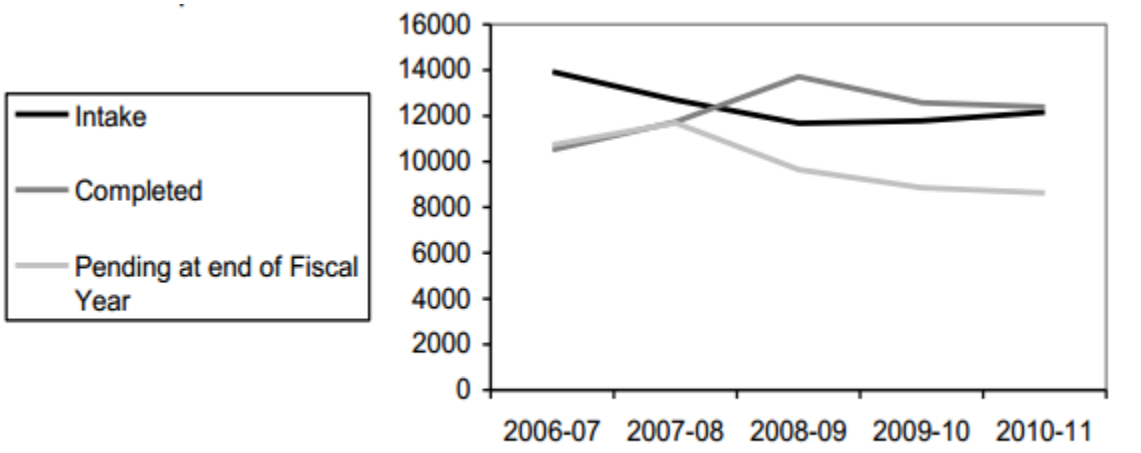


Table 2 - Appeals Completed with or without a Hearing

Fiscal Year	Complete without a Hearing	% of Total Completed	Completed with a Hearing	% of Total Completed
2006-2007	4,433	42%	6,083	58%
2007-2008	4,257	36%	7,472	64%
2008-2009	4,818	35%	8,898	65%
2009-2010	4,478	36%	8,062	64%
2010-2011	4,824	39%	7,564	61%

Table 3 - Appeals by Program

Fiscal Year	ODSP	% of Total	OW	% of Total	Total
2006-2007	12,253	88%	1,673	12%	13,926
2007-2008	11,120	88%	1,580	12%	12,700
2008-2009	10,113	87%	1,556	13%	11,669
2009-2010	10,401	88%	1,379	12%	11,780
2010-2011	10,801	89%	1,358	11%	12,159

Table 4 - Appeals by Program and First Level Decision 2010 - 2011

Program	Refusal	Cancellation & Suspension	Amount & Reduction	Other	Total
ODSP	9,694 (90%)	325 (3%)	676 (6%)	106 (1%)	10,801
OW	435 (32%)	464 (34%)	439 (32%)	20 (2%)	1,358
TOTAL	10,129 (83%)	789 (7%)	1,115 (9%)	126 (1%)	12,159

Table 5 - Tribunal Decisions by Outcome 2010 - 2011

Program	Granted	Denied	Denied in Absentia*	Other**	Total
ODSP	3,253 (48%)	2,052 (30%)	904 (13%)	535 (8%)	6,744

OW	120 (15%)	310 (38%)	257 (31%)	130 (15%)	817

* Cases denied in absentia are where the appellant was not present for the hearing.
** Other decisions include the following: consent order, no appeal before the Tribunal, appeal out of time, no jurisdiction, matter resolved or withdrawn, or cases referred back to the Director or Administrator to reconsider the original decision in accordance with the directions given by the Tribunal.

Table 6 - Language of Appeal 2010 - 2011

Language	#	%
English	12,033	99.0%
French	126	1.0%
TOTAL	12,159	100%

Table 7 - Appeals by Interpreter Language 2010 - 2011

Language	#	% of Total Appeals
Arabic	255	2.1%
Tamil	178	1.5%
Spanish	169	1.4%
Somali	111	0.9%
Farsi	95	0.8%
Urdu	94	0.8%
Other Languages	1,134	9.3%
TOTAL	2,036	16.8%

Performance Targets

The Social Benefits Tribunal is continually monitoring its performance, and developing strategies and processes to become a more accountable, predictable and proactive tribunal.

In the coming fiscal year, the Social Benefits Tribunal looks forward to working closely with the other tribunals in Social Justice Tribunals Ontario to contribute to the successful implementation of the cluster. In addition, the Social Benefits Tribunal will build on the strong gains that we have made on improving scheduling predictability - this includes revising Practice Direction 4 on Rescheduling of Hearings and Adjournments. The Tribunal will also continue to expand the work that has already been started on early resolution - we will work with our stakeholders to maximize the effectiveness of the Early Resolution Program (ERP), and to explore how to expand this to ODSP and other types of appeals.

Another major area of activity will be the decisions initiative that has been started. The Tribunal will find ways to increase public access to anonymized versions of the decisions and to establish standards for the quality of decisions and reasons.

In addition to these initiatives that are focused on quality, the Tribunal will continue to compile statistical reports to monitor productivity, detect trends and assist in managing the Tribunal. We will be working with the cluster to develop a more comprehensive set of service standards. This will build on current internal benchmarks for service, timeliness and productivity, and will include legislated timeframes that are imposed on the Tribunal (for example, the 60-day timeframe for releasing a decision). The Tribunal will establish numerical targets such as case processing time.

Performance measurement for adjudicative tribunals is one of the most challenging areas in administrative justice. But it is essential to meet the demands and expectations for greater accountability and better service. The Social Benefits Tribunal looks forward to working within the new SJTO cluster to develop coordinated performance targets and strategic priorities.

Decisions

Board and Lodging or Rental

(SBT File # 0910-08824, July 6, 2010)

This appeal required the Tribunal to decide whether the appellant resided in a board and lodging or rental situation. The appellant was a person with a disability residing with his parents.

The Tribunal determined that the appellant lived in a board and lodging situation. The fact that the appellant was learning to select and independently prepare his food did not change the fact that he was receiving his lodging and food from the same source, his mother.

The concept of tenancy includes an element of exclusive possession of the premises separating the rights of the tenant to occupy a premise from the ownership rights of the landlord. In this case there was no such distinction. The appellant and his family lived together in the family home owned by his parents.

Overpayments and the Social Assistance Review Board and Social Benefits Tribunal

(SBT File # 0911-09826, August 11, 2010)

This case is about two separate overpayments and whether the appellant had a right of appeal with respect to either one. The overpayments were assessed by the Director under the *Family Benefits Act* and for this reason the appeals were scheduled before a member who was cross-appointed to both the Social Assistance Review Board (SARB) and Social Benefits Tribunal (SBT).

The first overpayment was assessed by the Director under the *Family Benefits Act* in 1999. This overpayment was appealed to the SARB in 2000. At the SARB hearing, the Board upheld the decision to assess the overpayment but overturned the overpayment calculation and referred it back to the Director for a new calculation, which it ordered would constitute a new decision. The Board clarified that a 1999 file review that had disclosed a second overpayment in 1998 was not part of the appeal before the Board at that time.

In 2009, the appellant received a letter from Ontario Works regarding an outstanding balance owing on the 1999 overpayments. She filed an appeal with the SBT. The Tribunal determined that it had no jurisdiction to hear the appeal in relation to the first overpayment: the question of whether the appellant was overpaid had already been decided by SARB. The SARB decision was never challenged and was a final and binding decision. Although ordered to do so, the Director never recalculated the amount of the overpayment and therefore, there was no new decision to appeal. The SBT found that the 2009 letter from Ontario Works was not a decision letter as

contemplated by the legislation; rather, it was in the order of a collection letter regarding an outstanding debt. The result was a final SARB decision that the appellant was overpaid, but no new decision on the amount of that overpayment. In the unusual circumstances, the Administrator indicated that the appellant would receive an arrears payment for the overpayment recovery that had happened.

Regarding the second 1998 overpayment, the Tribunal determined that while the overpayment had not been part of the earlier SARB appeal and therefore was not barred for that reason, nevertheless it would not consider it. The Tribunal was satisfied that the 2009 collection letter was not the first time that the appellant knew about the 1999 overpayment. The appellant had received notice of the overpayment in a variety of ways over 10 years, including the discussion at the SARB hearing in 2000, and had failed to take any step to question the overpayment.

Tribunal's Human Rights Code procedure

(SBT File # 0510- 08309R, May 11, 2010)

The Tribunal determined that the appellant was not a person with a disability. The appellant requested a reconsideration hearing and argued that the decision discriminated, and in particular, failed to consider the application of the principles in the Supreme Court of Canada decision in *Tranchemontagne v. Ontario (Disability Support Program)*, [2006] SCC 14, and the "primacy of the appellant's human rights." The Tribunal denied the reconsideration request on the merits of the appeal and then, according to its practice governing human rights issues, asked the appellant to provide particulars of his human rights issue.

The Director challenged the Tribunal's right to proceed on two grounds: (1) that the Tribunal was *functus officio* when it issued its decision on the merits of the appeal and therefore the appellant was too late to raise a human rights challenge; and (2) the appellant had failed to provide sufficient particulars of the Code challenge, and more specifically, had failed to adequately identify the area and grounds of discrimination and the evidence to be relied on.

The Tribunal's Practice Direction 6 on Human Rights Issues allows a human rights challenge to be raised at the time the appeal is filed or during the appeal process. The Tribunal ruled that part of the appeal process includes the right to request a reconsideration hearing, and therefore, in raising the Code challenge as part of the reconsideration request the requirements of the Practice Direction had been met. The appeal was however dismissed because the appellant failed to provide sufficient particulars of his Code challenge. The appellant's dissatisfaction with the decision on the merits and characterizing it as unfair and discriminatory was not a human rights argument and could not be used as an alternate route to challenge the merits of the appeal. Although the appellant framed this as a Code discrimination challenge, the thrust of the submission was that the Tribunal had erred in its decision to find that the appellant was not disabled.

Interim Order directing procedure for hearing of human rights Code challenges to the special diet provisions

(SBT File # 0701-00262, January 10, 2011)

This is an interim order of the Tribunal regarding the Tribunal's procedure to hear a *Human Rights Code* challenge to the special diet provisions in the Ontario Disability Support Program legislation. The appellant in this case alleges that the special diet program under the ODSPA discriminates against him as compared to others with different disabilities because he has disabilities that require special diets that are either not funded or are inadequately funded as compared to individuals with other disabilities.

On February 17, 2010 the Human Rights Tribunal of Ontario (HRTO) released its lead decision in *Ball v. Ontario (Community and Social Services)*, 2010 HRTO 360, regarding the special diet allowance. In response to this decision, the Social Benefits Tribunal decided to implement an adjudication strategy for dealing with its caseload of over 500 special diet appeals raising human rights challenges. The appellant opted out of this case

management stream. At a prehearing conference, the parties as represented by Legal Aid Ontario, the Income Security Advocacy Centre, a community legal clinic and counsel from Constitutional Law Branch of the Ministry of the Attorney General agreed that this appeal would move forward as a test case to determine if the Social Benefits Tribunal would adopt the legal analysis applied by the HRTO in the *Ball* decision.

The Social Benefits Tribunal determined that the reasoning and legal analysis in the *Ball* decision should be applied to special diet appeals filed with the Tribunal, as it establishes a useful guideline for notifying this appellant and other appellants about the necessary evidence to produce to establish a successful claim of discrimination, and that appellants would benefit from knowing what would be expected of them in terms of particularizing their claims.

Human rights Code challenge - marital status

(SBT File # 0405- 03455R, April 23, 2010)

The Director assessed an overpayment of $60,000 caused by business and inheritance income and assets in excess of the allowable limit. The appellants appealed the decision to the Tribunal and challenged several sections of the ODSPA under the *Canadian Charter of Rights and Freedoms*. The Tribunal ruled that it lacked jurisdiction to hear the charter issue. The appellants appealed the ruling to the Divisional Court but eventually withdrew the appeal. The matter came back before the Tribunal for a hearing on the merits, as well as a challenge that the Director's decision contravened the marital status protections of the *Human Rights Code*.

The Director's decision on the merits was upheld and the Tribunal then turned to consider the Code issue. The appellants alleged that, because they were married, they were unfairly forced to include income and assets of the husband in assessing the wife's financial eligibility as a disabled recipient of ODSP. The Tribunal found that including the husband in the "benefit unit" of the disabled person was not discriminatory: it does not treat married members of the benefit unit differently than non-married members in comparable circumstances.

The Tribunal further found that any distinction drawn between ODSP recipients who inherit assets by way of trust and those ODSP recipients who inherit assets not held in trust cannot be said to be a Code-based distinction and thus did not constitute discrimination under the Code.

Assets held in trust

(SBT File # 0811-09925, May 25, 2010)

To be eligible for income support a disabled person must not have assets that exceed the prescribed limit unless the assets are exempt. Purposively assigning or transferring assets in order to become eligible for support can justify a reduction or cancellation of support.

The appellant received an inheritance of over $200,000. The appellant's sister agreed to manage the money for the appellant and sought legal advice, which resulted in the funds being placed in a trust fund. The appellant's sister was the trustee and she had sole discretion in using the funds for the appellant's benefit.

The Tribunal determined that the asset was not exempt and that the appellant became ineligible to receive income support at the time that he received his inheritance in the form of a cheque.

The Tribunal found the following factors significant: the will by which the appellant inherited did not include any provision precluding the appellant from accessing the funds directly, there was no provision in the will suggesting that funds be held in trust if a beneficiary were found incompetent to manage them, and no evidence led to suggest that the appellant had been found to be incompetent. The Tribunal concluded that the wording of the will and the remainder wording of the trust document, as well as the testimony of the appellant and his sister, presented a consistent description of circumstances in which the funds were not only accessible to, but given by

way of cheque directly to the appellant, who then agreed with his sister to seek a legal means of protecting them from infringing on his receipt of ODSP benefits.

Direct and cumulative effect of an impairment results in a substantial restriction in activities of daily living

(SBT File # 0910-08884, November 19, 2010)

The appellant applied for income support under the *Ontario Disability Support Program Act* as a person with a disability. Her doctor listed conditions and impairments in the Disability Determination Package, (DDP); however, the column for restrictions in daily living was left blank. The appellant obtained further information from the doctor. The Director's representative argued that because the additional medical information was in a letter and not in chart form as provided in the DDP, there was no way to determine which impairment resulted in which restriction, and that this was a requirement of the legislative test. Subsection 4(1)(b) of the Act requires a determination that the direct and cumulative effect of the impairment results in a substantial restriction in one of the activities of daily living. The Tribunal found that it could consider restrictions set out in the doctor's additional report despite the fact that they were not tied to a specific impairment. Relying on decisions of the Court of Appeal and the Divisional Court, the Tribunal confirmed that not all details need be provided once the existence of the impairments and the restrictions had been verified. In the Tribunal's view, the approach advocated by the Director's representative placed undue emphasis on the term "direct" effect and would render the requirement to consider the "cumulative" effect meaningless.

Verification of impairments and restrictions

(SBT File # 1002- 01332, October 1, 2010)

In an appeal of the Director's decision to deny eligibility as a person with a disability, a preliminary issue was raised as to which impairments and restrictions the Tribunal would consider at the hearing. The appellant had submitted additional medical information from the doctor in the form of several charts, which listed additional conditions, impairments and restrictions. The appellant requested the Tribunal consider comments listed under "impairments" as referring to "restrictions" and to accept other comments as referring to impairments.

The Tribunal determined that impairments/restrictions need not only be found in the areas designated in the forms; however, they must still meet the legislative requirements in subsection 4(1) of the Act. The onus remains on the appellant to show that the decision of the Director was incorrect. The Tribunal agreed that "impairments" and "restrictions" are distinct concepts. Impairments refer to problems in body function or structure, while restrictions refer to difficulties an individual may have in executing activities. For example, the Tribunal found that the term "arthritis" did not constitute or make plain a significant loss or deviation and could not be considered an impairment.

SOCIAL JUSTICE TRIBUNALS ONTARIO BOARD MEMBERS (As of March 31, 2011)

SJTO Executive Chair and Alternatives

Adjudicator	First Appointed	Term Ends
Executive Chair		

Michael Gottheil	March 2011	March 2016
Alternate Executive Chairs		
Lilian Ma	March 2011	March 2016
Gary Yee	March 2011	March 2016

Child and Family Services Review Board / Custody Review Board

Adjudicator	First Appointed	Term Ends
Associate Chair		
Suzanne Gilbert	October 2006	October 2011
Vice-Chairs		
Ruth Ann Schedlich	August 2001	October 2012
Sheena Scott	May 2008	May 2012
Members		
Keith Brennenstuhl	June 2009	June 2011
Kevin W. Brothers	November 2010	November 2012
Donald Butler	December 2006	December 2011
Celia Denov	February 2007	February 2012
Denyse Diaz	October 2006	October 2011
Patrick R. Doran	May 2007	May 2012
Judy Finlay	January 2011	January 2013
John Gates	October 2005	October 2013
Heather Gibbs	July 2007	July 2012
Gail Gonda	May 2007	May 2012
Aida Graff	June 2007	June 2012
Andrea Himel	November 2010	November 2012
Heather Hunter	May 2008	May 2010

Lorna King	April 2006	April 2014
Alina Lazor	May 2008	May 2010
Richard Linley	December 2006	December 2011
Richard Meen	February 2011	February 2013
Michele O'Connor	November 2010	November 2012
Gregory Price	May 2007	May 2012
Nycole Roy	May 2007	May 2012
Frances Sanderson	December 2006	December 2011
John F. Spekkens	November 2010	November 2012
Wendell White	March 1999	September 2012
Mary Wong	May 2007	May 2012

Human Rights Tribunal of Ontario

Adjudicator	First Appointed	Term Ends
Associate Chair		
David Wright	March 2007	March 2016
Vice-Chairs		
Faisal Bhaba	October 2008	June 2011
Kenneth Bhattacharjee	September 2008	September 2013
Keith Brennenstuhl	September 2007	September 2012
Ena Chadha	September 2007	September 2012
Brian Cook	September 2008	September 2013
Maureen Doyle	February 2011	February 2013
Brian Eyolfson	August 2007	August 2012
Michelle Flaherty	October 2008	October 2013
Mark Hart	September 2007	September 2012

Judith Keene	November 2008	November 2013
Sherry Liang	September 2007	September 2012
Ian Mackenzie	March 2011	March 2013
Kathleen Martin	June 2006	September 2012
David Muir	August 2008	August 2013
Naomi Overend	September 2008	September 2013
Sheri Price	September 2008	September 2013
Leslie Reaume	June 2007	June 2012
Alison Renton	October 2008	October 2013
Douglas Sanderson	January 2011	January 2013
Jayashree (Jay) Sengupta	September 2008	September 2013
Mary Truemner	September 2008	September 2013
Eric Whist	September 2008	September 2013
Part-time Members		
Judith Allen	January 2011	January 2013
Ian B. Anderson	October 2005	October 2012
Catherine Bickley	January 2011	January 2013
Pamela Chapman	May 2009	May 2014
Janice Diane Johnston	January 4, 2011	January 2013
Sunil Kapur	June 28, 2006	June 2014
Michael Lerner	January 2011	January 2013
John Manwaring	May 2009	May 2014
Mary Anne McKellar	April 1995	February 2014
Yasmeena Mohamed	January 2011	January 2013
Alvin B. Rosenberg	October 2000	February 2012
Caroline Rowan	October 2005	October 2012

Janice Sandomirsky	August 2008	August 2013
Jennifer A. Scott	July 2006	July 2014
David W. Shannon	August 2008	August 2013
Brian Sheehan	August 2008	August 2013
Lorne Slotnick	September 2008	September 2013
Alan G. Smith	January 2011	January 2013
Ailsa Wiggins	August 2008	August 2013

Landlord and Tenant Board

Adjudicator	First Appointed	Term Ends
Associate Chair		
Dr. Lilian Yan Yan Ma	June 2005	March 2016
Vice-Chairs		
Kim E. Bugby	September 2004	May 2013
Eli Fellman	December 2004	December 2013
Régent P. Gagnon	July 2004	August 2013
Murray William Graham	June 1998	June 2012
Sean Henry	March 2004	December 2011
Guy William Savoie	May 2001	April 2012
Jonelle Elizabeth van Delft	November 2004	June 2012
Full-time Members		
Elizabeth Beckett	February 2001	April 2012
Joseph A. Berkovits	June 2005	July 2014
Louis Bourgon	December 2006	December 2011
Vincenza (Enza) Buffa	May 2004	May 2012
William Burke	October 2005	October 2013

Ruth Carey	December 2006	December 2011
Vincent Ching	April 2006	April 2014
Shirley Jean Collins	November 2009	November 2011
Brian A. Cormier	April 2006	May 2012
Nancy Fahlgren	June 1998	June 2012
Bittu Kurian George	May 2007	July 2010
Petar Guzina	November 2009	November 2011
Brenna Homeniuk	December 2006	December 2011
Elke Homsi	March 2006	February 2014
Anita Louse Horton	June 2009	June 2011
Greg Joy	June 2005	June 2013
Caroline A. A. King	October 2004	October 2012
Claudette Leslie	April 2006	April 2014
Vernon Wayne MacKinnon	December 2004	January 2014
Ieva Martin	June 2004	June 2012
James Grant (Jim) McMaster	October 2005	November 2011
Debbie Mosaheb	February 2011	February 2013
Gerald Naud	October 2004	October 2012
John Patrick Nolan	November 2006	May 2011
Lloyd Phillipps	January 2007	January 2012
Jean-Paul Pilon	August 2006	February 2012
Jana Rozehnal	April 2006	April 2014
Egya Ndayinanse Sangmuah	January 2007	January 2012
Freda Shamatutu	April 2004	April 2012
Michael Soo	July 2010	July 2012
Lisa M. Stevens	November 2009	November 2011

Gerald Douglas Taylor	September 2001	September 2012
Jeanie Theoharis	December 2006	December 2011
Marian Elizabeth Usprich	March 2006	February 2014
Rosa Votta	August 2003	August 2011
Brad J. Wallace	December 2005	December 2013
Karen Wallace	December 2006	December 2011
Sylvia Nancy Watson	June 2009	June 2011
Part-time Members		
Judy Ireland	March 2007	March 2012
Lindsay Lake	February 2011	February 2013
Sandra Macchione	February 2011	February 2013
Alan B. Mervin	October 2001	July 2013
Christina Budweth Mingay	October 2002	October 2010
Lynn Neil	April 2004	April 2012
James Robinson	February 2011	February 2013
Michael Soo	January 2007	July 2010
Nina Stanwick	January 2007	November 2010
Karol Wronecki	January 2007	January 2012

Ontario Special Education Tribunals

English Tribunal Members

Adjudicator	First Appointed	Term Ends
Associate Chair		
Marilyn Thain	March 2011	February 2013
Vice-Chair		
Eva Nichols	January 2005	February 2013

Members		
Ross Caradonna	May 2008	May 2013
Derryn Gill	April 2005	June 2012
Miray Granovsky	December 2010	December 2012
Janice Leroux	November 2006	November 2012
Carlana Lindeman	August 2008	July 2013
Julie Lindout	April 2005	June 2012
Uma Madan	October 2005	November 2012
Jim McCaughey	May 2005	May 2012
Noel Williams	October 2005	November 2012

French Tribunal Members

Adjudicator	First Appointed	Term Ends
Associate Chair		
Céline Allard	March 2011	February 2013
Vice-Chair		
Robert Lefebvre	January 2005	February 2013
Members		
Yvon Huppé	October 2005	November 2011
Lillian LaForest	April 2008	April 2013

Social Benefits Tribunal

Adjudicator	First Appointed	Term Ends
Associate Chair		
Gary Yee	September 2009	March 2016
Vice-Chair		

Mary Lee	January 2007	April 2011
Beverly Moore	October 2006	October 2014
Robert Murray	May 2004	February 2014
Full-time Members		
Brian Brown	April 2004	May 2013
Helen Buckley-Routh	September 2003	September 2011
Sylvie Charron	December 2009	December 2011
Denise Dudley	March 2005	March 2013
Nathan Ferguson	June 2006	June 2014
Audrey Hummelen	June 2007	April 2013
Anna Jurak	May 2004	June 2013
Dawn Kershaw-Halligan	June 2006	June 2014
Linda Lebourdais	February 2005	February 2013
William Murray	June 2008	November 2011
Marilyn Mushinski	June 2004	July 2013
Janice MacGuigan	May 2008	May 2013
Roslynne Mains	January 2003	February 2012
Sandra Margerrison	June 1998	May 2013
Frank Miclash	October 1999	November 2011
Carol Anne McDermott	June 2007	June 2012
Monica Purdy	March 2005	March 2013
Margaret Reynolds	April 2006	April 2014
Tony Riccio	October 2005	November 2011
James Robinson	October 2008	October 2010
Sherene Shaw	February 2005	February 2013
Richard Simpson	October 2005	October 2013

Part-time Members		
John Brownlee	February 2003	February 2010
Roberta Corey	July 2001	October 2011
Dorte Deans	September 2005	October 2011
Patrick Doran	June 1998	August 2012
Kelly Gaon	August 2008	August 2013
Sydney Gladstone	July 2008	July 2010
Sandra Macchione	November 2006	November 2011
Lynn Neil	August 2008	August 2010
Bonnie Patrick	June 2007	June 2010
Rosemary Walden-Stephan	February 2001	July 2013
Roy Wood	March 2005	March 2013
Karol Wronecki	September 2008	September 2010

FINANCIAL INFORMATION

Data for fiscal years 2008-09 and 2009-10:
Public Accounts
Data for fiscal year 2010-2011:
IFIS Year-End Report or Draft Public Accounts

Child and Family Services Review Board / Custody Review Board

The following table shows the funding and expenditures of the CFSRB/CRB for the 2010-2011 and previous two fiscal years.

VOTE & ITEM	2008 - 09 ($)	2009 - 10 ($)	2010 - 11 ($)
FUNDING			
Ministry of Children & Youth Services	2,124,000	1,990,000	1,792,000
Ministry of Education	249,000	219,000	200,000
Total	2,373,000	2,209,000	1,992,000
EXPENDITURE			
Salaries	1,187,000	1,063,000	1,077,000

Benefits	180,000	121,000	128,000
Travel & Communications	179,000	176,000	173,000
Services	480,000	472,000	179,000
Part-Time Members per diem	227,000	189,000	384,000
Supplies & Equipment	72,000	61,000	57,000
Total	2,325,000	2,082,000	1,998,000

Notes:

1. Funding from the Ministry of Education is provided to the Board through journal entry as expenses are incurred.
2. Overall expenditures for supplies and services were reported incorrectly in the 2008-2009 Annual Report. The actual amount is documented in this Annual Report.

Human Rights Tribunal of Ontario

The following table shows the expenditures of the HRTO for the 2010-11 and previous two fiscal years.

VOTE & ITEM	2008 - 09 ($)	2009 - 10 ($)	2010 - 11 ($)
EXPENDITURE			
Salaries	4,840,100	6,473,820	6,223,504
Benefits	556,100	776,120	796,433
Travel & Communications	368,700	643,380	764,849
Services	1,097,831	994,587	808,848
Part-Time Members per diem	197,569	462,793	613,554
Supplies & Equipment	323,500	182,770	179,640
Total	7,383,800	9,523,470	9,386,828

Landlord and Tenant Board

The following table shows the expenditures and revenues of the LTB for 2010-11 and previous two fiscal years.

VOTE & ITEM 1904-03 Residential Tenancy	2008 - 09 ($)	2009 - 10 ($)	2010 - 11 ($)

EXPENDITURE			
Salaries	16,302,172	16,561,864	17,542,358
Benefits	2,460,798	2,404,624	2,468,993
Travel & Communications	1,278,264	1,237,511	1,429,671
Services	7,710,207	6,976,252	8,537,045
Part-Time Members per diem	299,829	284,082	237,467
Supplies & Equipment	395,243	406,439	588,059
Total	28,446,513	27,870,772	30,803,593
Fees*	10,892,563	11,750,665	11,612,606

*These are fees collected for filing applications. They are deposited in the Consolidated Revenue Fund

Notes:

1. The Public Accounts reflect consolidated numbers of the LTB and IEU (the Investigations and Enforcement Unit of the Ministry of Municipal Affairs and Housing). Accordingly, to arrive at LTB numbers, Public Account numbers have been adjusted to remove IEU numbers.
2. Expenditures include lease costs for all LTB offices which are funded by the Ministry. Lease costs were as follows; 2008-09 ($2,697,947), 2009-10 ($2,775,887) and 2010-11($2,951,597).

Ontario Special Education Tribunals

The following table shows the expenditures of OSET for 2010-11 and previous two fiscal years.

VOTE & ITEM	2008 - 09 ($)	2009 - 10 ($)	2010 - 11 ($)
EXPENDITURE			
Travel & Communications	35,140	17,526	29,074
Services	85,937	34,275	*107,117
Part-Time Members per diem	237,597	190,306	250,253
Supplies & Equipment	9,755	10,400	10,699
Total	368,429	252,825	397,143

*increase is as a result of translation of tribunal documents

Social Benefits Tribunal

The following table shows the expenditures of the SBT for the 2010-11 and previous two fiscal years.

VOTE & ITEM	2008 - 09 ($)	2009 - 10 ($)	2010 - 11 ($)

EXPENDITURE			
Salaries	5,007,312	5,099,841	5,187,726
Benefits	576,118	608,454	609,514
Travel & Communications	721,240	476,119	482,007
Services	811,864	725,030	818,970
Part-Time Members per diem	599,344	529,087	282,049
Supplies & Equipment	77,942	77,363	83,568
Total	7,793,820	7,515,894	7,463,834