

ANNUAL REPORT FOR FISCAL YEAR
2009 - 2010

**Occupational Health
and Safety Tribunal Canada**



**Tribunal de santé
et sécurité au travail Canada**

August 2010

Canada 

Occupational Health
and Safety Tribunal Canada



Tribunal de santé
et sécurité au travail Canada

Ottawa, Canada K1A 0J2

August 31, 2010

Mr. Scott Streiner
Assistant Deputy Minister
Labour Program
Human Resources and
Skills Development Canada
Gatineau, Quebec K1A 0J2

Mr. Streiner,

I am pleased to forward to you the Occupational Health and Safety Tribunal Canada's Annual Report.

This report shows the activities of the Tribunal during fiscal year 2009 – 2010. The effort during the year focused on several initiatives designed to:

- maintain the Tribunal database in order to make it more efficient and effective;
- reduce the number of appeals in standby; and
- offer additional mediation tools to help the parties to settle their differences.

Yours truly,

Pierre Rousseau
Director

Enclosure

Table of Contents

Item	Page
I. OUR MISSION, OUR ROLE AND OUR OPERATIONS.....	7
1. Who we are	7
- The Tribunal	7
- The appeals officer	7
2. Our mission	7
3. Our mandate	8
4. Our vision	8
5. What we do	8
Preparation for the hearing	8
The hearing	9
Decision and its dissemination	9
 II. WORKLOAD AND PERFORMANCE FOR FISCAL YEAR 2009 – 2010	 11
1. Overview	11
2. Appeals of Directions	15
2. a) Appeals of directions in 2009 - 2010.....	15
2. b) Requests for stays received in 2009 – 2010	17
Criteria considered in requests for a stay of a direction	17
2. c) Preliminary objections	17
3. Appeals of decisions of absence of danger	17
3. a) Appeals of decisions of absence of danger in 2009 – 2010.....	17
3. b) Mediation Process	19
4. Ongoing cases and carryovers.....	19
4. a) Ongoing cases as of April 1 st 2009	19
4. b) Appeals carried over by fiscal year.....	19
4. c) Breakdown of ongoing appeals in the various occupational sectors	20
i) Private sector under federal jurisdiction.....	20
ii) Federal public service and agencies.....	20
5. Federal Court and the Federal Court of Appeal.....	21
5. a) Pending decisions at the Federal Court and the Federal Court of Appeal	21
5. b) Decisions rendered by the Federal Court and the Federal Court of Appeal	22
6. Standards of Service.....	23
7. Budget	24
8. Conclusion.....	24
- Overall situation.....	24
- The database	24
- Web page	25
 Appendix A	 26
Statistics	26
 Appendix B	 27
Mediation fact sheet	27
-The Mediation Process	28

I. OUR MISSION, OUR MANDATE AND OUR ROLE

1. Who we are

- **The Tribunal**

The primary responsibility of the Occupational Health and Safety Tribunal Canada (Tribunal) is to manage appeals, convene hearings from their reception to the transmission of the final decision. Remember that the appeals are filed by employers, employees or unions against directions issued by health and safety officers or decisions of absence of danger made following a refusal to work. These decisions of absence of danger and these directions are rendered and issued in the process of administering the *Canada Labour Code*, Part II (the Code). The appeals are provided by subsection 129(7) of the Code concerning decisions of absence of danger following refusals to work and by section 146 of the Code concerning directions.

Contrary to Part I and Part III of the Code who have jurisdiction only on the federal employers excluding the public administration. Part II has jurisdiction over the federal employers including the federal departments and the federal agencies.

This particularity of Part II of the Code put the Tribunal and more specifically the Appeals Officers in a particular situation in regard of their independence and their impartiality when they have to deal with federal departments. The Tribunal is structured to ensure a complete independent in the management of the appeals files and the access to legal services independents of Justice Canada.

The Tribunal is an administrative entity essential to manage the appeals files. The registry staff act as contact persons with the parties, insure the follow-up of the files, books the hotels and hearing rooms, and facilitate the exchange of documents. They prepare conference calls, help the Appeals Officer as required during the hearings, arrange for the translation of decisions, and make sure that the decisions are sent to the parties and other persons concerned and they manage the data base.

- **The Appeals Officer**

The Appeals Officers are qualified persons, public servants or hired under service contracts, in Occupational Health and Safety, designated by the Minister of Labour under section 145.1 (1) of the Code. The Appeals Officer's decision is final and shall not be questioned or reviewed in any court. However, the parties can ask for a judicial review at the Federal Court under section 18 of the Federal Courts Act.

2. Our mission

The mission of the Occupational Health and Safety Tribunal Canada is to ensure expert, independent, unbiased quality service to all parties by treating them fairly and with understanding, respect and dignity.

3. Our mandate

Receive, hear and decide on appeals of decisions of absence of danger and directions regarding occupational health and safety, issued pursuant to the Code.

4. Our vision

The Occupational Health and Safety Tribunal Canada in the context of its mandate and the prevention of workplace accidents and injuries to health seeks:

- an understanding by all parties of hearing procedures and of their rights;
- a prompt, impartial and fair hearing;
- a correct and reasonable decision rendered with reasons in a timely manner;
- to establish jurisprudence in the interpretation and the application of the Code and its regulations.

In the exercise of its powers, the Tribunal aims to be efficient, effective, innovative and progressive. The working environment at the Tribunal promotes learning, development, professionalism and respect.

5. What we do

The process of appealing can be divided into three major stages:

- Preparation for the hearing
- The hearing
- The decision and its dissemination.

Preparation for the hearing

The process begins with a written request for an appeal by an employer, employee or trade union or a person acting on their behalf (the appellant), who wants to appeal a direction or a decision of absence of danger issued or rendered by a health and safety officer.

Once an appeal has been received, the Tribunal sends an acknowledgement letter and requests from the health and safety officer a copy of the decision or direction that is appealed, as well as copies of all documents related to this case. These documents are sent to the parties and serve to indicate the appeal's constraints.

Then the Tribunal proceeds to identify the respondent, to inform him or her as soon as possible of the appeal and to invite her or him to participate in the process. The Tribunal compiles all the documents to make a hearing file that is sent to all parties and to the Appeals Officer responsible.

The Appeals Officer studies the file and decides if she or he will proceed by way of an oral hearing or written submissions. The Appeals Officer may decide to communicate with the parties in writing or through a teleconference call to inform and explain the process she or he intends to follow and evaluate the pertinence of a written hearing. Following the reasons and the circumstances of an

appeal, the Tribunal may occasionally propose to the parties a Mediator to work on a conflict resolution process to bring them to an agreement.

At this stage of the process, the Appeals Officer may be seized of many types of requests on which she or he will have to render decisions. For example, it could be a request for the stay of directions, to obtain an intervener statute, to proceed *in camera*, to put the appeal in abeyance or to extend delays.

Following the decision of the Appeals Officer responsible for the file, the Tribunal organizes the schedule, prepares summons, if requested, and prepares for the holding of the hearing or the mediation in a neutral location near the workplace. If the parties agree on a mediation process, the appeal is suspended and if a mediation agreement is achieved the appellant is requested to withdraw the appeal. If the mediation does not succeed, the Appeals Officer takes back the appeal file and proceeds with the hearing.

It is important to specify that the Mediator and the Appeals Officer are two different individuals.

The hearing

As we have mentioned, the hearing is held near the workplace where the event occurred to avoid travel expenses for the parties and also, if required, to enable the Appeals Officer to go to the site if she or he deems it necessary to do so. The Appeals Officer must decide the appeals based on the evidence produced and the applicable legislation. However, appeals to Appeals Officers are *de novo*, which mean that the hearing constitute a new procedure.

The Appeals Officer's powers are listed in sections 145.1 and 146 of the Code.

Decision and its dissemination

After the hearing, the Appeals Officer examines and analyses the documentary and testimonial evidence produced at the hearing and analyses the parties' submissions. The Appeals Officer writes up the detailed reasons for the decision. After that, it is up to the Tribunal to ensure that the parties to an appeal and their representatives receive the written decision of the Appeals Officer. A version of the decision in the second official language is also prepared.

II. WORKLOAD AND PERFORMANCE FOR FISCAL YEAR 2009 – 2010

1. Overview

Evolution and distribution of the appeals and decisions rendered by the Appeals Officers from fiscal year 2000 - 2001¹

All files	2000 2001	2001 2002	2002 2003	2003 2004	2004 2005	2005 2006	2006 2007	2007 2008	2008 2009	2009 2010
Reported from the previous year	5	32	45	58	76	62	100	95	98	90
New appeals received	36	44	49	48	42	85	43	37	44	32
Average numb. of days per hearing	n/d	n/d	n/d	n/d	n/d	n/d	n/d	5	4.5	4.2
interlocutory Decisions rendered	n/d	n/d	n/d	n/d	n/d	n/d	n/d	8	7	6
Decisions rendered on stay requests	n/d	n/d	n/d	n/d	4	5	7	3	2	7
Final decisions rendered	15*	25*	36*	30*	56*	47*	48*	34*	29	21
Appeals withdrawn / (following a mediation)	4	8	13	13	29	19	25	22 /(6)	23 /(2)	39 /(2)
Appeals closed	15	25	36	30	56	47	48	34	52	60
Average number of days to render a final decision	n/d	n/d	n/d	n/d	n/d	104	45	90	72	116 ²
Appeals pending at the end of FY	26	45	58	76	62	100	95	98	90	62

¹ In September 2000 the Code was amended giving Appeals Officers the responsibility to conduct hearings of appeals of decisions of absence of danger following a refusal to work in addition to directions. Before that responsibility belonged to the Canada Industrial Relations Board and to the Public Service Labour Relations Board.

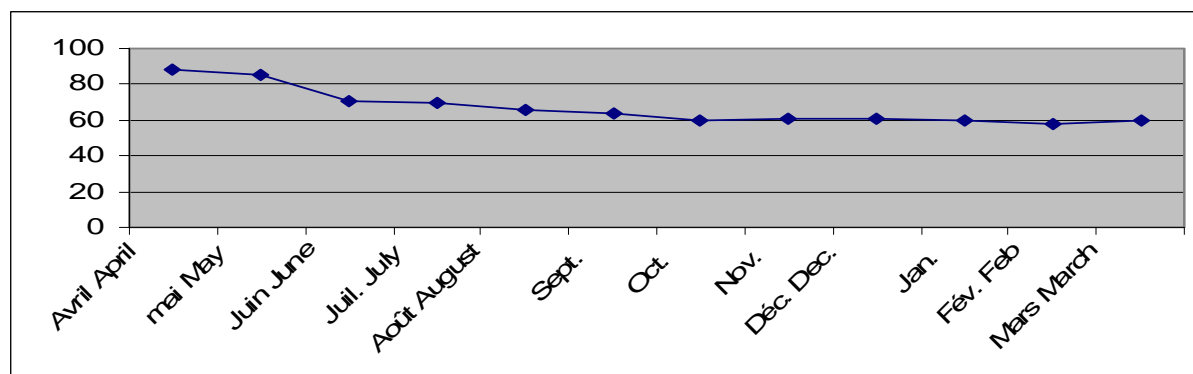
* The number of decisions includes all withdrawal decisions; a practice abandoned in fiscal year 2008 – 2009.

² Of the 21 final decisions, 5 were rendered by the contractual Appeals Officers with an average of 213 days to write them. If we subtract that number of the decisions rendered by the full time Appeals Officers, the average would have been 86 days instead of 116.

During fiscal year 2009 – 2010, the Occupational Health and Safety Tribunal Canada (Tribunal) received 32 appeals, divided up as follows: 14 concerned directions and 18 concerned decisions of absence of danger rendered by health and safety officers. Of these 32 appeals and the 90 carried over from 2008 – 2009 for a total of 122 appeals, 60 appeals were resolved, 24 concerned directions and 36 concerned decisions of absence of danger. As well, seven decisions about applications for a stay of direction and six interlocutory decisions on preliminary objections were rendered in the same period.

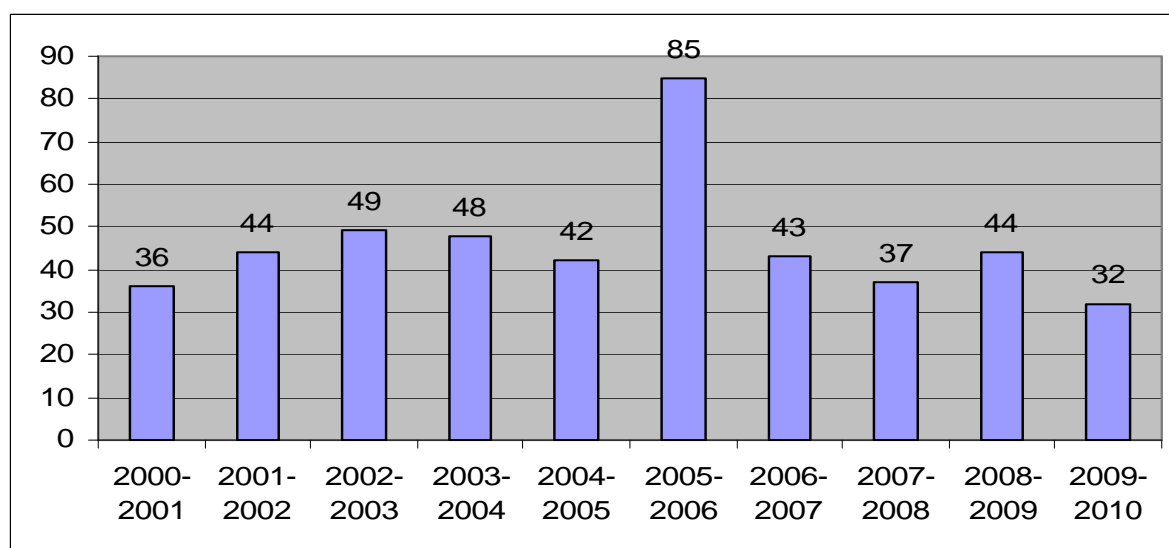
We ended up with a carryover of 62 appeals or cases into 2010 – 2011.

Table 1: Changes in the number of ongoing cases during the year 2009 – 2010



Our production has improved this year compared to last year in regards to cases heard and final decisions rendered. We have closed 60 appeals in 2009 – 2010, in comparison to 52 in 2008 – 2009 and 34 in 2007 – 2008.

Table 2: Number of appeals received per fiscal year from 2000 – 2001 to 2009 – 2010



In 2009 – 2010, we received fewer appeals than the normal in the number of appeals filed, 32 in comparison to an average of 43 for the last eight years if we exclude year 2005 – 2006 where we received 85 appeals.

Table 3: Comparison of appeals received and resolved for each month in 2009 – 2010

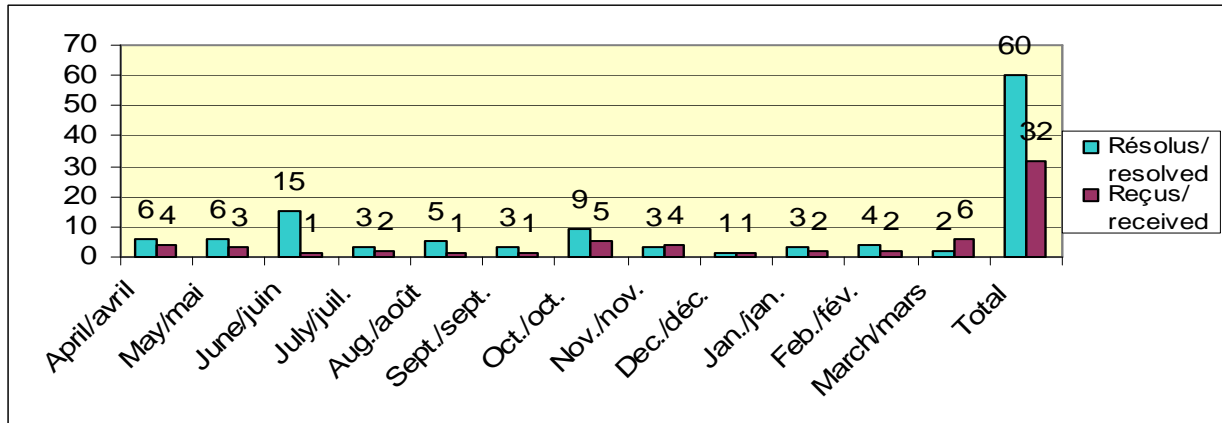
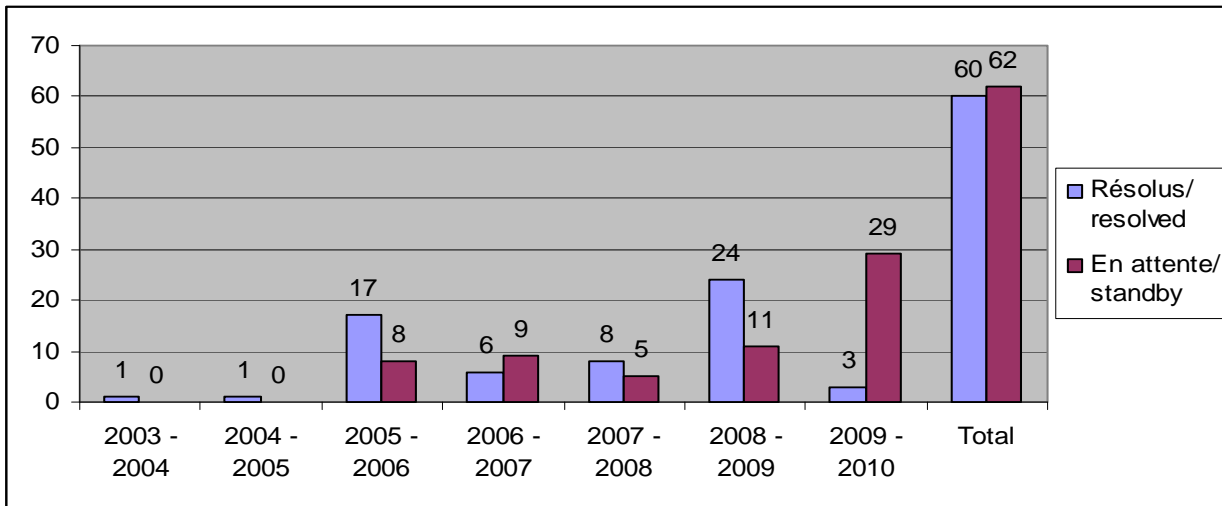


Table 4: Number of ongoing and resolved appeals in 2009 – 2010 in reference to the fiscal year they were received



The 14 directions that were appealed in 2009 – 2010 represent around 5.5% of the total number of directions issued, 256³ during the same period, by all HSO’s including the extended jurisdiction. In comparison to that 5.5%, the annual average of directions appealed during the last 10 years is 9.7%.

It is worth mentioning that the 256 directions rendered represent 2.5% of the 10,132 contraventions reported during the year, of which 9,882 or 97.5%, were resolved by Assurances of Voluntary Compliance (AVCs) received by HSOs.

³ For more information, see Appendix “A” for the table that was sent to us by HRSDC “Systems Group”

The 18 appeals against decisions of absence of danger issued by HSOs during fiscal year 2009 – 2010, correspond to 20% of the total number of 91 refusals to work recorded for the same period. Of this total number of refusals to work, 66 were individual refusals to work and 25 were group refusals consisting of two or more employees.

According to table 5, in fiscal year 2009 – 2010, if we compare to the ten last fiscal years, the average number of appeals was half of the average for the directions and the decisions of absence of danger appealed.

Table 5: Percentage of directions and decisions appealed since 2000 – 2001

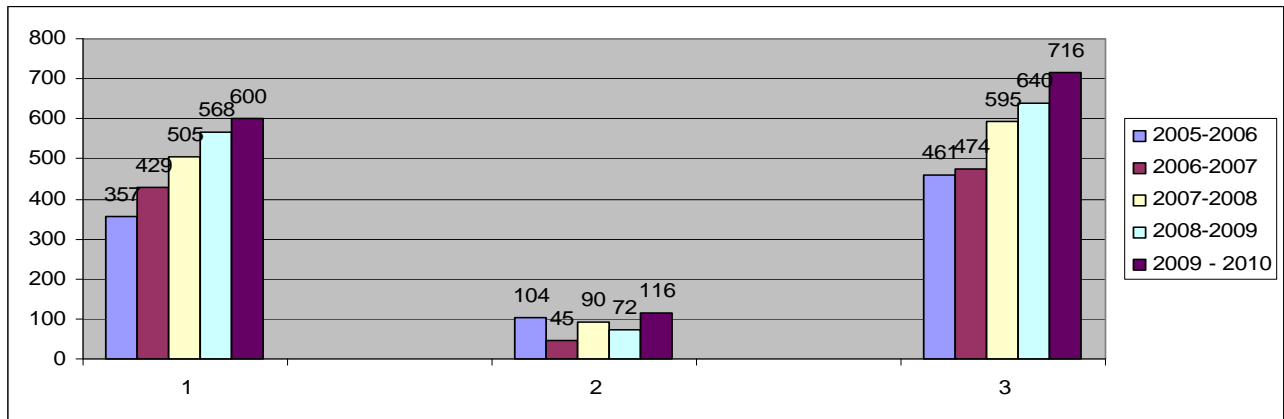
	Direction appealed	Directions issued	% Direct. appealed		Decisions appealed	Decisions rendered	% decis. Appealed
2000-2001	24	117	20.50%		12	13	92.30%
2001-2002	14	125	11.20%		30	54	55.55%
2002-2003	17	287	6.00%		32	75	42.66%
2003-2004	18	216	8.33%		30	142	21.12%
2004-2005	12	192	6.25%		30	64	47.00%
2005-2006	38	246	15.40%		47	129	36.43%
2006-2007	20	270	7.40%		23	107	21.50%
2007-2008	15	208	7.20%		22	72	30.55%
2008-2009	18	191	9.00%		26	63	41.00%
2009-2010	14	256	5.50%		18	91	20.00%
General Average			9.68%				40.81%

In comparison to the last ten years, this year we received half of the appeals of directions and decisions given.

In 2009 – 2010 the average time from the receipt of an appeal to the final decision was 716 days in comparison to 640 in 2008 – 2009, 595 in 2007 – 2008 and 474 in 2006 – 2007. The average time to write a decision went from 45 days in 2006 – 2007 to 90 days in 2007 – 2008 to 72 days in 2008 – 2009 and to 116 in 2009 - 2010. As noticed for the last two years, the average time between the receipt of the appeal and the hearing is longer. This can be explained by the fact that the parties request deferrals of the procedure to wait for a similar case being heard by another Appeals Officer or administrative tribunal, or because a case is at judicial review before the Federal Court or the Federal Court of Appeal.

In January 2009, again to help to speed up the process, we instituted a new procedure where the Tribunal imposes a limited number of hearing dates. This permits us to have a better control on our intervention time and reduce the delays. In doing this we have been able to reduce the number of files in standby. However, as we closed many cases that were three to five years olds, this brought up our numbers for the average time spent in the process.

Table 6: Comparison from 2005 – 2006 to 2009 – 2010 of the average intervention time in days



- 1- Average time spent between the receipt of the appeal and the hearing or its withdrawal.
- 2- Average time spent between the hearing or the withdrawal and the final decision.
- 3- Average total time spent between the appeal receipt and the final decision.

We try to render short decisions and as soon as possible. To meet that goal, training on “Clear language” was given to the full time Appeals Officers at the end of February 2010. As a matter of fact this fiscal year, the contractual Appeals Officers took an average of 213 days to write their decisions when the full time Officers took 86 days.

2. Appeals of directions

2. a) Appeals of directions in 2009 - 2010

As mentioned before, we received in 2009 – 2010, 14 appeals of directions, which represent around 5.5% of the total number of directions issued for that period.

Table 7: Appeals of directions statistics from fiscal years 2000 – 2001 to 2009 – 2010

Fiscal Year	Directions		Stays			Decisions on directions							Average time
	Total issued	Appealed	Requested	Refused	Accepted	Dec. rendered	C	V	W	D	R	Std by	(in months)
Before													
2000 – 2001		+5										5	
2000 – 2001	117	24				9	1	1	2	2	3	20	7.3
2001 – 2002	125	14				15	2	-	4	1	8	19	7.6
2002 – 2003	287	17				17	2	-	8	-	7	19	10.8
2003 – 2004	216	18				15	1	-	3	5	6	22	13.5
2004 – 2005	192	12	4	3	1	18	2	2	5	2	7	16	14.3
2005 – 2006	246	38	10	3	2 (5 rep.)	17	3	3	5	3	3	37	14
2006 – 2007	270	20	2	6	1	25	2	6	10	3	4	32	13.6
2007 – 2008	208	15	3	2	1	14	0	8	5	0	1	33	14
2008-2009	191	18	2	1	1	11	0	0	9	0	2	40	15.6
2009 – 2010	256	14	7	3	4	24	1	5	11	0	7	30	19.4

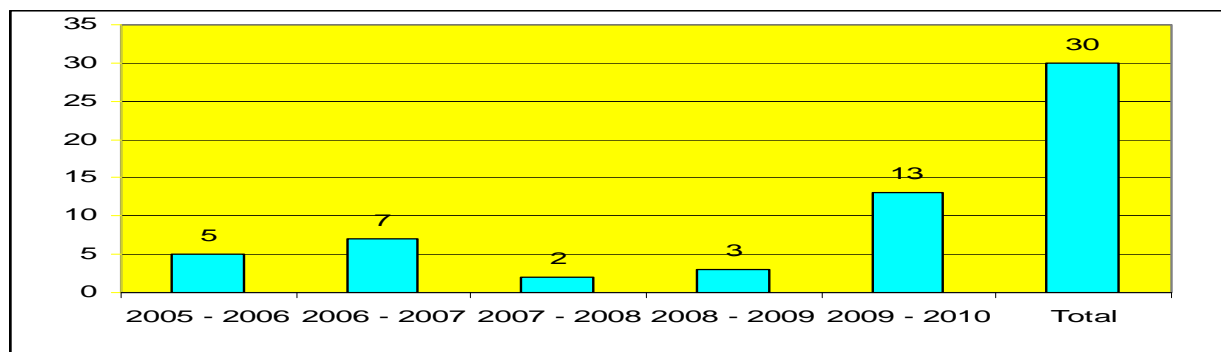
**C = Confirmée (Confirmed) V = Modifiée (Varied) W = Retirée (Withdrawn)
D = Refusée (Dismissed) R = Annulée (Rescinded) Rep. = Reported**

During 2009 – 2010, we resolved 24 appeals of directions. Of those, 4% (one) was confirmed by the Appeals Officer, 21% (five) were varied, 46% (11) were withdrawn by the appellants, none were dismissed and 30% (seven) were rescinded.

The average time taken to close an appeal of a direction in 2009 – 2010 was 19.4 months. This high number can be explained by the fact that we closed many files that dated from 2003 – 2004.

The current backlog situation is as follows: five directions from 2005 – 2006, seven from 2006 – 2007, two from 2007 – 2008, three from 2008 – 2009 and 13 for 2009 - 2010, for a total of 30 appeals of directions carried over into 2010 – 2011.

Table 8: Current backlog of directions appealed



Of the 13 final decisions rendered in 2009 – 2010, one was referred to the Federal Court for judicial review.

2. b) Requests for stays received in 2009 – 2010

Prior to a request for a stay, an appeal must have been filed. In order to grant or dismiss a stay, the Appeals Officer must hold a hearing and render a decision with reasons. Most requests for a stay are heard by Appeals Officers via conference calls or in writing and the Appeals Officer do not need to meet with the parties concerned unless she or he deems it necessary to visit the work site. The hearing generally boils down to assessing the reasons for the request for a stay.

Criteria considered in cases of requests for a stay of a direction

The request for a stay is made in writing and contains brief observations to establish:

- a) To the satisfaction of the Appeals Officer, that there is a serious question to be tried as opposed to a frivolous or vexatious claim.
- b) That the refusal of the Appeals Officer to suspend the application of the direction will cause significant harm to the appellant.
- c) The measures that will be put in place to protect the health and safety of employees or how their health and safety will be protected, should a stay be granted.

Of the 14 appeals received in 2009 - 2010, seven appellants requested a stay. From those seven requests, four stays were granted and three were denied. The hearings of the stays were held within a delay of twelve days and the writing decisions were transmitted in a maximum delay of 24 days.

2. c) Preliminary objections

In 2009 – 2010, we rendered six interlocutory decisions with an average of three hearing days and 14 days to write the decision.

Of our six interlocutory decisions rendered in 2009 – 2010, one was referred to the Federal Court for judicial review.

3. Appeals of decisions of absence of danger

3. a) Appeals of decisions of absence of danger in 2009 – 2010

As mentioned above, we received 18 appeals of decisions of absence of danger issued by HSOs during fiscal year 2009 – 2010, this correspond to 20% of the total number of 91 refusals to work recorded for the same period.

Table 9: Statistical summary of appeals of decisions of absence of danger for fiscal years 2000 – 2001 to 2009 – 2010

Fiscal year	Decisions rendered by OHS officers		Number of Resolved Appeals						
	Total	Appealed	Rendered	C	W	D	R	In process	Average time to close a file (in months)
2000– 2001	13	12	6	2	2	2	-	6	3.5
2001– 2002	54	30	10	6	4	-	-	26	8.4
2002–2003	75	32	19	11	5	3	-	39	12.3
2003 – 2004	142	30	15	5	10	-	0	54	11.7
2004 – 2005	64	30	38	4	24	5	5	46	20
2005 – 2006	129	47	30	9	14	1	6	63	20.4
2006 – 2007	107	23	23	2	15	2	4	63	18
2007 – 2008	72	22	20	1	16	0	3	65	23
2008 – 2009	63	26	41	3	29	1	8	50	22
2009 - 2010	91	18	36	2	28	2	4	32	30

C = Confirmed W = Withdrawn D = Dismissed R = Rescinded

During that period, 36 appeals were resolved. Of that number, 5% (two) were confirmed (the Appeals Officer agreed with the HSO); 78% (28) were withdrawn by the appellants or the appellant refused to proceed with the appeal (of that number two or 5% of the total were withdrawn following a mediation⁴); two were dismissed (the Appeals Officer decided that she or he had no jurisdiction); and 11% (four) were rescinded (the Appeals Officer concluded that the HSO had erred).

The average time taken to finalize an appeal on a decision file in 2009 – 2010 was 30 months. This average time covers the period from the day the appeal was received to the day the appeal was resolved, including the waiting period for:

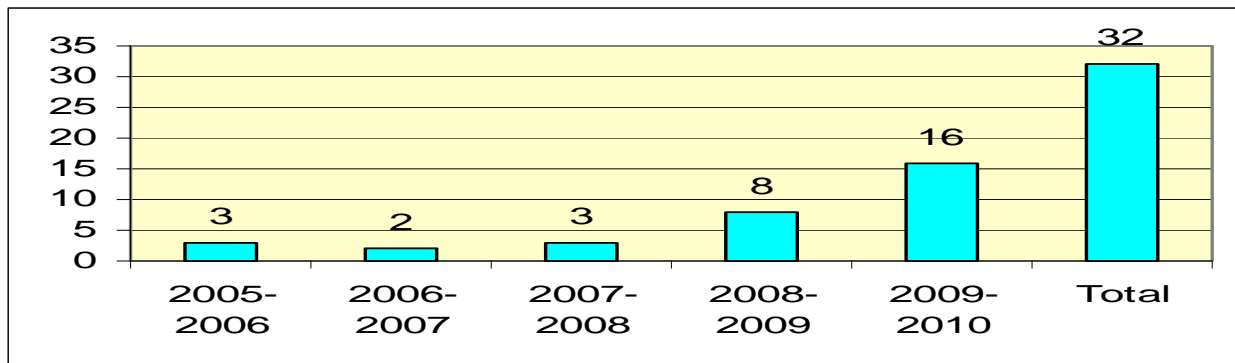
- the Federal Courts to render their judgments on similar decisions;
- the similar appeals to be heard by other administrative tribunals;
- all the grievance process before proceeding in front of an Appeals Officer;
- the parties to agree and to submit dates.

As well as for the directions, the fact that we closed many appeals that were in standby since 2003 – 2004 this rise up significantly the time average to finalize a case.

At the end of 2009 – 2010, there are still three appeals from 2005 – 2006, two from 2006 – 2007, three from 2007 – 2008, eight from 2008 – 2009 and 16 from 2009 - 2010 for a total of 32 appeals of decisions of absence of danger carried over into 2010 – 2011.

⁴ We had four interventions of mediation in 2009 – 2010 and two appeals were withdrawn after the signature of a protocol between the parties.

Table 10: Current backlog of health and safety officers' decisions appealed



Of the 36 appeals resolved in the fiscal year, none were referred for judicial review to the Federal Court.

3. b) Mediation Process

Presently, three full time Appeals Officers are trained to conduct mediations. When the parties informed us of their interest to proceed with mediation, we offer the services of a mediator to help them to resolve the case.

The Tribunal offers a mediation service to help the parties who want to try an alternative dispute resolution process. The fact that the parties ask for mediation does not terminate the appeal. If the parties do not arrive at an agreement or if there is only a partial agreement and the appellant maintains her or his appeal, the hearing process with an Appeals Officer goes forth. In addition, if a mediation intervention is done and does not conclude in an agreement, the information received is kept confidential and the file is transferred to an Appeals Officer to be heard.

You have to note that this service is offered only to settle appeals on decisions of absence of danger following **refusals to work**. As a basic rule, knowing that there is always an exception to the rule, the appeal of a **direction** cannot be mediated. For more information on our mediation services, see the Appendix "B".

4. Ongoing cases and carryovers

4. a) Ongoing cases as of March 31st 2010

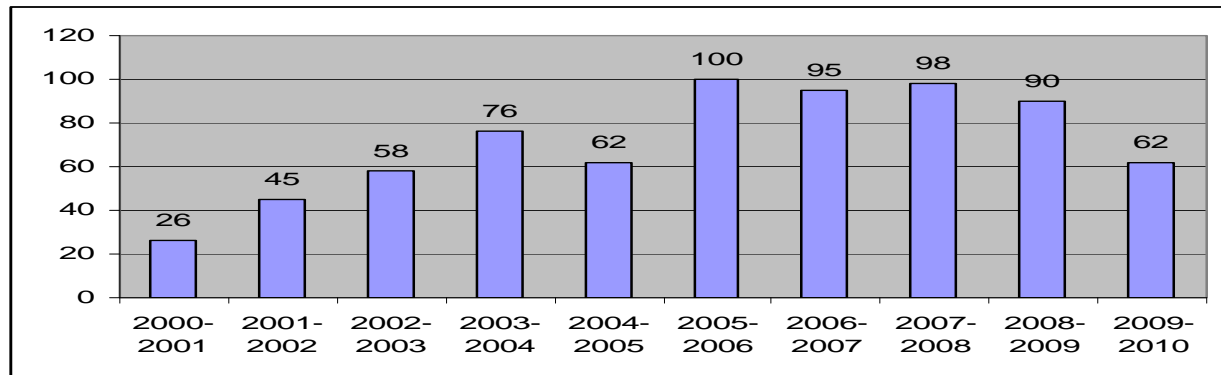
As of March 31st, there were 62 ongoing cases at the Tribunal. Of this number, 30 were in response to directions and 32 were in response to decisions of absence of danger rendered on refusals to work.

4. b) Appeals carried over by fiscal year

Table 11 indicates the changing backlog of cases carried over per fiscal year since 2000 – 2001, the year in which the Code was amended giving Appeals Officers the responsibility to conduct hearings of appeals of decisions of absence of danger following a refusal to work. Before year 2000 that

responsibility belonged to the Canada Industrial Relations Board for the private sector employees under federal jurisdiction and to the Public Service Labour Relations Board for the federal public servants.

Table 11: Carryover of appeals by fiscal year from 2000 – 2001 to 2009 - 2010



4. c) Breakdown of ongoing appeals in the various occupational sectors

Here is a breakdown between the private and federal public service sectors for ongoing appeals (cases), as of March 31st, 2010.

i) Private sector under federal jurisdiction

Total number of appeals coming from the private sector 42

Particular occupational sector:

Postal	22
Air	06
Road (including security transport)	05
Stevedoring	03
Rail	02
Radio Television	02
Grain Elevators	01
Maritime Transportation	01

ii) Federal public service and agencies

Total number of ongoing cases 20

Particular service or agency

Correctional Service of Canada	15
Canada Border Services Agency	03

Canada Revenue Agency	01
Parks Canada	<u>01</u>
Grand Total (Private + Public)	62

We are presently conducting hearings on test cases of similar appeals for the same employer and this may allow us to close many appeals or at least engage some actions in a majority of the 13 appeals that are in abeyance.

5. Federal Court and the Federal Court of Appeal

Under the *Federal Court Act*, the decisions of Appeals Officers (AO), who have the status of quasi-judicial administrative tribunals, can be subject to judicial review in the first instance by the Federal Court pursuant to section 18.1 of the *Federal Court Act*. Actually and since fiscal year 2000 – 2001 to March 31, 2010, we have had 30 judicial reviews over 403 appeals resolved amounting to an average of 7.4%.

One of the 60 appeals resolved during the fiscal year and one of the six interlocutory decisions were sent for judicial review to the Federal Court. As well, the decision of the Federal Court (on our interlocutory decision) was appealed to the Federal Court of Appeal.

Table 12: Decisions under Judicial review at the Federal Court and Federal Court of Appeal

Fiscal year	Appeals Officers' decisions under judicial review at the Federal Court and the Federal Court of Appeal			
	Appealed / Appeals resolved	Judgments rendered by the Fed. C. and Fed. C. of A.	On standby at Fed. C.	On standby at Fed. C. A.
2000 – 2001	Att.2		2	
2000 – 2001	3 / 15	2	3	
2001 – 2002	1 / 25	2	2	
2002 – 2003	3 / 36	1	4	
2003 – 2004	3 / 30	3	4	
2004 – 2005	5 / 56	1	8	
2005 – 2006	3 / 47	5	6	
2006 – 2007	2 / 48	4	4	2
2007 - 2008	5 / 34	3	8	1
2008 – 2009	3 / 52	6 and 2 discontinuations	4	1
2009 - 2010	2 / 60	3	4	1

5. a) Pending decisions at the Federal Court and the Federal Court of Appeal

Federal Court:

We presently have four cases pending at the Federal Court and one at the Federal Court of Appeal for a total of five.

1- 2- The two first ones are requests from the *Canadian Union of Public Employees (CUPE) v. Air Canada*, concerning our two (2) decisions numbers 04-007 and 04-019, and are still in abeyance at the **Federal Court** and they bear the registration numbers (T-814-04) and (T-945-04). They were held in abeyance pending a decision of the Federal Court in essence similar of judgment; reference 2006 CF 673, which was appealed to the Federal Court of Appeal. The Federal Court of Appeal dismissed the request and rendered a decision on September 11, 2007 under reference number 2007 FCA 279. That judgment was appealed to the Supreme Court of Canada who dismissed the application on January 31, 2008.

The dispute in this case revolves around the issue of whether an Appeals Officer has jurisdiction to hear all the appeals submitted to him or her regardless of whether or not they are pursuant to subsection 129(7) or section 146 of the Code. This would include any Assurance of Voluntary Compliance given by an employer to a HSO or any letter or document written or transmitted by a HSO.

3- The third case concerns our interlocutory decision in *Katie Bartakovic and PSAC v. Attorney General of Canada*, OHSTC-08-014(I), recorded at the Federal Court under number (T-1165-08). The Appeals Officers rendered an interlocutory decision to the effect that he has jurisdiction to hear the case. In his request for a judicial review, the appellant's lawyer referred to the lack of institutional independence and impartiality of the Tribunal to hear his case.

4- The fourth case concerns our decision rendered June 23, 2009 in *Air Canada v. CUPE and Canada Transport Safety Board* OHSTC-09-023. The applicant requested a *certiorari* order quashing the decision of the AO as he concludes that a "Confidential Air Safety Report (ASR)" is an employer report within the meaning of section 135(9) of the Code and that Air Canada unlawfully denied the Occupational Health and Safety Committee access to it. The hearing of that case is scheduled for April 20th, 2010.

Federal Court of Appeal

5- On reception of the Federal Court decision in *Canada Post Corporation v. Canadian Union of Postal Workers*, 2010 CF 154 rendered on February 16, 2010, the Union made an appeal to the Federal Court of Appeal on March 17, 2010. That application for judicial review is recorded under number A-101-10.

5 b) Decisions rendered by the Federal Court and the Federal Court of Appeal

During this fiscal year, three of our decisions were heard by Federal Court and the Federal Court of Appeal. Of those three cases, two were heard by the Federal Court and one by the Federal Court of Appeal.

Federal Court:

1- On January 27, 2010, Mr. Justice Michel Beaudry rendered his decision in *Her Majesty the Queen in Right of Canada and Éric Vandal et al*, (2010 FC 87). The request for judicial review concerned our decision number OHSTC-09-009 rendered on February 27, 2009. In that final decision the AO rejected again the preliminary objection on his jurisdiction and received the appeals on the merit. The request for judicial review was only addressing the section referring to the jurisdiction of the AO. The Court ordered that the application for judicial review be dismissed.

2- On February 16, 2010, Mr. Justice Yves de Montigny rendered his decision in *Canada Post Corporation v. Canadian Union of Postal Workers*, (2010 FC 154). The request for judicial review concerned our interlocutory decision OHSTC-09-014 rendered on April 9, 2009. In that interlocutory decision the AO accepted an appeal as being within the prescribe delay by the Code to make an appeal. The judge concluded that the AO erred in law by misinterpreting the Code and quashed that interlocutory decision.

Federal Court of Appeal:

3- On May 28, 2009, Ms. Justice Desjardins rendered on the bench her decision in *E. Vandal and al and Correctional Service Canada* (2009 FCA 179) in which she confirmed the Federal Court decision to reject the request as premature. That request was aiming our interlocutory decision on normal condition of employment BCA-07-041(A) rendered on November 23, 2007. The AO decided that he has jurisdiction to hear that case based on the fact that the employees had initially refused to work and independently to the fact that the health and safety officer decided it was a normal condition of employment, the employees had the right to appeal that decision under subsection 129(7) of the Code.

6. Standards of Service

We have established standards for the registry staff to:

- 1) transmit an acknowledgement of receipt to appellants within three business days after reception of their appeals at the Tribunal pursuant to the Code;
- 2) request the HSO concerned to provide us with a copy of his or her report concerning the appeal within two business days (48 Hours) following receipt of notice of appeal;
- 3) respond to any phone message left with the Tribunal's support section within four hours during business hours (for example, a call received at 4 p.m. should be returned by noon the following day), since the Tribunal's business hours are from 8:30 a.m. to 4:30 p.m. (Eastern Standard or Daylight Saving Time).

Those standards were met at 100 % in the case of an acknowledgment letter and in the case of requesting the health and safety officer's report. The return of phone calls was met in 99%.

7. Budget

Wages and operating expenses for fiscal year 2009 – 2010

Fiscal year ending March 31, 2010

Wages	\$773,502
Operating expenses – other than wages	\$308,772
Total	\$1,082,274

8. Conclusion

- **Overall situation**

Over the last fiscal year, we have succeeded in raising our production and reducing the number of cases in abeyance. The number of new appeals has reduced comparatively to the last ten years average. We received 32 appeals this fiscal year and the annual average is around 43 per year.

We are still experiencing major delays. The delays are:

- scheduling hearing dates; and
- containing the number of days to conduct the hearings.

In the mean time, we have been able to reduce the number of appeals in abeyance and started to address the length of the decisions reasons. As we only received the training courses on “Clear Language” at the end of February 2010. This objective will stay for next year.

We also started to develop “Procedural Directives” that should be completed and tried by the end of next fiscal year. These Directives should guide the parties on our files and delay management.

- **The database**

In 2009 – 2010 we hired a student who worked full time during the summer and two days per week for the rest of the year and we have been able to overcome our backlog. We also had meetings with the departmental Systems representatives and they should produce a new program adapted to our needs in 2010 – 2011. To be able to put in place that new program and make the investment cost-effective we will have to insure that we have a person entirely dedicated to the database who will be able to test the new program and update the files.

- **Web page**

Our webpage was entirely modified to meet the new requirements of the Treasury Board in that domain. Here again we work in collaboration with the Systems people to be able in a near future to complete management of our site. However, the Tribunal's support staff will require more training to fulfill this task.

- 30 -

Appendix “A”

Statistics

Statistics supplied by the Systems Group

Number of contraventions “recorded” per province in 2009 - 2010

Region	# AVCs	# of directions	# Violations
Alberta (2)	1 470	14	1 483
British Columbia/ Yukon Territory (2)	689	36	725
Manitoba (2)	256	4	260
New Brunswick (2)	224	25	245
Newfoundland (2)	621	0	621
Nova Scotia (2)	636	13	649
Ontario (2)	2 968	119	3 086
P.E.I. (2)	54	0	54
Quebec (2)	2 473	45	2 518
Saskatchewan (2)	491	0	491
Total for Report	9 882	256	10 132

AVC = Assurance of voluntary compliance

Refusals to Work completed within Time Period 2009-04-01 to 2010-03-31

Region	Finalized GRW	Finalized RW	Total GRW and RW
Alberta (2)	1	1	2
British Columbia/ Yukon Territory (2)	3	6	9
Manitoba (2)	1	2	3
New Brunswick (2)	0	4	4
Nova Scotia (2)	5	5	10
Ontario (2)	14	37	51
Quebec (2)	1	11	12
Total	25	66	91

GRW = Group refusal to work

RW = Individual refusal to work

Appendix “B”

Mediation

MEDIATION FACT SHEET

Mediation is a voluntary and confidential process in which the mediator, an impartial third party, facilitates open and respectful communication between parties.

Mediation is not a contradictory process and is not meant to determine who is right or who is wrong.

In a mediation process, the mediator assists parties in reaching a solution but does not make decisions. Therefore, only parties can agree on a settlement.

Mediation allows parties to better understand and express their respective needs and interests, to share their concerns and to define the issues in dispute more clearly. As opposed to a formal hearing where a decision is imposed to parties, in a mediation process, parties are to find themselves options that could lead to mutually acceptable solutions.

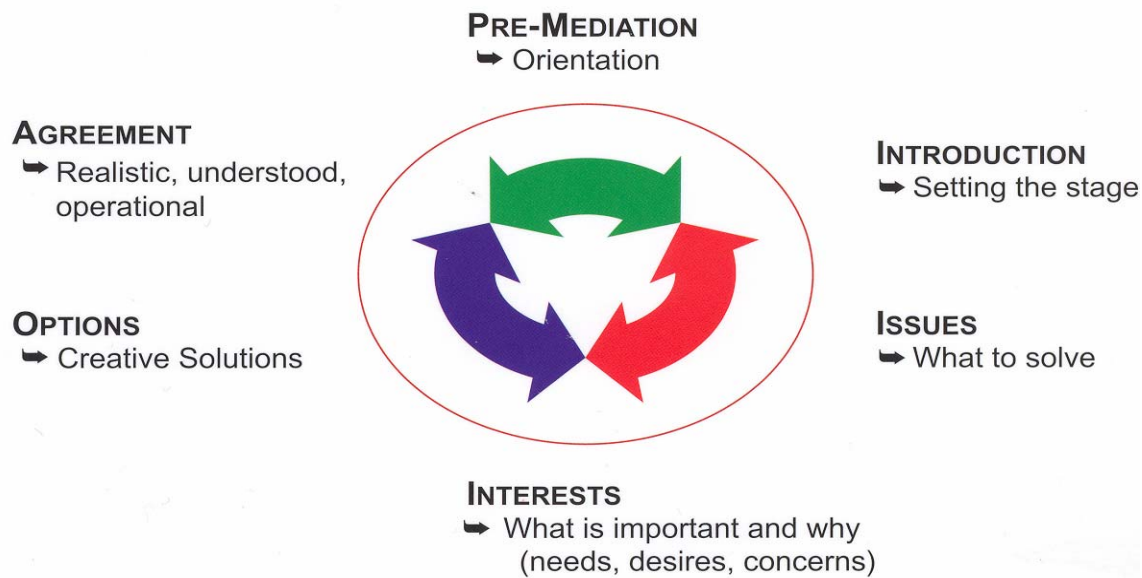
Usually, parties that voluntarily accept to participate in a mediation process are asked to assist mediation sessions. To maximize the potential for positive outcomes, it is recommended that the persons having the necessary authorities to settle the dispute also attend those meetings. Occasionally, other interested parties or experts might also be requested to participate. The nature of the conflict, the personalities of the people involved and the intensity of emotions are some of the factors that may influence the mediator’s approach.

Mediation allows to:

- encourage sharing of information;
- establish or re-establish communication between parties;
- establish or re-establish personal and/or professional relations between parties;
- identify and narrow the issues;
- clarify misunderstandings and perceptions;
- help parties understand each other’s views, needs, interests and realities;
- encourage positive and productive exchanges between parties and shift the focus from the past to the future;
- encourage flexibility and creativity;

- help parties to realistically evaluate alternatives;
- in certain cases, resolve other issues attached to the main problem;
- reach an agreement in a shorter timeframe than in a formal hearing and at lower costs.

The Mediation Process



For more information on our mediation services, you can visit our web site at:
<http://www.ohstc-tsstc.gc.ca>, or call us at 1-866-440-3343.