

Report to the Minister
under Section 23(c) of the
Workers' Compensation Act
R.S.Y. 2002, ch. 231

Submitted by the
Appeal Tribunal
March 22, 2006

Introduction

The tribunal was established on April 1, 2000 as a result of legislative amendments. The tribunal is independent from the Yukon Workers' Compensation Health and Safety Board and is a quasi-judicial body authorized to hear final appeals from both workers and employers on compensation claim matters. There are six part-time members on the tribunal: a neutral chair and alternate chair, two members representative of employers and two members representative of workers. Cabinet appoints tribunal members after Ministerial consultation with employers, workers, and their representative organizations.

Reporting to the Minister

Under section 23 (c) of the Act, the appeal tribunal must report to the Minister no later than 90 days after the end of each calendar year with respect to:

- (i) the number of appeals heard, resolved and pending before the appeal tribunal,
- (ii) the activities of the appeal tribunal generally, and
- (iii) such other matters as the Minister requests.

This report addresses (i) and (ii) for the period from January 1, 2005 to December 31, 2005.

Number of Appeals Heard, Resolved and Pending in 2005

In 2005, 36 appeals were brought forward for hearing. Of these, 21 were resolved when decisions were reached in this reporting period. Ten decisions were pending at the end of 2005; two of these were board direction to rehear. One remaining appeal was originally scheduled to be heard twice in June. In the first instance, due to non-disclosure to the employer, the hearing was postponed. The second and third postponements were requested by the worker's advocate office. (The third postponement occurred in December and was not brought forward for hearing until early in 2006.)

Outcome of Appeals Resolved in 2005

Appeals allowed – 14
Appeals denied - 7

Appeals withdrawn - 4
Decisions pending – 10

Postponed at end of 2005 - 1
[Appeals directed to be reheard by the board: 6]

For clarification purposes, 30 original appeals were brought before the tribunal, 6 of these decisions were stayed by the board of directors and ordered to be reheard. Four appeals were withdrawn by the workers' advocate before being heard.

Of the appeals heard in 2005, one appeal was brought forward by the employer, two years previously in 2003. Due to scheduling problems and disclosure issues, the merits of the case were finally heard in November, with a decision being rendered in late December 2005.

The workers' advocate provided representation for most appeals; however three individuals represented themselves at hearing and one appellant was represented by an independent representative.

Average Length of Time from Hearing to Written Decision - 36.5 days

The tribunal is required to provide decisions with written reasons within 45 working days from the close of hearings. The average length of time from closure of the hearing or from receipt of the last document (on a documentary review) to release of the decision was 36.5 working days. This is slightly longer than 2004 which was 36 working days. Rehearings are not calculated into this figure.

As mentioned above, an appeal advanced by an employer in 2003 was finally before the tribunal to decide on the merits of the case. The tribunal had concerns about the length of time it took to complete this as it took in excess of two years from the time the appeal was launched until the rendering of a decision. Many circumstances that were not in the tribunal's control contributed to the delay.

Activities of the Appeal Tribunal

The tribunal has to ensure that all parties are available when scheduling hearings. Hearings require a three-member appeal committee. Sometimes members have a conflict of interest with either the worker or the employer. Most appeals are brought to the tribunal by the workers' advocate's office. Their availability must be taken into consideration when setting dates. The tribunal endeavors to accommodate the availability of parties for attendance at hearings.

Again this year, the trend continued of more employers being involved at the final level of appeal. The tribunal encourages both employers and workers to be involved in the appeal process. It allows tribunal members a better understanding of the circumstances surrounding the claim and aids in making a well-informed decision.

Website

Since the tribunal's inception in 2000, the board has provided a link to tribunal's decisions, reports to the Minister and rules of procedure. In 2005 the tribunal launched their own website (www.yukonwcat.ca). Although the site needs a little fine-tuning, we feel it provides website browsers with valuable information. Brian Werlin was the driving force behind getting the website in place.

New Appointments and Departures

There were three new appointments of tribunal members in 2005. Following is the make-up of the tribunal as of December 31, 2005:

Ed Sumner, Chair – appointed March 31, 2003 to March 30, 2006
Hank Leenders, Alternate Chair – appointed October 22, 2003 to October 21, 2006
Larry Watling, representative of employers – appointed July 21, 2003 to July 20, 2006
Cary Gryba, representative of workers – appointed August 1, 2005 to July 31, 2008
Carel Alexander, representative of employers – appointed July 22, 2005 to July 21, 2008
Margaret McCullough, representative of workers – appointed November 18, 2005 to November 17, 2008

In 2005, three members departed the tribunal:

Brian Werlin decided not to let his name stand for reappointment.

Jan Stick tendered her resignation. Jan was elected to Whitehorse City Council.

Joseph Radwanski's appointment expired on August 28, 2005.

Costs for the Appeal Tribunal

The costs of the tribunal are paid out of the compensation fund. Since the tribunal came into existence in 2000, expenditures have been well below anticipated budget projections:

- **\$142,246**, 40% less than the budgeted amount of **\$236,722** for 2000;
 - **\$195,433**, 33 % less than the budgeted amount of **\$289,868** for 2001;
 - **\$174,375**, 27% less than the budgeted amount of **\$240,431** for 2002;
 - **\$187,371**, 22% less than the budgeted amount of **\$240,134** for 2003;
 - **\$170,812**, 30% less than the budgeted amount of **\$245,125** for 2004;
- and,
- **\$181,338**, (figure provided by the board on March 16, 2006) which is 28% less than the budgeted amount of **\$251,703** for 2005.

The above figures are taken from the Reports to the Minister for the years 2000 through 2002 and from budget documents provided by the board for the years 2003, 2004 and 2005.

The tribunal sets its budget after determining how many appeals it expects to undertake in the coming year. It also takes into account the possibility of higher legal costs and costs associated with independent medical examinations.

Estimated Costs for 2006

The appeal tribunal estimated their operating costs for 2006 at \$245,784, slightly lower than last year's. This figure is based on 20 hearings for the calendar year. The tribunal has allowed for higher legal services costs. Again, as in last year, there is a possibility that three new members will be appointed in 2006 that will need training.

Conference Attendance

Canadian Council of Administrative Tribunals ("CCAT")

CCAT acts as a national forum which addresses issues of importance to the administrative justice community and provides its members with a venue to work in partnership with other tribunals.

The Alternate Chair, Hank Leenders attended CCAT's 21st Annual Conference in Ottawa from June 19 to 21, 2005. The theme of this year's conference was "Administrative Justice in the Modern Mosaic". The conference began with a session entitled "The Modern Canadian Mosaic: Changing Demographics". This was followed by a plenary session focusing on aboriginal legal traditions and decision making in administrative justice. Sessions included workers' compensation, human rights; aboriginal rights, visible minorities; access to information; labour relations; economic and regulatory agencies; and energy, resources and the environment. Mr. Leenders had the opportunity to speak to tribunal members from Alberta and British Columbia. Attending the conference allowed him to network with other tribunal members and to gain a better understanding of the make-up of other tribunals and how they are appointed.

Training

Debra Fendrick, of Austring, Fendrick, Fairman & Parkkari provided a one-day "Introduction to Administration Law" training session on October 11, 2005 geared toward the tribunal. Topics covered by Ms. Fendrick were Fundamental Principles, Duty of Fairness, Conducting Fair Hearings & Evaluating Evidence, and Decision Writing.

The Yukon Law Society and the Court of Appeal of the Yukon Territory hosted a "Bench & Bar Seminar" on September 22, 2005. Guest speakers included Madam Justice Marie Deschamps, Supreme Court of Canada; Madam Justice Sheilah Martin, Alberta Court of Queen's Bench; Mr. Justice John Laskin, Court of Appeal of Toronto and

Mr. Hersh Wolch, Q.C. (counsel for David Milgaard). Topics included International Law; Legal Writing for Practitioners; Charter of Rights and Freedoms; and Writing Better Judgments, Decisions and Opinions. Justice Laskin led an excellent session on writing decisions.

On November 2, 2005, Karen Branigan, Acting Manager, Return to Work Services for the Yukon Workers' Compensation Health and Safety Board provided tribunal members with a training session on the claims process. Ms. Branigan explained how the claims process progresses at the board including registration, management, rehabilitation, medical monitoring and intervention and return to work planning. She also gave a brief overview of prevention services, vocational rehabilitation and the current structure of the claims branch.

Looking Ahead

Rules of Procedure

Pursuant to section 23 (b)(iii) the tribunal has made rules of procedure for the conduct of its own affairs. A sub-committee was struck in early 2005 to review the Rules of Procedure with the intention of amending them. The Rules of Procedure for Proceedings before the Tribunal were amended to notify appellants of a potential downside risk.

The tribunal has been hesitant in the past to enforce the Rules regarding allowing new evidence into the hearing 7 days in advance; however, we have enforced this during the latter part of 2005 and will continue to do so in the future. Further, when Notices of Appeal are submitted, the tribunal will not schedule a hearing until the changes being sought are set out in a clear and concise fashion.

Changes in Membership to the Tribunal

Mr. Sumner, Chair, Mr. Hank Leenders, Alternate Chair and Mr. Larry Watling, member representative of employers, appointments are due to expire this year. Mr. Sumner has forwarded a letter to the Minister stating he would like his name to stand for reappointment.

Canadian Council of Administrative Tribunals - CCAT Conference

CCAT acts as a national forum for the administrative justice community. This year CCAT will be holding its Administrative Justice Conference from June 11 to 13 2006 at the Ottawa Congress Centre. The theme is "The Integrated Administrative Tribunal; From Concept to Reality".