

Report to the Minister 2006

under Section 23(c) of the
Workers' Compensation Act

R.S.Y. 2002, ch. 231

Submitted by the
Workers' Compensation Appeal Tribunal
March 20, 2007

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, 2006 to December 31, 2006. There were no Ministerial requests.

Number of Appeals Heard, Resolved and Pending in 2006

In 2006, 20 appeals were advanced for hearing. In addition, there were 12 decisions pending at the end of 2005 from hearings which took place in that year. Following is the outcome of the 29 appeals resolved in 2006:

Outcome of Appeals Resolved in 2006

Appeals allowed – 9

Appeals denied - 16

Appeals withdrawn – 3

No jurisdiction - 1

Decisions pending – 2

Hearings needed to be scheduled at year end - 1

Of the appeals heard in 2006, one appeal was brought forward by the employer; this was later withdrawn.

The workers' advocate office provided representation and advanced 15 appeals in 2006. Two individuals represented themselves at hearing and one appellant was represented by legal counsel.

Average Length of Time from Hearing to Written Decision – 28.8 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 to release of the decision was 28.8 working days. This is significantly shorter than 2005 which was 36.5 working days.

Other Key Performance Indicators

The Auditor General of Canada, in her report released on September 10, 2002, recommended the tribunal develop performance issues and use them to report on its performance. The tribunal expended considerable time developing and implementing these performance issues, which were included in previous Reports to the Minister. The tribunal decided to concentrate on shortening the time it took to render a decision after the hearing closed, one of the recommendations identified by the Auditor General.

Most appeals are brought to the tribunal by the workers' advocate office. Their availability must be taken into consideration when setting dates. We have not reported on the other performance issues for the past two years because we have no way of determining when the workers' advocate office will file Notices of Appeal to the tribunal. Also, scheduling of hearings must be coordinated with all parties, which can be problematic and may skew statistics for key performance issue "deadlines".

Activities of the Appeal Tribunal

The tribunal revamped their Notice of Appeal form in 2006 as committees of the tribunal found it increasingly difficult to determine the issue(s) of appeal and the changes the appellant was seeking. The new form is designed to address both of those areas more fully. It was produced, in part, using information gathered from appeal tribunal jurisdictions across Canada and adapting them to make them more Yukon friendly.

Affected parties have been notified that the tribunal will not schedule any hearings until all the required information has been provided. The tribunal is aware that any delay in scheduling hearings could result in hardship to injured workers.

New Appointments and Departures

There was one new appointment and one re-appointment of tribunal members in 2006. Following is the make-up of the tribunal as of December 31, 2006:

Ed Sumner, Chair – reappointed April 1, 2006 to March 31, 2009

Representative of Employers

Helmer Hermanson – appointed July 21, 2006 to July 20, 2009

Carel Alexander – appointed July 22, 2005 to July 21, 2008

Representative of Workers

W. Cary Gryba – appointed August 1, 2005 to July 31, 2008

Margaret McCullough – appointed November 18, 2005 to November 17, 2008

In 2006, Larry Watling departed the tribunal. Hank Leenders' appointment, as Alternate Chair, ended on October 21, 2006. He was re-appointed for a term of three years effective January 19, 2007.

No appointments are scheduled to expire this year; however three tribunal members' appointments will expire in 2008.

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;
- **\$181,338**, 28% less than the budgeted amount of **\$251,703** for 2005;

and,

- **\$164, 492**, (year-to-date figure provided by the board on March 20, 2006) which is 33% less than the budgeted amount of \$245,784 for 2006.

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 through 2006.

The tribunal sets its budget after determining how many appeals it expects to hear in the coming year. It also takes into account the possibility of higher legal costs due to judicial review and costs associated with independent medical examinations; neither of which can be determined in advance. Any difference between last year's budgeted and actual figures is entirely due to fewer appeals, no independent medical examinations, and lower legal costs.

Estimated Costs for 2007

The appeal tribunal estimated their operating costs for 2007 at \$234,313. This is a decrease of over \$11,000 from last year. The number of appeals heard by the tribunal totally depends on how many are advanced by the workers' advocate office. The number 20 in this year's operating costs reflects an average of previous years translated into expected cases for the coming year. Due to a fairly high cost per appeal, any increase or decrease in the number of appeals presented to the tribunal will automatically reflect favourably or unfavourably on operating costs.

Conference Attendance

Canadian Council of Administrative Tribunals (CCAT)

CCAT is a national, non-profit organization consisting of members, lawyers and staff of federal, provincial and territorial tribunals, and other persons interested in administrative justice issues. Each year, CCAT holds a conference dealing with administrative justice issues. Its annual conferences regularly attract delegates from all domestic regions and from several other countries.

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 Chair, Ed Sumner, and tribunal member, Cary Gryba, attended CCAT's 22nd Annual Conference in Ottawa from June 11 to 13, 2006. The theme of this year's conference was *The Integrated Administrative Tribunal: From Concept to Reality*. Sessions included workers' compensation, human rights; labour relations & employment; internal tribunal governance – staff and members; case management; jurisprudence and consistency and alternate dispute resolution. Other sessions focused on managing a hearing; problem solving at the hearing; and decision-writing. A common theme of this year's conference was the independence of tribunals. Roundtable discussions with respect to workers' compensation issues addressed recent developments dealing with mental stress and chronic pain. Both attendees felt that the conference afforded them a golden opportunity to interact with compensation tribunal members from other jurisdictions.

Canadian Council of Administrative Tribunals Conference 2007

CCAT acts as a national forum for the administrative justice community. The Council of Canadian Administrative Tribunals will be holding its 4th International Conference (and 23rd annual conference) from May 6 to 8, 2007 in Vancouver, British Columbia. The BC Council of Administrative Tribunals (BCCAT) will be one of the major partners in the organization of this conference. The theme of CCAT's 4th International Conference is *Administrative Justice Without Borders*.

Training

Dr. Reddoch, board medical consultant, provided information sessions on carpal tunnel syndrome, mental stress and chronic pain. Donna Dymackova, Manager of Claimant Services, YWCHSB, provided a presentation on Policy CL-35, "Average Weekly Earnings". Tribunal members found these sessions to be helpful and informative. Although sessions were provided by board staff, there was no discussion with respect to specific claims or claimants.