

Report to the Minister 2011

under Section 63(c) of the
Workers' Compensation Act
S.Y. 2008, c. 12

Submitted by the
Workers' Compensation Appeal Tribunal
March 29, 2012

Introduction

The Workers' Compensation Appeal Tribunal (WCAT) 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. Since its inception, the tribunal has rendered over 190 decisions.

Reporting to the Minister

Under section 63 (c) of the *Workers' Compensation Act*, S.Y. 2008, c. 12, (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, 2011 to December 31, 2011. There were no Ministerial requests during this time.

Number of Appeals Heard, Resolved and Pending in 2011

In 2011, 11 original appeals were heard. Two decisions were stayed by the Board of Directors and sent back for rehearing. With the exception of one employer's appeal, the remainder of appeals were advanced by workers. Most appellants are represented by the workers' advocate office.

A total of 13 decisions were rendered in 2011. One decision from an appeal originally heard in November of 2010 was pending at the beginning of 2011.

Outcome of Appeals Resolved in 2011

Appeals allowed -	6 out of 13
Appeals denied -	5 out of 13
No jurisdiction -	2 out of 13

The workers' advocate office withdrew one appeal.

Average Length of Time from Hearing to Written Decision

The tribunal is required to provide decisions with written reasons within 45 working days from the close of hearings; however tribunal members strive to render a decision within 30 days from the close of the hearing. The average length of time from closure of the hearing or from receipt of the last document to release of the decision was 29.6 working days in 2011.

Activities of the Appeal Tribunal

New Appointments and Departures

There were two reappointments in 2011. Following is the make-up of the tribunal as of December 31, 2011:

Ed Sumner, Chair – reappointed April 1, 2009 to March 31, 2012

Hank Leenders – Alternate Chair – reappointed February 19, 2010 to February 18, 2013.

Representative of Employers

Helmer Hermanson – reappointed July 21, 2009 to July 20, 2012

Nancy Huston – appointed September 24, 2010 to September 23, 2013

Representative of Workers

W. Cary Gryba – reappointed August 1, 2011 to July 31, 2014

Margaret McCullough – reappointed December 16, 2011 to December 15, 2014

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, with the exception of 2010.

- **\$171,493**, 6% more than the budgeted amount of **\$161, 771** for 2010;
- **\$175,740**, 7.35% less than the budgeted amount of **\$189, 687** for 2011.

Due to an increase in excess of 25% for office space rental at their previous office, WCAT moved offices in June of 2011. We are expecting a reduction in rental accommodation costs.

The tribunal sets its budget after determining the number of appeals it expects to hear in the coming year. As noted above, most of our appeals are advanced by the workers' advocate office.

Estimated Costs for 2012

The appeal tribunal estimated their operating costs for **2012 at \$187,215**. Due to a fairly high cost per appeal, any increase or decrease in the number of appeals presented to the tribunal will automatically reflect on operating costs. WCAT is scheduled to hear several complex appeals which arose from claimants being investigated. This will increase members' honoraria costs as they will need to review files dating back to the 1990's.

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 dedicated to promoting excellence in administrative justice. CCAT provides a forum for discussion, education, research and policy development in the field of administrative justice. 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's goals are to:

- enhance and expand contact among members of the administrative justice community,
- promote awareness of the role and importance of administrative justice in everyday life,
- speak out on issues of importance to the administrative justice community, and
- provide support and services of value to its membership.

CCAT's 27th Annual Conference

CCAT's 27th Annual Conference was held in Ottawa from June 5 to 7, 2011. The theme for this year's session, "Performance, Predictability and Proactivity" was based on the three "Ps" contributing to tribunal excellence.

Plenary sessions, workshops and roundtables addressed tribunal's accountability for quality and production; clear and accessible decision-writing; reliable scheduling; improved communications; and earlier intervention by tribunals in order to gain more control of the entire process.

Tribunal member W. Cary Gryba attended the conference. As part of the conference, about 50 WCAT members attended a session on workers' compensation tribunals. Issues discussed were:

- WCATs are trying to educate the public on the process.
- There is a need for standardized processes with quality decisions.

- Some jurisdictions conduct an internal review which results in consistency in decisions and predictable outcomes.
- A one-page summary of the decision is provided. These are approximately 500 words and contain the applicable legislation and policies.
- Some WCB's are looking at compensation coverage for people who are 65 years old or older.
- Quebec provides a transcript of the hearing to all the parties at their own cost.
- Some jurisdictions have brochures which provide tips for "lay" presenters about basic procedural issues.
- All jurisdictions are concerned with privacy issues.
- Video surveillance was discussed.
- Jurisdictions with workers' advocates in place noted this has proven to be a great help to appellants.
- A debate took place on frivolous or malicious claims.

The Council of Canadian Administrative Tribunals will be holding its 28th Annual Conference from May 13 to 15, 2012 in Calgary. The theme for this year's conference is "Mapping New Frontiers - The Good, The Bad and The Ugly of Administrative Justice".

Training

Tribunal members and the appeals officer, along with board decision-makers and workers' advocate staff attended courses offered by the Foundation of Administrative Justice in May and June 2011. The Foundation of Administrative Justice offers the only certificate program in Canada which assists tribunals and participants to evaluate and support competencies in administrative justice roles.

Tribunal member Margaret McCullough was successful in obtaining both the Tribunal Member and Advocate certificates in *Tribunal Administrative Justice*. Vernna Johanson, WCAT appeals officer, also successfully completed the courses required for the Tribunal Member Certificate in *Tribunal Administrative Justice*.

Other Matters

The tribunal amended their Rules of Proceedings for Hearings in April of 2011.