

Report to the Minister 2012

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

Submitted by the
Workers' Compensation Appeal Tribunal
March 27, 2013

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 198 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, 2012 to December 31, 2012. There were no Ministerial requests during this time.

Number of Appeals Heard, Resolved and Pending in 2012

2012 proved to be a challenging time for tribunal members due to the complexity of the appeals advanced for hearing. Claim files dated back to the 1990's on two appeals which arose from claimants being investigated. One decision was stayed by the Board of Directors and sent back for rehearing. This resulted in the same decision. One of the appeals was a result of a Yukon Supreme Court decision to quash a previous tribunal decision. The tribunal was ordered to rehear the appeal, also resulting in the same decision. Most appellants are represented by the workers' advocate office.

A total of 5 decisions were rendered in 2012. No decisions were pending at the beginning of 2012.

Outcome of Appeals Resolved in 2012

Appeals allowed -	2 out of 5
Appeals denied -	3 out of 5

An appeal launched by an employer was later withdrawn.

A special examination was performed by the Office of the Auditor General of Canada and their report was released in September 2002 with recommendations for change. One of the key recommendations was that the tribunal needed to develop performance measures and use them to report on its performance. One performance measure which was adopted was the “Time to release of decisions from the close of the hearing.” The intent of this measure is to ensure that tribunal decisions are released in a timely manner after the close of a hearing.

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, to stay in line with their performance measures. As stated earlier, this year the tribunal was faced with several complex claims. On two occasions during 2012 the timelines needed to be extended when rendering decisions. For this reason, and due to the minimal number of appeals, we have not calculated the average length of time from closure of the hearing or from receipt of the last document.

Activities of the Appeal Tribunal

New Appointments and Departures

The Chair, Ed Sumner, was reappointed in 2012. Helmer Hermanson’s appointment ended in July of 2012. W. Cary Gryba tendered his resignation in September. Following is the make-up of the tribunal as of December 31, 2012:

Ed Sumner, Chair – reappointed April 1, 2012 to March 31, 2015
Hank Leenders – Alternate Chair – reappointed February 19, 2010 to February 18, 2013.

Representative of Employers

Gary Boyd – appointed October 9, 2012 to October 8, 2015
Nancy Huston – appointed September 24, 2010 to September 23, 2013

Representative of Workers

Margaret McCullough – reappointed December 16, 2011 to December 15, 2014
Vacant – need one more tribunal member to be appointed.

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;
- **\$183,407**, 2.03% less than the budgeted amount of **\$187, 215** for 2012.

The complex claims dealt with in 2012 required WCAT to seek legal counsel's advice, resulting in higher legal costs for 2012.

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 2013

The appeal tribunal estimated their operating costs for **2013** at **\$196,965**. 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. The requirement to review complex appeals increased honoraria costs for 2012.

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 28th Annual Conference

CCAT's 27th Annual Conference was held in Calgary, Alberta from May 13 to 15, 2012. The theme for this year's session was, "Mapping New Frontiers: The Good, the Bad and the Ugly of Administrative Justice".

Plenary sessions, workshops and roundtables addressed tribunal's accountability for providing reasons for decisions; current Human Rights issues in Canada; labour relations; weighting medical evidence; staff issues; administrative justice research; the role of tribunals in appeals and judicial review; privacy issues in administrative tribunal proceedings and decisions; adjudicative decision-making;

access to justice; ethics for administrative tribunals the use of social media and electronic communications; and public interest standing before administrative tribunals.

Tribunal Chair, Ed Sumner, and member, Nancy Huston, attended the conference. As part of the conference, a session was provided on workers' compensation tribunals.

The Council of Canadian Administrative Tribunals will be holding its 6th International Conference and 29th Annual Canadian Conference from May 26 to May 28, 2013 in Toronto, Ontario. The theme for this year's conference is "Evolution or Revolution: Administrative Justice in a Radically Changing World".

Other Matters

WCAT has concerns with the time it has taken to fill vacant positions. The tribunal has only one member representative of workers since Mr. Gryba tendered his resignation last Fall. This could lead to problems when scheduling hearings if the remaining member has a conflict of interest with the parties or is not available for hearings.