

Report to the Minister
under Section 18.2 (c) of
the *Workers' Compensation Act*

Submitted by the
Appeal Tribunal
February 12, 2001

Introduction

The *Workers' Compensation Act* has as one of its objectives that the appeals procedure be simple, fair, accessible, with minimal delays [section 1.1)(e)]. The work of the tribunal must meet these objectives. In addition, the tribunal's goals are to:

- ensure that workers, dependents of deceased workers and employers are treated with compassion, respect, and fairness;
- set down appeals for hearing as soon as possible and with adequate time for the parties and appeal committees to be adequately prepared (such preparation includes (a) obtaining disclosure of the file; (b) preparing a file summary and book of documents, where necessary, for easy reference to relevant materials from the file during the hearing and (c) reviewing the entire record before the hearing);
- write good quality decisions in a timely manner;
- ensure that tribunal members have adequate training for hearing and deciding workers' compensation appeals; and,
- accomplish the tribunal's work as cost effectively as possible.

Under section 18.2 (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 March 1, 2000 to December 31, 2000.

Number of Appeals Heard, Resolved and Pending

1. Number of Appeals Heard: 9 [*eight represented by the workers' advocate; one worker represented himself*]

In addition to the nine appeals, there was one "reconsideration" of a decision previously dealt with by the appeal tribunal. This reconsideration was done, with the consent of the appellant, on the basis of written submissions and document review rather than an oral hearing. The decision dealt with the payment of interest under section 19.4 of the *Act*, in circumstances where there is currently no board policy in place on the payment of interest. The tribunal ordered that interest be paid in accordance with section 19.4 of the *Act*.

2. Number of Appeals *Resolved: 9

For the purpose of this report, “resolved” means a decision has been released. The nine appeals resolved were from eight of the nine oral hearings as well as the one reconsideration decision discussed above. The ninth oral hearing was held on December 15, 2000 and no decision was released before the end of the calendar year.

3. Number of Appeals Pending in 2000: 1

No date has been set for an oral hearing in this matter: the tribunal is awaiting written submissions on the issue of jurisdiction. These written submissions are due on January 26, 2001.

4. Outcome of Appeals Resolved in 2000

In all decisions released in 2000, the appeals have been granted: the decisions under appeal (of the board’s Internal Review Committees or Hearing Officers) have been reversed and/or varied. All of these appeals dealt with compensation matters and the issues ranged from the interpretation and application of the board’s chronic pain policy to the application and interpretation of what is often referred to as “CL-35”, that is the policy dealing with average weekly earnings.

5. Average Length of Time to Hearing and to Decision

The tribunal is required by law provide decisions with written reasons within 45 working days of the close of the hearing. For the first eight decisions, the **average** length of **time** from closure of the hearing **to release of the decision** was **30 working days**.

There is no deadline required by law for setting down hearings or hearing appeals after the Notice of Appeal is filed with the tribunal. The **average** length of **time** from filing Notice of Appeal **to opening of the hearing** for the first eight appeals was **62.5 working days**. While it is true that some time is required to prepare for a hearing (obtaining the file from the board [takes up to 10 working days]; preparing a file summary and book of documents; arranging recorder/facilities and available dates for members of the appeal committee, the parties and their representatives; reviewing the entire record), the tribunal is concerned about the length of time on some appeals between the day a worker asked for a hearing until he or she obtained one. In one case, it took 101 working days from the notice of appeal to the date of the hearing. Most frequently, the delay has not been due to the availability of the tribunal members but rather availability of representatives from the workers’ advocate office.

Activities of the Appeal Tribunal

New Appointments

Effective March 1, 2000, the following members were appointed to the appeal tribunal for a term of three years:

- Heather MacFadgen, Chair
- Jan Stick, representative of employers
- Karen Waroway, representative of workers

Also effective March 1, 2000, the following members were appointed for a term of two years and six months:

- Hank Ambrose, representative of employers
- Joe Radwanski, representative of workers
- Janet Wood, Alternate Chair

Budget (“Estimated Costs”) 2000

The budget for the appeal tribunal from March 1, 2000 to December 31, 2000 was **\$236,722** (see attached). This budget was based on a **projection** that the tribunal would hear **25 appeals** in the year 2000. This figure was chosen as a result of discussions with the workers’ advocate office as well as a review of some projections prepared by both the government and the board with respect to the likely number of appeals in the tribunal’s first year. The projected number of appeals did not materialize. (As you will see below, the tribunal actually spent substantially less than was projected.)

It is worth noting that the budget contains both fixed and variable costs. Variable costs such as honoraria, telephone charges, and professional fees depend on the number of appeals heard in a calendar year; whereas line items such as rent and staff salary are fixed, regardless of the number of hearings which occur in the year.

Actual Costs for Appeal Tribunal 2000

According to variance reports and financial documents prepared by the board, the actual costs for the new appeal tribunal in 2000 were **\$ 142, 246**, substantially below budget (approximately 60% of what was projected). The savings from budget were largely due to the small number of appeals dealt with in 2000. Although the tribunal projected it would hear 25 appeals, it only heard nine as well as one matter that was a “reconsideration” of an earlier decision.

Some of the actual expenditures were for “one-time” costs such as office furniture and equipment. In addition, there was a \$5000 charge to the tribunal as a penalty payment for office space that the tribunal did not arrange or agree to lease. (Apparently this space was arranged through discussions between the board and Government Services.) This private office space was too large for the tribunal’s purposes (approximately 1500 square feet) and not adequately wheelchair accessible. Instead, the tribunal took temporary office space of approximately 250 square feet for \$400 per month and then in August leased office space in a federal government building at 419 Range Road for one year at approximately \$1000 per month for roughly 400 square feet. This building is fully wheelchair accessible, with ample parking and a bus stop in close proximity. In addition, it provides excellent boardrooms for hearings with equipment for teleconferencing free of charge at this location as well as downtown at the Elijah Smith Building.

There is also a “hidden” set-up cost for the tribunal: the Chair did not submit any claim for honoraria for the first three months [March, April, May] for any time spent other than in meetings, even though there was a substantial amount of her time spent in set up and administrative work while the tribunal got underway. There were two reasons for this: discussions at the board centered around the need for some time to be considered donated as a public service in line with expectations for government appointments of this nature; in addition, the Chair thought that government policy and directives were not clear with respect to claiming honoraria for time spent on administrative tasks. It should also be pointed out that all the current tribunal members volunteer some of their time, because of the way that the honoraria policy of the board and also the tribunal’s own rules with respect to honoraria both limit what activities and hearing preparation time may be claimed for. It should also be pointed out that currently the tribunal is not listed in the Government schedule for various categories of boards and tribunals for the purpose of setting rates of remuneration.

Estimated Costs for 2001

The appeal tribunal estimated costs for 2001 are again based on a projection of 25 hearings for the 2001 calendar year and total **\$278, 422**. This figure is higher than that in the budget for 2000 for a partial year. (At the time of writing this report, two notices of appeal were received in the month of January, 2001 – one from the workers’ advocate office and one from a worker representing himself.) If there are fewer than 25 hearings, actual costs should be below the estimated costs as was the case for the year 2000.

The estimates were prepared in October, 2000 and submitted to the board in November. They were presented at the December 6th, 2000 board meeting; however, the board had not passed this budget (which included costs for the appeal tribunal) by the end of 2000.

Work on Procedures

Under section **18.2** of the *Act*, the tribunal must make rules and procedures consistent with the Act and the regulations relating to:

- (i) defining circumstances that will constitute conflict of interest for its members
- (ii) disclosing conflict of interest, and
- (iii) procedures for the conduct of its own affairs including hearings by appeal committees.

The appeal tribunal passed the following procedures:

- Rules of Procedure for Honoraria (25/05/00)
- Rules of Procedure for Conflict Interest and Disclosure (25/05/00)
- Rules of Procedure for Meetings other than Hearings (01/05/00)

In addition, draft Rules of Procedure for Hearing [currently used as guidelines for hearings] were developed and circulated to stakeholders: the Workers' Advocate office, the Workers Compensation Board, the Chambers of Commerce and the Injured Workers' Alliance. In addition, these rules were provided to the Ombudsman and to an independent consultant and expert in workers' compensation law, Terence Ison [during the training session he led for the tribunal -- see "Training" section of this report]. The tribunal is currently re-drafting these Rules for Hearings, based on the feedback it has received.

Training for Tribunal Members and Staff Person

Of the six new members, only half have had previous training in administrative law, conduct of hearing and adjudication in the context of workers' compensation law.

Some initial orientation sessions were provided by the board's staff as follows:

- General overview of the workers' compensation system and the role of constituency representatives on boards and tribunals by Doug Carr, former General Counsel of Alberta WCB [March 22, 2000 --_ day]
- Overview of Bill 83 amendments by the board's legal counsel [April 4, 2000--_ day]
- Orientation to programs, systems and services of Yukon's WCB by Vice-President Programs, Manager of Claims, and Acting Manager of Rehabilitation Services [April 6, 2000--_ day]
- Orientation to policy by board's legal counsel and policy analyst [April 11, 2000--_ day]
- Orientation to role of the medical consultant by the board's medical consultant [May 23, 2000 -- _ day]

- Overview of chronic pain in workers' compensation claims by Dr. Jock Murray (medical expert in this area) jointly sponsored by WCB and Yukon Law Society and Yukon Registered Nurses' Association [October 5, 2000--_ day]

In addition, the tribunal arranged for the following training sessions:

- Orientation to office/role of the workers' advocate [April 13, 2000--_ day]
- Introduction to principles of administrative law and conduct of hearings with case examples drawn from the Yukon *Act* provided by Yukon Public Legal Education Association [April 20 and 26, 2000--2 days]
- Orientation to access to information and protection of privacy legislation by the Director, Yukon Archives [May 3, 2000--_ day]
- Training with respect to specific provisions in the Yukon *Workers' Compensation Act* and related appeal issues by Terence Ison, author of the text, *Workers Compensation in Canada*, and former chair of the Chair British Columbia Workers' Compensation Board [November 24 & 25, 2000 --2 days]

Conference Attendance

Each year, the national Association of Workers Compensation Board of Canada ("AWCBC") organizes two extensive education sessions [the "College" and the "Congress"] for all workers' compensation board members and management staff in all jurisdictions across Canada. This year, the appeal tribunal's Jan Stick [employer representative] and Heather MacFadgen [Chair] attended the AWCBC College in Quebec City on November 5th -9th, 2000, with a report on the sessions to the tribunal at the November and December meetings. Sessions and workshops attended included Basic Adjudication, Program Evaluation, Improving Organizational capacity, Privatization and Partnering in delivery of WCB services, Advanced Adjudication, Fraud, Demographics of Aging Population, Specialized Services, and Role of Health Care Providers/Alternate Therapies. Both attending members agreed that the most useful part of the conference were the informal round table discussions for tribunal staff and members from the various jurisdictions in which common issues and problems were explored. In attendance were tribunal staff and members from Newfoundland, Saskatchewan, Northwest Territories, Manitoba, Ontario, and Quebec.

Tribunal Staff

The tribunal has had the benefit of the secondment of Ms. Vernna Johanson, from the board staff, from April 1, 2000 to August 31, 2001 as the tribunal's new appeals officer. Due to her previous duties at the board as Board Secretary and Appeals Registrar, Ms. Johanson has been able to bring a great deal of knowledge and continuity to the new tribunal. The board's willingness to assist the tribunal by means of this secondment is

greatly appreciated. The tribunal Chair has provided on-the-job training to its appeals officer in preparation of file summaries and books of documents for hearings and in registry procedures. In addition, the appeals officer has developed a short manual on office procedures for the new tribunal. The decision to hire a full-time appeals officer was based on a projected workload (which included 25 appeals per year). In its first year of operation, while the tribunal searched for appropriate space, set up its office and procedures, and developed new documents for the appeal process, a full-time staff person was necessary, even though only nine appeals were heard. The tribunal plans to evaluate its staffing needs again in 2001, before the secondment arrangement ends.