

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 29, 2005

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, 2004 to December 31, 2004.

Number of Appeals Heard, Resolved and Pending in 2003

The tribunal heard 27 appeals in 2004. Of these, 24 were resolved when decisions were reached in this reporting period. Two appeals were pending at the end of 2004, one of the two was a board direction to rehear and the remaining appeal was heard in December, with no decision rendered before the end of the year.

Outcome of Appeals Resolved in 2004

Appeals allowed – 15

Appeals denied - 8

No jurisdiction - 3 (2 letters and one decision)

Appeals withdrawn - 1

[Appeals directed to be reheard by the board: 5]

For clarification purposes, 21 original appeals were brought before the tribunal, 5 of these decisions were stayed by the board of directors and ordered to be reheard. One appeal was withdrawn by the workers' advocate before being heard.

One appeal was brought forward by the employer in 2003. At this time, a decision on the disclosure issue has been rendered, with the merits of the case still to be heard.

The workers' advocate brought two appeals forward regarding lump sum payments. Both of these claims were over a decade old. A pre-hearing conference was conducted. The appeal committee decided to petition the court to determine whether the policy on lump sum payments was consistent with the *Act* before setting these two down for hearing. A Supreme Court decision was rendered early in 2005.

Average Length of Time from Hearing to Written Decision - 36 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 working days. In 2003 the average was 31 working days; in 2002 the average was 37 working days.

Tribunal members strive to get decisions out in a timely manner; however, unavailability of committee members has delayed the rendering of decisions.

As in 2003, one appeal was filed by an employer. This is the same appeal that has continued through 2004. Extenuating circumstances have prevented the tribunal from hearing the merits of this appeal, but we are hopeful that early in 2005 a hearing will be completed and a decision rendered. The tribunal is concerned about the length of time this has carried on.

The trend continues of more employers being involved at the final level of appeal. The tribunal makes every effort to accommodate the availability of parties for attendance at hearings.

Activities of the Appeal Tribunal

A 2002 recommendation of the Auditor General stated that the tribunal needed to develop performance measures. The tribunal agreed with this recommendation, and adopted two performance measures. For the past two years, the tribunal has been monitoring these recommendations.

1. Time from receipt of Notice of Appeal to the opening of the hearing

The intent of this measure is to monitor the period of time that a Notice of Appeal was received in the tribunal office to the opening of the appeal hearing. It is incumbent on the tribunal to ensure a party's appeal is heard in a timely manner.

The time frame for this in 2004 was from 21 to 158 days, with an average of 57.4 days from the time the notice was received until the opening of the hearing. Although this has decreased minimally from last year, the tribunal's goal is to hear an appeal within 55 working days of the receipt of notice.

Two of the appeals filed by the workers' advocate office had to be cancelled and rescheduled due to non-attendance by the worker. One of the appeals was cancelled and postponed three times before the appellant was contacted and participated. The tribunal has no control over such matters. As well, it should be noted that board direction to rehear statistics are not included in this performance indicator.

2. 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. OIC 1999/2000 requires that decisions be released no later than 45 working days from the close of the hearing.

Release of decisions from the close of the hearing in 2004 was from 16 to 45 working days with an average of 36.04 working days. The tribunal's goal is to release a decision from the close of the hearing to 30 days.

There are variables that may affect performance measures.

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.

New Appointments and Departures

There were no new appointments or departures of tribunal members in 2004. Following is the make-up of the tribunal as of December 31, 2004:

Ed Sumner, Chair – appointed March 31, 2003 to March 30, 2006

Hank Leenders, Alternate Chair – appointed October 22, 2003 to October 21, 2006

Joseph Radwanski, representative of workers – reappointed on August 29, 2002 to August 28, 2005

Jan Stick, representative of employers - reappointed April 8, 2003 to April 7, 2006

Larry Watling, representative of employers – appointed July 21, 2003 to July 20, 2006

Brian Werlin, representative of workers – appointed August 1, 2002 to July 31, 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;
- **\$186,701**, 22% less than the budgeted amount of **\$240,431** for 2003;

and

- **\$181,695**, (figure as forwarded by the board on March 24, 2005), which is 26% less than the budgeted amount of **\$245,125** for 2004.

The above figures are taken from the Reports to the Minister for the years 2000 through 2003.

The tribunal sets its budget after determining how many appeals it expects to undertake in the coming year. Expenses for legal services increased significantly in 2004.

Estimated Costs for 2005

The appeal tribunal estimated their operating costs for 2005 at \$251,703, slightly higher than last year's. This figure is based on 20 hearings for the calendar year. The tribunal has allowed for higher legal services costs. There is a possibility that three new members will be appointed in 2005 and will therefore need training. As well, tribunal members have discussed the design and maintenance of their own website. This will result in higher costs.

Conference Attendance

Canadian Council of Administrative Tribunals ("CCAT")

The Chair, Ed Sumner, and one of the members representative of workers, Brian Werlin, attended the CCAT Conference in Toronto in June. The theme of this year's conference was "Bringing Administrative Justice to the People of the World". Two breakfast meetings specific only to Chairs and members of workers' compensation appeal bodies were held. Round table discussions centered on bias, impartiality, natural justice and the independence of appeal tribunals. A common issue that kept surfacing in discussion was the actual or perceived independence of tribunals. Claimants seeking justice wanted assurance that they had been listened to and received justice. Both Mr. Sumner and Mr. Werlin found the conference to be interesting and a good opportunity to meet with tribunal members from other jurisdictions.

Training

No formal training was taken by any of the tribunal members in 2004. Members have expressed an interest in having further medical and/or legal training. It was suggested that Debra Fendrick present a workshop specific to tribunal matters.

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. Within the last six months, several appeals have been brought forward by unrepresented workers or workers with representation other than the workers' advocate. The tribunal wishes to make the Rules as user-friendly as possible for workers without representation. Further, a new rule will be established regarding disclosure as well as a rule to notify appellants of a potential downside risk.

Changes in Membership to the Tribunal

Both Mr. Werlin and Mr. Radwanski's appointments expire in 2005. Ms. Jan Stick has been elected to Whitehorse City Council and has notified the Chair that she will be resigning her appointment with the tribunal effective April 30, 2005.

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 19 to 21, 2005 at the Ottawa Congress Centre. The theme is "Administrative Law in the Modern Canadian Mosaic".