

Report to the Minister 2007

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

R.S.Y. 2002, ch. 231

Submitted by the
Workers' Compensation Appeal Tribunal
March 10, 2007

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 140 decisions.

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, 2007 to December 31, 2007. There were no Ministerial requests.

Number of Appeals Heard, Resolved and Pending in 2007

In 2007, 12 appeals were advanced by the workers' advocate office for hearing. Of these appeals, the workers' advocate withdrew one appeal and one appeal was cancelled by the tribunal after six months of inactivity.

One worker represented himself at the tribunal in 2007. Another worker, originally represented by legal counsel, decided to represent himself. He filed 5 appeals in October of 2007 with a hearing scheduled in November. Both the worker and the appeal committee were in agreement to hearing all of the appeals in one hearing. The decisions were rendered early in 2008.

A total of eleven decisions were rendered in 2007. One decision from 2006 was pending at the beginning of the year. A decision was rendered on January 16, 2007. One appeal was heard in December of 2007, with a decision being rendered on January 16, 2008.

Outcome of Appeals Resolved in 2007

- Appeals allowed – 7 out of 11
- Appeals denied – 4 out of 11
- Decisions pending – 1

Appeals withdrawn/cancelled – 2

Included in the eleven decisions is a decision from the Board's direction to stay and rehear Decision #139. This resulted in the appeal committee issuing Decision #141 which allowed the appeal as in Decision #139.

Not included are two decisions of the tribunal to reopen and vary Decisions #138 and #139. On the first occasion the committee reopened and varied the decision to correct a typographical error and allow an additional day's compensation; Decision #139 was reopened and varied to award interest on compensation benefits.

Supreme Court Decision

In December of 2005, WCAT issued Decision #106 which held that the worker did not suffer a work-related disability as a result of a disciplinary suspension and subsequent termination of her employment in 2002.

The workers' advocate, on behalf of the worker, sought a petition from the Supreme Court of the Yukon on January 10, 2006. However, the petition did not take place until October 27, 2006.

On January 17, 2007 the Honourable Justice L.F. Gower rendered his decision quashing Decision #106 and remitting the matter to the tribunal for reconsideration. This confirmed the hearing officer's decision and the worker was provided compensation benefits which continue to date.

The employer advanced an appeal to the Court of Appeal for the Yukon Territory from the January 17, 2007 Supreme Court decision. On July 17, 2007, the Supreme Court issued a Consent Order allowing a stay of the reconsideration of Decision #106 by WCAT pending the hearing of an appeal of Mr. Justice Gower's decision. It is expected the court will hear reconsideration in the spring of 2008.

Average Length of Time from Hearing to Written Decision – 24 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 24 working days. This is less time than 2006 which was 28.8 working days.

Activities of the Appeal Tribunal

New Appointments and Departures

There was one re-appointment in 2007. Following is the make-up of the tribunal as of December 31, 2007:

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

Hank Leenders – Alternate Chair – reappointed January 19, 2007 to January 18, 2010

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

Three appointments are scheduled to expire in 2008. The three tribunal members have expressed an interest in being reappointed and continuing with the tribunal.

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;
- **\$167, 480**, 32% less than the budgeted amount of **\$245,784** for 2006; and
- **\$142,640**, (year-to-date figure provided by the board on February 28, 2007) which is 39% less than the budgeted amount of \$234,313 for 2007.

The tribunal sets its budget after determining how many appeals it expects to hear in the coming year. The difference between last year's budgeted and actual figures is entirely due to fewer appeals, and a lack of any independent medical examinations.

Estimated Costs for 2008

The appeal tribunal estimated their operating costs for 2008 at \$218,360. This is a decrease of approximately \$16,000 from last year. The number of appeals heard by the tribunal depends on the number advanced by the workers' advocate office. As in previous years, 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 on operating costs.

In 2008 we are expecting an increase in legal costs due to representation at the Court of Appeal case.

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.

The 2007 CCAT's 4th International and 23rd Annual Conference was attended by over 400 persons. The theme of the conference was "Administrative Justice without Borders". Domestic and international speakers addressed issues that have arisen as a result of globalization, the changing world demographic, and the movement of jobs and people to meet labour market needs.

The Chair, Ed Sumner; Alternate Chair, Hank Leenders and tribunal member, Margaret McCullough attended the conference in Vancouver from May 6 to 8, 2007. Sessions included roundtable discussion on adjudication in the fields of workers' compensation, labour and employment, human rights, immigration and economic regulation. Other sessions focused on credibility issues and methods of assessing credibility; consistency among adjudicator decisions; and the dispute resolution process. A post-conference workshop concentrated on advanced hearing skills. This session dealt with how to conduct a hearing and how to respond to different types of challenges that might arise during a hearing.

Canadian Council of Administrative Tribunals Conference 2008

The Council of Canadian Administrative Tribunals will be holding its 24th annual conference on June 26 and 27, 2008 in Gatineau, Quebec.

Training

Tribunal members Mr. Gryba, Ms. Alexander, and Ms. McCullough attended a two-day “Advanced Decision Writing” workshop at Yukon College.

Ms. Carel Alexander, tribunal member and appeals officer, Vernna Johanson attended an “Evidence” course provided by the Foundation of Administrative Justice located in the University of Alberta. The focus of this one-day intermediate evidence course was to assist tribunal members and decision-writers to acquire additional skills and tools related to admitting and weighing evidence.

Other

Due to the lack of appeals in 2007 leading to a slow year at WCAT, the appeals officer assisted YWCHSB with the following three projects:

- Researching other jurisdictions’ legislation and policies regarding volunteer coverage;
- Assistance was provided with the CHOICES program;
- Yukon school officials were polled to determine whether they found the “Day of Mourning” kits provided by the board beneficial.