

Report to the Minister 2008

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

Submitted by the
Workers' Compensation Appeal Tribunal
March 27, 2009

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 150 decisions.

Reporting to the Minister

Under section 63 (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, 2008 to December 31, 2008. There were no Ministerial requests during this time.

Number of Appeals Heard, Resolved and Pending in 2008

In 2008, 7 appeals were advanced by the workers' advocate office for hearing. Of these appeals, the workers' advocate withdrew one after being notified that it was not rightfully before the tribunal. The workers' advocate office also advanced two appeals in 2007 that were not heard until December 2007 and January of 2008, with decisions being rendered in January and March 2008 respectively.

One worker filed five appeals in October of 2007 with a hearing scheduled for November. Decisions were rendered early in 2008.

A total of twelve decisions were rendered in 2008. Two decisions from 2008 were pending at the beginning of 2009.

Outcome of Appeals Resolved in 2008

Appeals allowed – 3 out of 12
Appeals denied – 9 out of 12
Decisions pending – 2

Appeals withdrawn/cancelled – 1

Included in the twelve decisions is a decision from the Board's direction to stay and rehear Decision #150. This resulted in the appeal committee issuing Decision #152 which allowed the appeal as in Decision #150.

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. The average length of time from closure of the hearing or from receipt of the last document to release of the decision was 25 working days in 2008.

Activities of the Appeal Tribunal

New Appointments and Departures

There were three re-appointments in 2008. Following is the make-up of the tribunal as of December 31, 2008:

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 – reappointed July 22, 2008 to July 21, 2011

Representative of Workers

W. Cary Gryba – reappointed July 22, 2008 to July 21, 2011

Margaret McCullough – reappointed November 17, 2008 to November 16, 2011

The Chair's appointment expires on March 31, 2009. He has indicated 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;
- **\$134,630**, 43% less than the budgeted amount of **\$234,313** for 2007; and

- **\$156,849**, (figure provided by the Board on February 24, 2009), 28% less than the budgeted amount of **\$218,360** for 2008.

The tribunal sets its budget after determining how many appeals it expects to hear in the coming year. 2008 legal expenses were higher due to representation by legal counsel at the Court of Appeal.

Estimated Costs for 2009

The appeal tribunal estimated their operating costs for **2009 at \$163,206**. This is a decrease in excess of \$55,000 from last year. The number of appeals heard by the tribunal depends on the number advanced by the workers' advocate office. Both 2007 and 2008 were slow with respect to appeals being advanced to the tribunal. 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.

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 24th Annual CCAT Conference was held in Gatineau, Quebec from June 25 to June 27, 2008. The theme of this year's conference was "Serving a Diverse Population". Attendees came from all Canadian provinces and territories as well as from Brazil and Taiwan. Some 50 speakers addressed issues dealing with diversity, the country's changing social and cultural fabric, and how administrative tribunals should respond with these new realities.

The Alternate Chair, Hank Leenders and tribunal member, Helmer Hermanson attended the conference. Sessions included roundtable discussion on emerging issues and their impact on adjudication in the fields of workers' compensation, labour and employment, human rights, immigration and citizenship, rental housing and economic regulation.

A pre-conference training day on Alternative Dispute Resolution was organized by CCAT's Professional Development Committee.

The plenary session "Cultural Competence – Part 1" focused on:

- recruitment of tribunal members and differences in how appointments are made in several jurisdictions;
- dealing with cultural competence; the relative efficiency of the courts as compared to administrative tribunals; and
- issues related to mental health, including the importance of tribunals ensuring that the rights and dignity of those living with mental illness are respected.

In the session on "Access to Justice for a Diverse Population", speakers examined the relationship between independence and accountability, instruments for defining and safeguarding independence, and tribunal autonomy.

The closing plenary session, "Accommodation Practices and Cultural Differences" concluded with three concurrent workshops which dealt with:

- corporate responsibility of tribunal members and examined the need to foster certain fundamental tribunal values in them.
- how stakeholders relations can be managed appropriately without sacrificing tribunal integrity or independence.
- how to ensure access to tribunals, particularly among non-represented parties and first-time users of administrative tribunals.

Canadian Council of Administrative Tribunals Conference 2009

The Council of Canadian Administrative Tribunals will be holding its 25th annual conference in Halifax from May 31 to June 2, 2009. The theme of this year's conference is "The Modern Canadian Tribunal: 25 Years in the Making".

The Canadian Institute

Chair, Ed Sumner attended a two-day conference "Advanced Administrative Law & Practice" in Vancouver on May 1 & 2, 2008. Issues presented included:

- new legislative developments and cases on the standard of review;
- getting up to speed on constitutional, *Charter* and human rights law developments;

- managing self-represented and under-represented parties – ensuring fairness;
- protecting tribunal independence;
- handling heavy caseloads efficiently;
- reconciling disclosures and transparency with privacy laws.

Training

Tribunal members W. Cary Gryba, Carel Alexander, Helmer Hermanson and Margaret McCullough enrolled in an online decision writing course offered by CCAT. Alternate Chair, Hank Leenders, and the appeals officer, Vernna Johanson are also enrolled in the course. Participants work at their own pace. The course is to be completed by April of 2009.

In early June tribunal members and the appeals officer attended training provided by the board with respect to changes to the *Workers' Compensation Act* and board policies.

Other

Due to the lack of appeals in 2008, leading to a slow year at WCAT, the appeals officer undertook research work of other jurisdictions' legislation and policies for YWCHSB' Policy Unit to aid in policy development for the new *Act*.