

Report to the Minister 2009

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

Submitted by the  
Workers' Compensation Appeal Tribunal  
March 29, 2010

## **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 160 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, 2009 to December 31, 2009. There were no Ministerial requests during this time.

## **Number of Appeals Heard, Resolved and Pending in 2009**

In 2009, 13 appeals were advanced to the tribunal for hearing. In total 9 appeals were heard in 2009.

The workers' advocate office filed 11 Notices (appeals) on behalf of workers – two appeals for the same appellant. The workers' advocate office also advanced two appeals in 2008 that were not heard until December 2008 and January of 2009 respectively. Both decisions were rendered in January 2009.

The advocates' office filed the majority of appeals later in the year: two were filed in March; one in June; the remaining were filed September to December 2009.

One worker represented himself at appeal. One worker has retained legal counsel.

A total of eight decisions were rendered in 2009. Two decisions from appeals heard in 2009 were pending at the beginning of 2010.

## **Outcome of Appeals Resolved in 2009**

Appeals allowed – 2 out of 8

Appeals denied – 6 out of 8

Decisions pending– 2

No appeals were withdrawn or cancelled.

## **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. The average length of time from closure of the hearing or from receipt of the last document to release of the decision was 17.5 working days in 2009, resulting in decisions being rendered in a third of the legislated timeline.

## **Activities of the Appeal Tribunal**

### **New Appointments and Departures**

There were two re-appointments in 2009. Following is the make-up of the tribunal as of December 31, 2009:

Ed Sumner, Chair – reappointed April 1, 2009 to March 31, 2012

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

### *Representative of Employers*

Helmer Hermanson – reappointed July 21, 2009 to July 20, 2012

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 Alternate Chair's appointment expired on January 18, 2010. He has been reappointed for 3 years, effective February 19, 2010. No other appointments are due to expire in 2010.

## **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;
- **\$156,849**, 28% less than the budgeted amount of **\$218,360** for 2008; and
- **\$138,344**, 15% less than the budgeted amount of **\$163,026** for 2009

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. The majority of appeals were filed late in the year.

### **Estimated Costs for 2010**

The appeal tribunal estimated their operating costs for **2010 at \$159,425**. This is a decrease in excess of \$36,000 from last year. Due to a minimal number of appeals advanced by the workers' advocate office, 2009 was an extremely slow year for WCAT. 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 25<sup>th</sup> Annual CCAT Conference was held in Halifax, Nova Scotia from

May 31 to June 2, 2009. The theme of this year's conference was "The Modern Canadian Tribunal: 25 years in the Making". Attendees came from across Canada, the United States, Australia and Brazil. Almost 50 speakers addressed the state of administrative justice in Canada today and looked at both new and continuing challenges. The Chair, Ed Sumner and tribunal member, Carel Alexander attended the conference.

### **Canadian Council of Administrative Tribunals Conference 2010**

The Council of Canadian Administrative Tribunals will be holding its 5<sup>th</sup> International Conference on Administrative Justice in Montreal, Quebec from May 31 to June 2, 2009. The theme of this year's conference is "The World and Administrative Justice: Forward to Basics!"

### **Training**

Tribunal members W. Cary Gryba, Carel Alexander, Helmer Hermanson and Margaret McCullough, Alternate Chair, Hank Leenders, and appeals officer, Vernna Johanson enrolled in an online decision writing course offered by CCAT in 2009. All completed the course in the spring of 2010.

Early in 2010, Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff provided a session to the tribunal and workers' advocate office staff on the Transition Policy and amendments to the *Act*. In April, Dr. Allon Reddoch presented a session on "Pre-existing Conditions" and Dr. Alan Buchanan covered the topics "Determining Functional Limitations in Psychiatric Situations, PTSD and Disability, and Extreme Personalities and Disability" which was attended by WCAT.

### **Other**

As in 2008, due to a lack of appeals advanced in 2009, leading to a slow year at WCAT, the appeals officer undertook research work for YWCHSB.