



Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

Acts modernization external advisory group meeting 7 – appeals issues

Mount McIntyre Recreation Centre, Whitehorse

Wednesday, December 11, 2019, 10:00 a.m. to 12:00 p.m.

Introduction

This is a summary of comments made by participants at the external advisory group session on December 11, 2019. For more information on the topics that were discussed [download](#) the appeals paper.

Method

Participants were divided into groups randomly and were asked to discuss acts modernization policy topics. Through group discussions that included Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff, participants had their thoughts recorded on poster paper. The groups discussed three questions for each topic.

1. *What are the benefits to this approach?*
2. *What are the disadvantages/risks?*
3. *What are some other options to consider?*

The poster paper notes are reflected in this document.





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Appeals framework

Proposal

The Government of Yukon is proposing to:

- simplify the internal review process for claims for compensation matters and provide a less formal reconsideration process with the aim of decreasing complexity and time required to issue a decision. This process, for example, would allow for new evidence to be submitted at the reconsideration level, without the requirement that it be sent back to the original decision maker; and
- introduce a three-stage appeal framework to occupational health and safety (OHS) and assessment appeals. YWCHSB's Board of Directors would no longer have the jurisdiction to hear appeals.

Benefits

- Hearing officers can review new evidence – saves time;
- Feels more focused on client in terms of service;
- Could push employers with OHS appeals to remedy hazards quicker;
- OHS likely quicker, less cumbersome;
- Similar to other jurisdictions – more consistency;
- Faster;
- Removes perception of conflict of interest;
- Possibly cheaper;
- Reduced burden on Board of Directors;
- Board of Directors can focus on governance;
- Potential for better decision;
- Quality control;
- Increase education about system;
- Simplified process;
- Quicker process and decisions;
- More efficient; and
- Reduced costs for Workers Compensation Appeals Tribunal (WCAT).



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Risks and challenges

- Unknown cost impact;
- Could be a perception of bias with only one decision maker at reconsideration phase;
- Difficulty finding people with right credentials;
- More meetings of WCAT;
- Increased cost as more people involved; and
- Training cost – internal and WCAT.

Other options to consider

- Ensure language regarding roles and processes is very clear – currently confusing already;
- Need to ensure procedural fairness, est. timelines;
- Need to simplify language;
- Make sure anyone with significant issues (e.g. mental health) isn't prejudiced by timelines/the process;
- Leave assessment appeals with Board of Directors; and
- Who does training for WCAT?
 - Perception of bias if provided by YWCHSB.





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Workers' Compensation Appeal Tribunal

Proposal

The Government of Yukon is proposing to establish training, education and experience requirements for WCAT members that promote independence, impartiality and fairness in decision making.

Benefits

- Consistency in decision making;
- Perception of fairness;
- Higher qualifications should result in better decisions;
- Increased confidence in WCAT decisions;
- Decisions could be training tool for YWCHSB staff and improve process;
- Removes Board of Directors bias/perception of influence;
- Decrease stayed/rehear decisions;
- Opportunities for people to get involved/broaden their knowledge;
- Increased structure;
- Useful to have all types of appeals heard by one body;
- Everyone receives some training – consistency; and
- Panel should have some qualifications.

Risks and challenges

- Challenging to find qualified people;
- Inadequate training may lead to YWCHSB influencing decisions;
- Lack of experienced people when needed;
- Increased costs;
- Potential negative reputation damage;
- WCAT not having mandatory legal counsel is a real risk;
- May decrease the number of eligible candidates – hard to find the right mix likely; and
- Make sure there is no favoritism.

Other options to consider

- Increase compensation to find well qualified people;



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- Offer training to candidates;
- Maintain separation of WCAT and YWCHSB;
- Outside experts to fill positions;
- Concentrate expertise in limited number of WCAT members – lower costs and pressure to find people;
- Could consult criteria for judicial appointments – they have much that may be useful;
- Good to have legal counsel advising decision makers to explain potential outcomes – not making the decision;
- Should be able to bring in expertise/expert witnesses when necessary;
- Don't need a lawyer as decision maker, but do need legal advice readily available;
- Should have legislated diversity on panel;
- Can't provide everything through training, unbiased decision makers are key;
- Want decision makers to understand human rights issues too;
- Appointment provisions should be clear; and
- Longer-term appointments.





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Time period to appeal decisions - claims for compensation

Proposal

The Government of Yukon is proposing to align the time allowed for a person to appeal a claims decision with the amount of time a worker has to file a claim, that being 12 months for each level of appeal.

Benefits

- Consistency with other Boards;
- Timely decisions ;
- Faster return to work;
- Faster return to work reduces risk of mental health issues;
- Preservation of evidence;
- Reduced claims costs;
- Five years is too long for those who have to go through it; and
- 24 months feels too long, 12 months seems better.

Risks and challenges

- Lack of access to medical care – could miss appeal limit/lose right to appeal;
- Possible requirement of more YWCHSB staff to meet timelines;
- Negatively affect decisions if rushed;
- May deter workers from filing;
- Worker may feel rushed/pressured;
- Employers will have to change their processes; and
- Potential harm to people needing more medical testing.

Other options to consider

- Build in exceptional circumstances;
- Leave timeline as is;
- Clarity around how to preserve right to appeal;
- Transition period/strategy;
- Should have “extenuating circumstances” provision or something – don’t want health systems to cause problems;
- Provision to extend timeline by mutual agreement would help;



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- Fairer if extenuating circumstances; and
- Should have extenuating circumstances for cancer, etc. other serious conditions.





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Time period to appeal decisions – occupational health and safety

Proposal

The Government of Yukon is proposing to maintain the 21-day time limit for a person to appeal to a hearing officer, and allow an additional 21 days to appeal to WCAT following the date of the internal review decision.

Benefits

- Preservation of evidence;
- Consistent with other Boards;
- Clarity for employers;
- Quicker resolution; and
- Board of Directors can focus on governance.

Risks and challenges

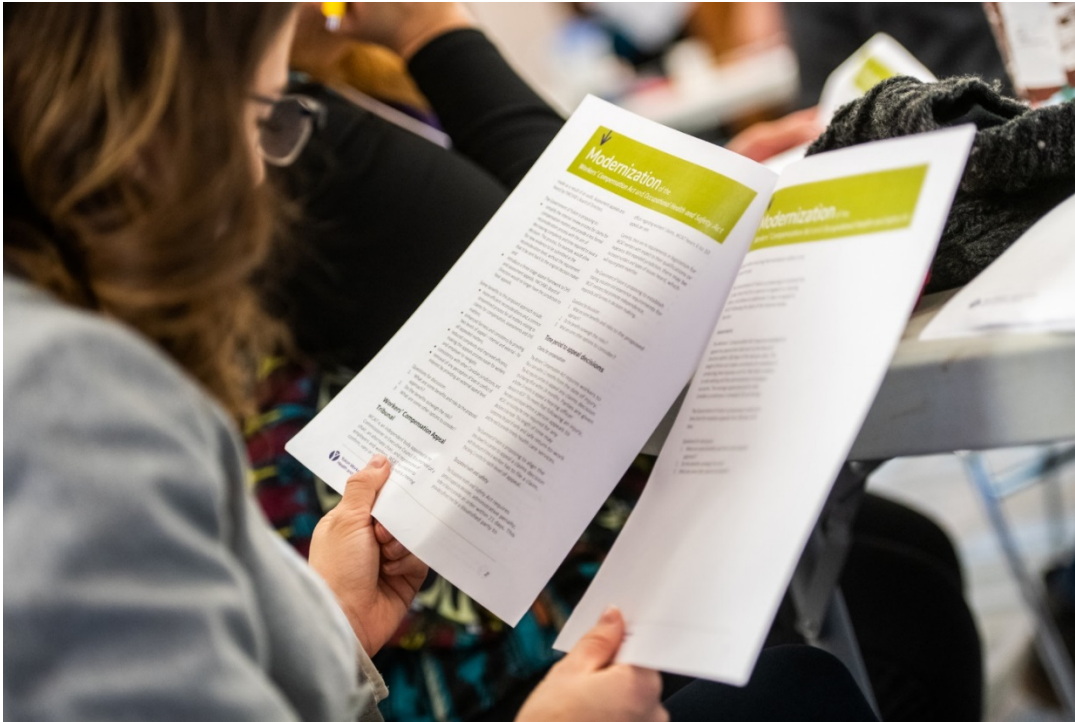
- Increased staff requirements to meet timelines;
- Negatively affect decisions if rushed;
- Employers will have to change their processes;
- Sometimes order goes to a remote camp, but doesn't make it to the key decision maker for 21 days; and
- Since all appeals going to WCAT, need to make sure timelines don't expand.
 - 21 days for WCAT may cause issues.

Other options to consider

- Transition period/strategy;
- Want to ensure people in remote work areas are not disadvantaged;
- Need to ensure accessibility for those with disabilities; and
- Should ensure orders are understandable to all, if they aren't it could take it past 21 days.



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Time period to appeal decisions – assessments

Proposal

The Government of Yukon is proposing to reduce the time limit for employer appeals from 180 days to 90 days.

Benefits

- Preservation of evidence;
- Certainty for seasonal employers;
- Consistent with other Boards; and
- Holding employer records for 180 days is bad.
 - Less time in process helps employer resolve quickly.

Risks and challenges

- Need for more staff to meet timelines;
- Negatively affect decisions if rushed;



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- Employers will have to change their processes; and
- WCAT's capacity to hear three different types of appeals, three different timelines, three areas of expertise.

Other options to consider

- Transition period/strategy.





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Parking Lot

When questions or statements arose throughout the meeting that were unrelated or were not covered by the topic under discussion, participants were encouraged to record thoughts on the “parking lot” poster paper.



No parking lot items were posted during this session.