



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

Appeals Issues

The Government of Yukon is looking to modernize and amalgamate the *Workers' Compensation Act* and the *Occupational Health and Safety Act*. Our goals are to:

- enhance worker safety;
- reduce workplace incidents and injuries;
- improve services for our clients;
- reduce red tape and delays for workers and employers; and
- continue to responsibly manage the Compensation Fund

With these goals in mind, we are proposing to remodel the appeals framework to make it more efficient for workers and employers. Currently, there are different appeal processes for injured workers' claims, Occupational Health and Safety (OHS) matters and employers' assessments matters.

This document is meant to provide some background and an overview of the issues with some possible solutions. Specifically, the following will be discussed:

- ways to create a common streamlined process for internal reconsiderations and appeals for claims, assessments, administrative penalties and other OHS matters;
- updates to appeal timeframes that promote return-to-work, access to appropriate medical care and fairness; and
- updates to enhance independence, impartiality and fairness of the appeal process.

These issues are not exclusive and the group is welcome to explore any additional questions or solutions it considers important.

Appeals framework

The legislation sets out processes of appeal for claims for compensation, OHS and assessment matters.

Most Canadian jurisdictions have a three-stage appeal framework:

1. Initial determination
2. Internal review/reconsideration

3. External appeal (WCAT)

Currently, in Yukon, this three-stage approach only applies to claims for compensation issues. The formal nature of the internal claims review process, however, adds time and complexity to this framework.

Claims for compensation

A claim for compensation may be submitted to Yukon Workers' Compensation Health and Safety Board (YWCHSB) when a worker (or a dependent of a deceased worker) has experienced an injury that is thought to be work-related. Any decision made in relation to a claim can be appealed.

Currently, an internal appeal process allows a worker, a dependent of a deceased worker or an employer to appeal a decision made on a worker's claim. The legislation sets out a process where an internal staff member called a hearing officer reviews the decision. Typically, this involves an oral hearing and other complex processes. One example is that any new evidence provided during the appeal process must be referred back to the original decision maker for review and reconsideration before the appeal can continue.

Once a decision has been issued by a hearing officer, if a person is still unsatisfied, the decision may be appealed to an independent external tribunal, the Workers' Compensation Appeal Tribunal (WCAT).

Occupational health and safety

Any decision, administrative penalty, order or failure to make an order by a safety officer can be appealed. For example, a worker could appeal an administrative penalty levied for failure to wear the required personal protective equipment on a worksite.

Appeals of this type are heard by YWCHSB's Board of Directors.

Assessments

An employer may appeal any assessment matter or decision, such as what industry they are classified in, a penalty for failure to report an injury or a decision



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made as a result of an audit. Assessment appeals are heard by YWCHSB's Board of Directors.

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 OHS and assessment appeals. YWCHSB's Board of Directors would no longer have the jurisdiction to hear appeals.

Some benefits to this proposed approach include:

- more efficient reconsiderations and a common streamlined process for all matters relating to claims for compensation, assessments and OHS matters;
- enhanced fairness and consistency by providing two levels of appeal – internal and external – for all appealed matters;
- reduced complexity and improved efficiency, making the appeals process easier for workers and employer to navigate;
- consistency with other Canadian jurisdictions; and
- removal of any perception of bias or conflict of interest by providing an external appeal level.

Questions for discussion:

1. What are some benefits and risks to the proposed approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Workers' Compensation Appeal Tribunal

WCAT is an independent body appointed by the Commissioner in Executive Council. It is comprised of a chair, an alternate chair, and representatives of employers and workers. WCAT has jurisdiction to confirm, vary or reverse decisions made by a hearing

officer regarding workers' claims. WCAT hears 6 to 10 appeals per year.

Currently, there are no requirements in legislation for WCAT members with respect to their qualifications or experience. With expanded jurisdiction, there may be increased numbers and types of issues heard, which will require greater expertise.

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.

Questions for discussion:

1. What are some benefits and risks to the proposed approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Time period to appeal decisions

Claims for compensation

The *Workers' Compensation Act* requires workers to file a claim within 12 months from the date of injury. The Act requires parties to appeal any claims decision to a hearing officer within 24 months. Parties are given a further 24 months to appeal a hearing officer decision to WCAT. This means that following an injury, five years could elapse before a person appeals to WCAT, not including the time required for any decisions to be made. This length of time may compromise the goal of early and safe return-to-work and the need to provide timely health care services.

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.

Occupational health and safety

The *Occupational Health and Safety Act* requires parties to appeal any decision, administrative penalty, order or failure to provide an order within 21 days. This provides sufficient time for a dissatisfied party to



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appeal while ensuring that workplace safety is not compromised.

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.

Assessments

The *Workers' Compensation Act* requires employers to appeal any assessment decision to the Board of Directors within 180 days of the decision date. This length of time can create uncertainty for employers in conducting their business and for YWCHSB in relation to rate setting and the administration of employer accounts. The average appeal period for other Canadian jurisdictions is between 30 and 90 days.

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

Questions for discussion:

1. What are some benefits and risks to the proposed approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?