

Report to the Minister 2010

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

Submitted by the  
Workers' Compensation Appeal Tribunal  
March 30, 2011

## **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 170 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, 2010 to December 31, 2010. There were no Ministerial requests during this time.

## **Number of Appeals Heard, Resolved and Pending in 2010**

In 2010, 17 appeals were heard. One appellant was represented by legal counsel; the rest were represented by the workers' advocate office.

The workers' advocate office advanced five appeals in late 2009; two of these were heard in December 2009 and the remainder were scheduled for hearing in early 2010.

A total of 18 decisions were rendered in 2010. Two decisions from appeals heard in 2009 were pending at the beginning of 2010. One of the appeals, originally heard by documentary review, was adjourned in December 2010 in order to allow the appellant time to return to the territory as the appeal committee wished to conduct an oral hearing and gather more information.

## **Outcome of Appeals Resolved in 2010**

Appeals allowed -	7 out of 18
Appeals denied -	9 out of 18
Appeals varied -	1 out of 18
Appeals reversed & varied	1 out of 18

The workers' advocate office withdrew/asked for postponement of two appeals.

This year proved to be a busy year compared to the previous two years for the tribunal. There were several complex appeals in addition to appeals that dealt with more than one issue.

In January 2011, the Board of Directors, YWCHSB, stayed and directed the tribunal to rehear one issue of a rendered decision as well as directing that a decision be rendered when the committee issued a letter. (This was a result of an employer filing a Notice of Appeal for a claim for compensation by one of his employees; however, when he appeared before the appeal committee he had no appeal, and therefore no "order" was needed and no decision was rendered.)

### **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 31.5 working days in 2010.

## **Activities of the Appeal Tribunal**

### **New Appointments and Departures**

There was one new appointment and one reappointment in 2010. Following is the make-up of the tribunal as of December 31, 2010:

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

Hank Leenders – Alternate Chair – reappointed February 19, 2010 to February 18, 2013.

#### *Representative of Employers*

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

Nancy Huston – appointed September 24, 2010 to September 23, 2013

#### *Representative of Workers*

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

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

## **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, with the exception of 2010. This is the first year the tribunal has incurred costs above the budgeted amount.

- **\$138,344**, 15% less than the budgeted amount of **\$163,026** for 2009; and
- **\$171,493**, 6% more than the budgeted amount of **\$161, 771** for 2010.

The following reasons are provided for the increase in expenditures:

- An increase in excess of 25% for office space rental occurred in July of 2010; further cost increases will be substantial by 2014. Due to this, the tribunal will be moving offices in 2011.
- An increase in honoraria is attributed to a higher than average caseload.
- Accrued leave & severance costs were higher than expected. (This almost doubled from previous years.)

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.

### **Estimated Costs for 2011**

The appeal tribunal estimated their operating costs for **2011 at \$189,687**. 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.

WCAT will be assuming the costs of renovations to their new office space. In addition, the board has scheduled training in early 2011 for tribunal members. Both of these have sizeable costs associated with them which will reflect on WCAT's budget.

### **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 World and Administrative Justice: Forward, to Basics!**

CCAT's 5<sup>th</sup> International Conference and 26<sup>th</sup> Annual Conference was held in Montréal, from May 30<sup>th</sup> to June 1<sup>st</sup> 2010. Over 525 participants from 15 countries and the United Nations took part. Participants had the opportunity to attend about twenty sessions addressing issues and challenges related to administrative justice in a constantly changing world.

The theme for this year's session, *The World and Administrative Justice: Forward to Basics!* brought together, as speakers, several authorities in administrative justice involved in international organizations.

One of the plenary sessions entitled, "*The place of administrative justice within judicial institutions*" emphasized the fact that tribunals are impaired in the fulfillment of their mission by an excessively heavy legal framework and by the multiplication of levels. Consequently, accesses to administrative justice, excessive delays and costs for litigants have become major obstacles in their daily work. The tribunals should have all the means to fulfill their mission of providing, in a timely manner, an efficient and good quality justice in the proximity of the residence of the litigants.

Tribunal members Margaret McCullough and W. Cary Gryba attended the conference.

### **Canadian Council of Administrative Tribunals Conference 2011**

The Council of Canadian Administrative Tribunals will be holding its 27<sup>th</sup> Annual Conference from June 5 to 7, 2011 in Ottawa.

### **Training**

Due to changes in the board's Return to Work policies, tribunal members attended training sessions in order to gain a better understanding of how the new policies will affect both workers and employers.

### **Other Matters**

The tribunal reviewed their Rules of Proceedings for Hearings. These will be amended in 2011.