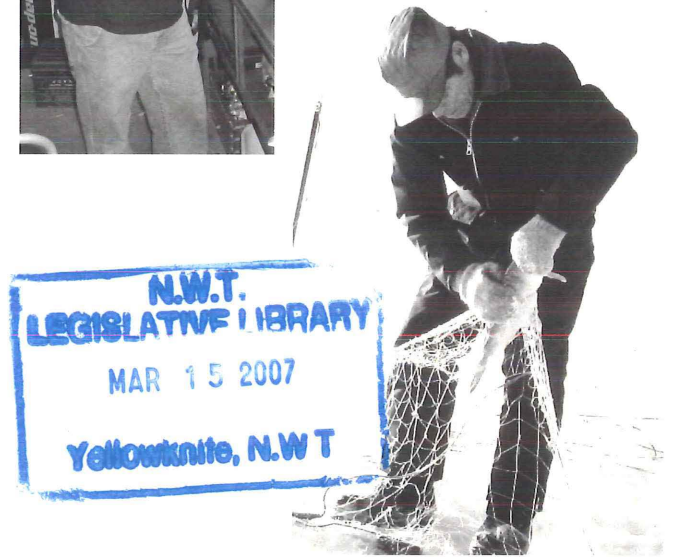




# Workers' Advisor Office Northwest Territories & Nunavut

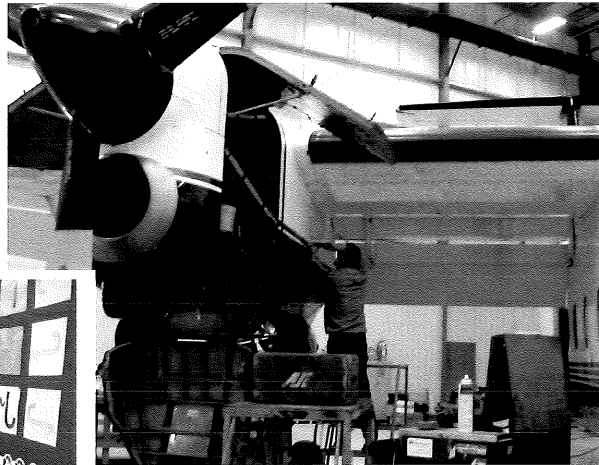
## 2006 Annual Report



**N.W.T.  
LEGISLATIVE LIBRARY**  
MAR 15 2007  
**Yellowknife, N.W.T**

## Table of Contents

Message from the Workers' Advisor.....	3
Services Provided by the Workers' Advisor Office.....	4
The Normal Process of a WAO Client File.....	5
Workers' Advisor Office – The Workers' Compensation Act.....	6
WAO Activity Statistics.....	7
Client Base.....	9
Trends in Client Base.....	11
Recommendations Regarding Governing WCB Legislation.....	11
Systemic Issues.....	15
Looking forward.....	15



## Message from the Workers' Advisor

Several important steps this year have been being taken by the Workers' Advisor Office to become more accessible to residents of the Northwest Territories, Nunavut and throughout Canada. The Office's new website allows clients to access information and forms. The appointment of a Deputy Workers' Advisor in Nunavut has allowed for more direct contact for residents of Nunavut.

I am very encouraged by the increasing level of interaction between this Office and the Board's Governance Council. This interaction has allowed for injured workers' views and input to be considered in Board policy development. During this year, processes such as the Office of the Auditor General of Canada report on the WCB have created an environment of exploration into improving the WCB system during which this Office has represented the interests of injured workers. This process continues to be open and collaborative. The needs of injured workers in these Territories are being addressed and advanced and the Workers' Advisor Office's participation in improving the system will continue to be a welcomed priority.



Colin Baile  
Workers' Advisor

## Services Provided by the Workers' Advisor Office

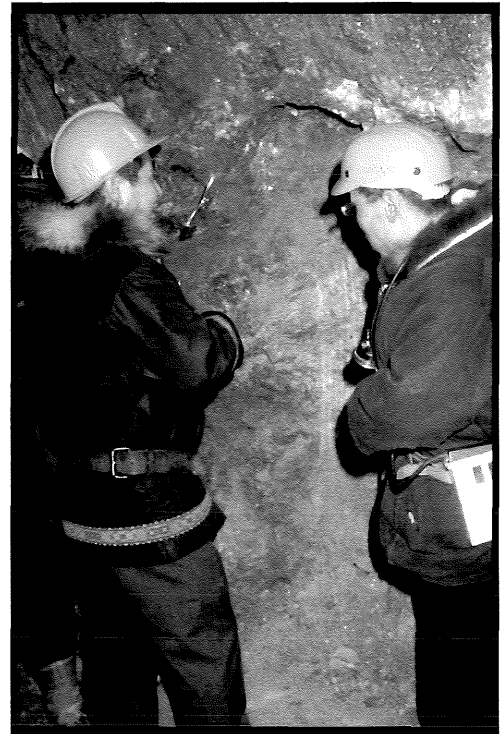
The WAO provides a range of assistance to workers injured in the NWT or Nunavut. These services include:

- Obtain information from the Board for a client,
- Assist clients to communicate with the Board,
- Explain the WCB process and WCB decisions to clients,
- Review file evidence,
- Obtain further evidence that may be required,
- Assist a client in preparing and presenting submissions to all WCB decision-making levels,
- Refer clients to appropriate community services.

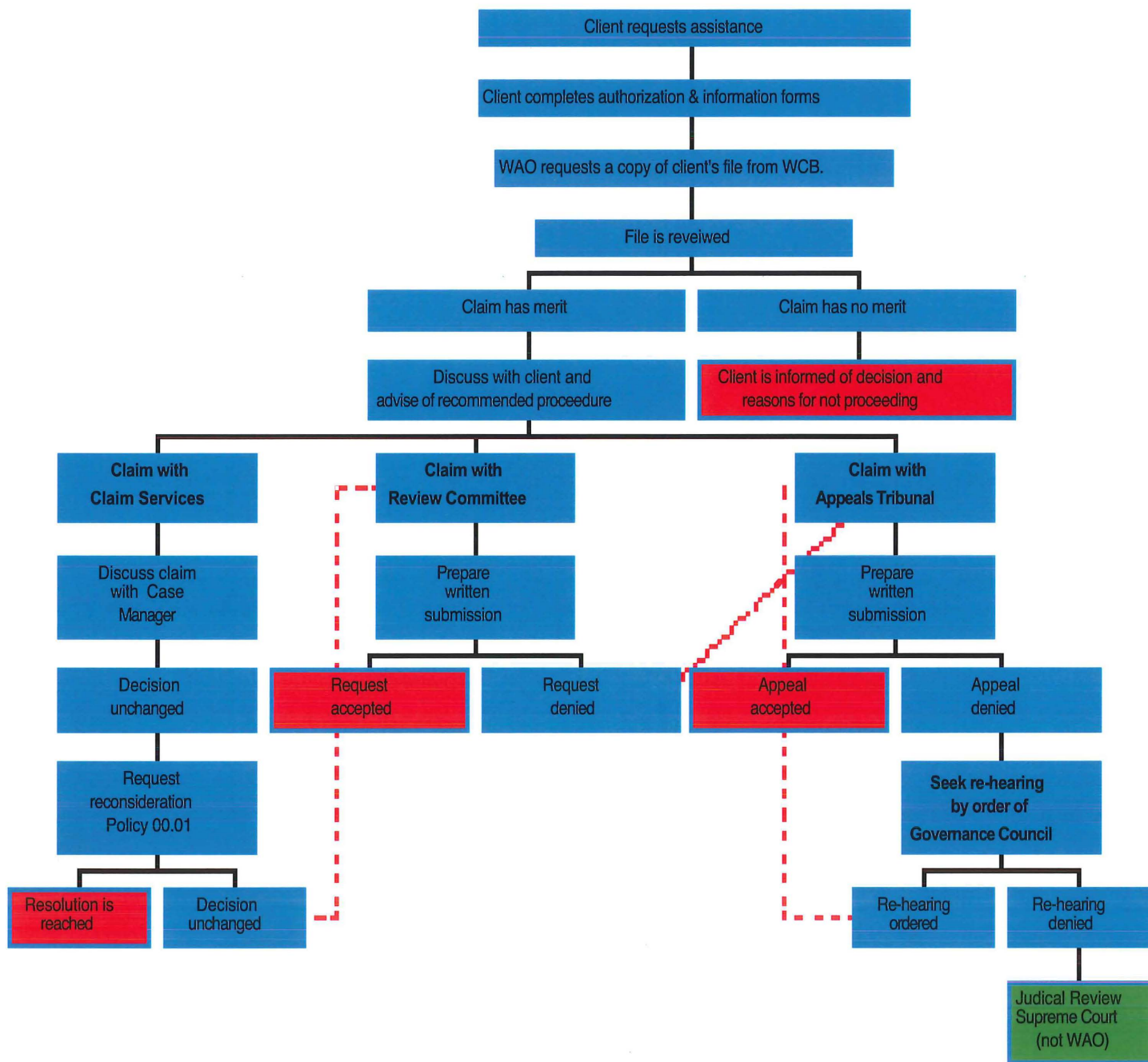
The WAO will assist any injured worker or their family members who contact the Office, seeking assistance or information about their WCB claim. A client's first contact with the WAO may take place while the client's claim is at any stage of the WCB process. Some clients contact the WAO prior to completing the claim forms, while others make first contact days prior to appearing before the Appeals Tribunal. Regardless of where a client's claim is in the WCB process, the Workers' Advisor Office can lend assistance.

After discussing the client's concerns, most often a copy of their WCB file is obtained and reviewed. It is then possible for the WAO to advise the client of the options available. This may be simply explaining what has happened to the other extreme of making representations on behalf of the client to any or all decision-making authorities within the WCB system.

The WAO may refuse to further assist a client if it is clear that there are no grounds upon which to further their case. This may be the result of medical evidence or the lack of statutory entitlement.



## The Normal Process of a WAO Client File



## Workers' Advisor Office – The Workers' Compensation Act

The Workers' Advisor Office is established by the Workers' Compensation Act of both Territories.

*7.91.(1) The Minister may appoint a workers' advisor and one or more deputy workers' advisors.*

*(2) The workers' advisor shall report to the Minister.*

*(3) The workers' advisor and deputy workers' advisors are not employees in the public service.*

*(6) The workers' advisor shall, on request,*

*(a) assist any person who is or has been a claimant for benefits under this Act, unless he or she is of the opinion that the claim is without merit; and*

*(b) advise workers and dependants on the application and administration of this Act and the regulations and any decisions made under it.*

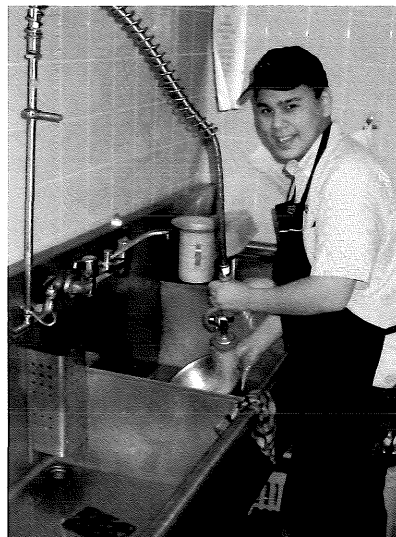
*(8) The workers' advisor may, if he or she considers it appropriate, make representations on behalf of a claimant in support of the claim*

*(a) to the Board;*

*(b) to a review committee; and*

*(c) to the appeals tribunal.*

*(10) The workers' advisor shall report annually on the functions of his or her office to the Minister and the Governance Council.*



## WAO Activity Statistics

### Contacts

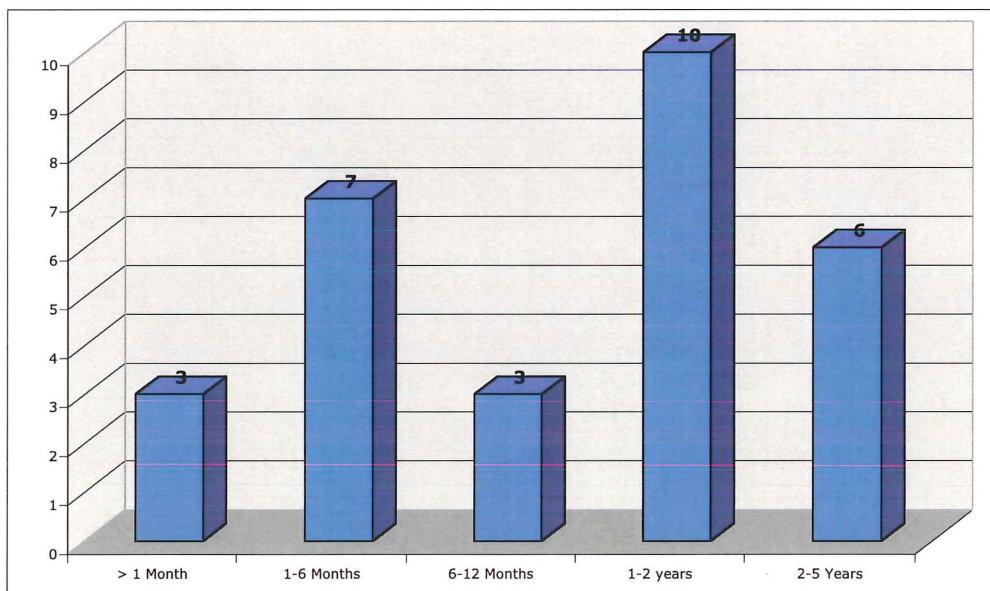
During the course of 2006, the WAO had contact with various individuals and community organizations. Understandably, the majority of contacts were with clients or WCB staff regarding claim issues. Additionally, the WAO had contact with labour groups, employers, healthcare providers, the media, MLAs, and other stakeholder groups. Total contacts – 2721

### Caseload

	Cases Opened	Cases Closed	Cases Active
NT	28	23	67
NU	6	6	12
Total	34	29	79

### Time Files Open

The following graph reflects the length of time WAO files remained open. This graph represents the number of files closed during the reporting period.



## Issues Addressed

For each client file, there may be several individual issues for which the WAO provided assistance. An example is that of a client for whom the WAO assisted with: acceptance of the claim, vocational rehabilitation, and the level of *Permanent Medical Impairment* awarded. This example represents three issues. During 2006, the WAO addressed 197 individual claim issues.

## Appeals

During 2006, the WAO represented clients in 22 appeals at all three levels of appeal, they being: the Review Committee, the Appeals Tribunal, and the Governance Council.

Review Committee – 14

Appeals Tribunal – 7

Governance Council - 1



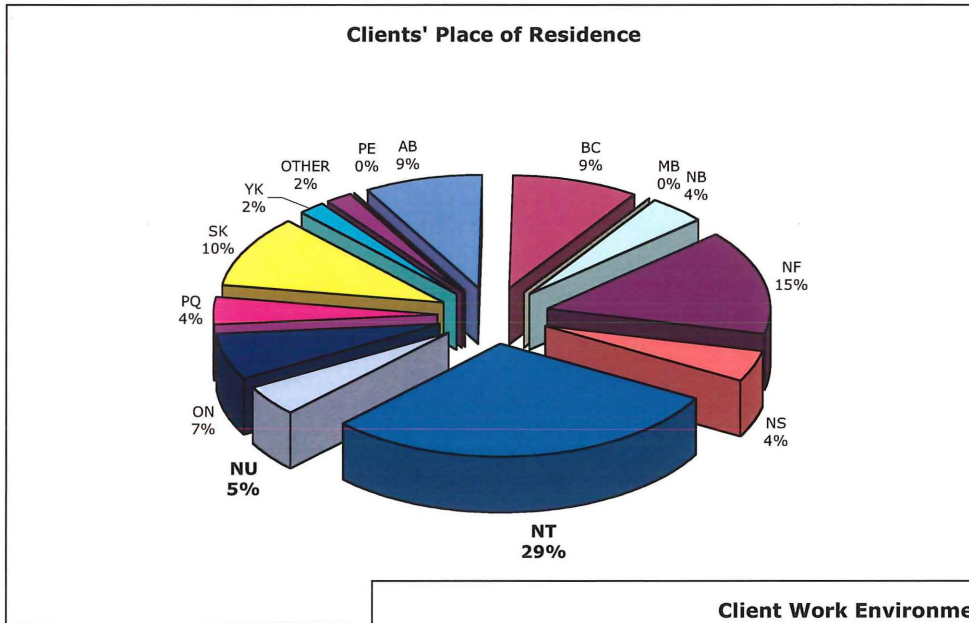


# Client Base

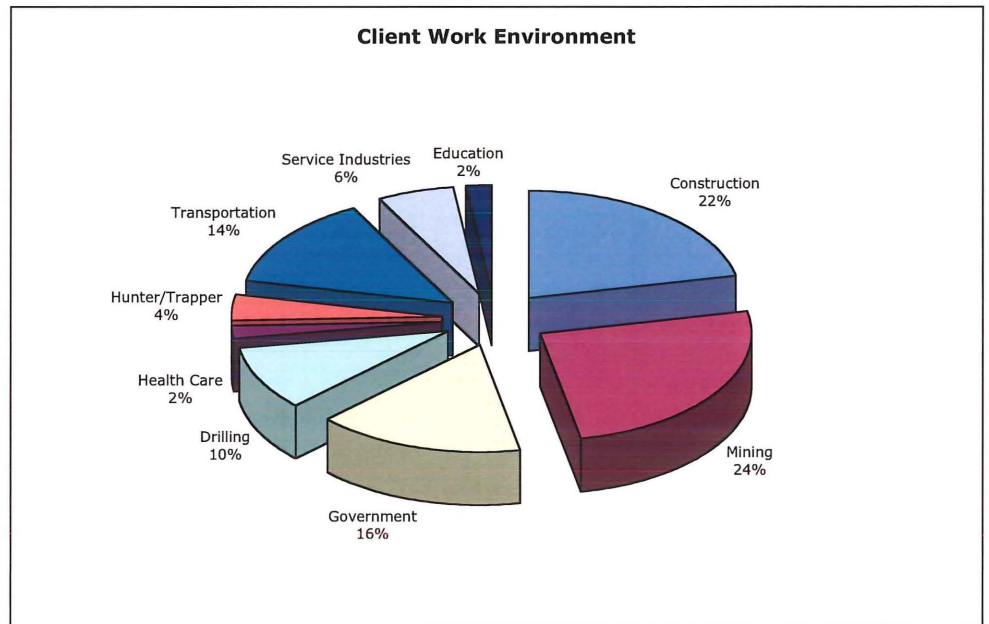
The four graphs on the next two pages are reflective of WAO clients during 2006:

## Place of Residence

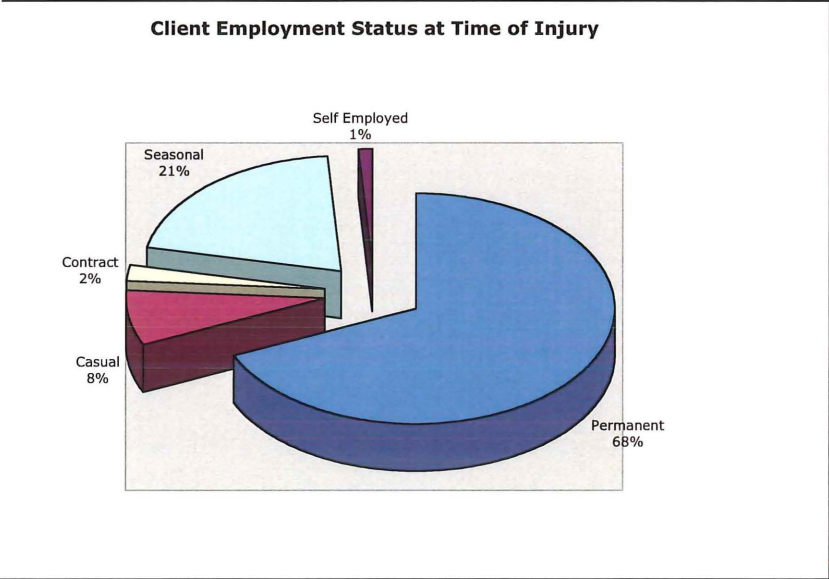
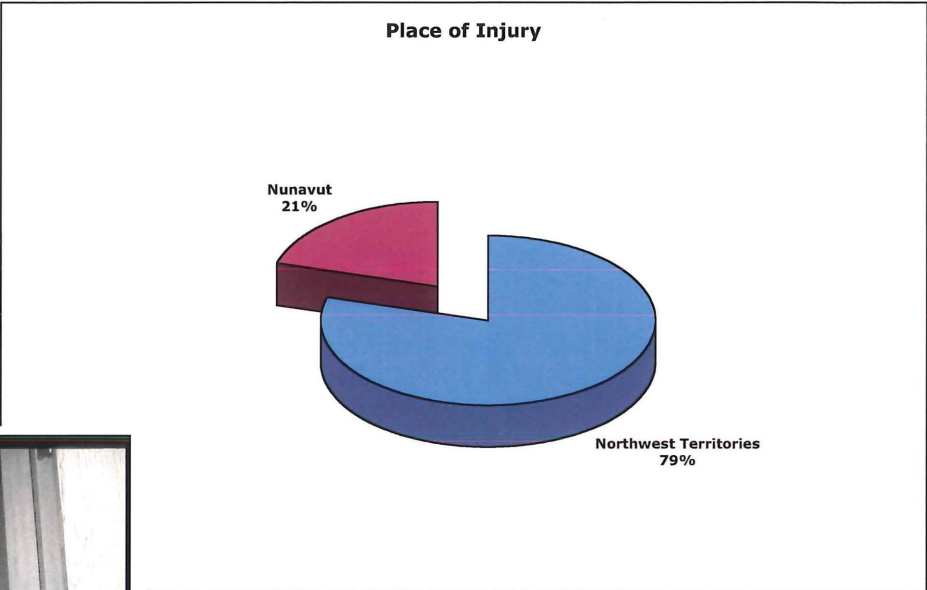
As is indicative of the Nunavut and Northwest Territories workforce, many WAO clients reside outside of the two northern jurisdictions. A breakdown of clients' place of residence is as follows:



## Client Work Environment Clients by Industry at Time of Injury



**Place of Injury**  
identifies in which  
Territory the injury  
occurred.



**At the time of injury** the  
worker's employment status  
is identified as being  
permanent, seasonal, casual,  
contract, or self-employed

## Trends in Client Base

- The year of 2006 saw very similar statistics for percentage of injuries per work environment, place of injury, and employment status as in the previous year.
- The number of clients whose employer is either the Government or a Government agency has increased from 13% to 16% from the previous year.
- The most common issue for which clients seek assistance from the WAO is that of continuation of benefits. Generally, this group of clients feel their benefits had been prematurely terminated.



## Recommendations Regarding Governing WCB Legislation

Arising from the ACT NOW document, the first round of legislative changes were enacted in January 2004. Several further legislative changes are anticipated in the coming year. The following legislative changes/considerations are recommended:

### ***Limitation on time to file an appeal***

- It has been proposed by others that a time limit of one year be introduced for the filing of appeals. In other jurisdictions, 25% do not have such limits. The establishment of a time limit would have the greatest impact on those who are least able to defend themselves. It is my experience that individuals seeking appeals after one year are often the least able, and without the resources or energy to forward claims in a timely manner.

### ***Benefits in exceptional cases***

- Presently there are several “chronic cases” representing individuals who have been mired in the WCB process for an uncommon period of time. These individuals’ arguments, and the very merit of their cases, are often overshadowed by the process itself. Although these cases are few, these are the cases that seem to be on a never-ending cycle of appeal. There would be great value in the introduction of a process that addresses these cases as a whole, rather than by individual issues, providing for the independent examination of the case and the rendering of a final, and binding decision.

### ***Lump sum payments of PMI awards***

- Presently, an award for a Permanent Medical Impairment (PMI) or pension is paid on a monthly basis for life unless the PMI is less than 10%. The implied premise of this requirement is that most Claimants require their monthly pensions for the necessities of life. In fact most Claimants in receipt of a pension must continue to work in order to sustain themselves. An individual receiving a 20% pension may receive a few hundred dollars each month. This amount certainly assists with living expenses, however few workers rely solely on their pension to live.
- The second premise upon which the present practice is based reflects a mindset that the Board has some responsibility regarding the Claimant’s finances. This approach may have had merit in the past, however it is inappropriate today. It is my experience that Claimants who wish a lump sum payment make the request for a specific purpose, most often to further their own financial situation such as buying a business or house.
- It is recommended that Claimants who are awarded a PMI of greater than 10% be given the option of receiving their pension as a lump sum should the Claimant be able to demonstrate reasonable self support.



### ***Employment Insurance included in calculation of remuneration***

- The Act is silent on the issue of EI being included in the calculation of remuneration. During 2005, the WCB amended its policy to exclude EI and did so retroactively. Although the Board has jurisdiction to make such a policy amendment, it is highly questionable if the WCB has the jurisdiction to make policy retroactive in this manner.
- Several jurisdictions include EI in calculating income. In the jurisdictions with this practice there are higher numbers of seasonal employees. An example for the NWT is that of a forest firefighter who works 4 months a year. For a portion of the year that individual would collect EI. EI entitlement is

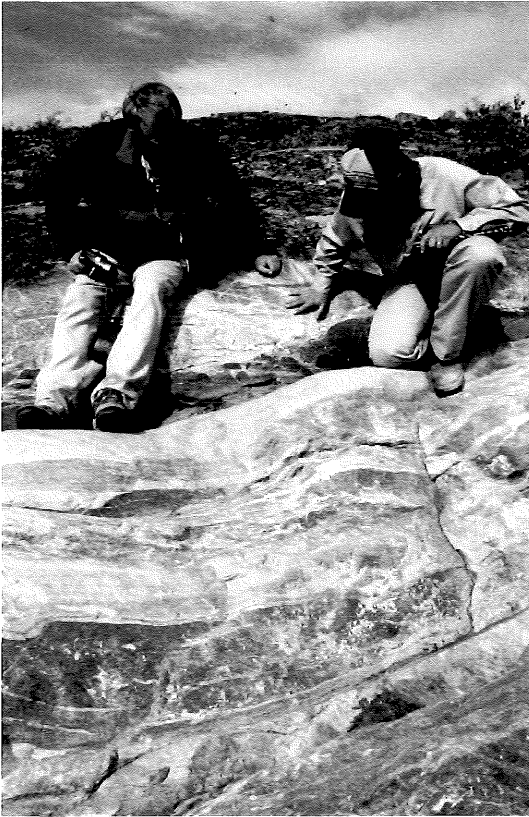
based upon having been employed and for a specific period of time. The firefighter's lifestyle is based upon both employment income and EI. Should an injury occur, benefits are based only on employment income. This has a profound effect of the Claimant's lifestyle and that of family members.

#### ***Duty to accommodate***

- With the *NWT Human Rights Act* now two years old, it is clear that employers have a duty to accommodate. It is submitted that it is important for the WCB Act to contain such a provision. The WCB Act should not rely upon other legislation for the application and enforcement of workers' rights. Its exclusion from the WCB Act forces injured workers to seek remedy through the *Human Rights Act* rather than compelling the Board to ensure an employer is providing accommodation for disabled workers.

#### ***S. 7.7(2) Governance Council ordering Appeals Tribunal to rehear a matter***

- The Appeals Tribunal is less an independent body when such "oversight" provisions are in place. Should the Appeals Tribunal make a decision with which the Governance Council disagrees, the matter should rightly go to the Court by way of judicial review. If the Appeals Tribunal erred at law, the Court should be the one to direct a re-hearing, not the Governance Council.



#### ***Chronic Pain***

- The WCB is presently amending its chronic pain policy. It is anticipated that during the coming year a new policy will be introduced to better address this issue. It is hoped that the policy will better reflect the true level of impairment that this condition imposes.

#### ***Obligation to investigate***

- A great number of disputes occur between the Board and Claimants in situations where a Claimant's doctor has opined that the Claimant has a specific condition or restrictions yet has failed to provide "objective medical evidence" to the standards imposed by the Board. This situation often results in denial of benefits, as the Board does not normally seek further information from the doctor. Where the Board receives a medical opinion without supporting evidence, the Board should have an obligation to enquire into the matter, provide the attending physician with the Board's standard of proof, and request clarification from the attending physician.

### *Retroactive application of Board Policy*

- The Board's Governance Council is charged with the development of policy. Often new or amended policy will greatly impact the nature or level of benefits to which Claimants are entitled. Such changes may, in certain circumstances negatively impact Claimants. The Board's ability to make new or amended policy retroactive should be governed by legislation in order to reduce the negative impact of Claimants. Legislation in some jurisdictions prohibits new or amended policy from retroactively diminishing a Claimant's entitlement. This legislative directive would prohibit the Board from passing policy that would adversely affect a Claimant's entitlement.

### *Benefit of the doubt*

- Section 14 of the Act suggests that injured workers should be given the benefit of the doubt as to entitlement. This is reflected in Board Policy 03.04. It is recommended that this provision be strengthened to require the Board to actively seek medical information where there is any indication of ambiguity in the medical evidence. Despite the legislative and policy requirements, injured workers are often left to seek additional medical evidence despite there being medical opinion supporting their case on record.



### *Method of calculating benefits*

- The method of calculating benefits- Sections 39 & 41 of the Act stipulates how an injured worker's benefits are to be calculated. This process is further refined by Board Policy 03.07. It is practice for the Board to determine a client's level of remuneration based upon his or her income for the 12 months preceding the injury (non-permanent employees). This calculation is not reflective of the intent of s. 39(3) which states:  
*(3) Subject to subsection (4), the gross annual remuneration of a worker is the estimate of annual remuneration by the Board that the worker would have earned in the year in which the accident occurred if the accident had not occurred, calculated in accordance with section 41.*

Where a client is injured soon after starting a seasonal or casual job, the Board does not consider the "loss of earning capacity" for the future, but rather only the income from the previous year. This practice discriminates against workers whom, for whatever reason, did not work or worked very little in the previous 12 months. It is recommended that the Act be amended to reflect the intent of s. 39(3).

## Systemic Issues

- In the recent past, a shift has been observed regarding the burden of proof of clients' medical conditions. Where a client's healthcare provider opines that a specific condition is present, the Board will not consider the opinion unless the healthcare provider also includes "*objective medical evidence*" of the condition. In the absence of the medical evidence, the Board generally does not proceed with the matter. Further, the Board does not seek clarification from the attending healthcare provider, but rather shifts the onus to the client to provide additional information. It is recommended that where a healthcare provider opines that a client suffers from a given condition but does not provide the standard of evidence required by the Board, that the Board request the additional information rather than requiring the client to do so.
- Presently the waiting time for an Appeals Tribunal hearing is approaching one year. Notwithstanding the challenges of a part-time panel and continuing appointments to the Tribunal, this length of time awaiting a hearing is an undue burden on injured workers. Often the issue before the Tribunal is the denial of benefits. The protracted time for a hearing places great strain on injured workers and their families.



## Looking Forward

The Workers' Advisor Office looks forward to 2007 with great anticipation. Legislative amendments, collaborative Governance Council processes, and the establishment of a Deputy Workers' Advisor in Nunavut to better serve the residents of that territory are all positive indicators. As a member of the Canadian Association of Worker Advisors and Advocates (CAWAA), the Workers' Advisor Office participates in discussions and activities that impact all injured workers in Canada. The WAO looks forward to representing not only individuals who are impacted by a workplace injury, but also all injured workers by making representations to the Board, Governance Council, Ministers, and Legislative Assemblies on systemic issues.

## Contact Us

### Workers' Advisor Office

**Write:**

#19, 4817 – 49<sup>th</sup> St.  
Yellowknife, NT  
X1A 2N7

**Email:**

[info@waonorth.ca](mailto:info@waonorth.ca)

**Fax:**

(867) 873-4349

**Call:**

Toll Free: 1-877-816-0166  
Yellowknife: (867) 873-4345  
Nunavut Toll Free: 1-866-727-3830

**Web:**

[www.waonorth.ca](http://www.waonorth.ca)

