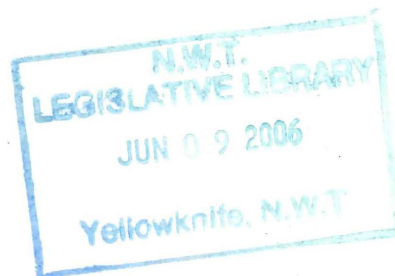


**Workers' Compensation Appeals Tribunal
Northwest Territories & Nunavut
Annual Report
2005**



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Chair's Message

It is my pleasure to offer the Annual Report of the Appeals Tribunal (AT) of the Workers' Compensation Board of the NWT and Nunavut for the year ending December 31, 2005. Overall the number of appeals received by the tribunal has decreased by 16 percent, and the number of decisions rendered has increased by 8 per cent over the previous year. Appeal issues ranged from denial of claim, ongoing medical treatment, vocational rehabilitation, PPD (permanent partial disability) benefits to termination and/or suspension of TTD (total temporary disability) benefits.

New members were appointed to the AT in 2005. Training opportunities were also offered to tribunal members in 2005. There was turnover amongst our support staff. One of our Tribunal members resigned in 2005. The AT continues, however, to resolve appeals in a fair and impartial manner in accordance with its enabling legislation.

I recognize that 2005 was a challenging year for the advocates in the worker and employer communities because they too were faced with legislative changes that resulted from the ACT NOW document.

It has been a privilege to chair the Workers' Compensation Appeals Tribunal (WCAT) and I want to extend my appreciation to our support staff who have worked diligently and conscientiously during this very challenging year.

Debora Simpson
Chair



1. Appeals Tribunal's Role within the Workers' Compensation System

The WCAT is an independent appeals tribunal external to the Workers' Compensation Board (WCB). The mandate of the AT is to decide appeals brought forward by workers and employers from decisions that have already been made by the Review Committee of the WCB. Appellants can bring their issues of appeal to the AT if they are dissatisfied with decisions made by the Review Committee (the internal committee of the WCB that reviews internal decisions of claims/revenue staff).

The operational funding of the AT comes from the Accident Fund (as stipulated in the Act). The AT is the second and final level of appeal. It is an independent, external body set up under the Act to be the final claims/revenue arbiter.

The role of the AT is to resolve appeals in a fair and impartial manner in accordance with the enabling legislation (the *Workers' Compensation Acts and the WCB Policies and Regulations*).



2. Appeals Process

These are the main steps in the appeals process:

- ✘ Appeal is acknowledged: letters sent to appellant, appellant's representative, worker, employer
- ✘ Request for disclosure referred to the appropriate division by the Appeals Registrar
- ✘ Request for client information sheet/medical summary by the Appeals Registrar (depending on issue)
- ✘ File summary is prepared by Appeals Registrar
- ✘ AT Members meet in pre-hearing to review file
- ✘ Additional information may be requested
- ✘ Hearing is scheduled & client can choose from : documentary, tele-conference, video-conference or in-person
- ✘ Once the hearing is scheduled the appellant, representative and interested parties are notified and provided with a copy of the case summary
- ✘ Post hearing: case is discussed, decision process begins
- ✘ Members may request client undergo independent assessment
- ✘ Decision rendered: copies sent to appellant, appellant's representative, worker, employer, and to Client/Revenue Services to address the decision



3. Statutory Framework

The statutory framework governing the operation of the AT was established in April, 1990. Section 7.1 of the *Workers' Compensation Act* describes the make-up of the Tribunal, defines its jurisdiction and defines its operational parameters.

Jurisdiction

According to section 7.3 of the *Workers' Compensation Act*, "subject to section 7.7, the AT has exclusive jurisdiction to examine, inquire into, hear and determine all matters arising in respect of an appeal from a decision of a review committee under section 24 or 64, and it may confirm, reverse, or vary a decision of the review committee."

Timeliness

There is no time limit stipulated within the Act regarding the amount of time required to decide new appeals. On average, from the time an appeal is requested by an appellant to the time a decision is rendered and sent out it usually takes 176 days. The process may be slowed down if additional medical information is requested or if the appellant requests a postponement.

The AT makes every effort to render its decisions within a month of a hearing.

Consistency

The AT must apply the policies of the Governance Council when determining an appeal, unless the policy is so patently unreasonable that it cannot be supported by the Act. Application of policy is a means of promoting consistency in decision making within the workers' compensation system.

Finality

The decisions of the AT are final and conclusive. There is no further avenue of appeal beyond the AT unless the Tribunal has erred in application of the law or natural justice has been denied to the appellant. If this is the case, decisions can be referred to judicial review by the courts.

There is a limited opportunity for reconsideration, on application by a party. The AT may, however, rehear a decision on the basis of new evidence/material which is substantial and did not previously exist.



Rules of Procedure

The rules of procedure to be followed by the AT came into effect July 1, 2002. They are posted on the WCB website at: http://www.wcb.nt.ca/forms/Appeals_Trib_Rules.pdf

Public Access

Decisions of the Appeals Tribunal are not publicly accessible on the WCB website. If such a practice were to be undertaken, the written decisions would have to be “sanitized” so the privacy of the parties could be protected.

Independent Medical and Legal Advice

The AT seeks independent medical and legal advice when necessary. We have legal council in Calgary on retainer and we obtain assistance and advice from “outside” medical specialists if necessary. Any such medical reports are disclosed to all parties for comment before the AT makes a decision.



5. Cost of Operation

Budget for 2005 (January 1, 2005 – December 31, 2005)

CATEGORY	BUDGET	SPENT
Salaries & Benefits	\$129,654.52	\$117,491.05
Other Operating Costs	\$319,432.76	\$189,106.01
TOTAL EXPENDITURES	\$449,087.28	\$306,597.06

Financially, the tribunal's total expenditures were \$142,490.22 less than what had been budgeted in 2005. We spent less in the categories of publicity, medical consulting and travel, legal fees, translation, honorarium and training. However, overall expenditures for 2005 were 16.5 percent higher than expenditures in 2004. This increase in expenditures was due to higher operating costs.

2005 Variance

When preparing the annual budget we have to allocate sufficient funds to cover a full complement of Tribunal members (which would include honorarium, travel and training costs) as well as potential legal and medical consulting fees. In 2005 we did not have a full complement of Tribunal members and we only required minimal legal and medical consultation.



6. Appointments

Serving members

MEMBER	APPOINTED	RE-APPOINTED	TERM EXPIRES
<p>Debora Simpson Chairperson (Public Interest- Minister Appointee)</p> <p>(Public Interest- Minister Appointee) Vacant</p>	December 5, 2001	March 5, 2004	March 4, 2007
<p>Blake Lyons (Employer Rep. – NWT Chamber of Commerce)</p>	July 26, 1999	January 18, 2005 (date of instrument March 11, 2005)	March 10, 2006
<p>Craig Scott (Worker Rep. – Town Council of Norman Wells)</p>	March 1, 2005		February 28, 2007
<p>Mary Lou Cherwaty (Worker Rep.- NWT Federation of Labour)</p>	May 19, 2005		May 18, 2008
<p>Trent Fequet (Worker Rep. - Self Appointed)</p> <p>(Employer Rep.) Vacant</p>	October, 2004 (date of instrument January 10, 2005)		August 16, 2005
<p>Marija Babic (Worker Rep. – NWT Federation of Labour)</p>	December 5, 2001	March 5, 2004	March 4, 2007

The Ministers (NWT and Nunavut) appoint two public interest members to the AT. Members representing both employees and employers are appointed by the Ministers in equal numbers. The appointments of individuals representing employees are made by the Ministers based on the recommendations of representatives of employees (e.g. unions). The appointments of individuals representing employers are made by the Ministers based on the recommendations of representatives of employers (e.g. Chamber of Mines, Chamber of Commerce, Construction Association etc.).



7. Support Staff

Requirements

There are two full time support staff in the office of the AT. The Senior Appeals Registrar manages and directs the work of the Tribunal on a daily basis. The Junior Appeals Registrar assists the Senior Appeals Registrar with the day to day administration of the Tribunal's work.

The Junior Appeals Registrar position was vacant for three months in 2005. A casual employee was hired to assist from time time to time until the position was staffed.



8. Training and Development

Rationale for training

Continuing education, training and development are essential to achieving and maintaining the expected standards of quality in decision making and decision writing. Accordingly, the Chair has made every effort to orient new members to the operations of the Tribunal.

The AT is committed to excellence in decision making and decision writing. Recognizing that members come to the Tribunal with varying skill levels, the Chair organized a Decision Writing Workshop in 2005 to help members enhance their skills in this very important area. Members also attended a variety of other training events.

List of training events attended

In 2005 some members of the AT attended a Decision Writing Workshop (August 2005), Administrative Law Course, Canadian Council of Administrative Tribunal Conference (CCAT) and the Association of the Workers' Compensation Boards of Canada Symposium (AWCBC). In June the Chair of the Appeals Tribunal also met with other Workers' Compensation Appeals Tribunal Chairs.



9. Statistics

a) *How many requests for appeals were there in 2005 and what was the gender breakdown of the appellants?*

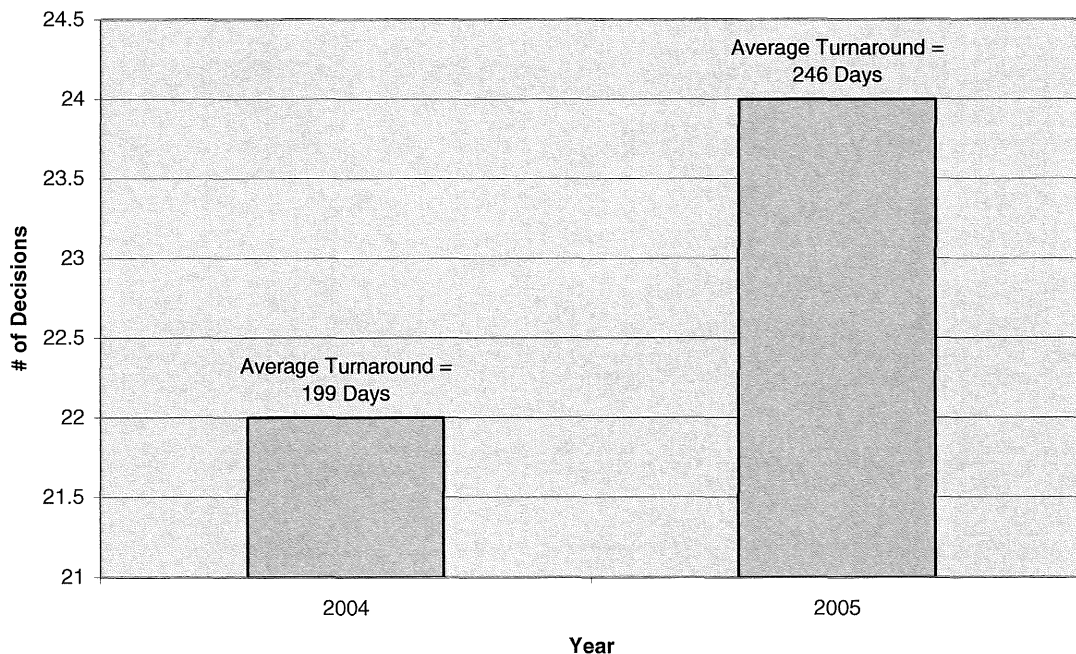
Twenty requests for appeals were received in 2005. Two of the appellants were females and 18 were male.

b) *# of decisions rendered in 2005 compared to # of decisions rendered in 2004*

In 2005, 24 decisions were rendered (cases heard and completed) with an average turn around time of 246 days – (date received to decision communicated.)

In 2004, 22 decisions were rendered with an average turnaround time of 199 days.

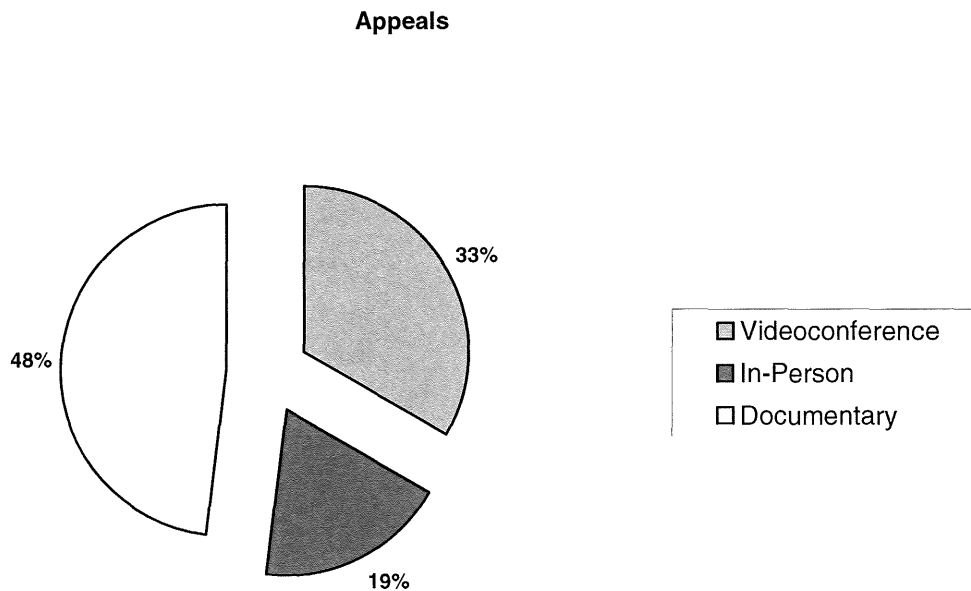
of Decisions Rendered 2004 & 2005



There are many factors that impact on the average turnaround time of a decision including:

- * appellant delays
- * medical and legal opinion
- * unavailable file information
- * medical summaries
- * case complexity

c) *How many appeals in 2005 were conducted via videoconference, how many were in-person and how many were documentary?*



d) *What issues were addressed?*

- ✘ Claim denied
- ✘ Rate of compensation
- ✘ Total Temporary Disability (TTD) Benefits
- ✘ Denial of ongoing medical
- ✘ Pension
- ✘ Vocational rehabilitation

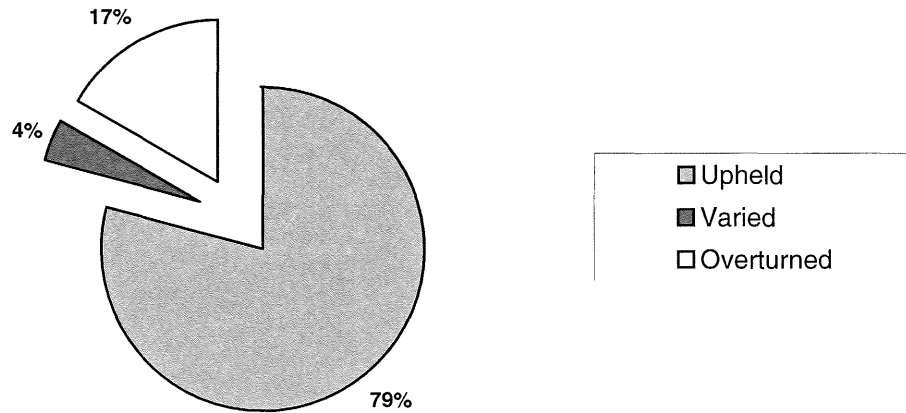
e) *How many appellants appealed in 2005 using the services of the Workers' Advisor, how many used lawyers and how many represented themselves?*

Appellants have a choice when they present their case to the Appeals Tribunal. In 2005, 6 of the appellants used lawyers to help them present their case, 4 used the Workers' Advisor and 14 represented themselves at their appeal hearing.



f) *What were the outcomes of the 2005 decisions?*

Outcomes of the 2005 Decisions



g) *How many of the decisions made by the Appeals Tribunal in 2005 went back to the courts?*

In 2005, 1 of our decisions was given a stay by the Governance Council and in turn was sent back to the Courts.

h) *What was the status of the backlog on the docket at the end of 2005?*

At the end of 2005, 19 cases remained on the docket of the Appeals Tribunal. Three cases remained due to the appellants' deferrals.

i) *How many cases in 2005 were long standing unresolved cases?*

In 2005 there were four long standing unresolved cases:

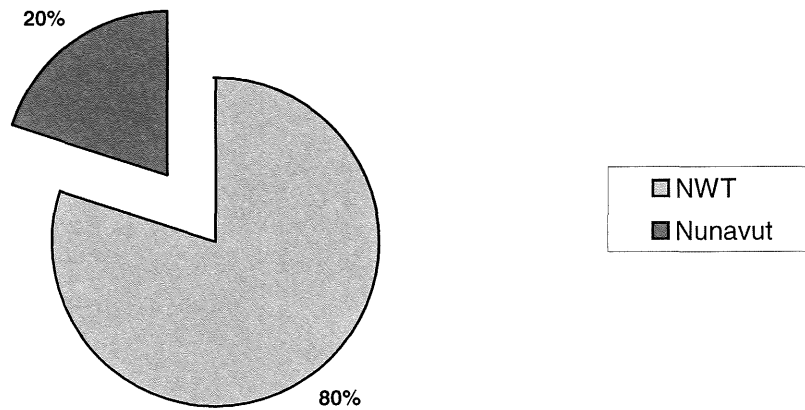
- ✘ Case 1 - Long standing case + submitted a second appeal
- ✘ Case 2 - Rehearing (Court decision/Governance Council Stay)
- ✘ Case 3 – Appellant submitted three different appeals
- ✘ Case 4 – 4th request for rehearing



j) *Of the 20 appeals received in 2005, how many were from Nunavut and how many were from the NWT?*

Four appeals were from Nunavut and 16 were from the Northwest Territories

Appeals NWT vs. Nunavut





10. Noteworthy Decisions

Employment Insurance (EI) as part of Remuneration

The AT upheld its original decision #01-011 (June 2002) to overturn the decision of the Review Committee dated July 9, 2001, which did not consider income from UIC (now Employment Insurance) as remuneration. The Governance Council stayed the AT's decision and sent it to the Courts. Justice Johnson agreed that there was ambiguity in the definition and he could not say that one definition was right and one was wrong. He concluded that the AT should rehear the decision.

In an effort to bring closure to the issue of EI as remuneration, The Tribunal suggested to the Governance Council that appropriate modifications be made to the Act, the policies and/or the regulations to clarify the definition of remuneration so that a clear statutory basis can be provided which will ensure clarity in future cases.

The case is ongoing.



11. Key Initiatives for the Coming Year

- ✘ Maintain our current level of independence and increase the public perception of independence
- ✘ Publish the decisions of the AT
- ✘ Facilitate and encourage enhanced training opportunities for members
- ✘ Reclassify the Senior Appeals Registrar's position description
- ✘ Produce an Annual Report within 90 days of fiscal year end
- ✘ Expedite the appeals process to the best of our ability
- ✘ Continue to have 4 hearings/month in 2006