

WORKERS' COMPENSATION APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES ACCIDENTS AU TRAVAIL

2015-2016

**Workers' Compensation
Appeals Tribunal
Annual Report**

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2015-16 WCAT Annual Report

A. Overview

I am pleased to present the 2015-16 Annual Report of the Workers' Compensation Appeals Tribunal (WCAT). Since this is the inaugural year of the Appeals Tribunal in its new format, the purpose of this report is to provide an overview of the changes made to the Appeals Tribunal as well as an overview of the work currently being done by the Appeals Tribunal.

In April 2015, the *Workplace Health, Safety and Compensation Commission Act and the Workers' Compensation Appeals Tribunal Act* was amended. These amendments, as it relates to the Appeals Tribunal, made it an independent appellate tribunal. Prior to these amendments, the Appeals Tribunal was part of WorkSafeNB. As of April 1, 2015, the Appeals Tribunal is now completely independent of WorkSafeNB and the Chairperson of the Appeals Tribunal reports directly to the Minister of Post-Secondary Education, Training and Labour.

The current legislation allows for a full-time chairperson and up to ten (10) vice-chairpersons. As of April 2015, there was an interim chairperson in place as well as four (4) vice-chairpersons who were appointed. As the Appeals Tribunal was a new entity, training was held for the vice-chairpersons and they were able to commence hearing appeals in July 2015.

On May 28, 2015, I was appointed the Chairperson of the Workers' Compensation Appeals Tribunal. I replaced Richard Hatchette, who served as interim Chairperson from April 1, until May 28, 2015. I want to take this opportunity to thank Mr. Hatchette for laying the groundwork for a smooth transition for myself into the position as Chairperson.

Presently, the Appeals Tribunal has nine vice-chairpersons who have been appointed by the Lieutenant Governor in Council. These vice-chairpersons represent the linguistic, gender and geographical realities of the province of New Brunswick. Vice-chairpersons are appointed on a part-time basis and are practicing lawyers. I am pleased that the following people are vice-chairpersons for the Workers' Compensation Appeals Tribunal:

- Anik Bossé
- Jennifer Cleversey Moffitt
- James A. Connely
- Danys R. X. Delaquis
- Shelley R. Dumouchel
- Denyse Landry
- Michèle Pelletier
- Candace Salmon

- James A. Whelley

Upon taking over as Chairperson, our backlog on May 31, 2015, was at 459. Now, with the addition of vice-chairs who have all undergone training, we are able to hear cases on a monthly basis and the inventory list as of December 31, 2015, stands at 410. As of March 9, 2016, the inventory list is at 384 cases. Appendix A provides a breakdown of the type of issue appealed to the Tribunal. At the Appeals Tribunal, our primary focus is to reduce our inventory list so that any appeal by a worker or employer of any decision of WorkSafeNB will be conducted in a timely and efficient manner.

QUICK FACTS

<i>Appeals received</i>	570
<i>Appeals resolved</i>	405
<i>Appeals initiated by:</i>	
<i>Worker</i>	87%
<i>Employer</i>	13%
<i>Time from the hearing to final decision</i>	47 days
<i>Results by panels</i>	
<i>Accepted</i>	83%
<i>Accepted in part</i>	5%
<i>Denied</i>	12%
<i>Hearings postponed</i>	96
<i>Hearings withdrawn</i>	56
<i>Appeals resolved by:</i>	
<i>Full Panel (prior to April 1, 2015)</i>	114
<i>Single member Panel</i>	107
<i>Paper Review</i>	4
<i>WCAT Budget 2015-2016</i>	\$2,000,000

For the purposes of this initial annual report, I believe it is important to understand how the Workers' Compensation Appeals Tribunal is structured. There are two executive positions within the Appeals Tribunal that report directly to the Chairperson. These two positions are; the Registrar of Appeals and the Manager, Appeals Services.

B. WCAT Structure

1. Registrar of Appeals

The Registrar's area of responsibility in the appeals process is mainly in the pre-hearing phase. The following are positions in the pre-hearing process with a brief summary of activities performed by the persons holding that position.

The **Registrar** is responsible for directing and managing the pre-hearing process; reviewing as well as overseeing the review of appeals to ensure that issues being appealed are properly identified, consistent with the legislation; ensuring that all pertinent information is available; and coordinating with the Chairperson on requests for extension of time. The administrative aspect of the work requires reporting to the Chairperson on matters regarding Appeals Tribunal activities; identify current issues and trends; participate in the development of new procedures and processes; and provide guidance to staff during implementation. Also, the Registrar is involved in discussions during management decisions with the Chairperson.

The **Appeals Secretary** is responsible to review all incoming correspondence addressed to the Appeals Tribunal, acknowledge receipt of appeals, and redirect correspondence not intended for the Appeals Tribunal. This individual is responsible to begin data collecting on the database. Also, the Appeals Secretary provides secretarial functions and works on assigned projects in collaboration with the Registrar.

The **Registrar's Assistant** is responsible to review appeals; identify issues being appealed; validate or confirm the appeal as well determine whether the appeal can proceed to a hearing. This individual's responsibilities are mainly in this area of the appeal process. The Registrar's Assistant was able to continue to review appeals during the period of transition before the vice-chairpersons were ready to hear appeals.

There are three **Researchers** under the direction of the Registrar. These Researchers are responsible for the preparation and content of complete and accurate *Appeal Records* as well as their distribution. An *Appeal Record* contains relevant documents of a file, including applicable policies, sections of legislation, appropriate Regulations, Court of Appeal of New Brunswick decisions as well as decisions of the Supreme Court of Canada, and other documents of various topics, all of which will be relied upon by the Chairperson or Vice-Chairperson to make a final decision on an appeal.

2. Manager, Appeals Services

The following positions report to the Manager, Appeals Services:

The **Scheduling Coordinator** who schedules appeal hearings based on the availability of hearing Chairpersons, the parties to the appeal and the representatives. Appeals are heard throughout the province and in the official language chosen by the person submitting the appeal. The Scheduling Coordinator also receives and processes post-hearing documents.

The **Decision Processing Clerk** is the person who processes all incoming decision drafts from the hearing Chairpersons prior to being reviewed. Once a decision has been reviewed, the Decision Processing Clerk makes the corrections, obtains the signature of the hearing Chairperson and ensures decisions are mailed out to all parties to the appeal within the legislated timeframe.

The **Quality Coordinator** reviews all decisions to ensure adherence to legislation and consistency with prior decisions on an issue. Corrections are made with the approval of the hearing Chairperson. Suggestions are made for ease of reading. The Quality Coordinator participates in providing orientation to Chairpersons and this person can be asked to do research on topics of interest.

The **Executive Secretary I** processes the payroll and expenses of the hearing Chairpersons and Recording Secretaries, processes invoices received from the hearings or for WCAT expenses; receives requests for Statement of Facts and prepares the document, prepares statistical reports under the guidance of the Manager, Appeals Services and also processes decisions when the workload requires.

The **Manager, Appeals Services** guides staff listed above who schedule and process appeals and also supervises the day to day tasks of the WCAT Executive Secretary II. Additionally, this person supervises three Recording Secretaries who work as casual administrative support for the hearing Chairpersons at the hearing. There are various other duties with this position such as the preparation and oversight of the WCAT budget, approval of expenses, preparation of statistical and other reports, orientation of new Vice-Chairpersons, obtaining professional development opportunities for the Vice-Chairpersons and organizing meetings of Vice-Chairs. This person also communicates on a daily basis with the Chairperson.

Another position at the Appeals Tribunal is the **Executive Secretary II**. Reporting to the Chairperson, this position is responsible for administrative support to the Chairperson, to the Vice-Chairpersons and to the WCAT in general. This includes answering and forwarding incoming calls on the WCAT toll-free line, ordering supplies, receiving and entering statistical data on incoming decisions, preparing statistical reports for the Chairperson and other duties as assigned. The Executive Secretary II also processes decisions when time and workload permits.

Prior to April 2015 appeals were heard by a panel of three persons. Since April 2015, appeals are heard by either the Chairperson or the Vice-Chairperson sitting alone. There is provision in the

legislation for the Chairperson to create a panel if it is required. However, to date, no such panel has been established.

Since July 2015 the Appeals Tribunal has continued to maximize the number of hearings based on the availability of hearing Chairpersons, appellants and their representatives. The new Act provides for a 90-day turnaround time to process decisions after the hearing. At December 31, 2015, the average turnaround time was at 47 days.

The following are some of the accomplishments and challenges achieved and faced by the Appeals Tribunal during 2015:

- The amount of appeals received decreased by 3.6% from 2014.
- The amount of appeals processed and resolved decreased by 27.2% from 2014. This is primarily due to the fact that no hearings were done between April and late July 2015.
- The inventory of appeals increased by 44% from the previous year. This was again due to the transition period when no hearings were being held. Although the total number of appeals received decreased slightly from the previous year, it nonetheless meant that appeal applications continued to be received during the period of time when no appeals were being heard. Furthermore, issues in scheduling representatives in the early part of 2015 restricted our scheduling of appeals.
- The overall processing time for an appeal decreased by 4.4% from 2014.
- The processing time from the hearing to the decision being finalized decreased by 70%. This accomplishment is due to the reduced time taken to remit a first decision draft and the work of the WCAT staff in processing decisions as quickly as possible. As noted above, the average processing time is at 47 days, well below the 90-day legislated time limit.
- The amount of postponed appeals decreased by 37.3% from the 2014 level when it increased by 8.5%. The lack of hearings being heard between April and late July would have contributed to this decrease. Additionally, the Workers' Advocates Services hired additional staff, which has helped to reduce the number of unrepresented appellants at the hearings, thus causing fewer postponements. We continue to monitor postponements to work toward reducing the overall amount.
- Appeals withdrawn before the hearing decreased by 31.7%. Again, a portion of this decrease can be attributed to fewer appeals being heard due to the transition to the new Appeals Tribunal.
- Appendix B contains information pertaining to WCAT operations.

C. Legislative Proposal

Prior to April 1, 2015, the Appeals Tribunal was able to hear reconsiderations. This, in essence, is when a party has new information that was not available to it that could impact their case, they could ask the Appeals Tribunal to review this new information to determine if it changed the outcome of their case. However, due to the wording of the amendments to the *Workplace Health, Safety and Compensation Commission Act and the Workers' Compensation Appeals Tribunal Act* reconsiderations are no longer able to be done by the Appeals Tribunal. The ability to hear reconsiderations was a valuable benefit to the workers and employers of the province of New Brunswick and it is recommended that amendments to the legislation occur so that the Appeals Tribunal can once again hear reconsiderations.

D. Going Forward

The Workers' Compensation Appeals Tribunal had a very challenging but productive first year. The Appeals Tribunal staff worked extremely hard to ensure that the transition to an independent tribunal was as efficient as possible. However, this smooth transition would not have been possible without the assistance of the staff of Post-Secondary Education, Training and Labour in offering their support and cooperation with respect to the administrative, human resource, information technology challenges involved in the migration of the Appeals Tribunal to Part 1 of the government of New Brunswick. In addition, I would like to thank panel members who sat prior to April 1, 2015. They were instrumental in ensuring that decisions for hearings heard prior to April 1, 2015, were completed prior to the transition.

Our goal in the coming year is to reduce the inventory of appeals. To reduce the inventory significantly, the Workers' Compensation Appeals Tribunal has to hear more cases than are being received on a monthly basis.

With eight vice-chairpersons and myself hearing two days per month at three appeals per day, we can hear 54 appeals per month. We are averaging 47.5 appeals being received by the Tribunal on a monthly basis. If nothing else were done, we would see a minimal reduction in inventory in the next year.

However, to further reduce our inventory we have undertaken a "clean up" of the scheduling list. This involves follow up of old appeals to see if the appellants wish to continue. History has shown that this may reduce the overall inventory by 20-25 appeals.

We also have 12 appeals dealing with cost relief. The policy issue in these appeals was found to be in violation of the *Workers' Compensation Act*. We are presently waiting on WorkSafeNB to deal with this issue which may eliminate these appeals, which is the purpose of section 21 of the *Workplace Health, Safety and Compensation Commission Act and the Workers' Compensation Appeals Tribunal Act*.

We have a vacant vice-chairperson position which we will be seeking suitable candidates to fill it in 2016. One vice-chairperson who has been unable to hear appeals due to illness is scheduled to

return in early 2016. By having a full complement of vice-chairpersons translates into hearing at least an additional 12 appeals per month which would reduce our inventory by 150 cases over a 12-month period.

Finally, our numbers are greatly affected by the postponements and adjournments received by the advocates' office. An absence of postponements or adjournments allows the Tribunal to run more efficiently, thereby reducing our inventory. Conversely, an increase of postponements or adjournments almost doubles our hearings. To this end we have met with the advocates' office and have been assured that the number of postponements and adjournments will be reduced.

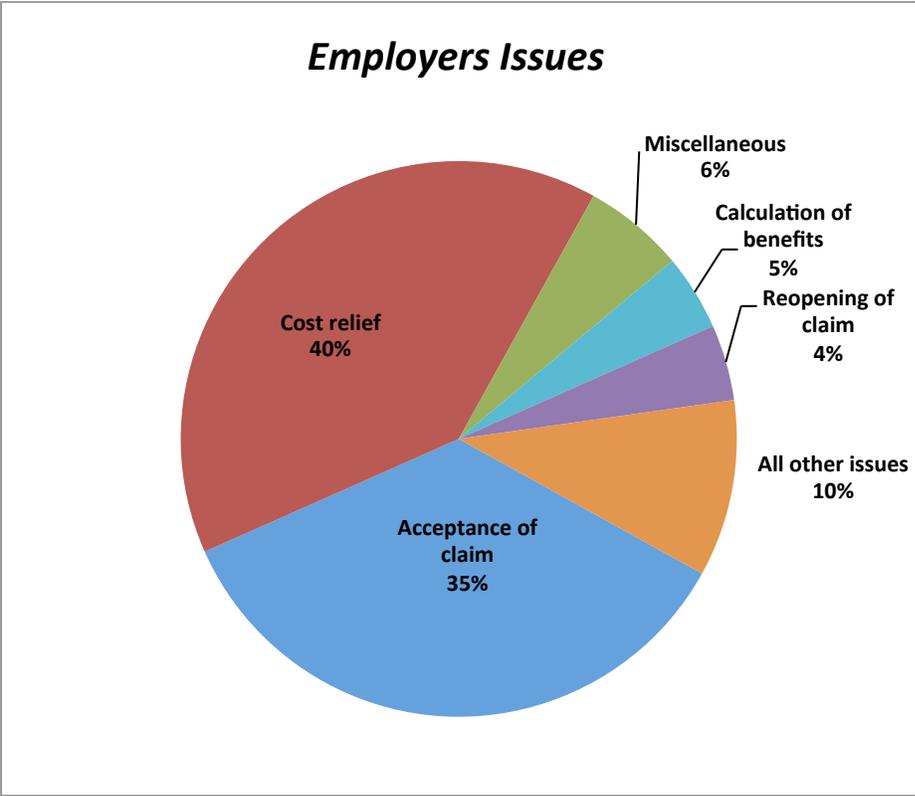
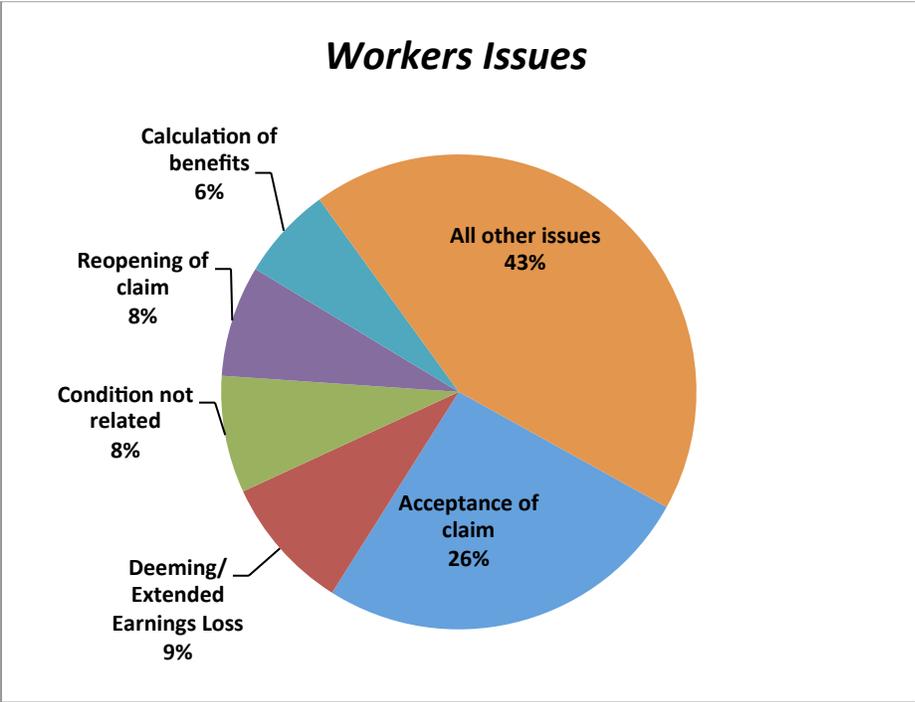
As the WCAT moves into its second year of operation as an independent tribunal, we will continue to focus on reducing our inventory list and processing appeals in a timely manner, while keeping in mind our goal of rendering fair, impartial and consistent decisions.

Respectfully submitted,

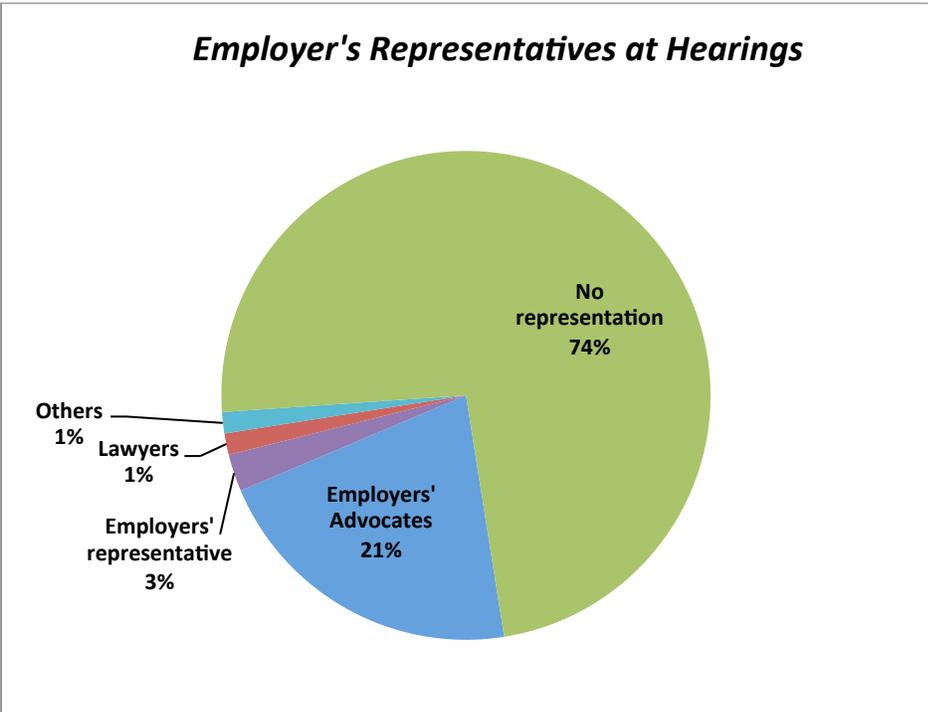
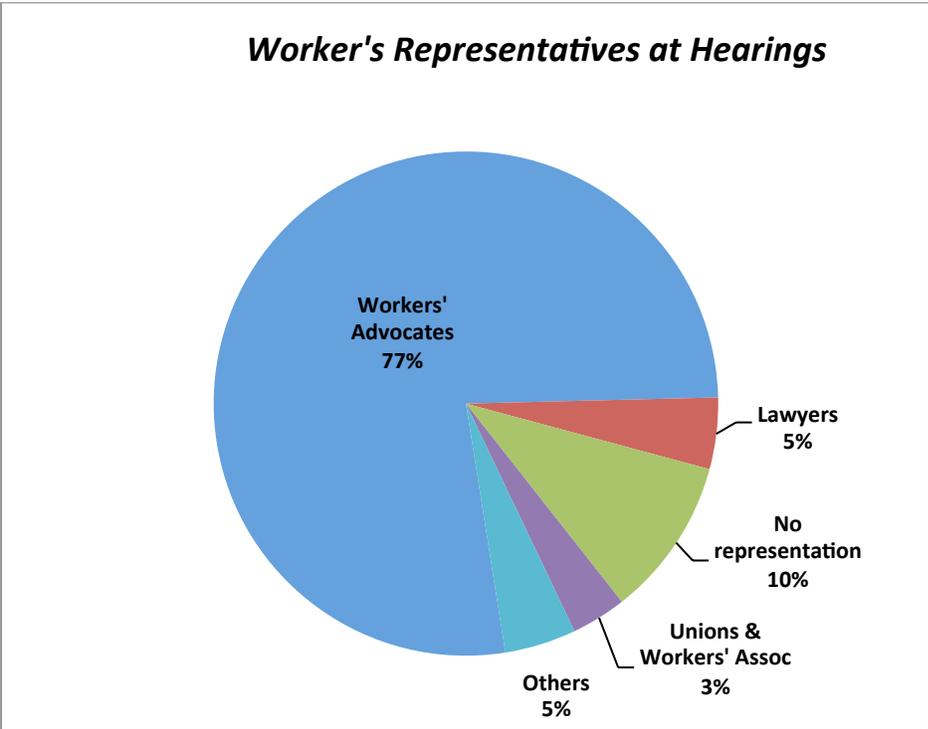
A handwritten signature in black ink, appearing to read "Daniel R. Theriault". The signature is fluid and cursive, with a large loop at the end.

Daniel R. Theriault, Q.C.
Chairperson
Workers' Compensation Appeals Tribunal

Appendix A



Appendix B



WORKERS' COMPENSATION APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES ACCIDENTS AU TRAVAIL

