

WORKERS' COMPENSATION APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES ACCIDENTS AU TRAVAIL

2016-2017

**Workers' Compensation
Appeals Tribunal
Annual Report**

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2016-17 WCAT Annual Report

A. Overview

I am pleased to present the 2016-17 Annual Report of the Workers' Compensation Appeals Tribunal (WCAT). It has been another busy year for the Appeals Tribunal with our main aim of reducing the number of cases in our inventory. Presently, we have 150 cases in our inventory waiting to be heard. This represents a substantial reduction from last year at this time when we had 384 cases in our inventory. By reducing our inventory, we are able to reduce the wait time that an appellant has to sustain before hearing their appeal.

In December 2016, the Legislature passed Bill 15, *An Act to Amend the Workplace Health, Safety and Compensation Commission and the Workers' Compensation Appeals Tribunal Act*. There are a number of sections in Bill 15 that affect the WCAT. We are working with the vice-chairpersons to advise them of these changes so that all future decisions will reflect such changes. Of particular importance to the Appeals Tribunal is subsection 22.1(1) which reinstates the ability of the Appeals Tribunal to reconsider a decision. This will allow appellants to ask the Appeals Tribunal to reconsider one of its decisions when there is new and substantial evidence that didn't exist or could not be obtained at the time of the original hearing before the Appeals Tribunal. This section rectifies the unintended consequence of the April 2015 amendments to the legislation which did not allow the Appeals Tribunal to reconsider its decisions.

Presently, the Appeals Tribunal has seven 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
- Johanne M. Landry
- Candace Salmon
- James A. Whelly

The Tribunal is allowed a maximum of ten vice-chairpersons and we are presently seeking three additional vice-chairpersons. These appointments are necessary to ensure that the cases in our inventory will be heard in a timely manner.

WCAT is always seeking ways to streamline our processes so that we may be more efficient and user friendly to appellants. Presently, we are amending our Notice of Appeal so as to include a section where an appellant will signify at the outset if they are going to appeal a policy provision. This has the added benefit of giving WorkSafeNB early notice that a policy is being questioned. In addition, we are developing guidelines surrounding the one-year limitation period to appeal so that it is clear to all parties when a limitation expires and what criteria will be used to extend the limitation period.

WCAT has a staff of professional employees who work tirelessly to ensure that our appeals process runs smoothly. In this past year, we have had one staff member, Scott Lockhart, retire and we want to thank him for his 34 years of service and wish him all the best throughout his retirement.

The following are some of the accomplishments and challenges achieved and faced by the Appeals Tribunal during 2016:

- The amount of appeals received decreased by 13.7% from 2015.
- The amount of appeals processed and resolved increased by 89.8% from 2015.
- The inventory of appeals decreased by 60.2% from the previous year. The overall processing time for an appeal increased by 12% from 2015. Since the number of hearings and consequently, the number of decisions increased, it is taking longer to process decisions from the time they are received at the Tribunal. We are however, still within the legislated 90-day time limit as discussed below.
- The processing time from the hearing to the decision being finalized increased by 53%. This is due to the increased amount of hearings being held therefore the vice-chairpersons have more decisions to render. Also, the time to render a decision from the hearing is dependent on the complexity of the issues under appeal. As noted above, the average processing time from the hearing to the decision being finalized is at 72 days, remaining below the 90-day legislated time limit.
- The amount of postponed appeals decreased by 1% from the 2015 level. 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 increased by 112.5%. The WCAT staff undertook a review of all outstanding appeals on the scheduling list. A number of cases were removed as the appellant was no longer interested in appealing since, over time, the issue had been resolved or the appellant had moved and not left a forwarding address. Another factor was that prior to the hiring of additional advocates, many appellants had filed their own appeal and further to a review from the advocates service, did not have the correct issue identified or were not ready to proceed. These issues were removed to allow for an appeal on the correct issue or for time to gather additional information to be sent for review to WorkSafeNB.

Below is a table of Quick Facts providing a snapshot of some WCAT statistical information. Appendix A and B also provide information on the operations of the WCAT.

QUICK FACTS

<i>Appeals received</i>	492
<i>Appeals resolved</i>	769
<i>Appeals initiated by:</i>	
<i>Worker</i>	87%
<i>Employer</i>	13%
<i>Time from the hearing to final decision</i>	72 days
<i>Results</i>	
<i>Accepted</i>	85%
<i>Accepted in part</i>	3%
<i>Denied</i>	11%
<i>Withdrawn (at hearing)</i>	1%
<i>Hearings postponed</i>	95
<i>Hearings withdrawn</i>	119
<i>Appeals resolved by:</i>	
<i>Single member</i>	443
<i>Paper Review</i>	16
<i>WCAT Budget 2015-2016</i>	\$2,013,000

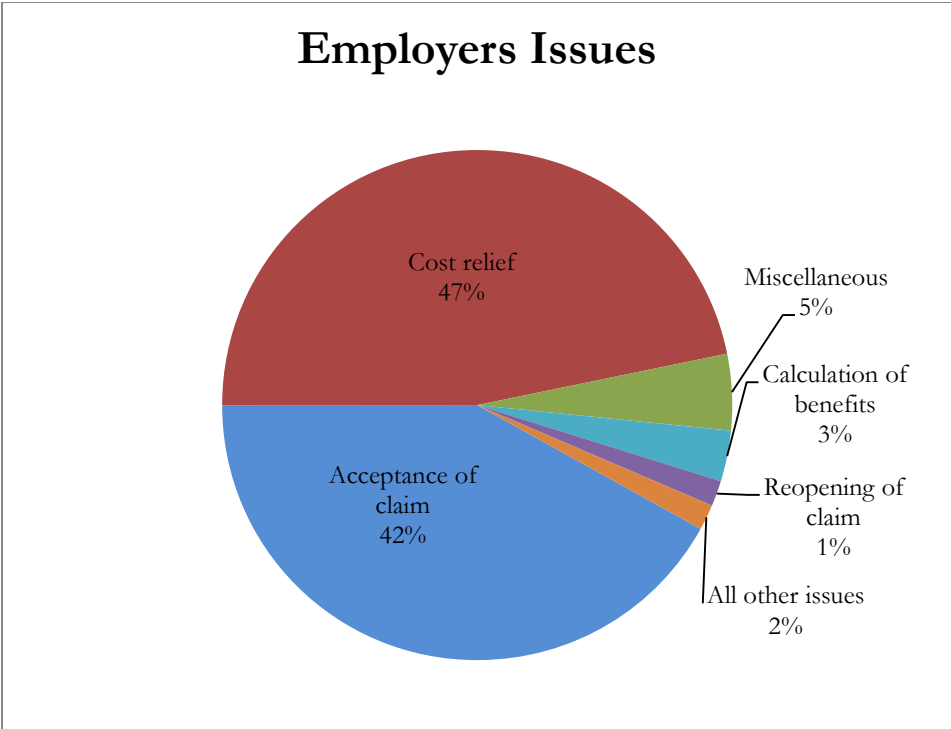
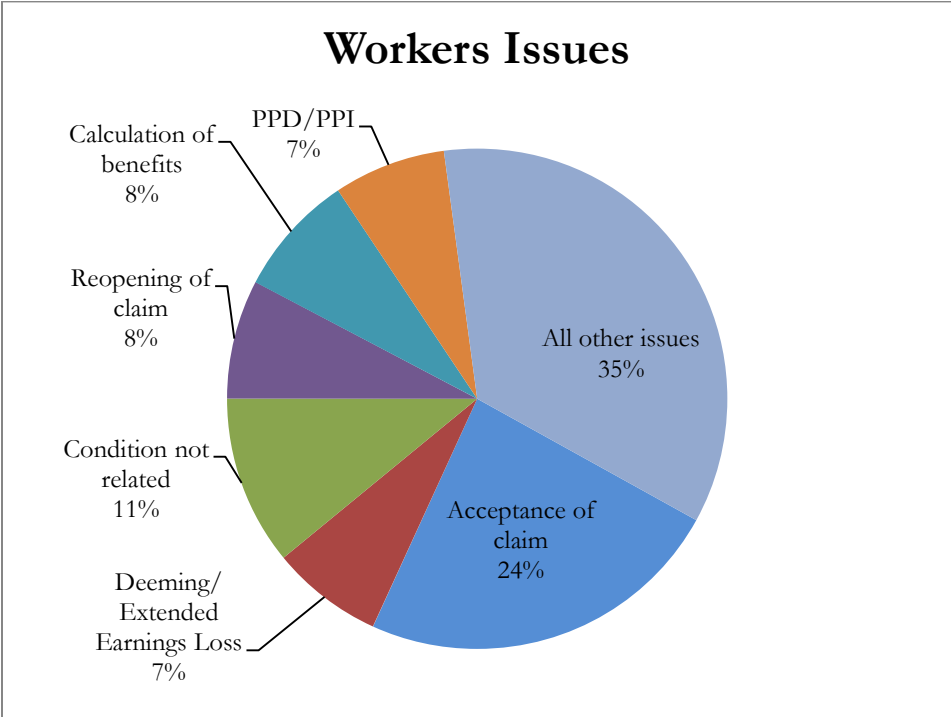
**Note: Quick Facts are for the 2016 calendar year except for the WCAT budget, which is for the 2016-2017 fiscal year*

Respectfully submitted



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

Appendix A



Appendix B

