



Workers' Advisor Office
for the Northwest Territories & Nunavut

Annual Report

2017

“I’m a bloke”
A Worker

Patrick Scott Phd
Workers Advisor
2017

Introduction

"I'm a bloke," he says, explaining why it took him so long to get checked out. "I just carried on, and it was only when I was unable to operate the garden trimmer because my back was in agony that my wife lost her temper and made me go to the doctor."
- A Worker

The Workers Compensation Acts defines the role of the Workers Advisors Office:

Section 107. (1): *The Office of the Workers' Advisor is established to assist workers and others to understand this Act and to make claims for compensation.*

Section 109 further states: (1) *The Workers' Advisor shall, on request, (a) assist any claimant, unless the Workers' Advisor considers that the claim is without merit; and (b) advise workers and their spouses, children and dependants about this Act, the regulations and any decisions made under this Act.*

The Act also requires the Workers Advisor Office to submit an annual report to the Minister and the Governance Council: ***The Workers' Advisor shall, in accordance with the regulations and the agreement referred to in subsection 108(3), prepare an annual report on the functions and activities of the Office of the Workers' Advisor for the Minister and the Governance Council.*** (s. 111(1))

"I'm a bloke!" Those few words are symbolic of how injured workers often feel as they face the challenges in having a claim processed by the Workers Safety and Compensation Commission (WSCC) Case Managers, the Deputy Workers Advisor or the Workers Advisor. Injured workers and their families have high expectations that WSCC will quickly and adequately provide compensation after a workplace injury. These expectations are regularly tempered by the restrictions mapped out by the Policies, which Case Managers must adhere to, and which the workers too often find incomprehensible and unfair.

During my first year in the office of the Workers Advisor, I have been surprised by the number of workers needing help because their claims have been denied or the compensation has been much more limited than they feel they are entitled to. The Deputy Workers Advisor faces unique challenges, helping workers in Nunavut who are Inuktitut speakers, understand the complex policies.

As the new Workers Advisor I inherited 120 cases/files. Some of those have been resolved, while many remain dormant. As well, in 2017 I had 50 new files activated, while the Deputy Advisor in Nunavut handled 8 new files.

Through this report, I hope to draw your attention to the types of challenges injured workers and their families face and who then request assistance in navigating their claim(s) through the WSCC system of complicated Policies and Regulations.

Workers Compensation Act:

Section 1.1 *The purpose of this Act is to establish an open, fair and comprehensive system of compulsory no-fault mutual insurance for workers and employers.*

Many workers remain pessimistic, believing Section 1 of the Act is not taken seriously. On December 29th I received an email from a worker. His comments reflect the impression many workers hold as they attempt to get support. He wrote: *“I need your help, not sure why I was cut off,they are protecting the company I was working for and not protecting me.”* In spite of the very impressive efforts of Case Managers to address the needs of workers within the confines of the Policies, there continues to be a prevailing perception that the Commission is designed to protect the “Fund” and the employers not the workers. We will discuss this concern later in the report.

The dialogue between the Workers Advisors office and WSCC has been positive. Throughout 2017 WSCC staff provided excellent support and much assistance to me as I have meandered my way into and through the maze of workers compensation. In general, I have been impressed by the corporate climate at WSCC. It is one of the most positive ones I have witnessed in a public institution. I want to state in unequivocal terms as part of this introduction that the standard of case management I have witnessed, in spite of the challenges, is extremely impressive. WSCC staff have been co-operative, empathetic and diligent in trying to find positive resolutions to workers' concerns. When matters cannot be resolved to meet a worker's expectations, every effort is made to assist both myself and the worker to be aware of the Policies behind their decision.

The comments made in this report, when critical, are done so with the hope that the challenges being faced by injured workers, who often face life changing circumstances after being injured, will be better understood and efforts will continue to be made to bring more balance to the management of injured workers' claims.

Our Advisors



Patrick Scott grew up in rural Ontario in farming village. He graduated from Ryerson University in 1973. In 2010 he attained his PhD from the University of Dundee, Scotland. He came North in 1975 as a cameraman for the Canadian Broadcasting Corporation, continuing with CBC as television producer and radio news reporter. Land Claims and Self Government negotiations were his focus for many years, working with the Government of the NWT and the Dehcho First Nations. He was appointed Co-manager of Aboriginal Programs for World Vision Canada, enabling him to work with Indigenous communities across Canada in a community development capacity. Patrick and his wife Gabrielle were married in 1977 and have raised eight children while living in Fort Simpson, Behchoko, and Yellowknife. He has published two books, *Talking Tools* (Canadian Circumpolar Institute 2012) and *Stories Told* (Edzo Institute 2007).



Attima Hadlari resides in Cambridge Bay, Nunavut. Attima was born out on the land on the Boothia Peninsula, between today's settlements of *Talurřuaq*, and *Kuugaarřuk*, and raised in tents and igloos until his family moved into the settlement of *Talurřuaq* when he was a teenager. He started hunting on his own, by dog team, at an early age. He is proud to say that if he had to, he could survive out on the arctic tundra still today. Over the years he has worked at translating and interpreting with all of the Nunavut dialects, speaking and writing in both Inuinnaqtun and Inuktitut. *Nattilingmiutut* is his own dialect and he also practices and performs the *Nattilingmiutut* style of drum dancing. He has served on the boards of many organizations, and has worked in many smaller communities in various capacities. Through interpreting for different organizations across Nunavut he has gained a broad understanding of the workplaces, and processes within workplaces across Nunavut. Attima has worked in the capacity of Deputy Workers' Advisor for several years now and is able to communicate to clients in their own dialects of the Inuit language.

Part 1

A) Workers Assessments:

Over the year, a number of workers made requests to challenge their PMI (Permanent Medical Impairment) assessment for their pension value. This is an area of policy which is difficult for workers to understand and accept. The impact(s) of a PMI rating on them can be significant as they face career changes and financial stressors.

Let me share an example of one worker. The worker was in a position that required standing all through their shift. After slipping and damaging their knee, the worker could no longer work in their journeyman's position. After treatment, the worker was left disabled and eventually found another position that paid \$10.00 less per hour. It was a significant financial blow for his family.

When their assessment was completed, the whole body assessment PMI rating was 1%. The worker's immediate reaction: *"this is an insult."* In Policy 06.01 it states: *A worker with a permanent disability receives a monthly pension payment based on the workers Net Annual Remuneration and the worker's reduced physical and mental abilities....determined in accordance with the most recent version of the American Medical Association Guide to the Evaluation of Permanent Impairment.*

The use of the American Guide and the consistently low rating, leaves the impression for workers that the Guide is used to minimize the obligations of WSCC to the worker, not to provide fair compensation. It is an "insurance" company framework, not a compassionate compensation program. Most workers envision the Commission as a 'program,' which is in place to provide relief and hope at time of unexpected crisis, often altering the life completely.

It is extremely difficult for a worker to comprehend how an injury, that has left them permanently disabled, unable to return to their former employment and left with a reduced earning power, only enables them to receive a pension that is based on an assessment that tells them their injury has only reduced their physical functionality by a small percentage, such as the above worker's assessment of 1%.

I should note this worker's condition worsened after receiving his PMI. He developed difficulties with the other knee, due to the stress from compensating for the original injury and now faces additional surgery on his second knee. His case manager continues to work with him, reviewing the medical relationship, while providing ongoing support. However, he continues to want to challenge the accuracy of his PMI, wanting a reassessment which reflects his "real" condition. His hope is for compensation that is reflective of the impact of his workplace injury on his ability to now earn a living.

PMI ratings also comes into play with workers whose conditions gradually worsen from physical deterioration, mental and financial stress and from the side effects of required medications. Late in the year I received a letter from the spouse of a worker who was injured over 10 years ago and struggles on a daily basis: *“the pain in his back is becoming more intense and these episodes are more frequent. He is requiring more care and simple tasks are becoming more difficult - getting dressed, meal prep, clean up The Specialist is concerned that he has central apnea . Central apnea is connected to brain functioning, caused by side effects of medication taken to control pain. His balance is unstable due to lack of sleep.”* For this worker and many others, the downward spiral continues.

This letter was a call for help, from the spouse not the worker. Another example is the spouse of another worker struggles to sustain her family functioning as she works, is the primary care giver for her spouse, while her husband’s chronic pain from his injury holds him back from re-employment. She often talks about his growing disability resulting from his pain medications, including insomnia, cognitive dysfunction, depression and an increasing dependency on alcohol as well as the stress from a loss of income and increased medical expenses. These spouses of the injured workers referred to here are typical examples of workers suffering from a workplace injury (not their own) with little or no direct support and frightful for their long term financial stability.

At some point in time a worker is deemed to have reached their maximum recovery. They are assessed and then subsequently receive a pension. But after that point, many workers experience very real deterioration and setbacks. Going through a reassessment of their PMI is not an easy undertaking. They experience new hurdles and roadblocks and so they gradually sour on the services being provide by WSCC, becoming distrustful and resentful.

The WSCC policy manual defines a disability as: *“the condition of having reduced physical or mental abilities caused by the workers injury or disease.”* In many cases, a worker’s disability is impacted by other factors not considered when the PMI assessment is completed. There are emotional and mental stress factors that impact on the wholeness of the worker. In many cases, where a worker requires ongoing medication, there are medicinal side effects that impair their abilities. In some cases workers have to face long term unemployment due to side effects from their medications. In these cases the worker has no simple recourse to getting compensation for the “whole” impact, their disability, their injury or disease has caused. A number of workers have directly queried why assessments don’t reflect the full impact of an injury on their lives as the “whole body.” For them the approach to defining the amount of compensation they are entitled to is too narrow and seems to be designed to *“protecting the company I was working for and not protecting me.”*

One of the challenges in achieving outcomes that appear fair and equitable to workers is comparability. Many of the workers who seek compensation reside in other jurisdictions. Their tendency is to garner information on their potential entitlement within the jurisdiction of residency. More than one worker has indicated their assessment would be significantly higher if they had the ability to be compensated through their Province’s compensation system.

Many workers remain with the false understanding that WSCC compensation is wage replacement insurance – a tool to sustain them at the same level of financial income as they had prior to their workplace injury. This misconception often is the underlying source of dissatisfaction of compensation outcomes. I suspect regardless of the assessment tools being utilized, workers will remain frustrated unless the compensation programs veer more closely to compensation that reflects income levels at the time of injury.

My limited experience leads me to make only two recommendations:

a) Have the WSCC communication team undertake the development of a communication tool for case managers, which in plain simple language explains to workers their PMI assessment. The assessment process is complicated and confusing for most workers. Effort is needed to simplify the language detailing the steps and the reasons for a particular assessment in order to achieve meaningful transparency.

b) Have WSCC policy specialists develop a methodology to include in assessments the additional impacts on a workers “health” once they have reached maximum medical recovery, which addresses the medicinal side effects, any resulting mental health issues, and employability as elements in reaching their PMI rating.

B: Case Management:

Workers have expressed concerns regarding routine case management. The most common complaint is the high frequency of changing case managers. A number of workers have had between 5 and 20 case managers since their file was opened. Workers feel frustrated and believe these changes delay or derail their claims.

Another consequence is that workers feel dehumanized and believe they are just file “numbers” instead of persons. They become very frustrated with delays in having their concerns addressed as their ‘new’ case manager reviews and familiarizes themselves with their file. We recognize, the assignment of Case Managers is difficult, with many apparently heavy case loads and a high ongoing attrition rate, as employees leave the Commission. Continuity of Case Management may reduce workers negative reactions about WSCC.

On occasion workers have reported when their files bounce between the Pensions department and the claims department, as a worker’s condition changes, information they provide gets lost. A number of workers have expressed frustration about various information flow problems. Some workers have expressed confusion when they are reimbursed for expenses and the reimbursement cheque does not provide a detailed printout. When the cheque is less than they were expecting, they react because they have no information to explain the amount of the reimbursement.

The Deputy Advisor, working throughout Nunavut brings important insight into the challenges faced by local workers. He writes: “For the clients whose first language is Inuktitut, many clients do not understand the letters that are sent to them. Once I orally explain the contents of the letters they have received, in their own dialect, the clients understand, and most often do not decide to proceed on to a review. They are usually very thankful that they understand what WSCC does and how decisions are made. For example, some clients have never realized the difference of WSCC paying for health costs or the GN health care system paying for health costs.”

He also notes: “For the clients whose first language is English/French, *clients still have difficulty understanding the correspondence from WSCC. I think it is difficult for adults to feel comfortable trusting a process that they have little experience with, and a process that is not fully transparent to them.* I end up explaining the processes. For example, clients want to be able to look up PMI ratings on the internet, and need to know why they cannot easily find that information. I notice that clients tend to be mistrustful of a process they do not fully understand, and this can be compounded by the experience of being injured and their life circumstances changing in an instant. Once they feel that I have actually heard them, and acknowledged their circumstances, they are more open to listening to explanations about WSCC policies and procedures. These clients often respond with a big thank you, as the unknown becomes something that is able to be somewhat understood.” My experience with workers is similar. At Christmas I received a Christmas/ thank-you card from a worker for treating him like a person and not a number. Very often the issue is being open to hearing their story and looking for a possible solution, or when appropriate, telling them clearly their expectation is unrealistic. Workers expect WSCC to be there for them but feel betrayed when they experience confusion, delays or denials of their claim.

Typically none of us expect to get injured and have our lives turned upside down as a result. The impacts are immense for many workers. The ability of WSCC to process a claim with compassion, efficiently and with a regard for the total impact on a worker, and consequently on their family lessens the extent of the tragedy. Every step should be taken to by the Commission to fulfill its obligations under the ACT (*see Workers Compensation Act Sections 1.1(a)(b); 10; 13.1; 14; 92.2(b)*). Workers would benefit from a simple timely process. Any delay seems to increase the impact of an injury or workplace disease. Decisions, which rely on restrictive interpretations of policy and appear contrary to Sections of the Act noted above, become costly and counter productive as workers resort to Reviews and Appeals.

Within the Workers Advisors Office, we too need to review how files are managed. Presently, files managed by the Deputy Workers Advisors office in Nunavut remain within that office. There is not a common databank where files could be shared between offices electronically. Many of the workers being dealt with in the WAO are persons who had employment in Nunavut. In actuality there is no permanent WAO office. Each newly appointed WA established their own office, unlike the Appeals Tribunal that has an established office. Contact information changes as the WA or the DWA changes. In the long run this is not the most effective approach. The management of workers files requires consistency. Prior to the end of my term as Workers advisor I will bring forward recommendations to address this issue.

Because of the high level of activity, a significant volume of documents are received, in both hard copy and electronically. The WAO is reviewing options to create a online secure databank to assist in the management of data and the transmittal of information to workers, to WSCC or to the Deputy Advisor. The WAO has established an online encrypted vault, in which all of the electronic files are being stored. This eliminates the risk of moving file via the use of memory sticks. If this vault works effectively, it will be shared with the DWAO so both offices could maintain a common electronic database.

The final issue I believe is important to note is verbally abusive claimants. There are workers who are consumed by their injury as they struggle to go forward. When their relationships with WSCC is difficult because of compensation benefits being denied, or repayments take too long, or their expectations are unrealistic, the relationship with their case manager can become strained. Some workers become angry and verbally abusive. The practice, at times, is to have the WAO become a mediator/communicator between the worker and WSCC. This practice can be effective in dissipating the charged emotional environment between WSCC and the worker. However it should not be the long term solution. A complete breakdown in communications between the worker and WSCC exasperates the problems, enhancing the mistrust and the efficiency of addressing the workers compensation. It may be more productive to engage a mediator, on a short-term basis to address the issues and develop a communication protocol, rather than deflecting them to the WAO as the long-term solution.

At the beginning of this report we noted a workers who declared WSCC is protecting his employer not him. This remains the prevailing view of workers about WSCC. One of the simple changes that would help diminish this reactive attitude is changing the language of initial contact with employers. When an incident occurs and WSCC contacts the employers, from the correspondence we have observed the common practice is to inform employers they may be liable to a fine, if they neglected to report an incident within 48 hours. Many employers are not familiar with the Workers Compensation Act requirements. And if a worker delays in reporting an incident to their employer and/or delays in seeking medical attention, the threat of fines quickly puts an employer on the defensive. It is therefore not surprising that employers will become unsupportive of their employees claim. They do not want to be liable for not reporting. Some employers go to considerable efforts to fight the workers claim. Finding the truth becomes extremely difficult.

If the initial communiqué by WSCC with the employer is exploratory seeking only information, rather than including the threat of fines, the workers' rights for compensation may be better protected.

Workers sometimes ignore an incident, believing their injury is minor and can be worked through. They don't report nor do they seek medical attention. It's what I have deemed as the wimp factor – an innate reaction of not wanting to be a sissy/wimp, of being strong. Then days later their condition worsens and they finally seek medical assistance. At that point they are asked if their injury is workplace related. That is when reports are initiated with WSCC. Unfortunately for some workers it is already too late to have their claim supported by their employer and get approval.

Recommendation:

a) When a case manager is changed, a protocol requiring a simple explanation for the change be provided to the worker, including an introduction of the new case manager and the timeline required for the person to familiarize themselves with the file.

b) The development of a 'simple' language version of each of the policies guiding the compensation process. A clear and understandable process well communicated result in outcomes that are acceptable *“as the unknown becomes something that is able to be somewhat understood.”*

C: Stress and Psychological Injuries and Diseases

Without a doubt stress, psychological, or emotional injuries and diseases are the most challenging claims to manage. Workers facing this level of disability enter the claims process seem to be the most vulnerable. The stress of the claims process, when delays are experienced can cause a deterioration of the person's condition. The current policies seem inadequate to enable positive and efficient case management decisions. We understand sections of the policies relating psychological and mental injuries and diseases are being reviewed. We are optimistic the review process will result in improvements to reflect that workplace factors causing psychological disorders and mental illnesses.

Policy Section 03.03 on **Cause** currently states:

To be eligible for compensation, a claimant must be diagnosed with a disorder that results from one or more of the following work-related incidents:

1. A work-related head injury, exposure to toxic chemicals or gases, anoxia, or any other work-related injury, disease or condition causally connected to organic brain damage (this also includes mental disorders resulting from medication used to treat a work-related injury);
2. An emotional reaction to a work-related physical disability;
3. An emotional reaction to a WSCC sponsored treatment of a compensable injury;
4. An emotional reaction in response to a sudden, single, traumatic, work-related incident that is frightening or shocking to the worker, and has a specific time and place; or,

5. An emotional reaction to an accumulation of a number of work-related traumatic events over time.

There is not a clear definition of emotional reaction. It is understandable that a worker who reads the above clauses and is stressed out or depressed as a result of work would conclude compensation is possible. Or as previously discussed has developed emotional or depression issues as a result of medication from a physical injury. Too often this part of the policy is bypassed. Workers who have contacted the WAO because their request for help has been denied face challenging Clause 03.09, the policy base for leaving the worker in limbo and without compensation:

A worker is not entitled to benefits for a psychiatric or psychological disability that results from usual work pressures, specifically mental stress arising out of labour relations between the worker and employer, or interpersonal conflict between co-workers that does not constitute harassment.

Work place environments continue to change. Stressors, mental fatigue and mental breakdowns are becoming more common. A worker in a new position, whose job description notes the potential for a high level of stress, may discover 10 months into the position or 5 years into the position they are facing all the symptoms of an emotional breakdown from workplace stressors. They have no safety net. They go to their health care provider who determines they have anxiety disorders caused by their workplace. They are put on medical leave. They submit a claim and are denied. It is at this point they feel totally abandoned by the system they thought was there to help.

Three workers have come for assistance this year who have been denied benefits because WSCC deemed their situation was “usual workplace pressures,” even though the cause of their mental stress and/or emotional breakdown was their workplace environment. They helplessly cite Clause 5: *An emotional reaction to an accumulation of a number of work-related traumatic events over time*. But their claim denied. So at the point of deep despair, when they cannot work, when they have little or no income, they have to begin a process to fight the system they believed was there to help them, by beginning a formal Review Committee process.

The policy manual defines Mental Stress as: *An individual's non-specific physical and psychological response to events or changes (stressors) in life. Distress occurs when a person's ability to cope with the stressors is overwhelmed and can result in diagnosable psychiatric or psychological disorders.*

There are obviously many causes, which vary by individual, in much the same way as individuals respond differently to medical treatment interventions. Clause 5 under “Causes” states “*an emotional reaction to an accumulation of a number of work related traumatic events over time.*” If I were asked to explain those two clauses to a worker who asks why they have been denied a claim, I would be hard pressed to provide a meaningful explanation. Their mental disease has risen out an accumulation of events, their expectations is that Section 1.1 of the Act which states: “*The purpose of this Act is to establish an open, fair and comprehensive system of compulsory no-fault mutual insurance for workers and employers that (a) provides for the sustainable payment of compensation to injured or diseased workers, the mitigation of the effects of workplace injuries and disease, and the eventual return of these workers to the workplace to perform work of which they are capable.*” Section 14.1 further articulates the positive nature of the Act on behalf of the worker: *The presumptions in this section apply to entitlement to compensation, unless the contrary is proven on a balance of probabilities.*” Finally, Section 92:2(b) seems to set the standard on making decisions on claims: “*The Commission shall: (b) draw all reasonable inferences and presumptions in favour of the claimant when determining any matter related to compensation. The probability of proof would lie, in balance favouring the worker and in their mind compensable.*”

Recently the sister of a worker came in to me. Her brother had a lung related disease, triggered by poor ventilation in a welding shop. His medical practitioner opined that the disease was work caused, however this assessment was challenged because he had previously been a smoker. It was deemed he had a pre-existing condition. He fought for six years trying to get a satisfactory claim result. During that period, his marriage disintegrated, he lost his house and became depressive. Regrettably, he committed suicide. He was *just a bloke*, caught in a system he didn’t understand but had expected and hoped for help, and instead he experienced resistance.

Recommendation:

Emotional and mental illnesses require considerable sensitivity to the worker’s ability to manage the claims process. Procedures need to be in place to ensure a worker is coping and has support systems while delays on medical and psychological evaluations are occurring. The current revisions being undertaken on this Section of the Policy manual should ensure simple language that provides clarity for workers. Workers deserve efficient decisions in a process that is not convoluted, resulting in creating further stressors on them. The goal is always to bring a worker back to health but sometimes the claims process results in further injuring the worker.

D: An Apparent Conflict in the Act:

Recently, after going through a Review process with a worker who had a initial denial but then received a reversal of the Case Manager's decision by the Review Committee, we experienced a challenge of that decision. The Act in Section 92.4 provides for a Reconsideration by the Commission. This Section of the Act states: *The Commission may reconsider any matter previously dealt with by it and may rescind, vary or amend any act or decision it had previously made, either on its own initiative or at the request of a claimant, employer or other person.* This clause leaves workers who have received a positive decision extremely vulnerable. Whenever anyone, whether it is an employer, a staff member of the Commission or a claimant, chooses to disagree with a decision of a Case Manager or the Review Committee, they have the right to question it, thereby potentially delaying benefits or denying a worker benefits. It is understandable that a mechanism does exist as a check and balance. However at what point should that intervention be limited. Section 113 says: *A claimant or employer who is dissatisfied with a decision of the Commission respecting a claim for compensation may, in writing, request that the decision be reviewed by the Review Committee.* Providing for a worker or an employer to question the Review Committees decision is prudent. However, to enable some "other person" the same right, appears, for the worker to be unreasonable. In addition the Act further states in Section 116 (7) states: *Subject to the right of appeal under section 128, a decision of the Review Committee is to be considered **a final and conclusive decision** of the Commission.* In Section 128 (1) of the Act, it enables only a claimant or the employer to appeal to the Appeals Tribunal. *"A claimant or employer may, in writing, appeal any decision of the Review Committee to the Appeals Tribunal."*

When a worker reads a decision of the Review Committee they assume that the decision is **final and conclusive**, as stated in Section 116 (7). But it is not. Section 92 (4) enables essentially any one to challenge and potentially delay the workers access to benefits. This conflict, we suggest leaves too many workers vulnerable and should be addressed. If the intent of including "other persons" is to provide family members an opportunity to intervene if the worker is not willing to continue their battle with Commission, then a simple language change could provide a stronger focus and protect the worker. Rather than using an open expression "other persons", changing it to "a worker or their representative" may provide the flexibility intended while giving a stronger level of security of decision for the worker.

E: Review Committee

The Review Committee is extremely thorough in its responses to claimants requests for reviews. Sometimes the process seems slow or tedious for the worker. However the level of investigation and analysis undertaken is critical for a transparent fair decision. Throughout the year the support provided to the WAO by the Review Committee has been excellent and valuable.

The one concern experienced by workers after a decision has been completed which reverses or alters the initial decision of a Case Worker, is the 'next steps.' When a worker receives a positive decision, most frequently they are completely unsure of what happens next and who is responsible for following up. In one exchange between the DWAO and a claimant, after the Client services decision had been overturned illustrates their dilemma: *"I requested a Review Committee Decision August 2016, decision overturned in my favour June 2017– my claim is now open and I'm still waiting for disbursement of funds...I would like help with the following: benefits calculation, health care benefits reimbursement, conflict of interest, negligence complaint investigation process, documentation requests."*

The DWA noted a common reality with workers who have reached this point in their process. The worker finds dealing with the Case Worker who initially denied his claim uncomfortable if not inappropriate; has little faith in the system and is expecting some clear information and guidelines on how his claim will be managed going forward.

When a decision is negative for the worker they are informed they have the right to appeal the Review Committee decision to the Tribunal. However, when the decision is in their favour they are not given any direction on what will happen with their claim. Developing a simple information protocol on next steps, which is included with a positive decision may help in developing trust and confidence as their claims process continues.

F: The Appeals Tribunal

The Act provides the Appeals Tribunal as a higher level of consideration for workers who feel their claim has been wrongly dealt with by WSCC. A workers interest in engaging in a Tribunal Appeal doesn't come out of their knowledge of the law, the Act or the Regulations. It stems from their emotional and experiential belief that they have met injustice in the processing of their claim. It becomes their last hope. Most don't have the resources to high legal counsel, so the reply on WAO to help the meander through a more juridical process.

The worker is usually completely intimidated. They are facing a panel of knowledgeable experts, usually litigators who are experienced in adversarial processes, like a court of law. Their future depends on them saying the right thing. The process is overwhelming.

The procedure requires them to make an affirmation and then, with the assistance of the Workers Advisor or deputy Workers Advisor present their case. The Tribunal can cross examine them. Fortunately this is usually done with patience and empathy. If the Employer is challenging the Claimant they too can cross-examine or object to testimony such as character witnesses or new documents that were not available to the claimant by the submission deadline. The employer can present their argument. The worker comes out of the hearing emotionally drained and most often feeling defeated. It is more complex and technical than they had anticipated.

The Tribunal is an important option for workers. It is at arms length from the WSCC. There is a stronger sense of neutrality, and at least in going into the process, hope the truth as they understand will be respected and honoured.

However, it is a faint last hope. The skill of the Deputy Advisor and the Workers Advisor in this adversarial environment, at least in my case, is not as refined as either the lawyers on the Tribunal or the legal counsel representing the Employer. The balance entering into the battle is tilted against the worker.

To ensure just outcomes, it may be appropriate to ensure a totally equal playing field for the worker and provide the resources to the Worker/Claimant to have legal counsel assistance, rather than depending on the WAO as their sole representation. There is a legal fund available to the WAO. However if the WAO were to engage legal counsel for each Tribunal Appeal, the current resources would be inadequate. A restructuring of budgeting for the Workers Advisors office to include a permanent office, as well as a strong legal defence fund, would provide a more balanced and consistent engagement between the worker/claimant and the WAO.



PART 2

WORKERS' COMPENSATION REGULATIONS

Regulation 15: The annual report of the Office of the Workers' Advisor required under section 111 of the Act must include an account of

- (a) the number of files in the Office's caseload;**
- (b) the length of time each file has been opened;**
- (c) the issues involved in each file;**
- (d) demographic information on the client base; and**
- (e) anything else the Workers' Advisor considers necessary and advisable.**



	MONTH OPENED	ISSUE	LOCATION OF PERSON	STATUS
1	January 2017	Travel assistance reduced/denied	NT	Closed – Review Committee Reversal
2	Nov 2010	Emotional stress	BC	Closed – Review Committee – denial confirmed
3	June 2016	shoulder	NT	Closed – Review Committee reversal
4	Dec 2016	Chronic Pain	ON	Open – going to Tribunal
5	July 2016	Back injury	NS	Closed – at Tribunal
6	Oct 2016	Back	AB	Open – Review Comm - deferred
7	Nov 2015	Emotional trauma	ON	Open –reconsideration
8	Nov 2016	Back - denial	NFL	Closed Review Comm - reversal
9	Nov 2016	Knee - PMI	NT	Open – not a maximum recovery
10	Sept 2016	Back – denial of benefits	NT	Open - At Tribunal
11	Sept 2016	Denial of benefits - hearing	AB	Closed – Review Committee - reversed
12	July 2014	Denial of orthopedics	NFL	Closed -Tribunal - denied
13	Feb 2010	Back – PMI reassessment	MB	Open -Reassessment requested
14	July 2010	Back pay retraining	AB	Closed -Tribunal - affirmative
15	Dec 2017	Benefits cancelled	AB	Open – temporary resolution with Case manager
16	Dec 2017	Claims filing assistance		
17	Sept 2017	PTSD –claim denied	NT	Closed - Review Committee - reversed
18	Nov 2017	Repetitive motion – denial	NT	Open
#	MONTH OPENED	ISSUE	LOCATION OF PERSON	STATUS
19	Dec 2017	Anxiety/PTSD - denial	ON	Preparing to go for Review
20	Dec 2017	Return to work benefits running out	NT	Open – unable to find employment that accommodates injury -



21	Nov 2017	Hearing aide – benefit denial	PEI	Open - Claim officer reversal – new info
22	Oct 2017	Back - denial	NT	Open -At Review – deferred waiting for new medical info
23	Jan 2017	HMILA - denial	NB	Open -Reversal by Claims officer
24	Aug 2017	Shoulder - denial	NB	Open – new medical opinion-being reconsidered
25	Oct 2017	Care giver assistance - reconsideration	NB	Closed: - approved
26	Nov 2017	Reduction in benefits	BC	Open- info on pension calculation provided – no worker response from worker
27	July 2016	Retraining denial		Open- Review Committee – reversal -
28	June 2017	PMI, wage replacement	ON	Open –requesting review
29	June2016	Chronic pain, PMI	NT	Open – consult with Case Manager
30	July 2017	Taxes deductions	ON	Closed – provided info
31	June 2017	Medical marijuana denial – D.I.N.	NT	OpenConsidering Tribunal appeal
32	Sept 2017	PTSD -	YT	Open- Deferral Review Committee
33	June 2016	Hearing - denial	NT	Closed – Review Committee denied
34	Feb 2017	Back – denial of claim	NT	Closed – Review committee reversal
35	Jan 2017	Concussion - denial	MB	Open- reconsideration
36	June 2017	Knee - denial	ON	Open – Review Committee – document review
37	June 2017	Mental health Injury	BC	Open- Review being considered
39	May 2017	Tinnitus - denial	NS	Closed – Review Committee denial
40	July 2017	Leg injury - denial	NT	Closed – reconsidered and approved
41	March 2017	Arm injury -denial	NT	Closed –Review Committee - reversal

42	June 2017	Labour Standards in NU	NFL	Closed -Info requested
43	June 2017	Knee	ON	Open
44	May 2017	Cancellation of physio treatment	NT	Open – requested Review
45	June 2017	Denied compensation	NT	Open – considering Tribunal Appeal
46	April 2017	Back Injury - Denial	NT	Closed – Review Committee - reversal
47	March 2017	Back and arm - denial	ON	Open – Review - deferred
48	May 2016	PDST, Chronic pain	BC	Open – considering appeal
49	May 2017	Request for therapy equipment	BC	Closed – resolved by Case Manager
50	April 2016	Info request re payment schedule		Closed – Pension provided info

The following data is submitted by the Deputy Advisors Office in Nunavut					
Date	Number of New Files	Continued Files	Status	Claimant Location	Issues
January	1	5	Acceptance -1 Amount of Benefit 1 File Assistance – 1 Awaiting Disclosure 2 Prep for RC - 1	1- NB 1- NF 1-NS 2- NU 1- PQ	Medical evidence Explain WSCC process Medical Info required Client Info required
February	No change	No change			
March	2	4 files closed	DWAO declined no merit Awaiting RC decision -1	1- AB 2 –NB 1 –NF 1 -NU	Client disclosure PMI reviewed
April		1 file closed, 3 remain open	Declined – no merit – 1 Review Committee – awaiting decision -1 prep/post - 2	AB -1 NB- 2 NU -1	
May	1	3 remain open	Review Committee Pre/post - 4	AB-1 NB-2 NF-1	Increase of Benefits – 1 PMI reassessment – 1 Medical treatment requested - 1



June	1	Closed – 1 2 continued	Review Committee – pre/ post -1 Claims services/post decision - 2	AB -1 NF -1 NU -1	Declined –legislation - 1
July	2	3 remain active	Review Committee – post decision – 2 Pre/post – 3	AB -2 NF -2 NU -1	Acceptance of claim – 1 PMI reassessment – 1 Explain WSCC process – 4 Assistance with filing - 1
Aug	No change	No change	Review Committee 1 denial Pre/post -3 Claims Services - 1	AB -2 NF -2 NU -1	
Sept	No change	No change	Appeals Tribunal – 1 Claims Services – 4	AB -2 NF -2 NU -1	PMI change – 1 Medical Info – 1 File Assistance -2
Oct	No change	No change	Claims Services - 5	AB -2 NF -2 NU - 1	
Nov	No change	No change	Claims Services – 4 Appeals Tribunal -1	AB -2 NF -2 NU - 1	
Dec	1	1 -opened	Lost contact with Client -1 Claims Services – 5 Appeals Tribunal - 1	AB - 3 NF -2 NU - 1	

PART 3

Personal Reflection

As a first year Workers Advisor I would reiterate a comment a friend recently made, “it’s like being permanently at University.” The learning curve has been steep and swift. The role the WA plays is privileged. Complete strangers agree to open the most private parts of their life’s journey to someone they have never laid eyes on, but are willing to risk trusting. It is in many ways a humbling honour.

When workers face a system they do not understand at point when their sense of well being is demoralized, they are gasping for air. When they encountered complex policies, which include a slow intense process of evaluation, their emotions can peak. When they contact the Workers Advisor, there is an important opportunity to listen – listen to their story of being injured, listen to their story of not fitting into the policy regime, and listen to their disappointment and at times anger. Empathy and patience are valuable skills for the Workers Advisor. Helping the working build a positive attitude, to maintain hope, even if compensation is denied is an ongoing challenge.

I have heard the expression “ they are living their injury,” meaning they are totally occupied or obsessed with the circumstances around their injury. More than one worker that I have encountered this past year fit that description. These are the most challenging ones to assist. Their level of mistrust, their anger can stand in the way of them moving forward. I believe one of the challenges WAO has is to not only help each person with managing the disability that has come as result of their injury or disease, but help build their ability to move away from a negative attitude about themselves, WSCC or their employer to one of hope. Total healing starts inside their being with building a healthy attitude. The journey to wholeness and health does not just arrive on the doorstep through medical interventions. Each person needs to be encouraged to do more than pain management but also heal the spiritual damage done as a result of the injury and any side effects or spinoffs. It is never an easy journey but reconciling their past with their current reality opens the possibility of experiencing hope, joy or a sense of peace in spite of their condition and limitations in their future.

In closing, I want to express my gratitude to the Minister and Members of the Legislative Assembly who support the principles of Workers Compensation. I am grateful for the opportunity to provide this report to the Honourable Members, and will be pleased to provide any additional information.

Masi Cho

