

Workers' Advocate Office

Annual Report

2004

**Department of Justice
Government of the Yukon**

March 31, 2005

Table of Contents

Message from the Workers' Advocate.....	1
Staff Profiles.....	2
Purpose and Mandate.....	4
Experience – First Contact to Appeal Tribunal	
• First Contact/Second Contact/Third Contact.....	5
• Adjudicator.....	6
Hearing Officers and Beyond	
• Hearing Officer/Appeal Tribunal/Board of Directors.....	7
2004 The Year in Review	
• Measuring Success.....	8
Statistics	
• Inquiries/General Inquiries/Claim Related Inquiries/Files/Updates.....	9
Appeals	
• Hearing Officer/Appeal Tribunal Hearings/Court Action.....	10
File Management	
• New Files/Files Closed/Current Active Files.....	11
Other Office Activities	
• Educational Activities/Complaints/CL-35/Employer Request for Disclosure.....	12
2005 – Looking Ahead	
• Employer Request for Disclosure/Other Court Decisions/Reduction in Early Intervention/Office Space/Meeting with WCHSB/Policy Development.....	13
Budget.....	14
National Activities	
• Canadian Association of Workers' Advisors/Advocate (CAWAA)/Goals of the CAWAA/Objectives of the CAWAA/Mission Statement.....	15
2004 Annual CAWAA Meeting – Yukon Territory.....	16
2002/2003 and 2003/2004 CAWAA National Statistics.....	17

Message from the Workers' Advocate

In accordance with section 13(6) of the *Workers' Compensation Act RSY 2002*, it is my pleasure to present the Workers' Advocates Office Annual Report for the year ending December 31, 2004 to the Minister of Justice, the Honourable John Edzerza.

The office of the Workers' Advocate exists to advise, assist and represent injured workers with respect to their claim for compensation. This mandate has been given a full and broad interpretation and it is a position that has been endorsed by the Supreme Court of the Yukon.

Throughout 2004 the workload increased as more workers requested our services, their issues were more complex and resolution was harder to achieve. The staff; Deputy Workers' Advocate Julie Docherty, Intake Officer Eldon Organ and Administrative Assistant Feline Walsh continued to achieve success and perform admirably despite the increased workload. The Office was required to participate in more court actions this year, which are handled by external counsel, Mr. Richard Buchan.

The Workers' Advocate Office and the Yukon Workers' Compensation Health & Safety Board (YWCH&SB) endeavour to resolve issues of dispute at the earliest possible stage between the worker and the adjudicator. Early intervention allows us to ensure that all the information is readily available to all parties. This usually leads to a set of known and agreed upon facts and we are then better able to make decisions by applying the legislation and policies. When we have the same information and apply the same rules, we often come to the same conclusion.

Accomplishing early intervention is time consuming and intensive. With the increasing workloads at the WAO and the YWCH&SB early intervention is becoming more difficult. Developing a trusting relationship between the Workers' Advocate Office and the Yukon Workers' Health and Safety Board front line staff is difficult to create and tenuous to maintain, in part due to the sheer volume of cases. For example, we could be working collaboratively with an adjudicator on 20 files while working from an adversarial position on ten. It is a testament to the professionalism of both the Workers' Advocate Office and the Yukon Workers' Compensation Health & Safety Board staff that interplay from different files does not carry over.

We believe that 2004 was overall a very successful year for the Workers' Advocate Office. We will continue to work toward early intervention and resolution for files. Additionally the passage of Policy CS-11 requests further interventions by workers' representatives.

I know I speak for all of the staff when I say that it is our privilege to serve injured workers of the Yukon. We look forward to continuing to do our best to meet their needs in 2005.

Mike Travill
Workers Advocate

Workers' Advocate Office Staff

Mike Travill – Workers' Advocate



Mike was appointed Workers' Advocate when the office was established in 1997.

His primary responsibilities include managing the WAO program and staff, fulfilling administrative requirements, developing policy, delivering education, training and all appeal directions, including direction of any court actions.

Julie Docherty – Deputy Workers' Advocate

Julie handles most of the appeal functions of the Workers' Advocate Office. Handling almost all of the appeals done at both the Hearing Officer and the Appeal Tribunal. As Deputy Workers' Advocate her role is to prepare client cases, accompany clients to hearings and present the case on their behalf.



Eldon Organ – Intake Officer



As Intake Officer for the Worker's Advocate Office, Eldon performs most of the early intervention and return-to-work interactions. He handles much of the daily communication between workers and the Office. Eldon has completed coursework in criminology, native awareness and suicide prevention and he has a certificate in Justice Administration. He also brings his own experience as an injured worker to the job.

Feline Walsh – Administrative Assistant

Feline joined the Workers' Advocate Office in 2002 as an Administrative Assistant. She is the first point of contact for all clients who visit and telephone the office. Feline is also in charge of all administrative work, scheduling, file management and maintaining and managing the database that allows for more accurate statistics. With the influx of new clients and issues in the past year, she has also taken on some of the intake work on client files.



Purpose and Mandate

What is a Workers' Advocate and what does he or she do?

A Workers' Advocate's job is to support workers and protect their interests in their dealing with the Yukon Workers' Compensation Health & Safety Board. Their job is also to act as an "interpreter" of the Yukon Workers' Compensation Health & Safety Board's actions.

A Workers' Advocate also provides expert advice to injured workers and their dependants, and supports the early resolution of issues and disputes in the workers' compensation process.

How does the Workers' Advocate determine whom to help?

The Workers' Advocate Office (WAO) will assist any injured worker that comes into the office seeking assistance or information about what to do in relationship to a claim or a possible claim for compensation. After obtaining information about the worker's concerns and reviewing the file the Workers' Advocate may refuse further assistance if, in the Workers' Advocate's opinion, there are no grounds for appeal or for a claim of compensation.

In assessing which claims will be taken to the next level in the process or to an appeal, the Workers' Advocate Office acts on a priority basis – not on a first-come-first-serve basis. The office assesses all appeals, claims, issues and concerns to determine which issues should be dealt with first. This decision considers a number of factors such as individual need, likelihood of success, availability of advocates and global impact.

Experience – First Contact to Appeal Tribunal

First Contact

The first contact an injured worker has with the office is usually by phone or in person.

When the injured worker first contacts the office, there is general discussion about the reason for the call and the worker's concerns. Sometimes the concerns are easily answered and do not require any further action. For example: the injured worker might want to know why their benefits went up. The Workers' Advocate Office would be able to explain that benefits are indexed yearly.

Other times the issues are more complex and need claim specific information.

If the caller's questions are answered and no further action is required then the contact is recorded as a general inquiry.

Second Contact

If the worker requires more specific information or requires further assistance, an appointment will be made between the injured worker and the Workers' Advocate Office staff for a more formal exploration of the issue.

If, after these discussions, the injured worker requests further assistance from the Workers' Advocate Office, the injured worker will be asked to provide written authorization for the Workers' Advocate Office to represent him or her. The injured worker's claim file is then requested from Yukon Workers' Compensation Health and Safety Board.

At this point, the file is recorded as an open file for statistical purposes.

Third Contact

When the file is received from the Yukon Workers' Compensation Health and Safety Board, the Workers' Advocate Office reviews the injured worker's file and discusses with the injured worker the issues in light of the information on their file.

If there is no entitlement to compensation or to additional compensation, the Workers' Advocate explains the situation to the worker and discusses the decision based on the applicable policies and legislation. If necessary, the decision of the Workers' Advocate is communicated to the injured worker in writing.

Adjudicator

If there is a legitimate claim for compensation or for a variation in the amount, the Workers' Advocate Office approaches the Adjudicator at Yukon Workers' Compensation Health and Safety Board to discuss the concern.

Section 12 of the *Workers' Compensation Act* directs that Adjudicators must make the initial decision on behalf of the board, and that all decisions must be in writing. The term adjudicator is accepted to mean any decision maker on a worker's claim file. The Adjudicators can make and alter their decisions right up to the point of an appeal to a Hearing Officer.

The discussion with the Adjudicators can be quite extensive and can cover all aspects of the claim. Resolution of issues with the Adjudicator is the preferred method of resolution. The formal appeal method often entails delays (often several months) to accommodate the process of scheduling a hearing; therefore significant time and energies are directed to this early intervention.

If, after discussions with the Adjudicator, there still remains a dispute, and the Worker Advocate believes there is a legitimate claim, an appeal is filed to the Hearing Officer.

Hearing Officer and Beyond

Hearing Officer

The first formal stage in challenging an Yukon Workers' Compensation Health and Safety Board decision is to take it to a Hearing Officer. This process is internal to the Board and is governed by Section 20 of the *Workers' Compensation Act*.

The Workers' Advocate Office files the request for a Hearing Officer appeal on behalf of the client. The Workers' Advocate then prepares and presents the appeal on the workers behalf. The employer is invited to attend and participate in the hearing.

Often cases are resolved following the hearing. The Hearing Officer has 30 working days to issue a written decision after the conclusion of the hearing. Decisions are detailed accounts of the circumstances of the issue, an analysis of the facts and the Hearing Officers decision. Generally, resolution is achieved at this level; however, if the worker or employer is not satisfied with the decision, they may pursue the matter with the Appeal Tribunal.

Appeal Tribunal

The Appeal Tribunal is an independent body that was established under Section 21 of the *Workers' Compensation Act*.

At a hearing, the Appeal Committee will be a three-person committee that hears each Case. The committee is comprised of a worker representative, employer representative and a neutral chair. Decisions from an Appeal Committee are considered final and is to be implemented within 30 days. There are rare exceptions which allow the Appeal Tribunal decision to be challenged to the Courts.

While the Tribunal is more formal than the Hearing Officer and proceedings are recorded, lawyers are seldom involved. The Tribunal members are actively involved in the process; reading, researching and asking questions to ascertain the facts and determine a decision.

The employer is also invited to attend and he/she may make a presentation or ask questions of witnesses.

Review by the Board of Directors

After the Appeal Tribunal or the Appeal Panel has heard a claim and made a decision, the Board of Directors must review the decision to determine if all of the Policies and the *Act* have been complied with.

The Board may either refer the decision back to the Tribunal or to Court, or they can accept the decision. For each individual file the Board of Directors makes, the final decision is in compliance with the *Act* and policies.

2004 – The Year in Review

Measuring Success

Quantifying “value for service” continues to be a difficult issue for the Workers’ Advocate Office. The office’s main function is to identify areas of entitlement and to provide the Yukon Workers’ Compensation Health and Safety Board hearing bodies with the information to determine entitlement.

For statistical purposes, it would be a simple matter if we simply identified issues and filed appeals without trying to resolve those issues through the early intervention at the adjudicative level, or participate in vocational rehabilitation planning.

One of the fundamental principles of the Workers’ Advocate Office — and one that we all strive to attain — is to seek early resolution to complaints and concerns that injured workers bring to us. The value of this work is harder to quantify but we believe in the long run it is more effective.

The complaints of delay in securing resolution have been minimal based on this early intervention. The reduction in appeals going forward from one level to the next reflects the quality of the decisions (confirming or allowing) a compensation claim has at the lower level of appeal.

Statistics - 2004

Inquiries

The number of *general inquiries* does not track the activities of the Workers' Advocate, only the activities of staff. The Workers' Advocate deals with more global issues, with a few of them being liaison with counterparts throughout Canada, discussions surrounding benefits to disabled individuals, education, specialized information, official inquiries and administration of the office.

General Inquiries – 946

- These are calls or contacts with the office that are not specifically related to an individual claim.

Claim Related Inquiries – 7,107

- Claim inquiries are calls/contacts directly related and in regard to a specific file.

Files and/or updates requested – 460

- These are either complete files requested because of a new “injured worker” file being opened at the Workers' Advocate Office or an update of an existing file.
- This number is up noticeably from the 335 files requested in 2003.

Appeals

Hearing Officer Appeals – 29

- This number reflects hearings held either in a documentary review or an in-person hearing and where a decision has been made. It does not include hearings that were postponed/adjourned or withdrawn with short notice (for which preparation had been required).
- This number is a slight decrease from the 32 Hearing Officer Appeals held in 2003.

Appeal Tribunal Hearings – 20

- This number reflects hearings held either in a documentary review or an in-person hearing and where a decision has been made. It does not include hearings that were postponed, adjourned or withdrawn with short notice (for which preparation had been required).
- There were 20 Appeal Tribunal Hearings in 2003.

Court Action – 3

- During 2004, the Workers' Advocate Office participated in three court actions that were related to workers' compensation.
- In 2003, there was one court action.

File Management

New Files – 80

- There were 80 new clients in 2004. These are clients that had not previously received services from the Workers' Advocate Office. They include claimants who returned for service when they had previously been in receipt of assistance from our office and their files had become inactive (closed), or placed in storage waiting for file review by the Workers' Advocate to close the file.
- This is a slight increase from 2003 when there were 67 new client files opened.

Files Closed – 0

- The process followed by the Workers' Advocate Office is to have the Workers' Advocate review all files prior to officially declaring the file closed.
- There are currently 56 files set aside to be closed; however, the review has not been completed.

Current Active Files – 490

- There are currently 490 open files.
- Open status means that the Worker's Advocate Office is actively working on or awaiting actions, on the files due to outstanding issues of entitlement.
- Number of files should not be confused with future number of appeals as intervention prior to an appeal is still the most cost-effective method of solution. Also, the number of files does not reflect the number of "issues" which are statistically relevant in determining service delivery (see jurisdictional comparison).
- In 2003, the Workers' Advocate Office had 360 current active files.
- This year the Workers' Advocate Office started counting issues. For the year 2004 there were 215 new issues brought forward for injured workers.

Other Office Activities

Educational Activities – 1

- In 2004, the staff participated in one speaking engagement. This was done by Mike Travill for Public Service Alliance Canada.

Complaints

- In 2004, there were no complaints filed with the Assistant Deputy Minister of Justice or any ATIPP requests. There was one complaint filed to the Ombudsman's Office that was later withdrawn. The Ombudsman has the ability to review decisions of the Workers' Advocate Office.

CL-35 Hearing Officers

- The Office filed 21 Notice of Claim Reviews to the Hearing Officer in regards to the calculation of long term benefit rates.

Employer Request for Disclosure

- On July 19, 2004, there was a decision made by the Supreme Court of the Yukon Territory that provided clarification surrounding the information release/file disclosure issue. It was ruled that when an employer requests disclosure of an injured workers' file under section 27(2) of the *Workers' Compensation Act*, the only information to be released to the employer is the information that was considered relevant to the issue of appeal.
- Employer disclosures take a considerable amount of time. The board must review every document on a worker's file to determine which ones are relevant to the issue of appeal (i.e. if the issue is pre-accident earnings, issues surrounding the worker's medical condition are not needed). At this point, the documents are provided to the Worker Advocate Office who reviews those documents in conjunction with the entire file and who may request additions or deletions (to ensure all relevant information is shared with the parties to the appeal). If there is a disagreement, the documents may be referred to the President of the Board for determination. This process can entail three or four complete file reviews (line by line).
- Employer Disclosures in 2004 – 18

2005 – Looking Ahead

The Workers' Advocate Office is looking towards ways of handling the increasing workload while striving to provide the same type of services to the injured workers of the Yukon in 2005.

There are several issues that are likely to arise in 2005.

Employer Request for Disclosure

- These requests have had a significant impact on the workload of the office and may affect the ability of the Workers' Advocate Office to meet its mandate at the current staffing and funding levels.

Other Court Decisions

- Moving into 2005 there are four matters that need to be addressed through the Courts and it is expected that there will be a few others.

Reduction in Early Interventions

- Since late 2003, 2004 and continuing into 2005 we have seen less "early interventions". It is likely that this will lead to an increase in the number of Hearing Officer appeals being requested.

Office Space

- The Department of Justice is continuing to work on developing long-term office space options for the Workers' Advocate Office. Some of these options cannot be fully developed until a decision is made about the consolidation of other government department's space needs.

Meeting with the Yukon Workers' Compensation Health and Safety Board

- Up to the present time, the Workers' Advocate Office and the Department of Justice only meet once a year to present the Workers' Advocate Office budget. At the 2004 budget meeting, it was agreed that there should be more frequent meetings, quarterly or bi-annually and possibly written submissions. Unfortunately, workloads have not allowed for this to be implemented (March 2005).

Workers' Advocate Office – Policy Development

- In 2004, the start of the development of several policies at the Workers' Advocate Office took place, most notably the Professional Responsibility Guideline and Personal Security Policies, with implementation expected in 2005.

Budget

The Workers' Advocate Office is attached to the Department of Justice and funded through the Yukon Workers' Compensation Health and Safety Board.

Section 13 of the *Workers' Compensation Act* RSY 2002 reads: "the Minister of Justice shall prepare an annual budget for the Workers' Advocate, and following consultation with the board, approve the budget, which shall be paid out of the compensation fund".

The Yukon Workers' Compensation Health and Safety Board operates on a calendar year (including their budgetary process). The Workers' Advocate Office, as part of the Department of Justice, operates on a fiscal year. This creates some confusion when comparing budget amounts and activities.

There have been significant increases in the budget for the Workers' Advocate Office since its inception in 1997. When the office was originally planned it was expected that it could be run as a one-person office. It quickly became clear that this was not possible based on the ever-increasing demand for services.

Fiscal Year	O&M Budget	% Increase/Decrease
1997/1998	78.2	-----
1998/1999	124.6	37.2%
1999/2000	192.9	35.4%
2000/2001	229.9	16.1%
2001/2002	309.9	25.8%
2002/2003	323.2	4.1%
2003/2004	376.3	14.1%
2004/2005 *	358.3	(5.0%)
2005/2006 **	354.3	(1.1%)

*The budget for 2004/2005 was \$358,300.00.

**The budget for 2005/2006 is \$354,341. It is a challenge for the Workers' Advocate Office, as it is for any office, to estimate expenditures six to nine months in advance. The office makes every effort to minimize expenses; however, we do believe it is important to continue to provide an acceptable level of service to injured workers in the Yukon.

2005/2006 also has seen a Capital Budget for the first time of \$18,500 which has been allotted for computers, the data base system and renovations for the office.

The process appears to be coming much more litigious with the Worker Advocate Office, Appeals Tribunal and the Yukon Workers' Compensation Health and Safety Board filing proceedings with the courts. It becomes extremely difficult to budget legal expenses as they arise based on either a WCB or Appeal Tribunal decision, which we then have to react to.

National Activities

Canadian Association of Workers' Advisors/Advocate (CAWAA)

CAWAA is comprised of workers' representatives or advisors established under provincial and territorial workers' compensation regimen or by legislation. The organization was officially founded in 1999 with 11 members, (Northwest Territories and Nunavut being represented by one member). The members represent all jurisdictions except Quebec, which operates under a slightly different system.

The Goals of the CAWAA are to:

- Ensure excellence in service to injured workers and their dependants, achieving fair resolution of individual and systemic workers' compensation issues;
- Share information on issues affecting injured workers;
- Assist members in better achieving their own goals toward injured workers and their dependants;
- Promote effective working relationships with Canadian Workers' Compensation Boards and appeal bodies;
- Promote the role of the worker advisors or advocates role in the compensation system of Canada; and
- Nurture continued growth and development of our association.

The Objectives of the CAWAA are to:

- Encourage co-operation among members of the association;
- Provide a forum for study and exchange of views and experiences on administration and enforcement of appeal provisions of workers' compensation legislation;
- Encourage research on subjects related to the work of workers' compensation law and policy; and
- Encourage high standards of administration of worker appeals.

Mission Statement

To promote and support the work of Workers' Advisors and Advocates in Canada

The association meets by teleconference every two months and has a "face-to-face" meeting annually. This meeting is hosted on a rotational basis. The 2004 meeting was hosted by the Yukon Territory and held in Dawson City. In 2005, the annual conference will be held in October in Halifax, Nova Scotia.

The discussion at these meetings and conference calls include information exchanges about jurisdictional experiences, statistics and performance measures, common experiences, access to resources, training, etc. In addition, the organization develops and advances positions on a wide variety of issues, such as the amendments currently before the Parliament of Canada that would alter the way workers' compensation is provided to Federal employees in the Territory and other issues relating to inter-jurisdictional agreements among workers' compensation boards.

2004 Annual CAWAA Meeting – Yukon Territory

The Yukon Workers' Advocate hosted the CAWAA annual conference this year in Dawson City, Yukon. We chose Dawson City as our host city for the conference, as the Association of Workers' Compensation Boards of Canada hosted theirs the following week in Whitehorse.

This year's conference went off without a hitch. There were seven members in attendance with four members hooked up via teleconference and five guests.

The meetings began on August 4th and carried through until August 7th, with three CAWAA members meeting with the AWCBC Executives and attending the AWCBC conference during the following week.

Delegates from across Canada attended the meetings. There were discussions around Age 65 and the Charter, Canada Pension Plan, development of the future CAWAA Web site, statistical reports, and strategies on improving service in rural communities, research, public initiatives and professional training for advisors. The meetings were very productive.

By hosting the meetings in Dawson City not only did delegates get to focus their attention, they also got to experience the majesty and adventure of the Gold Rush era along with that of the Yukon.

By hosting our event in Dawson, the Yukon benefited through distributions of revenues generated through convention activity. We were also extremely lucky, as one of the delegates' spouses is a professional photographer and while in the Yukon he took some spectacular photographs, which Imac carried when he was selected as a featured artist.

2002/2003 and 2003/2004 CAWAA National Statistics

One of the priorities of CAWAA was to start inter-jurisdictional comparative statistics. The organization realized that the need for decision makers to have access to clear, concise and meaningful statistics outlining the activities of Workers' Advocate/Advisors offices across the country was needed.

The attached reports covering the years 2002/2003 and 2003/2004 is the third issued by the organization. Gathering and managing statistical information is an onerous task and Anne Clark, Chief Advisor of Nova Scotia, deserves much credit for compiling the information. In reading the report, please be aware of explanatory notes and footnoted comments.

Yukon Appeal Statistics

When you look at the report, you will see that the statistical information for the "Total Number of Appeals" for the Yukon is footnoted.

The Yukon has reported 360 appeals in the CAWAA Report. This number includes Hearing Officers, Appeal Tribunals, Court and representations before an adjudicator (non-formal appeal process yet to have interaction with the board), not just the actual Hearing Officers and Appeal Tribunals.