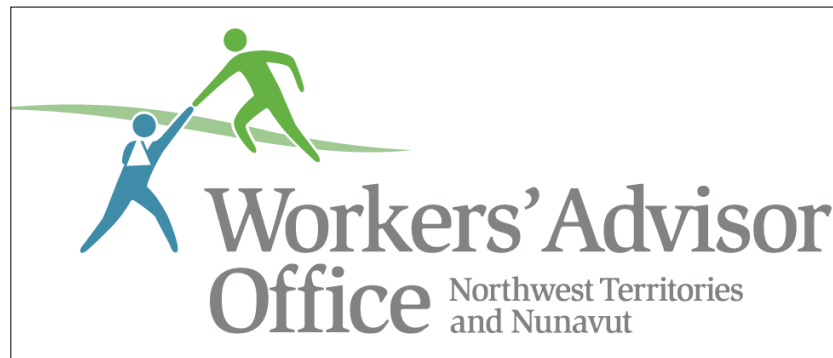

Annual Report 2018



TOWARDS RECOVERY

Prepared for: Hon Alfred Moses,

Minister Responsible for the Workers' Safety and Compensation Commission

Hon George Hickes

Minister Responsible for the Workers' Safety and Compensation Commission

Members of the Legislative Assembly

Governance Council, Workers Safety and Compensation Commission

President, Workers Safety and Compensation Commission

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January 2019

TOWARDS RECOVERY

Workers Advisor Office

2018

Annual Report

INTRODUCTION:

The Workers Advisors Office and the Office of the Deputy Workers Advisor had a very active year in 2018. Approximately 80 different workers came to the Workers Advisors Office and Deputy Workers Advisors Office for assistance during the year. Their concerns ranged from the denial of their claim, retraining, pension assessment to seeking advice on employer/employee relations. The consistent concern with all files is the slow speed in having matters resolved. Workers who have been on compensation for a number of years also complain about the frequency of their claims manager being changed, which often creates delays or poor decisions. We have previously commented on this issue but at the same time recognize that the attrition rate for case managers is high. The Workers Advisors Office (WAO) acknowledges their work is detailed, technical and highly stressful and commend their dedication and professionalism.

The WAO made one strategic change to better represent workers at the Appeals Tribunal;. After losing two appeals at the Tribunal, the WAO concluded the worker was being put at a disadvantage if there was no legal counsel to assist in their representation. For all subsequent Tribunal Appeals we retained legal counsel on behalf of the worker.

As well, we recommended the establishment of a permanent Workers Advisors office, with an administrative assistant. I am pleased to report that the Minister, the CEO and the Board of Governors supported the proposal and approved the plan and a budget for 2019.

The amount of paper documents generated with each file is extensive. In order to better manage the files and have the information more accessible to the Workers Advisor and the Deputy Workers Advisor, we began digitizing each file on a secure server with a program which is fully searchable.

The WAO and the DWA consulted and worked co-operatively on a few files, providing a more efficient service to the workers involved. Although there is monthly contact between the two offices we recommend stronger collaboration to ensure the highest quality of service is provided.

In early fall I decided I should terminate my contract as Workers Advisor and provided three months notice to the Minister. I hope stepping aside will ensure workers will receive the best of service, they face very stressful challenges when attempting to resolve their entitlement and deserve a high

standard of service. My resignation came in part because I felt I was unable to provide an adequate response to every worker.

This report may not be structured in the way most annual reports are. I believe it is valuable to provide each reader with context and with the human realities of injured workers. You will find the report includes some summarized stories of the challenges individual workers are facing. A table has been inserted which provides a description of the issue each file has presented. I have also included a section prepared by the Deputy Advisor, as his Annual Report. As well, I made some specific comments about the Act and provide a list of recommendations, which are summarized at the end of the report.

The Advisors



Patrick Scott grew up in rural Ontario in a farming village. He graduated from Ryerson University in 1973 in Photographic Arts. 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 Ft 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 Talurṛuaq, and Kuugaarṛuk, and raised in tents and igloos until his family moved into the settlement of Talurṛuaq 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 been 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 Inuktitut.

Case Management

Case management by the Workers Advisors brings very diverse challenges because the stories the workers present are remarkable, and at times tragic. The volume during 2018 was at times overwhelming and unmanageable. Each month introduced one or more new workers to our list. Each worker had turbulent stories to tell about their feelings of frustration, disappointment or confusion and sometimes anger for the way in which their claims had been handled. For a few, through either consultations with staff or presenting before the Review Committee, we were successful in having some decisions altered or reversed.

The Workers Advisor must not only manage ‘cases’ but an important part of the work is managing people. Patience, a willingness to listen and the ability to set boundaries are critical skills.

After dealing with one worker who had his benefits suspended due to missing appointments and felt extremely desperate and frustrated with WSCC, we made the following comment to him: *WSCC can provide support for counselling services if you choose to utilize that type of assistance. That is your call of course. Your healing involves finding ways to manage the whole impact of the injury is having on you, so that whatever the final outcome of your injury is, you are able to discover a positive future.*

Many workers become so angry at the WSCC process and remain angry at themselves for having had an accident, they lose sight of how to heal. They begin to “live the injury” as it dominates their lives. It is very difficult for some workers to maintain healthy attitudes, and rely only on medical interventions provided through WSCC to “heal them.” I believe more efforts could be made to foster healthy thinking/attitudes as part of the workers recovery.

In our 2017 report we commented on the Review Committee. Once again we must acknowledge the exceptional work of the Review Committee. Their careful and detailed considerations of the facts of each file is impeccable. Their decisions are thorough and communicate carefully. Unfortunately they are not always favourable to the workers. The WAO had limited engagement with the Appeals Tribunal, having only a handful of the approximately 80 cases going to an Appeal.

Workers Stories

To enable a fuller understanding of the work being done by the WAO and the DWAO let me share a few worker stories. I am using a random first name and initial to protect the identity of each worker. I will not provide details of their cases but keep comments general.

[Redacted]

[Redacted]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

WSCC Policy 03.11 on Special Financial Assistance for workers states in part:

Special Financial Assistance may be provided to an injured worker who is, or likely to be, unable to work for 3 months or from the times of the injury and whose Annual Remuneration exceeds YMIR in the year they were injured. This one time assistance is provided to relieve a financial burden the worker did not have prior to their injury.

[REDACTED]

It seems absurd to the worker and to the WAO that the policy is written in such a way that those on lower incomes would never be able to access special emergency funding, if needed. [REDACTED]

[REDACTED] It is our view that this policy needs to be revised to be equitable and accessible to all workers, not just the better paid ones. Thousands of NWT workers work at wage levels much below this standard, which has now been adjusted upward to \$90600 for 2018. This YMIR is appropriate for mine and government workers but it means for the majority of private sectors workers, they are excluded from being able to benefit from Policy 03.11. The WAO recommends that this provision in the Policy Manual be changed so that any worker has a right to access compensation provided under this policy, regardless of their wage or the time of need, as long as their claim is active.

The WAO faced some challenges managing the large number of cases. Each worker who comes to the WAO for advice and assistance, comes with disappointment, frustration and sometimes anger. The ability to hear their story, empathize with their frustration and develop a strategy to bring their case back to WSCC without having predetermined biases of the case manager is, in each case, unique, time consuming and draining. The approval by the Board of Governors to provide an administrative assistant will provide much needed support.

Another area of concern is the ongoing weak connection between the DWAO and the WAO. Much more effort needs to be made for collaboration between the two offices. Secure electronic access and file sharing would provide more efficiencies. We began the process by establishing an Evernote sharing account, to electronically share files. However due to inadequate time and resources we were not able to complete the task.

Throughout my experience as WA, I felt it was essential to develop and cultivate professional, respectful relationships with WSCC officials. I was very encouraged when the Supervisor of claims offered to meet monthly to review active files that had issues that may be resolvable without seeking a Review. This interchange I found to be productive and beneficial to all parties and would encourage its continuation. It would also be more efficient if Case files were available as electronic files to the WAO and DWAO from WSCC, instead of paper files. I recommend WSCC look at a system to enable electronic files sharing.

At times the WA must be more than an advocate for the worker. The WA at times is faced with accepting and explaining or defending the WSCC decision or course of action. [REDACTED]

I think it is important to comment at this point once again on the remarkable work done by the Review Committee. They are compassionate, comprehensive and detailed in their decisions. What becomes problematic and of significant concern is having their decisions implemented. When the RC either alters a decision of a case manager or reverses it, the worker has no idea what comes next or how quickly their benefits would become available. There is a significant disconnect for the worker between getting a decision from the Review Committee and having it implemented. There are no procedures or directives that a worker can follow. New protocols need to be developed so that the worker knows what steps must or will be taken, once the Review Committee makes a decision, either by the worker themselves or by WSCC employees. Transparency at this point in the overall process would be extremely beneficial.

Only a few workers express a desire to move their case to the Appeals Tribunal level after being refused at the Review Committee. The WAO was successful in presenting a few cases to the Tribunal. However, after a number denials by the Appeals Tribunal, the WAO reassessed its roll as the advocate at that level. Without going into a tedious discussion, we made the decision that each worker going to Appeals Tribunal, through the WAO, deserves the skills and advice of legal counsel. The worker deserves a level playing field. The Appeals Tribunal is their last hope of getting a favourable decision. In Tribunal hearings they typical face a one or more lawyers as adjudicators, and if either the employer or WSCC participates in the Tribunal hearing, they typically have legal counsel argument their position. Unless the WA has training and experience in judicial hearings, the worker is very much at a disadvantage.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As the Workers Advisor, regardless of our attempts to address matters and find the truth in front of the Tribunal, both the lack of expertise and lack of experience played a critical role in the worker never receiving any benefits. This experience was the “straw that broke the camels back.” After the hearing, I committed never to go to the Tribunal for a worker without legal counsel. Otherwise the hearing is not equitable. It was also at this point where I concluded that I was not adequately representing workers and began planning to terminate my contract at year end.

I strongly recommend that policies and budgets be developed to require legal counsel representation at the Appeals Tribunal for workers, at no cost to the worker. Justice must not only be done, it must seem to be done.

The Act

The Act is an essential tool for case managers, workers, and for the role of the Workers Advisor. As the trump card, it is used to determine the eligibility of workers for compensation, along with the

policies developed by the Board of Governors. For many workers, who are dissatisfied with the response they receive from WSCC, the Act provides both guidance and confusion.

There are two specific clauses in the Act which appear to address the principles with which case managers must approach each file, Section 14 and Section 92. Section 14 of the Act states:

- 14. (1) The presumptions in this section apply to entitlement to compensation, unless the contrary is proven on a balance of probabilities.*
- (2) A personal injury, disease or death that arises out of a worker's employment is presumed to have occurred during the course of his or her employment.*
- (3) A personal injury, disease or death that occurs during the course of a worker's employment is presumed to arise out of his or her employment.*
- (4) The death of a worker is presumed to have arisen out of his or her employment if the worker is found dead at the place where the worker would be during the course of the employment.*
- (5) A disease is presumed to have arisen out of a worker's employment and to have occurred during the course of that employment if*
 - (a) the worker is disabled by the disease;*
 - (b) the worker has been exposed to conditions during the employment that might reasonably have caused the disease; and*
 - (c) the exposure to the conditions in paragraph (b) occurred at any time during the 12 months preceding the disability.*

Workers want to trust the language found in Section 14(1) - "entitlement to compensation, unless the contrary is proven "on a balance of probabilities." The phrase balance of probabilities seems to frequently be interpreted by case managers very narrowly. For the worker, that phrase should mean unless there is extensive, clear evidence beyond a reasonable doubt that their injury or disease is not work related then they should be entitled to compensation. Many workers experience outcomes which, for them, do not comply with Section 14:1. In some cases if common sense regarding the circumstances of an injury, was applied to the analysis, especially where evidence is limited, then the interpretation by WSCC should be in favour of the worker. Unfortunately sometimes the worker feels the interpretation of their injury circumstances seems to be that the worker is guilty of making a false claim, unless proven beyond a reasonable doubt that there was a workplace incident that resulted in an injury. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 92.2.b establishes the standard for the making of decisions by WSCC. The Act states:

92 (2) The Commission shall: (a) decide each matter according to the justice and merits of the case, without being bound by its previous decisions; and
(b) draw all reasonable inferences and presumptions in favour of the claimant when determining any matter related to compensation.

This Section of the Act requires WSCC to approach each decision with two obligations, decide on each matter according to its merits and draw all reasonable inferences and presumptions in favour of the claimant.

Presumably the Act, with the language that is found in Section 14 and Section 92 was developed with a desire to efficiently assist workers who have experienced a workplace injury or disease. At

least, that is the understanding workers attain when they read these sections of the Act. If the intent the Act is otherwise then these Sections need serious revision. However if the intent of the Act is, as most workers believe, to provide relief and support to injured workers, then the approach taken in many cases needs to be adjusted so that workers do not needlessly suffer further because the compensation system is either ineffective or inefficient, and at times profoundly slow in meeting the needs of injured workers.

[REDACTED]

The Act is 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. The condition of Appeal as referred to in Section 128 states: *A claimant or employer may, in writing, appeal any decision of the Review Committee to the Appeals Tribunal.*

As Section 116.7 states the Review Committee decision is the final and conclusive decision of the Commission, unless the worker (claimant) or the employer appeals the decision to the Appeals Tribunal using Sect 128.

Of greater concern, Section 116.7 has no solid finality at all. Section 116.7 of the Act has little or no authority or meaning when placed next to Section 92.4 which states:(4) *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.*

Anyone can challenge a decision of the Review Committee, as a decision of the Commission under Section 92.4. These two clauses appear to be contradictory. [REDACTED]

[REDACTED]

[REDACTED]

Under Section 128 of the Act the employer, [REDACTED] had the right to Appeal a decision by the Commission to the Appeals Tribunal. Regrettably for the worker, [REDACTED] as employer, maintained the position that this particular worker should not be entitled to benefits. They appealed the decision to the Tribunal.

[REDACTED]

[REDACTED] That decision came just prior to the Tribunal Hearing. The worker, at the time of writing this report, is still waiting for the Tribunal decision, over two years after reporting the injury.

Does this lengthy process seem fair or just for the injured worker? Are the delays in the worker receiving benefits really appropriate? Is it fair the employer has the ability to block a workers benefits, once the WSCC has approved them. And of critical importance, is the intent of the Act as defined Section 1.1, 14.1 and 92.2.(b) being honoured. Section 1.1 states

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 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;

b) ensures the quick and secure payment of compensation, without regard to fault and without court proceedings, to injured or diseased workers or, in the case of a fatality, to the dependents of the worker;

(c) provides for the independent administration of this compensation system and the adjudication of claims in a manner that treats employers, workers and claimants fairly, compassionately and respectfully;

(d) ensures the compensation system is accountable, through the Minister and the

Legislative Assembly, to the public for its decisions and for the administration of this Act; and

(e) is dedicated to the continued improvement of this compensation system and the ultimate goal of eliminating workplace injuries and diseases.

1(a) provides for the sustainable payment of compensation to injured or diseased workers;

Many workers who are assessed for pensions under the American Guide feel the impairment assessment is unfair, and consequently they believe WSCC does not provide sustainable compensation.

(b) ensures the quick and secure payment of compensation;

With respect to Section (b), it is unattainable in many cases because of the design of the overall process. Quick payment too often does not occur and the worker suffers. We have cited a few cases above where delays result in a complete failure of meeting the standard in clause (b). This is particularly the experience of workers who have a decision reversed by the Review Committee. The followup after the RC makes a decision is very often extremely slow.

(e) dedicated to the continued improvement of this compensation system.

We trust that all stakeholders, the Minister, MLA's, the Board of Governors, WSCC management and workers remain committed to clause (e).

The Workers Advisor Office suggests that in the two examples provided above, Section 1(a) and 1(b) and Section 14 and Section 92.b of the Act carry little importance in the process and illustrate that the system simply does not meet the standards defined by the Act. There is no doubt that workers whom come to the Workers Advisors Office for assistance feel wronged and violated because of a process they believe is contrary to the spirit and intent of the Act. In fact, the structure of the process often forces the worker into an adversarial position, requiring them to fight for the right of benefits while suffering and attempting to recover from a workplace injury, contrary to the objective of the Act as defined in Section 1.

Section 92.4 weighs heavily in Case B and is of real concern to the Workers Advisors Office. When the Act states a decision of the Review Committee is final (Section 116.7) and then allows any person, for any reason to request a reconsideration(92.4), at any time, the health and recovery of the worker is being put at risk. This is particularly real for workers suffering from mental health disorders as a result of their workplace experience or environment. It is the opinion of the Workers Advisor office that psychological and mental health disorder decisions awarding compensation to a worker should be exempt from the provisions of Section 92.4.

Further, with respect to mental health diseases and disorders that arise as a result of workplace environments, the WAO recommends significant revisions to the sections of the Act and the Policy manual which deal with mental and psychological health.

Section 12 of the Act states:

12. Notwithstanding any other provision of this Act, no person is entitled to compensation under this Act for (a) a personal injury, disease or death not arising out of and during the course of employment;

(b) mental stress arising out of labour relations between the worker and the employer, including mental stress caused by wrongful dismissal, unless the act or omission that caused the mental stress was made with intent to harm the worker;

(c) a personal injury or disease caused only by the serious and wilful misconduct of the worker, if neither death nor serious disability results from it; or

(d) a personal injury or disease caused only by combat with an enemy force, including an attack or an attempt to repel a real or perceived attack.

This part of the Act does not provide sufficient guidance for either Case managers or workers to enable clear understanding of entitlement in case of psychiatric, psychological, emotional or mental diseases. There is an increasing number of claims related in mental health. As more research on PTSD has occurred, the number of PTSD diagnosis has increased. However in having these claims processed, we have seen conflicting opinions between the health care provider and the medical and/or psychological of WSCC. These discrepancies result in independent medical assessment being required. This usually causes significant delays in getting support for the worker and finalizing a treatment program. In most cases these workers are very vulnerable. The WAO recommends revisions to the Act with regard to these types of injuries and diseases. Case managers could provide multiple examples of the challenges faced when managing mental health files that may provide more insight into what would be appropriate revisions to the Act. Cm are limited in their response due to the policies, even when they understand the needs of the worker.

Workers Advisors Office - Activity Report

The table below provides a list of workers who have interacted by email with the Workers Advisors Office, to seek assistance with their claim.

Many of the files remain as active files, as they continue either in recovery, retraining or on disability pension. The date on contact does not necessarily represent the first time of contact, but indicates when we first had contact with that particular worker in 2018. Many claims go back years. This list does not include the work of the Deputy Workers Advisor.

Initials of worker	Issue of Claim	2018 First Email Contact date	Outcome as of December 31 2018
■	Reinstatement of cut benefits	Jan 2	Benefits reinstated with new medical report
■	PMI rating and knee replacement	Jan 3	Ongoing
■	Denied compensation - Tribunal hearing	Jan 4	Denied
■	PTSD - travel assistance for treatment	Jan 4	RC scheduled for January 2019
■	Training payments	Jan 4	Case Manager issued payments
■	Unable to work, benefits cut off	Jan 6	Reinstated with conditions
■	Request for review - physio cut	Jan 8	Reinstated
■	Having difficulty finding modified work	Jan 10	CM implementing VR
■	Claim denied - back injury	Jan 12	Tribunal Appeal - benefits awarded
■	Back injury denied - Review Committee hearing	Jan 16	Ongoing
■	Review Committee request for reconsideration	Jan 16	Ongoing, at Tribunal
■	Back injury - denied benefits	Jan 17	RC denial upheld applying for Appeal
■	Nerve injury - denial of medical aid	Jan 18	Ongoing
■	Back injury - PMI, chronic pain	Jan 18	Ongoing
■	Hand injury - benefits cut	Jan 21	Benefits reinstated with conditions; ongoing
■	Lung disease - request to reopen claim	Jan 23	

Initials of worker	Issue of Claim	2018 First Email Contact date	Outcome as of December 31 2018
█	Wrist injury - denial	Jan 24	New medical reports - claim reinstated
█	Requested to go Review re denial HIMLA	Jan 31	HIMLA reinstated with new medical evidence - ongoing
█	Delay in compensation	Feb 2	Issue resolved -needed IME
█	Received partial benefits for time off work and wants retraining	Feb 2	Further reviewed, submitted request for VR
█	Hearing claim - denied at RC	Feb 3	Considering Appeal - advised little hope of success without more evidence
█	Carpal tunnel claim denied	Feb 27th	RC deferred for additional medical info
█	Assistance in resolving pension.	Mar 3	Unable to get reassessed
█	Mental Health disorder claim denied	Mar 6	Review requested - deferred
█	PTSD - assistance in getting a counsellor	Mar 8	Ongoing
█	Pension increase denied	Mar 14	Legal review of case concluded Appeal unlikely to be successful.
█	Review of handling of three claims	Mar 15	Unresolved
█	VR benefits cut	Mar 16	Review - reinstated
█	Psychological illness - benefits suspended	Mar 16	Ongoing - benefits reinstated
█	Unresolved issue from concussion	Mar 18	Ongoing
█	Emotional stress - claim denied	Mar 21	Unresolved
█	Post concussion syndrome	April 5	Ongoing
█	New medical evidence	April 7	Ongoing
█	HIMLA denied request for Review	April 17	RC reversal HIMLA reinstated

Initials of worker	Issue of Claim	2018 First Email Contact date	Outcome as of December 31 2018
■	Back injury - seasonal worker	April 18	Benefits received - Ongoing
■	Told reached maximum recovery but still receiving treatment - requesting legal advice	April 24	Provided legal advice
■	Additional knee surgery - request for Compensation	April 27	Ongoing
■	PTSD - claim denied- Review requested	April 18	Ongoing
■	Delays in having PMI assessment	April 30th	PMI scheduled
■	Emotional trauma from harassment - denied	May 3	Ongoing - considering document review
■	Request benefits for head neck injury	May 7	Referred to Case Manager
■	VR training terminated - request Review	May 8	RC reversed decision to deny benefit
■	Pension inadequate	May 10	No change
■	Dental claim denied - Review requested	May 15	RC reversed decision
■	Back injury claim denied by RC and upheld by Tribunal	May 15	Worker distraught - admitted to hospital
■	Reached MMR -query of next steps	May 22	Process of PMI/pension explained
■	Aggravation of previous as result of treatment of workplace injury - denied requested review	May 15	RC reversed decision and accepted aggravation resulting from compensable injury.
■	Back and PTSD denied -Review	May 23	RC reversal - Ongoing
■	Hand injury - living outside Canada	Jun 5	WSCC will pay Canadian rates for treatment
■	Psychological disorder claim denied	Jun 6	RC reversed decision
■	Requesting funding for safety boots	Jun14	Denied
■	Hip arm injury not fully healed but case closed	Jun 14	Unresolved

Initials of worker	Issue of Claim	2018 First Email Contact date	Outcome as of December 31 2018
█	Waiting for PMI	Jun 25	Director of Claims intervened
█	Benefits suspended after surgery	July 6	Ongoing
█	Not receiving HMILA payments	July 9	Payments issued
█	Travel benefits not being provided	July 24	Unresolved
█	VR - denied - request Review	Aug 8	RC reversed decision
█	Multiple injuries but only one accepted	Aug 8	█
█	PMI, VR	Aug 10	ongoing
█	Shoulder injury - claim denied	Aug 14	Provided additional info - claim accepted
█	Claim denied - Review Requested	Aug 15	RC hearing - decision in Jan 2019
█	Challenging PMI of 1%	Aug 15	Waiting for RC decision
█	Questioning PMI payment	Aug 15	Manger of Claims intervened
█	Benefits cut and HMILA denied	Sept 5	Reinstated - ongoing
█	Back injury and concussion	Oct 10	Ongoing
█	Request to have treatment appt rescheduled	Oct 5	Refused
█	Request for assistance - no details	Oct 18	No further contact
█	Back injury denied	Oct 19th	Ongoing -at RC
█	Dispute on treatment plan and travel compensation	Oct 25	Ongoing
█	Trauma injury denied - considering Review	Dec 4	Ongoing
█	Denied for carpel tunnel	Nov 6	RC reversed denial
█	VR - support for post secondary	Nov 23	ongoing

Initials of worker	Issue of Claim	2018 First Email Contact date	Outcome as of December 31 2018
█	Claim denied by Tribunal - wants to appeal to Board of Governors	Nov 27	Contact info provided - ongoing
█	Injured hand healed - benefits suspended	Nov 27	Ongoing
█	Review Committee denied claim	Dec 4	Ongoing - █
█	Request to assist with Review	Dec 4	Ongoing

Deputy Workers' Advisor, Nunavut Year End Summary 2018

Active files for 2018

There have been 14 active files; seven files were carried over from 2017 and 7 new ones were opened. Three files are currently open and will be carried into 2019.

Appeals

The one case in 2018 that proceeded to the Appeal Board was denied. However, the client was thankful for the assistance from this office, which, for a large part was time spent listening to the client express themselves, and coming to terms with their present situation.

Review Committee

One client application went to the Review Committee, and the Client issue was denied. The client did not wish to Appeal.

Another client file that was scheduled for a Review in December is deferred until the client completes more medical tests. This client was quite upset with the deferral, and it is apparent he has a lot of hope banked on a positive result from the Review Committee. In one of his telephone conversations he said something about wishing that he could rewind time, go back to the day of his work accident,

and not go to work that day. This basic theme is common in clients that contact this office, and these types of comments help me to understand how to communicate better with this person.

He wanted to speed up the Review Committee decision, by having the Review done without this new medical information and I told him it was up to him, as it is his application, and I only assist the process, but pointed out that if the Review Committee wants more medical evidence, surely that might give more hope for the change he is hoping for.

Current Disclosures

I am still waiting for information from Client Services for one client.

Short Term Clients

Every month there are phone calls with a variety of WSCC related questions, or what someone thinks is WSCC related. This involves answering these questions, researching when necessary and getting back to these clients, passing on information, and passing on website links and/or appropriate telephone numbers. This is done in English, Inuinnaqtun or Inuktitut, depending on the preference of the client.

One client in this category wants to fill out the Review Request himself. He phoned a number of times with questions until he understood the process. There was one issue he wanted to comment on that I am including in this report. He said when an injured worker such as he, finally asks for psychological help, he hopes no one else has to wait nine weeks for an answer. He said he found the nine week wait extremely taxing, saying it was hard enough to ask for this kind of help, he hopes no one else, besides himself, has to live through waiting nine weeks for an answer. He hopes that injured workers can get that kind of help easier. He mentioned how much his daily life, his relationship, his family connections and every other aspect of his life changed due to the workplace accident. With that amount of change there are so many things to come to terms with, and he commented that seeing a psychologist certainly helped.

General Comments

Of the client files that this office receives, only a few clients choose to proceed to the Review and Appeal process.

Once this office receives a client file, the issue is sometimes resolved by encouraging the client to communicate better with their case worker.

Sometimes the client just needs a verbal explanation of what decisions have been made and what the decision is based on. Once they understand the process, and understand how decisions are made they are satisfied. This does not mean they are satisfied with their present circumstances, but satisfied that they understand how WSCC works, and how decisions are made.

Sometimes letters clients have received from WSCC need plain language explanations. Sometimes they need to hear the explanation verbally and in their own dialect of Inuktitut. Perhaps it is from my years of experience interpreting and translating various Inuktitut dialects; I am pleased to find that I have been able to understand any Inuktitut or Inuinnaqtun dialect the client has spoken and find that I can always make myself understood as well.

I always explain that issues are quicker to resolve through client services if at all possible; the alternative can be a very lengthy process.

Often, upon reading through the file, it becomes very apparent the client has an issue that is beyond WSCC's jurisdiction. This could be an employee / employer relations issue, a human rights issue, or a request for benefits that have no medical or documentary evidence. It can be challenging to explain these differences to the client. It appears it is difficult for some people to understand the difference between a WSCC issue or, for example, an employee/employer relations issue. I will explain over the telephone, as well as put this in writing for them. It can take several calls and emails before the message starts to be understood.

As a Deputy Workers Advisor, I often have to tell clients that I am not a lawyer and I cannot help them sue WSCC or demand extra compensation for the inconvenience of having three case workers in one month or for what is perceived as rudeness from the case worker.

One complaint that came up quite often this year was that clients do not hear back from case workers, or they cannot get a hold of their case worker. In such cases sometimes I email, or phone the case worker to let them know a client is trying to get a hold of them.

Attima Hadlari,

Deputy Workers' Advisor,
Nunavut

Summary of Recommendations

1. More collaboration between the Workers Advisor and the Deputy Workers Advisor
2. Implement a plan to teach each worker the importance of and the skills to use positive thinking as part of their recovery.
3. Revise provision in Policy 03.11 Special Financial Assistance, so that any worker has a right to access compensation provided under this policy, regardless of their wage or the time of need, as long as their claim is active.
4. WSCC and the WAO develop a electronic file sharing system for Case files.
5. Recommend that an overlap/transition period be built into future appointments so that the incoming Worker Advisor can receive a full briefing on active files.
6. Develop clear procedural protocols and simple information for workers so they understand what happens with their claim after they receive a decision from the Review Committee.
7. Develop budgets and a Policy which requires legal counsel to advise the WAO and assist in the representation of workers appealing to the Appeals Tribunal.
8. Resolve the conflicts within the Act. In particular revise Section 92.4, by limiting the definition of “anyone” and a time limit.
9. Revise Section 128 of the Act to ensure that Section 116.7 means what it says, A decision of the Review Committee is final particularly in cases of claims where the worker has been disabled by psychological, mental mental disorders and limit the ability of employers to Appeal a decision of the Commission.
10. Revise Section 12 of the Act and Policies relating to Section 12, broadening the definition of compensable conditions and be more specific on the rights of workers suffering from workplace trauma, particularly with respect to diagnosis of PTSD as a result of workplace conditions.

Concluding Comments:

Although I was only Workers Advisor for two years, I come away from the experience with a much deeper appreciation for the work done by the Workers Safety and Compensation Commission. Case Managers have extremely heavy caseloads, that they try diligently to efficiently manage. But they are burdened with what is at times a tedious process, waiting for medical reports, opinions and workers treatments. The number of times workers have Case Manager changes frustrates workers and results in further delays in settling claims efficiently. If the work load of the Worker Advisors Office reflects the tip of the iceberg, with the cases that aren't resolved to the satisfaction of the worker, then the total number of cases is high. More work must be aggressively developed to educate workers in every workplace about safety matters. Of course most injuries appear to occur in the industrial workplaces such as mines exploration, and construction industries, However, with a large government workforce and the increasing number of stress and psychological claims for that sector, more effort is needed to address the stressful work environments and develop practices that create healthy workplace environments and worker relationships. Real progress will be reflected with a reduction of claims.

I am very grateful that the Board of Governors, the President and the Minister accepted the proposal to establish a permanent Workers Advisor office, with an Administrative Assistant. I believe this will have long term benefits for all workers facing challenges with their claims and ultimately provide a better service for the Workers.

I accept that my limited skills resulted in some workers not receiving the level of care from the WAO, they had expected and deserved. I acknowledge my concerns and my hopes in the notification that I sent to all workers:

I know at times I have not met your expectations in dealing with your concerns and I sincerely apologize for that. You deserve to be well looked after. I trust that whoever replaces me will have better skills to meet your needs.... I want to thank-you for entrusting me with your personal information and sharing your story with me. I have been humbled and honoured to have been in this role and I must, admit at times overwhelmed. The challenges you face following a workplace injury can be astounding. I would encourage you to manage the outcome of your injury and treatments with a positive spirit regardless of the outcome with WSCC. Life throws curve balls at us sometimes in the worst way. But life also calls us to carry on to the best of our ability, depositing our frustration and at times anger along the path and leaving it behind. It is never easy when you are reminded daily, of your new limitations. I am convinced, however, that we can reach new heights of strength and health if we allow ourselves to refocus on love and hope, instead of our inabilities.

The recommendations I have made in this report may not be the best answers, but I hope they at least, create more discussion and insight to finding better ways to serve the workers, and ultimately the employer.

My biggest disappointment throughout my tenure as Workers Advisor has not been with WSCC, with angry workers or even with accepting my own limitations but with the employers who do not support their injured workers and challenge their right to benefits. I accept there may be the occasional worker who attempts to abuse the system but they are few and far between. The systemic mistrust towards workers impacts on the workers recovery, as they feel they must fight to receive the benefits they are entitled to receive. The sense of betrayal a worker feels when their claims are opposed by their employer is phenomenal. It is difficult to see where the gains are, either for the employer or the employee.

After making the decision to step aside, I felt having substantial overlap with the new Worker Advisor would be beneficial. When I began as Workers Advisor I had a very brief session with my predecessor and I was provided with a list of pending Review Committee hearings and boxes of files. It was inadequate. I had hoped that there would have been at least a couple of weeks of overlap, however the appointment timing made that impossible. I would recommend that an overlap/transition period be built into future appointments.

In my October report, I included a quote from a Tibetan nun, Pema Chödrön, writing about the Tibetan practice, tonglan, in *Living Beautifully with Uncertainty and Change* (Shambhala: 2013), 80-81, 82, 84

The word tonglen is Tibetan for “sending and receiving.” It refers to our willingness to take on the pain of others we know are hurting and extend to them whatever we feel will ease their pain, whatever will enable them to stay present with the sorrows and losses and disappointments of life. Practicing tonglen awakens our natural empathy, our innate ability to put ourselves in others’ shoes. Caring about people when they’re scared or sad or angry or arrogant can be a challenge; it confronts us with our own pain and fear, with the places where we’re stuck. But if we can stay with those unwanted feelings, we can use them as stepping-stones to understanding the pain and fear of others. Tonglen allows us to acknowledge where we are in the moment and, at the same time, cultivate a sense of kinship with others. When painful feelings arise, we breathe them in, opening to our own suffering and the suffering of everyone else who is feeling the same way. Then we send relief to us all. . . .

Tonglen isn’t just a practice to do on the meditation cushion. It’s particularly useful right in the midst of our life, wherever we are as we go about the day. . . .

Tonglen reverses the usual logic of avoiding suffering and seeking pleasure. To the degree that we can open to our own pain, we can open to the pain of others. To the degree that we can stay present with our own pain, we can hang in with someone who’s provoking us. We come to see pain as something that can transform us, not as something to escape at any cost. As we continue to practice

tonglen, our compassion is bound to grow. We'll find ourselves increasingly more able to be there for others, even in what used to seem like impossible situations.

Although I am not a Buddhist, I find this advice to be appropriate and sustaining. I conclude with a final expression of gratitude for all those who have been a part of my journey as Workers Advisor.

A handwritten signature in blue ink, appearing to be "Paul Scott", written in a cursive style.