

MINISTRY OF LABOUR

INFORMATION NOTE

Cliff #: 61188

Date: April 6, 2021

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: 2020 Annual Report of the Workers' Compensation Appeal Tribunal (WCAT)

BACKGROUND: Andrew Pendray, the WCAT chair, has provided the Ministry of Labour the 2020 Annual Report (Report) for WCAT. Once the Report has been submitted to the Minister, the WCAT chair can make the Report public.

DISCUSSION: In a process that occurs annually under the provisions of the *Workers Compensation Act* (WCA), the WCAT chair is required to submit to the Minister by March 25 the Report on the tribunal's operations for the preceding year. The WCA does not require the Minister to table the Report in the Legislature. Ministry staff have reviewed the Report and have identified no significant issues or concerns. This briefing note summarizes the results of that review.

Chair's Message

In his accompanying message, Andrew Pendray noted that in 2020 workers and employers filed nearly 3,000 appeals and applications. With the onset of the pandemic in March, WCAT remained open, and moved quickly to shift its operations to a largely remotely operated workplace. WCAT also continued to work to improve accessibility to the tribunal in 2020, with the launch of a new website which uses an inclusive approach to content and design. This new website makes it easier for parties to find and understand information about the appeal process and to get help with their appeals. In 2021, WCAT will focus on continuing to improve accessibility through the development of an online document portal which will enable appeal parties to file an appeal and application, upload evidence and submissions, and view all of the correspondence and evidence on their appeal file in real time.

Brief Summary of Report's content

An appendix to this Information Note provides a detailed summary of the Report's content. In brief, WCAT's total active inventory at December 31, 2020 was 1,915 appeals compared to 1,931 at the end of 2019. WCAT received 2,848 new appeals in 2020. Based on an analysis of historical intake and appeal rates, WCAT's forecast for 2021 calls for a similar intake as 2020, with between 2,900 and 3,100 new appeals and applications expected. Whether the ongoing COVID-19 pandemic will have an effect on that forecast is not yet known.

WCAT was able to maintain timely decision-making across all categories in 2020. This was despite a brief period during April and May 2020 when hearings were postponed while the tribunal developed processes for in-person oral hearings to proceed by way of videoconference. All hearings that were postponed in April and May 2020 were heard by September 2020.

The Report noted that WCAT tracks noteworthy decisions, reconsiderations and judicial reviews, but the Ministry did not see in those cases anything that raises policy or legislative issues for the Ministry. From the Ministry's perspective, the Annual Report does not raise any significant issues or concerns.

NEXT STEPS: The results of the Ministry's review of the WCAT 2020 Annual Report are summarized in the appendix attached to this briefing note. Unless the Minister has any issues or concerns, WCAT will proceed to publish the Report. In the past, WCAT Annual Reports have not attracted any attention from the community or the media. It is unlikely that the 2020 Report will attract any media or community attention because the Report outlines usual and routine WCAT business and is consistent with past outcomes and Reports.

ATTACHMENTS: 2020 WCAT Annual Report

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Appendix – Summary of the WCAT 2020 Annual Report's Content

Total expenditures of WCAT for 2019 were \$14,909,543.04 (costs of operating WCAT are reimbursed to government from the WorkSafeBC accident fund), compared to \$14,813,976.53 in 2019. WCAT's total active inventory at December 31, 2020 was 1,915 appeals compared to 1,931 at the end of 2019. WCAT received 2,848 new appeals in 2020.

WCAT's reduced intake of new appeals over the past four years has corresponded with a decrease in the number of reviews at the Review Division. Based on analysis of historical intake and appeal rates, WCAT's forecast for 2021 calls for similar intake as 2020, with between 2,900 and 3,100 new appeals and applications expected. Whether the ongoing COVID-19 pandemic will have an effect on that forecast is not yet known.

WCAT's output of summary and merit decisions and determinations in 2020 was 2,863, compared to 3,105 in 2019.

Appeals and Decisions

Of the 2,848 appeals received by WCAT in 2020, 90% arose from decisions of Board review officers and 10% were direct. Appeals from the Review Division by type included:

- Compensation (2,344);
- Cost relief for employers (135);
- Occupational health and safety (41); and
- Assessment (43).

Direct appeals and applications by type included:

- Certifications for court actions (99);
- Prohibited action (69);
- Applications for reconsiderations (36);
- And re-openings (81).

WCAT made 2,133 merit decisions on appeals and applications in 2020, 48 of which concerned applications for certificates for court actions. The remaining 2,065 merit decisions concerned appeals from decisions of the Review Division or Board officers, which may be varied, confirmed, or cancelled by WCAT. Overall, in 2020, 33% of WCAT appeals were varied, 64% were confirmed, 1% were cancelled and 2% were certifications to court.

An appeal may raise numerous issues and WCAT may allow or deny the appeal on each issue. In 2020, WCAT decided 2,972 issues that arose out of the 2,038 appeals that led to merit decisions.

These issue outcomes included those denied (2,077 or 70%), those allowed (701 or 24%), and those allowed in part (194 or 6%).

The top five issue groups for WCAT appeals, by percentage of total decisions, were:

- compensation for personal injury (33%);
- permanent partial disability (14%);
- temporary partial disability (10%);
- occupational disease (7%);
- HeathCare (6%).

WCAT decided 141 requests for extensions of time to appeal; allowing 83 and denying 58. In 2020, WCAT decided 683 appeals and applications (32%) after convening an oral hearing and 1,427 (68%) after consideration of written submissions.

Noteworthy Decisions

In 2020, WCAT issued a number of decisions that it considers “noteworthy.” These decisions deal with a wide range of issues, including substantive issues, Board procedural issues, and WCAT procedural issues (see pages 14 -15 of the WCAT Annual Report for summaries of selected decisions).

Reconsiderations

The WCA provides that WCAT decisions are “final and conclusive”. Applications for reconsideration involve a two-stage process. The first stage results in a written decision, issued by a WCAT panel, about whether there are grounds for reconsideration of the original decision. If the panel decides that there are grounds for reconsideration, the original decision is reconsidered. If the panel determines that there is new evidence that meets those criteria, WCAT will reconsider the original decision on the basis of the new evidence. On an application to reconsider a WCAT decision on the basis of a jurisdictional error, a panel will determine whether such an error has been made. If the panel allows the application and finds the decision void, in whole or in part, WCAT will hear the affected portions of the appeal afresh.

During 2020, WCAT issued 28 stage one decisions. Of the stage one decisions issued, six determined that reconsideration grounds existed.

Judicial Review

In 2020, WCAT was served with 25 applications for judicial review of WCAT decisions. No appeals were served on WCAT of a Supreme Court of British Columbia judicial review decision. The Report summarizes these decisions and other court decisions (see pages 16 - 18).