
**WORKPLACE HEALTH, SAFETY
AND
COMPENSATION REVIEW DIVISION**



ANNUAL REPORT

2005

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Message from the Chief Review Commissioner

I am pleased to present our 2005 Annual Report in accordance with the provisions of the *Workplace Health, Safety and Compensation Act* (the Act). This report covers the activities of the Workplace Health, Safety and Compensation Review Division from January 1, 2005 to December 31, 2005.

Our primary goal is to provide an independent review of cases that have been exhausted at the Commission level and for which further review is sought.

During 2005, the Review Division has continued to provide access to appropriate and effective review services to stakeholders in the workers' compensation system. A significant challenge of the Review Division is that of scheduling. Scheduling decisions are impacted by both internal and external factors. We are working with workers, employers, dependents and representatives in an attempt to ensure hearings take place in a timely fashion by reducing wait times for hearings and by the efficient processing of decisions once a hearing has taken place. We continue to work to improve the service by attempting to reduce the overall turnaround times, even in light of delays over which we have limited control.

Additionally, the Review Division continues to provide public access to decisions through our online Decision Search System and in order to further enhance services, we are also in the process of developing a new web site as well as rewriting our Client Tracking System.

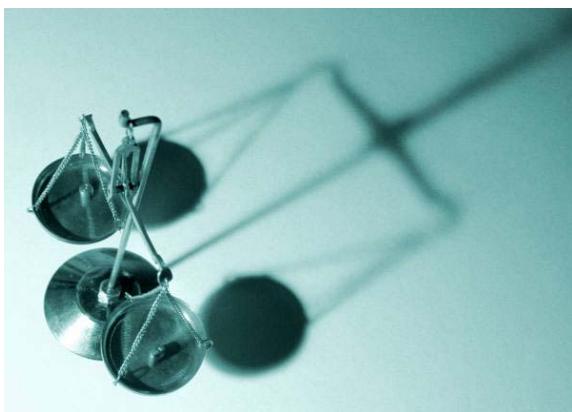
I wish to thank the five other Review Commissioners for their superb work over the last year. Special thanks also goes out to the Director of the Workplace Health, Safety and Compensation Review Division and each of the staff members who work so hard in providing this valuable public service.

Robert W. Lundrigan
Chief Review Commissioner

OVERVIEW

OUR GOAL

We are committed to providing *a timely and impartial* review process, and to ensuring decisions made reflect a *thorough analysis* of each case and the governing legislation.



INTRODUCTION

The Workplace Health, Safety and Compensation Review Division (WHSCRD) considers appeals from final decisions of the Workplace Health, Safety and Compensation Commission (WHSCC) under the authority of the *Workplace Health, Safety and Compensation Act* (the Act).

The WHSCRD is the final level of appeal provided by the Act. It is a separate and independent adjudicative entity and reports to the Minister of Human Resources, Labour and Employment.

The WHSCRD consists of a Chief Review Commissioner and five part-time Review Commissioners from various areas of the Province as well as a Director and seven office staff.

The WHSCRD office is located in the Dorset Building, 6 Mount Carson Avenue, Mount Pearl, Newfoundland and Labrador.

WHSCRD Role

The WHSCRD was established by legislative amendment in 1994. The amendment created the independent review division with exclusive jurisdiction to hear and decide appeals that arise from decisions made by the WHSCC.

Appeals are assigned to Review Commissioners throughout the Province to review evidence, to conduct a hearing and to provide a decision on the outcome of the appeal. An injured worker, their dependent or an employer can file an appeal.

Issues under review can include wage loss benefits, dependency benefits, rehabilitation services and benefits, disputes arising from the assignment of an employer to a particular group, medical aid benefits, etc.

Pursuant to Section 28(8) a Review Commissioner shall communicate his or her decision within 60 days of the date of the application for review.

The WHSCRD uses a Client Tracking System (CTS) to manage its cases. The CTS is an in-house software system designed specifically to monitor and track cases through the appeal process within WHSCRD.

The Review Division has also created a Decision Search System (DSS) that allows clients to search its decisions using the Internet. The WHSCRD provides regular updates to the website and contains decisions from 1997 to 2005.

The DSS can be searched using keywords or by Decision Number. The search results are displayed for viewing and printing. The Decision Search System can be accessed at <http://whscrd.gov.nl.ca> .

374 hearings were held throughout Newfoundland and Labrador in 2005

REVIEW PROCESS

Receipt of Appeal

As soon as an appeal application is filed, the WHSCC is contacted for confirmation that all levels of review have been completed internally. In addition, the WHSCC is also requested to provide a full copy of the file they used in their review of the case.

Hearing

When the appeal is accepted, it is assigned to a staff member of the WHSCRD. The staff member becomes the appellant's contact within the WHSCRD and provides all the necessary information on the processing of the appeal.

A copy of the file of information is prepared by the WHSCRD and distributed to the parties as soon as possible. The hearing is also scheduled. Delays may occur at this time as parties may indicate that they are not ready to proceed.

Appellants may appear in person for a hearing or they may request a paper review of their case.

Evidence

The WHSCRD will not accept new evidence at the review hearing that has not been previously reviewed by the WHSCC.

It is recommended that individuals who may have new evidence, i.e. medical reports, affidavits, etc. forward same to the WHSCC for their review as it may impact the status of the case. Upon confirmation of WHSCC review, the WHSCRD will accept the documents into evidence.

Decision

Once the hearing process is complete, a Review Commissioner will review the case and provide a decision approximately one month following a hearing.

*457 cases were
decided in 2005*

HIGHLIGHTS and ACCOMPLISHMENTS

WHSCRD is pleased to announce the appointment in January 2005 of Chief Review Commissioner, Mr. Robert Lundrigan who replaces Mr. Eric Gullage. As well, Ms. Kimberly Burridge and Mr. Alex Harrold were appointed as new Review Commissioners. Ms. Burridge was appointed in late December 2004 and Mr. Harrold was appointed in February 2005. In addition to the Chief Review Commissioner, these appointments have increased the Review Commissioners to five. This increase will contribute to WHSCRD reaching its goal in providing a timely and impartial review process

The WHSCRD's total caseload for 2005 was 712 cases. This total included 251 cases carried over from 2004 and 461 new applications. There were 274 cases heard in the St. John's area and 100 hearings took place in other regions throughout the Province.

Not all cases resulted in a decision - 457 cases received a final decision while other cases were withdrawn for varying reasons such as further investigation by the WHSCC. Some of the applications did not meet the requirements of the legislation for acceptance and were rejected by WHSCRD.

The following is a breakdown of the 457 decisions rendered in 2005: 233 (51%) upheld the Commission's decision, 156 decisions (34%) overturned the Commission's decision and 68 decisions (15%) were referred back to the Commission for further review.

There were 461 new applications filed with the Review Division in 2005

Opportunities and Challenges Ahead

The WHSCRD continues to work closely with all parties involved in the review process. WHSCRD staff provides assistance in preparing files for hearings, answering inquiries and ensuring that all decisions are released as soon as they are rendered.

WHSCRD has also begun work on several initiatives to increase productivity and provide improved services to clients.

In 2005, the WHSCRD undertook a project to rewrite its Client Tracking System (CTS). The Client Tracking System was originally designed in 1996 and has undergone many upgrades over the years. This current version will bring enhanced functionality and increased efficiencies in processing workers' compensation appeals.

A WEB site for WHSCRD is currently under construction and will provide relevant information on how to file an appeal, access to WHSCRD forms and publications, as well as links to other related sites.

The WHSCRD has also begun exploring the possibility of providing to stakeholders e-services such as the ability to file a Request for Review online and track the progress of an appeal from application to decision. Study and consultations with stakeholders will be undertaken in 2006 to assess the feasibility of such a project.

The biggest challenge facing the Review Division is providing decisions within the 60-day legislative time frame. The Review Division is continuously monitoring its cases in an effort to improve turnaround times of appeals.

Scheduling hearings also continues to be a significant challenge for the WHSCRD as often parties are not ready to proceed and delays are unavoidable. Cases are presently being scheduled on a current basis, approximately 3 – 4 weeks after application. The overall average turnaround time on case processing was approximately 4.5 months.

In 2005, the Government of Newfoundland and Labrador formed the Workers' Compensation Statutory Review Committee to review all aspects of the workers' compensation system in the province. The WHSCRD is awaiting the report and recommendations from the Committee due to be released in 2006.

STATISTICAL OVERVIEW

<i>Caseload</i>	Year Ending 2005	Year Ending 2004
Appeals carried forward from previous year	251	204
New Applications	461	534
TOTAL CASELOAD	712	738
<i>Decisions Rendered</i>	457	429
<i>Case Withdrawn</i>	67	50
<i>Cases Awaiting a Decision</i>	30	108
<i>Cases Waiting to be Heard</i>	101	96
<i>Applications Pending</i>	25	30
<i>Applications Rejected</i>	32	25

<i>Hearings</i>	Year Ending 2005	Year Ending 2004
St. John's	274	304
Corner Brook	36	42
Grand Falls-Windsor	40	63
Gander	24	29
Labrador	0	5
Total	374	443

<i>Decisions</i>	Year Ending 2005	Year Ending 2004
Denied	233	221
Allowed	156	161
Referred to WHSCC	68	47
Total	457	429

<i>Reconsideration Cases</i>	Year Ending 2005			Year Ending 2004		
	Requests	Allowed	Denied	Requests	Allowed	Denied
Requested by WHSCC	16	11	1	20	8	7
Requested by Worker	23	2	18	20	0	15
Requested by Employer	3	2	1	8	0	6
Total	42	15	20	48	8	28

Note: Section 28(1) of the *Act* outlines the process for the Reconsideration of a decision of a Review Commissioner. To have a decision reconsidered a party must not simply disagree with the decision of the Review Commissioner, but must have sufficient and reasonable grounds in order for a Reconsideration Request to be granted. A Reconsideration Application must be made to the WHSCRD within 30 days of the Review Commissioner's decision. The Reconsideration Application is provided to a different Review Commissioner for a determination as to whether or not the Application will be granted.

<i>Representative Profile</i>	Year Ending 2005		Year Ending 2004	
	73	100	40	50
Union	73	100	40	50
Legal Counsel	40	50	94	44
Member of the House of Assembly	94	44	113	121
Self	113	121	42	132
Other (Relative, Friend, etc.)	42	132	Employer's Consultant	n/a
Employer's Consultant	20	n/a	Worker's Consultant	n/a
Worker's Consultant	10	n/a	Total	392
Total	392	447		

Note: Claimants may have more than one representative, therefore, the total number of representatives does not correlate with the number of hearings.

<i>Hearings and Decisions</i>	Year Ending 2005		Year Ending 2004	
	Hearings	Decisions	Hearings	Decisions
January	21	26	40	42
February	33	63	27	56
March	27	58	36	64
April	41	19	7	1
May	33	52	30	18
June	25	35	14	31
July	42	15	14	15
August	37	41	38	21
September	27	42	29	37
October	25	17	38	42
November	31	42	63	39
December	32	47	42	63
Total	374	457	378	429

***73 decisions rendered in 2005
dealt with Extended Earnings Loss
benefits - 37 were allowed.***

***99 decisions dealt with Permanent
Functional Impairment Awards - 69 were
allowed and 6 were referred to the Commission.***

Summary of Issues on Appeal 2005

Type of Issues Reviewed in 2005	No. of Outcome				
	Objections	Allowed	Denied	A/P	RBC
Worker/Dependent Appeals					
Temporary Earnings Loss	14	3	9	1	1
Extended Earnings Loss	73	37	24	5	7
Permanent Functional Impairment	99	69	22	2	6
Recurrence	48	19	22	2	5
Reopening	25	10	10	0	5
Medical Aid	59	26	22	4	7
NOC Code	37	17	12	0	8
Arising out of Employment	62	29	27	2	4
Dependency Benefit	4	3	1	0	0
Retroactive Benefit	9	5	2	0	2
Reinstatement	8	4	4	0	0
Proportionment	24	5	11	3	5
Compensation Rate	5	3	2	0	0
Overpayment	10	5	4	1	0
Canada Pension Plan Benefit	6	2	4	0	0
Miscellaneous	6	1	3	2	0
TOTALS	489	238	179	22	50
Employer Appeals					
Objection to a Worker's Claim	15	13	2	0	0
Second Injury Fund Relief	1	1	0	0	0
Independent Operator	2	1	1	0	0
Early & Safe Return to Work	0	0	0	0	0
Underestimating Penalty	1	0	1	0	0
Rate Code	5	3	2	0	0
Cost Relief	2	0	1	0	1
TOTALS	26	18	7	0	1
OVERALL TOTALS	515	256	186	22	51

Note: Appeal Applications may raise more than one issue for review; therefore, the above numbers do not correlate with the number of Appeal Applications filed or Decisions rendered.

Budget 2005–06

Salaries \$304,600

Employee Benefits \$ 2,500

Transportation and Communication \$ 20,000

Supplies \$ 22,500

Professional Services \$353,000

Purchased Services \$125,000

Property, Furnishings And Equipment \$ 3,000

Information Technology \$ 56,400

Total **\$887,000**

APPENDIX - I

REVIEW COMMISSIONERS

Robert W. Lundrigan, Chief Review Commissioner

Mr. Lundrigan was appointed in January 2005. Prior to that time, he spent 27 years in the province's educational system, 20 of which as a school principal in three different communities. He began his career in education after serving three years with the Newfoundland and Labrador Housing Corporation in St. John's. Mr. Lundrigan received his postsecondary education at Memorial University of Newfoundland, graduating with undergraduate degrees in Arts and Education followed by a Master of Education degree in 1989. He was an active member of the School Administrator's Council and served as chairperson and/or a member of numerous school districts and provincial committees in the education field. Additionally, Mr. Lundrigan served as a municipal councilor up to September 2005.

Kimberly Burridge, Review Commissioner

Ms. Burridge is a graduate of Dalhousie Law School and was admitted to the Newfoundland Bar in 1994. She was appointed to the Review Division in 2005. She currently practices law in Corner Brook with *Sweetland and Burridge*. She is also an Adjudicator with the Newfoundland and Labrador Human Rights Commission and is the Vice Chair Person of the Board of the Humber Community Development Corporation. In the past she was a Commissioner for Urban and Rural Planning and a member of various other Boards.

Alex Harrold, Review Commissioner

Alex Harrold graduated from Dalhousie University Law School in 2001 and was called to the Newfoundland Bar in 2003. He was appointed as a Review Commissioner in 2005. Mr. Harrold is a retired teacher and former Executive Council member of the Newfoundland and Labrador Teachers' Association. He served a six-year term as Provincial Vice President of the Atlantic Division of the Multiple Sclerosis Society headquartered in Dartmouth, Nova Scotia.

Clayton Locke, Review Commissioner

Mr. Locke is a businessman operating in central Newfoundland. He was appointed to the Review Division in 1994. Mr. Locke has served on numerous volunteer boards, recently as Chairman of the Central Newfoundland Health Care Board. He also currently sits on the Newfoundland and Labrador Medical Board. He is past-president of the Newfoundland and Labrador Health Care Association and a past-president of the Grand Falls Chamber of Commerce.

Mary O'Brien, Review Commissioner

Ms. O'Brien is a graduate of the Dalhousie University Law School and was admitted to the Newfoundland Bar in 1990. She was appointed to the Review Division in 1994. Ms. O'Brien is an Adjudicator with the Newfoundland and Labrador Human Rights Commission and also practices law. Ms. O'Brien is also a businessperson. She has extensive experience in the Newfoundland fishing industry and continues to play an active role in her family's seafood business.

Derrick Watton, Review Commissioner

Mr. Watton was appointed originally in 1992 to the Workers' Compensation Appeal Tribunal as a Vice-Chairman. He was then appointed as a Review Commissioner to the Review Division in 1994. Mr. Watton is a past-president of the Corner Brook Rotary Club and practices law as a partner with the firm *Monaghan, Murphy, Watton* in Corner Brook, NL. He is a former Adjudicator for the Newfoundland and Labrador Human Rights Commission, a Commissioner for Municipal Affairs, and a Commissioner for the Labour Standards Tribunal.

TO CONTACT US

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Or you may reach us by telephone and fax at the following numbers:

Tel: (709) 729-5542
Toll Free: 1-888-336-1111

Fax: (709) 729-6956

You can also e-mail us at:

whscrd@gov.nl.ca

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