

ANNUAL REPORT

2001

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

*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.*

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I ntroduction

This report outlines the activities of the Workplace Health, Safety & Compensation Review Division for the period January 1, 2001 to December 31, 2001.

The Review Division is the final level of appeal provided by the *Workplace Health, Safety & Compensation Act*, for the review of decisions of the Workplace Health, Safety & Compensation Commission. Decisions open to review by the Review Division include issues such as:

- ! wage loss benefits;
- ! rehabilitation services and benefits;
- ! disputes arising from the assignment of an employer to a particular class or group;
- ! an employer's assessment rating;
- ! medical aid benefits;
- ! permanent functional impairment awards;
- ! personal care allowances.

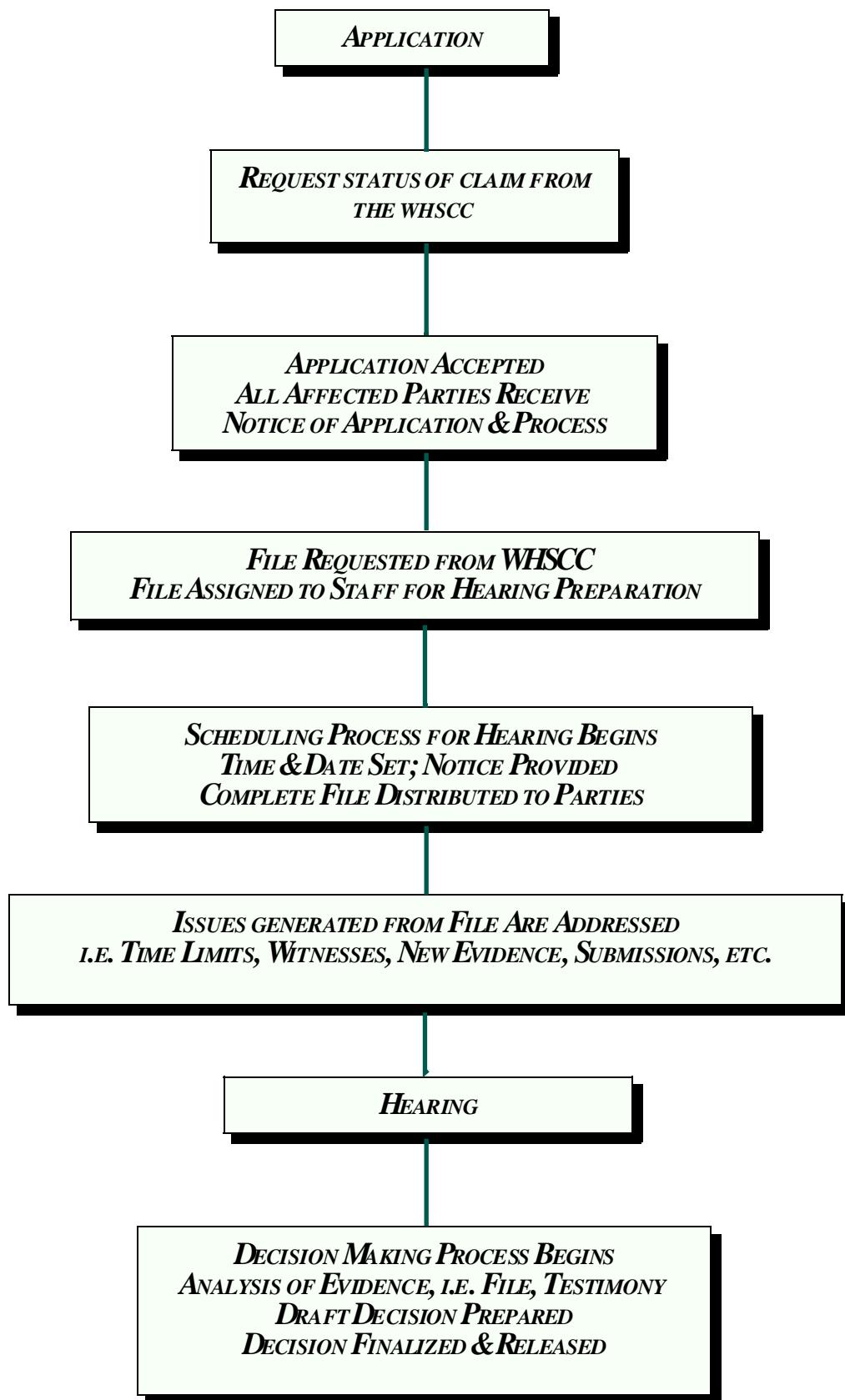
A bout the Review Division

There are two levels of appeal within the workers' compensation system in Newfoundland and Labrador. The first level of appeal exists internally within the Workplace Health, Safety & Compensation Commission through the Internal Review Division. The other level of appeal is the external appeal body - the Workplace Health, Safety & Compensation Review Division created in 1994 as an independent entity and separate from the WHSCC.

The Review Division has a Chief Review Commissioner and three other Review Commissioners. Review Commissioners are responsible to conduct hearings throughout Newfoundland & Labrador in accordance with the rules of natural justice and procedural fairness.

The appeal process includes file distribution, a hearing before a Review Commissioner (when necessary) and a written decision. This process, from application to decision, takes 60 days to complete.

R eview Process



2001 At a Glance

461 Cases were closed.

Throughout 2001 there were 646 new applications filed.

There were 51 Reconsideration Applications filed.

There were 484 hearings held in various regions throughout the Province.

**The Division's caseload in 2001 totaled 751 cases.
(646 new applications & 105 cases carried over from 2000)**

Average processing time on an Appeal was three months.

In 2001 it took an average of two months to schedule a hearing.

There was a 48% increase in caseloads since 2000.

C Case Summaries

CASE NO. 00266-07

The company produces a weekly magazine for local circulation. The Commission, for the purposes of assigning a Rate Code, had classified the company as a “manufacturer” and assigned a Rate Code of 317 - Commercial Printing. As the magazine was printed by an independent firm, the company argued it had been improperly classified. The Commission contended that Rate Code assignments were based on primary industrial undertaking and that the publication of a magazine was the primary undertaking of the company and that the assigned Rate Code was correct. The Commission relied on Policy ES-03.

The company applied to the Review Division appealing the Commission’s decision. The Review Commissioner found that the Internal Review decision was incorrect, as the Internal Review Specialist failed to provide reasoning to support some of her conclusions. The Review Commissioner, having reviewed the comparisons made by the Commission of the company to local printing/publishing firms, found that though there may be some overlap between the company’s business and that of other local printing/publishing firms, there were insufficient grounds to determine that they were competitors *per se* and belong in the same Rate Code. The Review Commissioner referred to the Commission’s Procedure 30:10:20. The Review Commissioner stated that the Procedure suggested a cautionary approach aimed at ensuring that companies were not necessarily lumped together just because of some similar functions. The Review Commissioner also found that the Commission had assigned a Rate Code that had no relation to the actual risk of injury. Clearly, the employees in this case were not exposed to the same risks as persons operating printing presses. The Review Commissioner concluded that manufacturing neither reflected the company’s type of business, nor the degree of risk of injury. The Review Commissioner directed the Commission to cancel all the assessments to date pursuant to Rate Code 317 and reimburse the company accordingly. The Review Commissioner further recommended that the Commission review the operations of the employer and apply a Rate Code that accurately reflected the type of business and the risk of injury associated. **The appeal was allowed.**

CASE NO. 00328-09

The worker is a 39-year-old man who had been a logger for 16 years. He suffered recurrent low back problems resulting from the heavy nature of his work for which he was receiving compensation benefits. It was recommended by his orthopaedic specialist that he pursue alternate work as a return to his pre-injury occupation was not likely. As a result, the Commission implemented the provisions of the Extended Earnings Loss Policy (EL-02) and subsequently deemed the worker of having the capacity to work as a transport truck driver. The worker objected to the deeming and applied for a review with the Internal Review Division. The Internal Review Specialist found that the guidelines of the policy had been properly applied and found the worker physically and academically capable of pursuing the position of a transport truck driver.

The worker disagreed with the Commission’s final decision and applied for further review. The Review Commissioner found that the Job Site Analysis relied on in the application of Policy EL-02 was not valid. The Review Commissioner further found that the physical requirements of the position were not considered by the Commission, nor was the point relating to the worker’s volume of medication on his ability to drive taken into consideration. As a result, the Review Commissioner recommended that the Commission obtain a more thorough Job Site Analysis which would include identifying any physical activities the worker may be required to complete. The worker’s benefits were reinstated and further investigation by the Commission was recommended. **The appeal was allowed.**

CASE NO. 01186-05

This worker, a 40-year-old man with a work history of manual labour, filed a claim for benefits relative to a condition of right-sided Carpel Tunnel Syndrome. The CTS, the worker contended, was due to the ongoing repetitive strain arising out of the nature of his employment. In addition, the worker submitted that his condition was aggravated by a work injury he sustained when he broke his left arm the preceding year. The worker had also been involved in a motor vehicle accident several years before his left arm injury. As a result of the motor vehicle accident, the worker had also sustained an injury to his right shoulder. The Intake Adjudicator referred the claim to the Commission's Medical Consultant for an opinion. The Medical Consultant found there were no objective medical reports to support the worker's contention of the CTS arising out of his employment. The Internal Review Specialist, in the Commission's final decision, indicated that the motor vehicle accident may have contributed to the worker's problem rather than the employment and denied the claim.

The worker appealed to the Review Division and the Review Commissioner found the Commission to be correct in their decision. The Review Commissioner stated there was no medical or objective evidence to support the worker's claim. **The worker's appeal was denied.**

CASE NO. 01363-08

The worker, a 23-year-old cashier, was employed in the food service industry. She sustained an injury to her lower back and was assessed by the Workers' Assessment and Diagnostic Centre with a follow-up participation in the Chronic Pain Management Program. She had also been assessed with a 10% PFI rating. It was later determined that she could not return to her pre-injury employment. The Commission provided rehabilitation services under its Work Force Re-entry Assistance Program in the form of 10-week sponsorship. The worker, however, requested vocational rehabilitation training. The Commission limited their rehabilitation assistance to 10 weeks, as they contended rehabilitation services were discretionary benefits and were only provided to restore the "pre-injury earning" capacity to its maximum potential. Given the worker's pre-injury earnings and her level of education, it was found that this level of entitlement was the most appropriate and denied further entitlement to a vocational rehabilitation program.

The Review Commissioner found the Internal Review decision to be incorrect as there was no evidence of the worker having transferrable skills, other qualifications or alternate work experience that would limit assistance to 10 weeks. The worker was a 23-year-old with highschool education and two years general studies at university. The Review Commissioner concluded that the Commission erred in its interpretation and application of the legislation and policy in this worker's case. While the Review Commissioner recognized the Commission's discretionary authority in providing rehabilitation services, the Review Commissioner found the Commission relied on a policy which was not relevant to the circumstances of the claim. The Review Commissioner, therefore, found the Commission erred in its interpretation and application of legislation and policy in its adjudication of the claim. **The appeal was allowed.**

CASE NO. 01463-10

The worker, a 28-year-old respiratory therapist, claimed to have a workplace related latex allergy and received compensation benefits. After considerable allergy testing and consultation with various specialists, it was concluded that a latex allergy could not be confirmed. The decision to accept her claim for benefits was reconsidered and her claim was denied. The worker became aware of clinics outside the Province that could provide additional testing to assist in diagnosing her condition. As a result, the worker requested funding from the Commission to cover travel costs to the United States for the additional testing. The Internal Review Specialist concluded that the medical evidence did not support that her symptoms were related to occupational exposure; therefore, finding it inappropriate for the Commission to cover costs associated with the travel for additional testing.

The worker appealed the decision to the Chief Review Commissioner who found that the Commission's decision was correct. The Review Commissioner concluded the decision by stating that there would be no responsibility for expenses related to the worker's condition until the worker was diagnosed with a condition related to her work environment. **The appeal was denied.**

A nalysis of Caseload Activity

CASELOAD

Status	Year Ending Dec. 31, 2001	Year Ending Dec. 31, 2000
Appeals Carried Forward from Previous Year	105	95
New Applications Received	646	438
TOTAL CASELOAD	751	533
<i>Decisions Rendered</i>	<i>461</i>	<i>361</i>
<i>Cases Withdrawn</i>	<i>73</i>	<i>29</i>
<i>Cases Heard But Not Decided</i>	<i>63</i>	<i>45</i>
<i>Cases Waiting to Be Heard</i>	<i>74</i>	<i>44</i>
<i>Applications Pending</i>	<i>29</i>	<i>18</i>
<i>Applications Rejected</i>	<i>51</i>	<i>37</i>

HEARINGS

Region	2001	2000
St. John's	330	254
Corner Brook	47	41
Grand Falls-Windsor	45	17
Gander	58	52
Labrador	4	2
Total	484	366

DECISIONS

Outcome	2001	2000
Denied	289	219
Allowed	108	100
Referred to WHSCC	65	42
Total	461	361

RECONSIDERATION APPLICATIONS

Applicant	Applications		Allowed		Denied	
	2001	2000	2001	2000	2001	2000
WHS offense	27	54	8	7	19	47
Worker	23	22	1	1	22	21
Employer	1	1	0	1	1	0
Total	51	77	9	9	42	68

REPRESENTATIVE PROFILE

Representative Type	2001	2000
Union	122	92
Legal Counsel	66	58
Member of the House of Assembly	52	53
Self	151	100
Other	93	63
Total	484	366

Hearings and Decisions

MONTHLY SUMMARY OF HEARINGS AND DECISIONS

Month	Hearings	Decisions
January	23	14
February	18	19
March	27	57
April	8	19
May	50	22
June	41	26
July	64	24
August	51	51
September	38	57
October	57	65
November	62	62
December	45	45
TOTAL	484	461

Budget 2001 - 2002

Account	Amount
Salaries	257,200
Employee Benefits	5,000
Transportation & Communications	25,400
Supplies	22,300
Professional Services	294,500
Purchased Services	41,600
Property, Furnishings & Equipment	3,000
Information Technology	32,200
TOTAL	681,200

R eview Commissioners

Eric A. Gullage, Chief Review Commissioner

Mr. Gullage has been Chief Review Commissioner of the Review Division since its inception in 1994. Prior to his appointment as Chief Review Commissioner, Mr. Gullage was the Member of the House of Assembly for the District of Waterford-Kenmount and served as minister in various government departments such as Municipal & Provincial Affairs, Housing and Social Services. He was previously a St. John's Municipal Councillor and Newfoundland Manager for a major life insurance company.

Clayton Locke, Review Commissioner

Mr. Locke is a businessman operating in central Newfoundland. He has been appointed to the Review Division since 1994. Mr. Locke has served on numerous volunteer boards, most recently as Chairman of the Central Newfoundland Health Care Board. He also currently sits on the Newfoundland & Labrador Medical Board. He is past-president of the Newfoundland & 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 Queen's University Law School and was admitted to the Newfoundland Bar in 1990 and has been appointed to the Review Division since 1994. Ms. O'Brien is an Adjudicator with the Newfoundland & Labrador Human Rights Commission and also practices law. Ms. O'Brien is also a business person. 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, Marshall, Allen-Westby, Watton* in Corner Brook, NF. He has in the past been an Adjudicator for the Newfoundland and Labrador Human Rights Commission, a Commissioner for Municipal Affairs and a Commissioner for the Labour Standards Tribunal.