

# Workers' Advocate Office

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## *2017 Annual Report*

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ANNUAL REPORT OF THE WORKERS' ADVOCATE OFFICE 2017

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Authorized by the Yukon Workers' Advocate Office

The Workers' Advocate Office, established through the *Workers' Compensation Act*, provides advice to workers and their dependents on the intent, process, and procedures of the compensation system, the effect and meaning of decisions regarding their claims for compensation, and assistance and/or representation before a decision maker, hearing officer or appeal committee. The service is free of charge, and independent of the Workers' Compensation Board.

We are members of the Canadian Association of Workers Advisors and Advocates, a group representative of all Canadian provinces and territories save Quebec.

The following report is respectfully submitted to the Minister of Justice as required by the *Workers' Compensation Act* (RSY 2011, C4, Part 16 S109 (7))

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The 2017 year at the Workers' Advocate Office was similar to many others with the highs of successfully resolving claims for workers at appeal. The highs of our work are offset by lows when we are, despite our best efforts, unable to informally resolve issues with the Yukon Workers Compensation Health and Safety Board (YWCHSB) prior to a hearing. The ebb and flow of clients and hearings in 2017 enabled the Advocates Office to also address key issues throughout the year including preparing a submission on the proposed amendment to the *Workers' Compensation Act*.

Bill Number 8, passed in the Legislatures fall sitting, extended the presumption clause for Yukon emergency response workers defined as firefighters, paramedics and police officers. The Workers' Advocate Office recognized the challenges of the tasks before the Workers' Compensation Board. We strongly encouraged the YWCHSB to be mindful that the key to the legislative changes will be their implementation and ensuring an appropriate level of resources is made available to the affected workers. Our submission is further discussed in this annual report.

Previous surveys of clients have identified the need for outreach by the Workers' Advocate Office. The Manager travelled to Dawson, meeting with injured workers, and initiated ongoing dialogue with the Disability Co-coordinators with the Yukon Government. Yukon Government being one of the larger employers, briefing sessions have been undertaken to ensure Yukon Government Human Resource Directors and Managers are fully aware of the services of the Workers' Advocate Office. Outreach to Governments has also extended to the Kwanlin Dun First Nation Government Human Resource department.

As 2017 progressed, through outreach and additional contact with workers, several issues began to emerge. We have witnessed a return to a more complex written relationship between workers and the YWCHSB, and a significant decrease in the number of informal resolutions reached with the YWCHSB. Lack of informal resolution is particularly exacerbated by Board rebates to employers. We have often heard comments from workers like, "*the Board has money for employers what about the workers*"? This frustration is most often expressed when an injured worker's claim has not been accepted or, accepted and benefits limited. A greater public awareness of the Workers' Advocate Office and a return to informal resolution with the YWCHSB may help address these issues.

## From the Advocates Desk (continued)

An especially difficult situation we are seeing arise with greater frequency are those claims that require an examination of a former claim or claims that may have been accepted at an earlier date and are stuck awaiting a new decision. As an injured worker ages, issues can arise related to the accepted worker's compensation claim. The need to examine a policy specifically addressing the continuation of a claim including the time frame for decision-making is an area the Workers' Advocate Office intends to pursue further in 2018.

The challenges of addressing the continuation of accepted claims, the implementation of the acceptance of post-traumatic stress disorder for emergency first responders and others, and re-establishing the informal resolution with the YWCHSB are work the Advocates office looks forward to addressing. We will also continue, as a priority, to make every effort to reach out to injured workers, their families and dependents throughout the Yukon.

Please be assured we will continue to serve our public with the highest standard of respect, compassion and fairness mandated by the Yukon *Workers' Compensation Act*.

It is my honor to submit this Annual Report of the Workers' Advocate Office for your thoughtful consideration.

Sincerely,

Pat Duncan  
Manager

## Our Clients

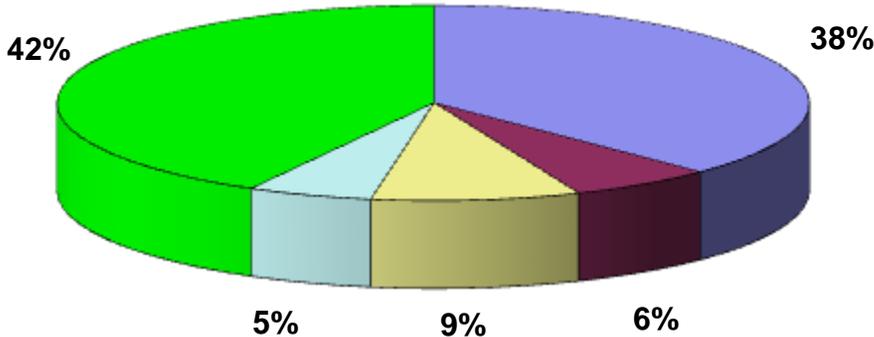
Telephone calls, emails and visits to the Workers' Advocate Office are recorded in a number of ways. Requests for information on following up on a workers compensation claim through the Northwest Territories Advocate office, for example, would be recorded as a General Enquiry. Our General Enquires in 2017 were 26, down from 34 in 2016. The reduction in General Enquires was offset by an increase in the number of new clients. A client is defined as an individual who signs an authorization form requesting that the Workers' Advocate investigate their issue or concern.

Year	New Clients	Clients Carried Forward
2014	92	18
2015	47	46
2016	58	56
2017	64	25



It is important to note that the number of clients is not reflective of the number of issues reviewed by the Workers' Advocate Office. An example of this is representation we have provided to one client with five Yukon workers' compensation claims for different workplace incidents. Critical to our work is the resolution of issues on behalf of our clients. The graphs below represent our efforts in this area.

**Resolution of Issues 2017**



There were a total of 112 issues handled in 2017:

- 38% = 42 issues were resolved by WAO alone
- 6% = 7 issues were resolved by WAO with YWCHSB
- 9% = 10 issues were presented by WAO to the Hearing Officer
- 5% = 6 issues were presented by WAO to the Appeals Tribunal

**42% = 47 issues remain under investigation by the WAO**

## Hearings and Appeals

Perhaps the most visible element of the work of the Advocates Office is representation of workers before a Hearing Officer or the Workers' Compensation Appeal Tribunal. Within the *Workers Compensation Act* a worker has 24 months to appeal a decision on their claim. An appeal can be in the form of a documentary review or an oral hearing before a Hearing Officer. An employer can also appeal a decision, as happened in 2017. The Workers' Advocate Office represents the worker, if the worker chooses, in all types of Hearings before a Hearing Officer and at the Workers' Compensation Appeal Tribunal. The Appeal Tribunal is the final level of hearing and is pursued after review by a Hearing Officer. Our efforts, including our success rate in this area are shown below.

Hearings and Appeals	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Hearing Officer Appeals	39	39	30	18	16	27	6	16	24	10
Representation by WAO at WCAT	5	8	16	9	5	5	3	3	2	6
Decisions at Hearing Officer or WCAT Overturned or varied	40%	33%	30%	62%	48%	75%	44%	63%	23%	44%

The Yukon Government requested input into a proposed amendment to the *Workers' Compensation Act* to include a post-traumatic stress disorder (PTSD) presumption clause for emergency response workers.

The Workers' Advocate Office has seen an increase in the number of workers requesting our help with claims for post-traumatic stress disorder. Our Advocacy work on behalf of these injured workers provided the basis for our submission to the consultation process. Our submission, in part read;

*“The proposed amendment is to provide a PTSD presumption for emergency response workers defined as firefighters, paramedics and police officers. The Workers' Advocate Office, representing injured workers and their families with their Yukon worker's compensation claims, has encountered individuals diagnosed with PTSD who would not meet the definition of an emergency response worker above. For these individuals, the work experience that caused their injury is as real as for those occupations for whom such injuries are presumed to occur more frequently. The Post Traumatic Stress Disorder experienced by these workers is in need of no less immediate care and attention than for those defined as “emergency response workers”.*

*It is noted that the proposal is to include police officers in this definition of emergency response workers. Police officers in the Yukon may be interpreted as members of the RCMP as they currently provide policing services on contract to the Yukon Government. Government of Canada workers' compensation claims are generally not administered by Yukon. This emphasizes one of the difficulties with a narrow definition of emergency response workers and begs the question would Correctional Officers at the Whitehorse Correctional Center, although not “Police Officers”, be considered as emergency response workers in the proposed changes?*

## Our Work- PTSD (continued)

*The Workers' Advocate Office would respectfully submit that changes to legislation to include a presumption clause only for emergency response workers diagnosed with PTSD is too limiting. We feel that rather than an exhaustive list of occupations the focus should remain with recognition of the occurrence of PTSD as a result of workplace events across a broad spectrum of occupations. A narrow definition of emergency response workers does not take into account the vicarious trauma experienced by social service workers or health care professionals beyond paramedics, public servants who may suffer a cumulative effect of compassion fatigue or employees indirectly exposed to violent incidents at the workplace.*

*The Workers' Advocate Office would also express our concern that in the course of discussing amendments, consideration must also be given to the implementation of these amendments. In the first instance, support is required to ensure the Workers' Compensation Board staff members, recognizing that each claim is different, are able to consistently provide a similar level of service and support to claimants who note PTSD as their injury. Adequate and appropriate medical resources must be available in order to meet anticipated demand. Policy makers and legislators need to be aware of the resources required to reach decisions and provide appropriate support, health care resources or compensation, for claimants with a diagnosis of PTSD. It must also be noted that existing resources in a community may not be appropriate for a claimant or group of claimants given the small size of Yukon's population and the limited number of professionals available."*

## Our Work- PTSD (continued)

The Workers' Advocate recommendations were consistent with responses received through the Workers' Compensation Board document "What We Heard." This document, summarizing the input received through the public consultation process, noted 76% of respondents also suggest applying the PTSD presumption to a broader group of occupations that included nurses, social workers and corrections officers.

The Government also requested the public's view on amendments to the *Occupational Health and Safety Act* that would, in turn, lead to the development of regulations aimed at preventing mental injuries at work. The Workers' Advocate submission also noted;

*"The Workers' Advocate Office is providing the following submission in response to the proposed amendments addressing PTSD only. The Occupational Health and Safety Act is somewhat beyond the scope of practice of our office and we would defer comments to those better versed in this area."*

We concluded our submission with this advice; *"The Workers' Advocate Office recognizes that the task before the Workers' Compensation Board drafting of amendments, implementing and resourcing changes, is a difficult one. It is our considered view that the definition of emergency response worker cannot be too limiting. The key to changes and recognizing workplace injuries such as PTSD is the implementation. Change must be resourced to truly provide appropriate care to injured workers"*.

Workers' Advocate Office staff members continue our efforts on behalf of injured workers and interest in area of care for workers. Staff attended the Workers' Compensation Board hosted event Cultivating Positive Mental Health at Work on February 7<sup>th</sup>, 2018. Guest speakers from the Canadian Centre for Occupational Health and Safety provided information on adopting the National Standard on Psychological Health and Safety to the Whitehorse area attendees.

## Client Satisfaction Survey

The Workers' Advocate Office requests the Yukon Government Bureau of Statistics to conduct a client satisfaction survey of fifty clients for whom we have provided service in the previous year. The telephone survey of twenty-five clients early in the new year and an additional twenty-five clients in midsummer, asks clients if they would agree, feel neutral, or disagree with statements regarding the helpfulness, courtesy and respect offered by the staff. Other questions include staff efforts regarding communication, explanations of their files and if the client was, overall, satisfied with the services offered. Results of the survey from January 2017 (of the latter half of the 2016 clients) to February 2018 are noted below.

### Client Satisfaction Survey 2018

	Jan-17	Aug-17	Feb-18
<b>Questions 1-4</b> ( Staff were helpful/courteous/respectful professional and knowledgeable)	95%-100% agreed	92.30% agreed	89%-100% agreed
<b>Question 2</b> (Clear explanations timely communications, kept up to date and informed)	85%-100% agreed	84.6-100% agreed	74%-79% agreed
<b>Question 3</b> (I was treated with dignity and respect and felt heard)	85%-100% agreed	92.30% agreed	95%-100% agreed
<b>Question 4</b> (Overall were you satisfied with the service provided )	85% agreed	92.30% agreed	89% agreed

## Client Satisfaction Survey (continued)

The client satisfaction survey provides useful information for the Advocates Office by asking clients how they learned about our services. The majority of respondents learn of our efforts through the Worker's Compensation Board. This emphasizes the need for clear communication and understanding of the services offered by the Advocates through Board decision letters, the YWCHSB website and staff understanding of the role of the Advocate in the Compensation system.

Survey respondents are also asked for General Comments at the end of the survey. Comments included:

*"it's a pity that workers don't know about this office. Some of the injured workers don't have great backup and they end up giving up. They shouldn't".*

*"it's really great to have a non-government board and workers to help support clients like us who don't really understand about the process."*

*"I really appreciate their service. It was very helpful to me to have a Workers' Advocate to explain the service to me and to help set up communication over long distance."*

Finally, clients are also asked for suggestions to improve the client service experience. There was not one clear suggestion that came forward although many comments related to communication. These comments ranged from:

*"they did everything in a super timely manner and were clear- I don't know how you could improve upon that" to*

*"have better communication".*

In order to address this last point, the Workers' Advocate Office has added a last action date to better track client contact.

## Financial Accounting 2017

The Worker's Advocate Office is funded annually by the YWCHSB as outlined in the Yukon *Workers' Compensation Act*. The financial year are as operations for the 2017 follows.

	<b>Budget</b>	<b>Actual Expenditures</b>
<b>Personnel</b>	<b>\$414,124</b>	<b>\$361,428</b>
<b>Office and Operations</b>	<b>\$60,000</b>	<b>\$45,618</b>
<b>Total</b>	<b>\$474,124</b>	<b>\$407,046</b>

The figures above are adjusted to account for rounding and are based upon the calendar year, the fiscal year of the Workers' Compensation Board.

The administration fee of \$47,412 paid to the Department of Justice is not included in the budgeted amount or the actual expenditures.

The 2017 expenditures were less than the budget amount approved by the Workers' Compensation Board of Directors and are a reduction on monies spent in previous years. Costs associated with participating in the Canadian Association of Workers Advisors and Advocates were reduced as the conference was located in British Columbia in 2017 and Halifax in 2016. Staff vacancies were accommodated with existing resources; experienced staff minimized training costs. The Workers' Advocate Office and the Coroner's Service share office space. A portion of the cost savings in 2017 is the greater allocation of costs of the office operation including administrative staff to the Coroner's Service reflective of a significant increase in activity in 2017 in the Coroner's Service.

The Budget amount for 2018, presented and approved by the Compensation Board of Directors is \$466,018.00

The workers' compensation system in Canada is founded upon a report by Sir William Meredith to the Ontario Legislature in (1913). Sir William Meredith's report stated in part, "*there should be certainty that the injured workman and his dependent shall receive the compensation to which they are entitled...*"

An issue presented with increasing frequency at the Workers' Advocate Office toward the end of 2017, and early in 2018, is the number of workers with injuries that occurred in the past and their claim files are now in a "closed" state with the YWCHSB.

The *Workers' Compensation Act* makes reference to pre-existing or earlier injuries at Section 26 *Recurrence of work related injury*. This section speaks to wages payable; it does not address continuing medical care. Section 127 the *Transitional* section speaks to compensation for workers with an accepted claim however, again, the focus is on monetary compensation rather than medical compensation.

The Yukon Workers' Compensation Board Policy (EN16) references "recurrence of injury". The purpose of the policy is to aid "*in determining whether a worker is experiencing a recurrence of their work related injury, and if they are, the benefits to which the worker is entitled. It also explains other situations where a worker might be eligible for further benefits, aiding the decision-maker. This includes situations such as a continuation of the original injury, a new injury, known or anticipated future treatment, the development of a subsequent disorder or condition, or the aggravation of a pre-existing condition.*"

This policy is being applied by YWCHSB decision makers when a worker presents with an injury accepted by the YWCHSB at an earlier time and possibly under an earlier version of the *Workers' Compensation Act*. It is being applied by decision makers in such a manner that they are requesting and reviewing all the previous information to reach a new decision on claims and medical benefits in particular.

Workers initially object to the claim being in a "closed" state with the YWCHSB. Secondly, workers do not accept that the review of all the medical evidence on their file is required. The medical community who may not have been the Doctor at the time of the injury have also expressed concern to the workers about locating this information and review of old files.

Mindful that every claim before the Workers' Compensation Board is different it may be useful for the reader to review the following examples of this situation with these case studies.

## 2018 Policy Review Case Study #1

*A worker suffers a significant injury to their right knee in 1987. The worker's injury is conservatively managed and the worker returns to work. The worker continued working, modifying to less strenuous work and maintained contact with the YWCHSB regarding the knee. The YWCHSB Medical Consultant, in 2003, advised the worker receive an orthopedic consultation and wrote "whether or not surgery happens as a result of that consultation and when it happens it is not possible to predict at this time". YWCHSB arranged for the orthopedic consultation in 2009. The Orthopedic Surgeon's report outlined a course of treatment including actions to prolong the life of the knee prior to a knee replacement in the future.*

*Although the worker objected the file was closed by YWCHSB in 2009.*

*In September 2017 the worker's family physician placed this worker on the public health care system wait list for a knee replacement. The worker, at the same time, filed the Request to Reactivate form as directed by YWCHSB, understanding that the knee replacement was the medical treatment recommended for the accepted workers compensation claim.*

*The decision maker, reviewing the request to reactivate, requested all medical reporting and chart notes on the knee, from 1987 up to present. Note that the claim was accepted in 1987 and the most recent medical reporting on the file already in place at YWCHSB is dated 2009. It is the same body part throughout and there are no new incidents of workplace injury on the file. As of March 1, 2018, six months after the request to reactivate was filed, no decision has been reached on the workers request.*

An unintended consequence of the approach of gathering all the medical evidence is that the health care professionals are tasked with data gathering rather than providing medical care. The worker rather than seeking care for their injury is copying files and exhausting their own memory of events and medical treatment sought- often not necessarily from the same health care professional.

The Policy is being interpreted that, with the continuation of an original injury, the decision maker can re-adjudicate or reach a new decision on the claim and potentially deny any benefits, including medical, rehabilitation or compensation for time loss.

*The worker suffered a back injury in 1981. In 1988 and 1991 the worker received surgery through YWCHSB for his accepted injury. In 1993 YWCHSB reporting reads “it is not anticipated that any further surgery would be necessary although there is an increased risk of problems above and below the site of the surgery.” The worker receives a permanent impairment award including a letter from YWHSCB that stated “We would like to point out that acceptance of the lump sum payment (permanent impairment award) does not affect any further medical treatment or compensation to which you may become entitled as a result of your accident of 1981.”*

*In 2016 the worker suffered a different workplace injury and during his recovery suffers pain at the same site of the 1981 injury. The decision maker on the second 2016 claim believes the pain unrelated to the second injury and suggests the worker request to reactivate.*

*The worker filed a reactivation request for his 1981 back injury. This worker has continued to seek medical attention and has a specialist report in hand that advises surgery at the same site as the previous surgeries.*

The worker is now in a situation of asking his medical practitioner to assemble medical documentation and to offer, in support of his request to reactivate, a medical opinion if the current medical condition is a continuation of the 1981 claim.

The Workers' Advocate Office believes that a clear policy providing direction to decision makers on continuation of injury would allow decision makers to examine the whole worker in the context of previous injuries rather than focusing solely on recovery from one injury.

We believe the Office of the Workers' Advocate has identified a gap in policy. That is, clear policy direction specifically on the continuation of injury is required with clear guidance for decision makers.

In his address to the Legislature Sir Meredith also said "*the true aim of a compensation law is to provide for the injured workman and his dependents and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.*" Statements such as these are often referred to as the Meredith Principles.

Applying the Meredith Principles to the continuation of injury discussions, a worker has been determined eligible for compensation which, in today's context includes medical care. Applying the Meredith Principle noted above rather than becoming a charge upon the community at large- forcing individuals to access a social program that may or may not be immediately available to them or becoming a patient in a crowded public health care waiting list prolonging an individual's medical treatment, rehabilitation and return to work, we believe guidance for decision makers should be in place that ensures that the YWCHSB continues to accept responsibility for the worker's injury.

We also recommend that the decision making in these situations not become a source of conflict between health care providers and the workers, or the YWCHSB. Perhaps most importantly we would also highly recommend that the timely requirement for reaching decisions must be outlined in a policy on continuation of claims.

The Workers' Advocate Office intends to address this policy matter with the YWCHSB in 2018 through our formal and informal representation of workers.