

Workplace Health, Safety and Compensation Review Division

Annual Performance
Report 2021-22

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Message from the Chief Review Commissioner

In accordance with the reporting requirements of the **Transparency and Accountability Act** for a Category 3 Entity and the **Workplace Health, Safety and Compensation Act** (the **Act**), I am pleased to present the Workplace Health, Safety and Compensation Review Division's (WHSCRD) Annual Performance Report for 2021-22. As Chief Review Commissioner of WHSCRD, I am responsible for the preparation of this report and accountable for the results contained within.

While I was appointed as the Chief Review Commissioner of the WHSCRD in an acting capacity last fiscal year, this year I was appointed to the role for a five-year term. I am honored by the opportunity to lead a team of dedicated and professional staff and Review Commissioners, and will strive to further build upon recent improvements to service delivery.

The challenges associated with the COVID-19 pandemic and the associated public health restrictions continued again this past year. However, once again, we remained fully operational throughout and were able to offer our clients continued quality service. I would like to thank the staff of WHSCRD once again for their exemplary professionalism and commitment to the delivery of services to injured workers and employers as we navigated the changes to service delivery necessitated by the global pandemic. We look forward to working with you in 2022-23 as we continue to strive to uphold the principles of natural justice and provide exceptional client service.

A handwritten signature in blue ink that reads "Suzanne Hollett". The signature is written in a cursive, flowing style.

Suzanne Hollett

Chief Review Commissioner

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Overview

Introduction

The Workplace Health, Safety and Compensation Review Division (WHSCRD) is the final level of review within the workers' compensation system in Newfoundland and Labrador. WHSCRD is responsible for the review of decisions of WorkplaceNL. WHSCRD may review such issues as:

- Compensation and medical aid benefits;
- Rehabilitation and return to work services and benefits; and,
- Employers' assessments and industry classifications.

Additional information on WHSCRD's mandate, lines of business and vision can be found on its website at <http://www.gov.nl.ca/whscrd>.

Financial Information

Funding for the operations of WHSCRD is reimbursed from the Injury Fund of WorkplaceNL pursuant to Section 25 of the **Workplace Health, Safety and Compensation Act**. In the 2021-22 fiscal year, WHSCRD's budgetary allocations were administered by the financial administration division under the Minister Responsible for WorkplaceNL. Unaudited expenditures for WHSCRD in 2021-22 were \$1,159,797 as provided by the Department of Finance. Please refer to page 20 for more detailed financial information.

Review Commissioners

WHSCRD has a Chief Review Commissioner and a Panel of Review Commissioners. Up to seven Review Commissioners, including the Chief Review Commissioner, may be appointed. Review Commissioners historically conduct hearings in Mount Pearl, Gander, Grand Falls-Windsor, Corner Brook, Happy Valley-Goose Bay, and Labrador City, with teleconference and videoconference options also available.

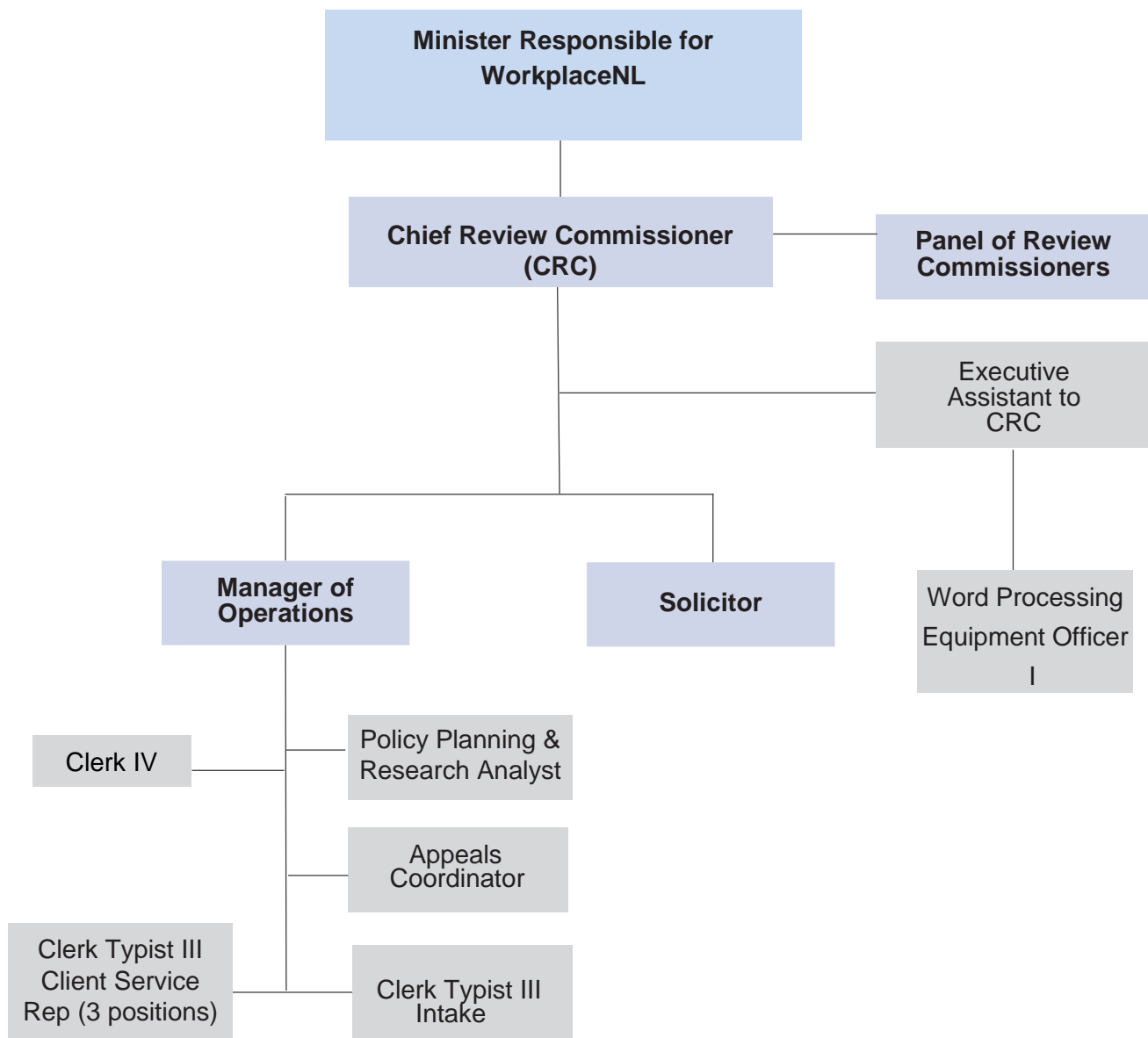
As of March 31, 2022, WHSCRD's Panel of Review Commissioners consisted of a Chief Review Commissioner and three full-time Review Commissioners. Review Commissioner Suzanne Hollett was appointed as Chief Review Commissioner for a five-year term effective December 2021. It is anticipated recruitment for a replacement Review Commissioner will be completed in fiscal 2022-23. Please refer to page 21 for current Review Commissioner biographies.

Overview continued

WHSCRD Staff

WHSCRD currently employs 14 staff (12 female and 2 male) in its office located in the Dorset Building, at 6 Mount Carson Avenue in Mount Pearl, Newfoundland and Labrador.

Organizational Chart



Highlights and Partnerships

Quick Reference Guide

In an effort to enhance the quality of service to our clients, WHSCRD completed a comprehensive review of its publically available print and digital information brochures. A review of the existing brochures highlighted the value of the information contained within them, but also identified areas where repetition and choice of language may be complicating the understanding of an already complex workers' compensation system and WHSCRD's role within it.

As a result of this review, WHSCRD developed a single Quick Reference Guide which provides applicants and other stakeholders with the information they need in a more clear and concise guide. This was achieved by prioritizing the use of plain language, updating outdated information, complying with accessibility guidelines, reducing repetition, and developing a single guide with the information laid out in order of process.

Report on Performance

In this second year of the 2020-23 planning cycle, WHSCRD continued its commitment to the issue of enhancing client service through increased electronic content and digitization of administrative workflow.

Issue 1: Enhance client service through increased electronic content and digitization of administrative workflows.

In 2021-22 WHSCRD continued its progress in exploring and expanding client-specific forms and applications for electronic submission. WHSCRD has continued digitization of active case files during the intake process and all files continue to move through administrative processes digitally.

In addition to added efficiency of application processing, the move to digital processes also allowed WHSCRD to pivot very quickly during the COVID-19 pandemic restrictions and regulations as client file contents are immediately available to staff at the press of a button when clients require information. The move from storing file information in paper files to digital aligns with information management best practices in storing and accessing personal and sensitive client information.

Unfortunately, due to an additional wave of the COVID-19 pandemic during this fiscal year, planned staff Hewlett-Packard Records Manager (HPRM) training sessions were again postponed. However, WHSCRD conducted informal in-house training that allowed staff to further utilize the HPRM system that aligned with information management best practices. This positions us well for future HPRM workflow business processes.

Report on Performance continued

Work completed in meeting WHSCRD's 2021-22 objective is outlined in the following section.

Objective Results for 2021-22

Objective: By March 31, 2022 WHSCRD will have continued implementation of digitizing its active intake and case management workflows through the Hewlett Packard Enterprise Records Manager (HPRM) system, and identified client-specific forms and applications for electronic submission.

Indicators	Progress and Accomplishments
Trained additional staff in HPRM Administrator Training as a required prerequisite for Workflow training as per direction from OCIO.	<ul style="list-style-type: none"> • WHSCRD registered three additional staff in HPRM administrator training. • Due to circumstances beyond the control of WHSCRD, this training did not occur. The provider is currently working with the appropriate vendors on services and will provide WHSCRD with an update when available. • Two staff are currently on the waitlist for HPRM administrator training.
Trained designated staff in HPRM Workflow.	<ul style="list-style-type: none"> • WHSCRD conducted in-house training for further HPRM utilization. • Client Service Representatives were trained in-house to further utilize the HPRM system. • Worked with OCIO to develop new functionality in Case Tracking System (CTS) active case management. • Trained staff on new CTS functionality as it relates to application workflow.
Developed testing for active case management workflow in development environment.	<ul style="list-style-type: none"> • Worked with OCIO to develop testing for the new functionality as described above. • Developed testing on new functionality and application workflow in CTS. • Continued discussions with OCIO on moving forward with workflow development. • Registered staff for HPRM workflow training; however, due to circumstances beyond the control of WHSCRD training was postponed. • Due to continued delays in HPRM workflow training, a workflow testing environment in HPRM could not be established and reporting on this will move to fiscal 2022-23.

Report on Performance continued

Indicators continued	Progress and Accomplishments continued
Conducted audits in development environment on digitization of workflow processes.	<ul style="list-style-type: none"> • Completed testing on new functionality and application workflow in CTS. • Completed audits on new functionality and application workflow in CTS. • Implemented new functionality and associated report in CTS as it relates to application workflow and active case management. • Due to the continued delays in HPRM workflow training, noted in the previous indicator, workflow process testing in the HPRM development environment are not complete and audits of same will move to fiscal 2022-23.
Identified issues (if any) and implemented changes in development environment of digitization of active workflow processes, if required.	<ul style="list-style-type: none"> • No issues were identified during the testing and audit process as it relates to workflow in CTS. • For the reasons noted above, reporting on this indicator as it relates to HPRM will also move to fiscal 2022-23.

Objective for 2022-23

Objective: By March 31, 2023 WHSCRD will have fully implemented digitizing its active intake and case management workflows through the Hewlett Packard Enterprise Records Manager (HPRM) system, and the identified client-specific forms and applications will be fully digitized for electronic submission.

Indicators:

- Trained additional staff in HPRM Administrator Training as a required prerequisite for Workflow training as per direction from OCIO.
- Trained designated staff in HPRM Workflow.
- Developed testing for active case management workflow in development environment.
- Conducted audits in development environment on digitization of workflow processes.
- Identified issues (if any) and implemented changes in development environment of digitization of active workflow processes, if required.
- Implemented workflow through HPRM.
- Digitization for HPRM is complete.
- Implemented online submission option for request for review application.

Opportunities and Challenges Ahead

Information Management

WHSCRD's information management (IM) project began as a challenge to organize, digitize, and regulate its paper-based file storage, retention, and disposal systems. As WHSCRD moves to digitize its workflow we have the opportunity to continue to build on our success to date. Significant progress made over the past number of years will allow IM to become an important element of our daily workflow. IM will continue to maintain and improve the program according to the resources we have available.

Caseload

Request for review applications in the 2021-22 fiscal year increased by 66 percent. This may be due in part to a return to pre-COVID-19 workplace activity in the province. WHSCRD will continue to monitor the number of applications through the 2022-23 fiscal year and respond according to the demand and make any necessary recommendations to the Minister Responsible for WorkplaceNL.

Noteworthy Decisions

The following WHSCRD decisions have been identified as noteworthy for 2021-22; they articulate the outcome of a particular issue or the issue may be of interest to the general public and stakeholders. Additional decisions may be viewed at www.gov.nl.ca/whscrd.

DECISION 2021118 (Worker Application), Allowed

Earnings Loss Benefits – Entitlement – Period of Entitlement – Disability After Age 63
ss. 2(1)(g.1), 2(1)(o), 74(1), 74(5), Policy EN-17, Policy EN-22

The Worker, who was over 63 at the time of the injury, was injured in February of 2019. The Worker remained at work but worsened by August of 2019. The Worker was placed off work and claimed earnings loss benefits. WorkplaceNL accepted the Worker's claim fell under s.74(5) of the **Act** and there would be a period of entitlement beyond age 65. The Worker received benefits as of August 2019 but the benefits were suspended under Policy EN-17: **Interruptions and Delays in Work Injury Recovery** due to the impact of an intervening, non-compensable health issue. That suspension decision was not appealed. The Worker's benefits did resume after the period of suspension but WorkplaceNL advised the Worker that earnings loss benefits would cease in February 2021, two years from the date of the injury. The Worker objected, claiming there should be entitlement for a period up to August of 2021, which would be two years from the date the disability began. The Worker's Internal Review was denied.

Decision: The review was allowed. The decision did not comply with s. 74(5) or WorkplaceNL's previous interpretation of the provision which had been upheld by **Decision 2020111**.

While the section was premised on the Worker's loss of earnings capacity commencing after age 63, it also stated the entitlement would last for two years following the date of 'injury', which created an ambiguity in the operation of the provision. The Review Commissioner agreed that the use of different words raised a presumption the words were intended to have different meanings, but he concluded the presumption was rebutted by an examination of the true meaning of the provision. He found that the literal interpretation of the plain text created an absurdity which was likely not intended by the legislation. The Review Commissioner explained that "the Section proceeds on the basis the injury and the earnings loss begin at or about the same time, and in most cases they would, with no conflict arising. However, where there is a delayed onset of earnings loss due to the injury, I am not prepared to accept the intent of the legislation is to anchor the time period to the date of the original injury/incident, before the earnings loss started." He found that s. 74(5) is a "limited exception" to the general rule terminating benefits at age 65 and resolved the ambiguity

according to the direction in the **Interpretation Act** to apply a “large and liberal” remedial meaning to the provision, finding it was a “deliberate policy decision to allow for a period of up to two years of benefits” even though the Worker would be beyond the age of 65.

The Review Commissioner also referenced Policy EN-22: **Merits and Justice**, which not only required a consideration of the facts of each individual case, but emphasized consistency in decision making. As WorkplaceNL had interpreted the provision differently in the decision which led to **Decision 2020111**, the Review Commissioner found it would be expected that the same interpretation would apply in this case. He also referenced the direction in the **Vavilov** decision which creates an expectation of consistent legislative interpretations, unless there were something particular about the facts of a case which call for a different interpretation. As there was no specific circumstance which would warrant a different interpretation, the Worker’s claim should have been treated similarly to the one in **Decision 2020111**. The Review Commissioner therefore allowed the review, finding entitlement existed up to August 2021. However, he declined to engage the issue of the suspension of the Worker’s benefits within that two year period, as there had been a previous decision on that point which was not appealed. That issue was not properly before the Review Commissioner because it was not within the scope of the application. **(Hickey)**

DECISION 2021126 (Worker Application), Denied

Pension Replacement Benefit – Entitlement – Attainment of Age 65 ss. 19(4), 75

Pension Replacement Benefit – Entitlement – Effect of Repeal ss. 19(4), 75

Retirement Benefit – Entitlement – Attainment of Age 65 ss. 19(4), 75

A worker was injured in 2011 and became entitled to earnings loss benefits. The Worker was made aware of potential future entitlement to a Pension Replacement Benefit (PRB) upon reaching the age 65. The Worker then elected to take early retirement benefits under an employer-sponsored pension plan. In 2018, s.75 of the **Act** was amended to eliminate the PRB and introduce a lump-sum Retirement Benefit, effective January 1, 2019. The Worker turned 65 in the middle of 2020. Under the new provision, workers in receipt of extended earnings loss benefits at age 65 qualify for the lump-sum payment. When discussing the Retirement Benefit with WorkplaceNL, the Worker advised that the PRB which would have been payable under the old section would have provided for greater entitlement. The Worker argued that the old PRB provision should continue to apply, as the lost pension contributions began while the old section was still in force, and the Worker elected for early retirement after being made aware the PRB existed. WorkplaceNL found that the new section was in force at the time the Worker turned 65, so the Retirement Benefit applied to the

claim, and not the PRB. The Worker requested an Internal Review, which was denied.

Decision: The review was denied. The decision complied with the current s.75 of the **Act**, which the Review Commissioner determined was applicable to the Worker's claim. The Review Commissioner discussed the provisions of the **Interpretation Act**, which confirmed the new Retirement Benefit provision was in effect when the Worker turned age 65, and had to apply unless the Worker had already acquired a right to a PRB before the Section was amended in 2018. The Review Commissioner found the Worker did not have a vested right to a PRB, as there was not an "accrued" or "accruing" right to the PRB by the time it was abolished. There was no "accrued" right because the Worker had no present right to a PRB by 2018. Under both the old and new versions of s.75, a worker had to turn 65 before becoming eligible for the benefit. He also found there was no "accruing" right because it was not inevitable the Worker would have become entitled before the repeal took place. It was not factually certain the Worker would have turned 65 at the time the Section was repealed.

The Review Commissioner found that the Worker turning 65 was not a mere formality because the intent of the provision was to provide a worker a benefit upon turning 65, when earnings loss entitlement ceased. He stated "the worker turning age 65 is the reason this provision exists" and that condition had to be fulfilled prior any entitlement under either version of the section. As he found there was no vested right to a PRB, so the presumption against interference with vested rights was not engaged. He explained that his 'review' jurisdiction only allowed him to overturn decisions based on non-compliance with the **Act**, he could not overturn the decision based on an argument that the repeal of the Section was unfair from a public policy point of view. Accordingly, WorkplaceNL's decision was upheld and the Worker found entitled to the lump-sum Retirement Benefit. **(Hickey)**

DECISION 2022007 (Worker Application), Denied
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Compensable Injury – Arising Out of and In the Course of Employment – Arising Out of – Cause and Effect Relationship ss.43(1), 60(1)

Compensable Injury – Exclusions – Stress ss.2(1)(o), 92.6, Policy EN-18

Compensable Injury – Scope of the Act – Industry in the Province – Extraprovincial Employment ss. 38

Proof of Claim – Standard of Proof – Balance of Probabilities – 'Balanced Analysis' – Duty to Investigate ss.60(1)

Proof of Claim – Standard of Proof – Balance of Probabilities – Probability Versus

Possibility ss.60(1), Policy EN-20

Proof of Claim – Weighing Evidence – Medical Evidence – Correctness of Facts Relied Upon ss.60(1), Policy EN-20

A worker presented a claim for post-traumatic stress disorder (PTSD) in 2019, relating stress symptoms to Newfoundland and Labrador employment as a paramedic between 2013 and 2014. The employment events were not identified and when WorkplaceNL investigated the claim, the Worker refused to disclose the events, advising the Employer would have records of them. WorkplaceNL discovered the Worker did not disclose the events to the Employer, did not seek medical treatment, and did not file a claim with WorkplaceNL at the time. The Worker first filed a claim in another Province, identifying the injury date as 2016, at which time the Worker was also employed as a paramedic in that jurisdiction. That claim was denied because it was found to be based on stress from labour relations issues which occurred in the first half of 2016. Four months after that claim was denied, the Worker filed a claim in Newfoundland and Labrador claiming the stress reaction in 2016 was a delayed onset of PTSD caused by responding to calls in Newfoundland and Labrador employment.

WorkplaceNL denied the claim, finding there was no evidence provided of any events which would be considered objectively traumatic and it was impossible to obtain evidence from the Employer or a medical professional because the Worker had made no reports to either. The Intake Adjudicator found the Worker had since obtained a PTSD diagnosis from the treating physician and psychiatrist, but neither identified the traumatic events in Newfoundland beyond a general reference to the Worker reporting having responded to calls involving death and injury. WorkplaceNL also found the Worker had provided a more specific report of responding to a suicide call in the course of the out-of-Province employment during 2016, which could be traumatic, but it was not in the course of the Newfoundland and Labrador employment.

The Worker sought Internal Review, maintaining that there were “many priority 3 or 4 calls involving loss of life” in Newfoundland, but no such events out of Province. The Worker also expressed reluctance to discuss the events for medical reasons. The Internal Review Specialist denied the claim, identifying that the Worker had responded to a potentially traumatic event out of Province in 2016, which is when medical treatment began, and had not disclosed any traumatic events in Newfoundland. The Worker proceeded to the Review Division.

Decision: The review was denied. The Chief Review Commissioner found the decision complied with the **Act** and the Policy. WorkplaceNL made no error in denying the claim as the existing claim evidence did not support a finding the Worker’s stress was delayed-onset PTSD due to a traumatic

event in Newfoundland and Labrador employment in 2013-2014, as the evidence did not identify any traumatic events having occurred in this Province.

The Chief Review Commissioner also found WorkplaceNL was also not in error for failing to investigate the claim further. The Chief Review Commissioner found WorkplaceNL attempted to investigate the claim, and obtained relevant medical information from the Worker's health care providers. However, the Worker did not identify the traumatic events and the Employer also could not identify the events without further information, which the Worker had not provided. As it was the Worker who possessed the knowledge about the traumatic events, the Worker was required to disclose them to WorkplaceNL before the claim could be evaluated. The evidence that was obtained by WorkplaceNL supported a finding the traumatic event occurred in Ontario.

Further, the evidence did not otherwise suggest the Worker's diagnosis was a result of the employment in Newfoundland and Labrador, as the Worker first made a claim in another Province, twice identifying the date of injury as '2016' (two years after the Newfoundland employment). The Worker's initial mental health diagnoses also did not include PTSD, and at the time the Worker first sought medical treatment, the Worker was also experiencing the effects of other non-traumatic stressors.

The Chief Review Commissioner also commented on the Worker's disclosure during the hearing that the earlier account of a 2016 suicide call in the Ontario employment was fabricated. She found this would have been unknown to the Worker's treating Physicians and also unknown to WorkplaceNL at the time of the Internal Review decision. While revelation of new information can be grounds to remit the matter back to WorkplaceNL for a new decision on the basis it could potentially shed new light on a worker's claim, the Chief Review Commissioner found that was not the case on this claim. The absence of evidence of a traumatic event in the Ontario employment did not necessarily lead to the conclusion the worker was traumatized in the course of the Newfoundland and Labrador employment, because the Worker presented no evidence of a traumatic event in that employment. Further, the medical evidence suggested other potential causes for the Worker's mental health problems.

The Chief Review Commissioner also expressed concerns about the reliability of, and the weight that could be placed on, the Worker's reporting as a result of the disclosure in the hearing. She also noted this disclosure could reduce the weight that could be given to the medical opinions in the claim file to the extent these opinions were influenced by the Worker's reporting to those Physicians. She concluded the disclosure during the hearing was not new evidence which could potentially help the Worker's claim and it was not necessary to remit the matter to WorkplaceNL for a new decision.

(Hollett)

DECISION 2022033 (Employer Application), Denied**Cost Relief – Second Injury Relief – Injury During Rehabilitation Program – Worksite Occupational Rehabilitation** ss.19(1), 60(1), 116, Policy ES-11, Policy HC-12

A worker was injured in the course of employment. The Worker was found to have restrictions but was considered capable of performing modified duties. The Case Manager referred the Worker to Worksite Occupation Rehabilitation (WSOR) to facilitate the return to work process. The Worker performed modified duties for two months, with periodic monitoring by the service provider. The Worker then sustained a second work injury in the course of employment, as a result of a fall. The Worker's employment was modified further. The Employer then advised it could no longer provide modified duties to the employee. The Worker's second claim was accepted, but the Employer argued that it should qualify for second injury cost relief on the basis the Worker was participating in a rehabilitation program when the second injury took place. WorkplaceNL found that WSOR was not a rehabilitation program as the Worker was performing regular job duties when injured. The Employer objected, submitting that WSOR was a type of rehabilitation program recognized by Policy HC-12, and was therefore a "rehabilitation program" for the purposes of ss.116 of the **Act**. The Employer's Internal Review was denied.

Decision: The Employer's review was denied. The Review Commissioner found that the Worker was both participating in a rehabilitation program and injured 'in the course of' employment by an employment hazard. She explained that where a worker is injured by a hazard in the course of employment, the normal principles in ss.43(1) and Policy EN-19 apply to the claim, and the costs would be appropriately associated with an employer's account in the ordinary fashion. The Review Commissioner found that while the Worker's progress was being monitored, the program introduced no hazard or risk not inherently present in the employment, and therefore resulted in no additional claims costs which otherwise would not be assignable to the Employer. She explained that while the claim had elements that satisfied ss.43 and Policy EN-19 on the one hand, and s.116 and Policy ES-11 on the other hand, the contradictory results produced by those provisions had to be resolved by considering the intent of the **Act**, the relationship between those provisions and the rest of the **Act**, as well as the practical consequences of the competing interpretations. She found the Second Injury Relief provisions were intended to provide relief when the extent of a worker's injury is magnified by a risk or hazard outside the employment setting, and over which the employer has no control. As the second injury in this case arose out of employment duties with the same employer, it was not the intent of the **Act** that second injury relief would be available. **(Dunford)**

DECISION 2022051 (Worker Application), Remitted

Permanent Functional Impairment – Assessment – Maximum Medical Improvement
ss.2(1)(o), 73(1)(b), Policy EN-01

Permanent Functional Impairment – Estimation After Death ss.2(1)(o), 19(4), 60, 69, 73(1)(b),
Policy EN-01, Policy EN-20

The Worker fell at work in 2016, striking the neck and suffering a laceration. The claim was accepted as a cervical injury. The Worker was later found to have had a left shoulder injury and cervical vertigo. The Worker was referred for a Functional Assessment, which confirmed the Worker had reached maximum medical improvement (MMI). The Worker inquired about a Permanent Functional Impairment (PFI) assessment, which WorkplaceNL approved in principle. In the meantime, the Worker elected to have neck surgery which was unlikely to promote function, but offered the possibility of symptom relief. The Worker died following the surgery and had not fully recovered from the effects of the surgery. The Worker's spouse maintained the Worker's request for a PFI award after the Worker's death, relying on the provision of Policy EN-01 which permitted WorkplaceNL to estimate a PFI "unrated" prior to death. WorkplaceNL denied the request on the basis that the Worker was not at MMI at the time of death because the Worker was still within the 1 year period allotted for recovery under the Guides. It also submitted that the PFI could not be 'estimated' from the claim evidence available. An Internal Review was denied.

Decision: The review was allowed on the PFI issue and the matter was remitted back to WorkplaceNL for a new decision. The Review Commissioner found WorkplaceNL fettered its discretion under Policy EN-01 by maintaining it could not estimate the Worker's physical PFI. She remarked that the Worker's MMI had been certified prior to the neck surgery, and there was other reliable functional testing performed on the Worker, including a Functional Assessment and a Clinic Based Occupational Rehabilitation (CBOR) assessment. The Worker had also been examined by specialists who commented on the Worker's condition. She found the case was unique in that the Worker's MMI had been confirmed at a time in the claim when there was ample functional evidence which may have addressed the criteria in the relevant rating schedule. She accepted that a worker would need to be at maximum medical improvement to qualify for a PFI, but the purpose of that requirement was to verify the Worker's 'permanent' condition before conducting the assessment. She found, in this case, the subsequent surgery was not performed to enhance function and was unlikely to do so. As the Worker had subsequently died, it was unlikely that the Worker's maximum medical improvement was anything other than as it had been at the time of the Functional Assessment. She rejected WorkplaceNL's argument that an impairment had to be 'measured' before it could be estimated because the two concepts were mutually exclusive under Policy EN-01 and if the impairment had already been measured, there would be no need to 'estimate' the impairment. She remitted the issue back to WorkplaceNL for a new decision on whether the impairment could be estimated from the claim evidence available. **(O'Reilly)**

2021-22 Caseload Activity

The following highlights WHSCRD's caseload activity for 2021-22. For statistical tables and additional caseload information refer to the Statistical Overview section on page 16.

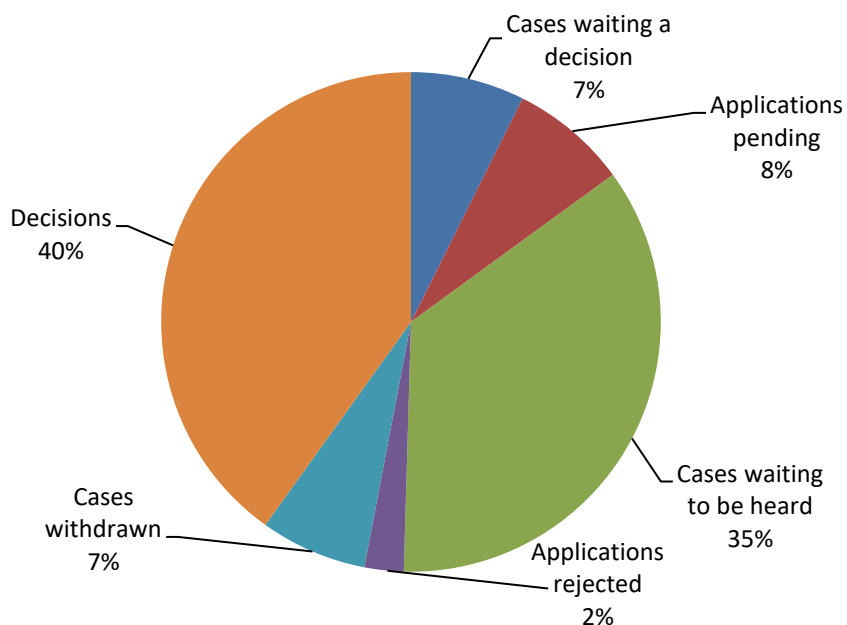
- WHSCRD's overall annual caseload consisted of 426 cases (Table 1-page 16).
- There were 245 new Requests for Review filed in 2021-22. The majority of these cases, 72 per cent, were filed within the Avalon region (Table 2-page 17).
- Workers and their dependents filed 218 Requests for Review representing 91 per cent of the applications filed in 2021-22. Employers filed 27 Request for Review applications, or 11 per cent (Table 3-page 17).
- There were 173 hearings conducted this fiscal year. The majority of hearings (67 per cent) were for applicants in the Avalon region (Table 4-page 17).
- Of the 166 decisions rendered, Review Commissioners found 64 per cent of WorkplaceNL's decisions were compliant with the **Act**; 36 per cent of decisions were either not consistent with the **Act**, the **Regulations** and policies of WorkplaceNL and were allowed, or were referred back to WorkplaceNL for further review or investigation. Review Commissioners also issued eight reconsiderations this fiscal year for a total of 174 decisions (Table 5-page 17).
- Workers participated in 92 per cent of the cases under review based on 166 decisions rendered (Table 6-page 18). Approximately 33 per cent of workers were self-represented and 67 per cent utilized outside representation (Table 7-page 18).
- Employers participated in 25 per cent of the cases under review based on 166 decisions rendered (Table 6-page 18). Approximately 32 per cent of employers were self-represented, and 68 per cent utilized outside representation (Table 8-page 18).
- Hearing types related to the 166 decisions rendered are as follows: 25 in-person, 120 by teleconference, 13 by videoconference, and eight documents only. A portion of these hearings employed more than one method of hearing delivery, e.g. some participants participated in-person while others participated via teleconference at the same hearing (Table 9-page 18).
- The top three issues under review were: Claim Denied, Extended Earnings Loss benefits, and Objections to a worker's Claim (Table 10-page 19).

2021-22 Statistical Overview

Table 1 - Annual Caseload

Caseload Breakdown	2021-22
Appeals Carried Forward April 1st	181
New Applications (plus 8 reconsideration applications)	253
Annual Caseload	434
Less Finalized/Closed Cases:	
Decisions Rendered (plus 8 reconsideration applications)	174
Cases Withdrawn	30
Applications Rejected/Dismissed	11
Caseload March 31st	219
March 31st Caseload Consists of:	
Active Cases:	186
(cases waiting to be heard)	154
(cases heard and awaiting a decision)	32
(reconsideration decisions pending)	0
Inactive Cases: (applications pending + awaiting exhaustion)	33

Figure 1 – Per cent of Annual Caseload by Disposition



* Due to rounding, the total percentages may not equal 100 per cent.

Statistical Overview continued

Note: Due to rounding, the total percentages may not equal 100 per cent.

Table 2 - Requests for Review by Region

Year	Avalon		Gander		Grand Falls-Windsor		Corner Brook		Labrador		Total
	#	%	#	%	#	%	#	%	#	%	
2021-22	177	72	23	9	15	6	27	11	3	1	245

Table 3 - Requests for Review by Claimant

Year	Worker		Employer		Dependent		Total
	#	%	#	%	#	%	
2021-22	214	87	27	11	4	2	245

Table 4 - Hearings by Region

Year	Avalon		Gander		Grand Falls-Windsor		Corner Brook		Labrador		Total
	#	%	#	%	#	%	#	%	#	%	
2021-22	116	67	16	9	20	12	18	10	3	2	173

Table 5 - Decision Outcome

Year	Allowed and/or Allowed in Part		Denied		Referred Back to WorkplaceNL		Total	Reconsideration Decisions Issued
	#	%	#	%	#	%		
2021-22	37	22	106	64	23	14	166	8

Statistical Overview continued

Table 6 - Party Participation by Decisions Rendered - Note: More than one party may be involved in the review process; therefore, the number of parties may not correlate with the number of hearings held or decisions rendered.

Year	Total Decisions		Worker Participation		Employer Participation		WorkplaceNL Participation	
	#	%	#	%	#	%	#	%
2021-22	166*		152	92	41	25	88	53

*Representative of 173 applications for review.

Table 7 - Worker Participation and Representation

Year	Self		Representative		Total
	#	%	#	%	
2021-22	72	33	80	67	152

Table 8 - Employer Participation and Representation

Year	Self		Representative		Total
	#	%	#	%	
2021-22	13	32	28	68	41

Table 9 – Hearing Type by Decisions Rendered

Year	In-person	Teleconference	Videoconference	Documents Only
2021-22	25	120	13	8

Statistical Overview continued

Table 10 – Issues Reviewed by Decision

Issues	Outcome			
	Objections	Allowed	Denied	Referred Back to WorkplaceNL
Worker/Dependent Appeals				
Baie Verte Mines	3	0	3	0
Claim Denied	27	9	15	3
Compensation Denied	10	2	7	1
Compensation Rate	5	1	3	1
Dependency Benefits	7	0	7	0
Early & Safe Return to Work	4	1	2	1
Extended Earnings Loss Benefits	23	7	10	6
Health Care Services	12	5	6	1
Industrial Hearing Loss	9	1	6	2
Internal Review Denied	1	0	1	0
Overpayment	4	2	1	1
Pension Replacement Benefit	3	1	2	0
Permanent Functional Impairment	18	0	17	1
Proportionment	5	2	3	0
Re-employment Obligation	1	0	1	0
Recurrence	12	2	7	3
Reinstatement of Benefits	2	0	2	0
Reopening	10	5	5	0
Temporary Earnings Loss Benefits	2	1	0	1
Wage Loss Benefits	6	1	4	1
Totals	164	40 (24%)	102 (62%)	22 (13%)
Employer Appeals	Objections	Allowed	Denied	Referred to
Classification Reassessment	1	0	1	0
Cost Relief	1	0	1	0
Objection to a Worker's Claim	25	5	14	6
Re-employment Obligation	1	1	0	0
Second Injury Fund Relief	1	0	1	0
Totals	29	6 (21%)	17 (59%)	6 (21%)
OVERALL TOTALS	193	46 (24%)	119 (62%)	28 (15%)

Note: Review applications may raise more than one issue/decision for review; therefore, the above numbers may not correlate with the number of Review applications filed or Decisions rendered. Due to rounding the total percentages may not equal 100 per cent.

Financial Statement

Expenditures included in this document are unaudited and based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended March 31, 2022. WHSCRD is not required to provide a separate audited financial statement.

Statement of Expenditures and Related Revenue UNAUDITED For Fiscal Year Ending March 31, 2022

	2021-22		
	Actual \$	Amended \$	Original \$
Workplace Health, Safety and Compensation Review Division			
01. Salaries	1,030,352	1,198,700	1,198,700
Operating Accounts:			
Employee Benefits	3,757	16,700	16,700
Transportation and Communication	18,931	61,300	61,300
Supplies	11,133	16,100	16,100
Professional Services	2,399	75,100	75,100
Purchased Services	13,224	39,000	39,000
Property, Furnishings and Equipment	8,908	4,000	4,000
	<u>\$58,352</u>	<u>\$212,200</u>	<u>\$212,200</u>
02. Revenue - Provincial	<u>(\$1,159,797)</u>	<u>(\$1,410,900)</u>	<u>(\$1,410,900)</u>
Total:	\$71,093	-	-

Source: Department of Finance (unaudited)

Active Review Commissioners 2021-22

Suzanne Hollett, Chief Review Commissioner (Appointed December 2021)

Suzanne Hollett graduated from the University of New Brunswick with a Bachelor of Laws in 2003. Having worked as both a lawyer and an analyst responsible for legislation pertaining to protection of privacy, access to information and personal health information, she has a broad range of experience in legal analysis, interpretation and dispute resolution.

Shane Hickey, Review Commissioner (Appointed January 2019)

Shane Hickey graduated from the Dalhousie Faculty of Law in 2011 and was called to the bar in 2012. He has extensive experience in administrative decision making at the adjudication level as well as the review and appeals levels. Most recently, Mr. Hickey was employed as the Director of Employment Standards and Residential Tenancies in the Yukon.

Heather Dunford, Review Commissioner (Appointed March 2019)

Heather Dunford graduated from Dalhousie University with a Bachelor of Science in Occupational Therapy in 1999. She has worked in both the private and public sector and has extensive experience in all areas of occupational rehabilitation including: functional capacity evaluation, adjudication assessment, clinic based rehabilitation, return to work consultation and disability case management.

Janet O'Reilly, Review Commissioner (Appointed August 2021)

Janet O'Reilly obtained her LL.B. from Dalhousie University in 1999 and was called to the Bar of Newfoundland and Labrador in 2000. Since that time Ms. O'Reilly has practiced law with Patterson Palmer; clerked at the Court of Appeal; worked as a Corporate Examiner with Johnson Insurance; and most recently, was an Access and Privacy Analyst with the Office of the Information and Privacy Commissioner. Ms. O'Reilly is also a director and actor in the local theatre community.

Contact Information

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