



Workers' Advisor Office

Northwest Territories and Nunavut

2020

ANNUAL REPORT

Prepared for:

**Minister Responsible for the Workers' Safety and
Compensation Commission (NT)**

The Honourable Shane Thompson

**Minister Responsible for the Workers' Safety and
Compensation Commission (NU)**

The Honourable George Hickes

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Maia Lepage, January 2021

Workers' Advisor Office Northwest Territories and Nunavut

ANNUAL REPORT

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A Message from the Workers' Advisor

I am pleased to introduce the 2020 Annual Report for the Workers' Advisor Office of the Northwest Territories and Nunavut (WAO).

This year has been a year full of challenges, but I am proud of the work we were able to accomplish in such uncertain times.

We look forward to assisting more workers in their recovery in 2021.



Maia Lepage
Workers' Advisor



1. Purpose of the Workers' Advisor Office

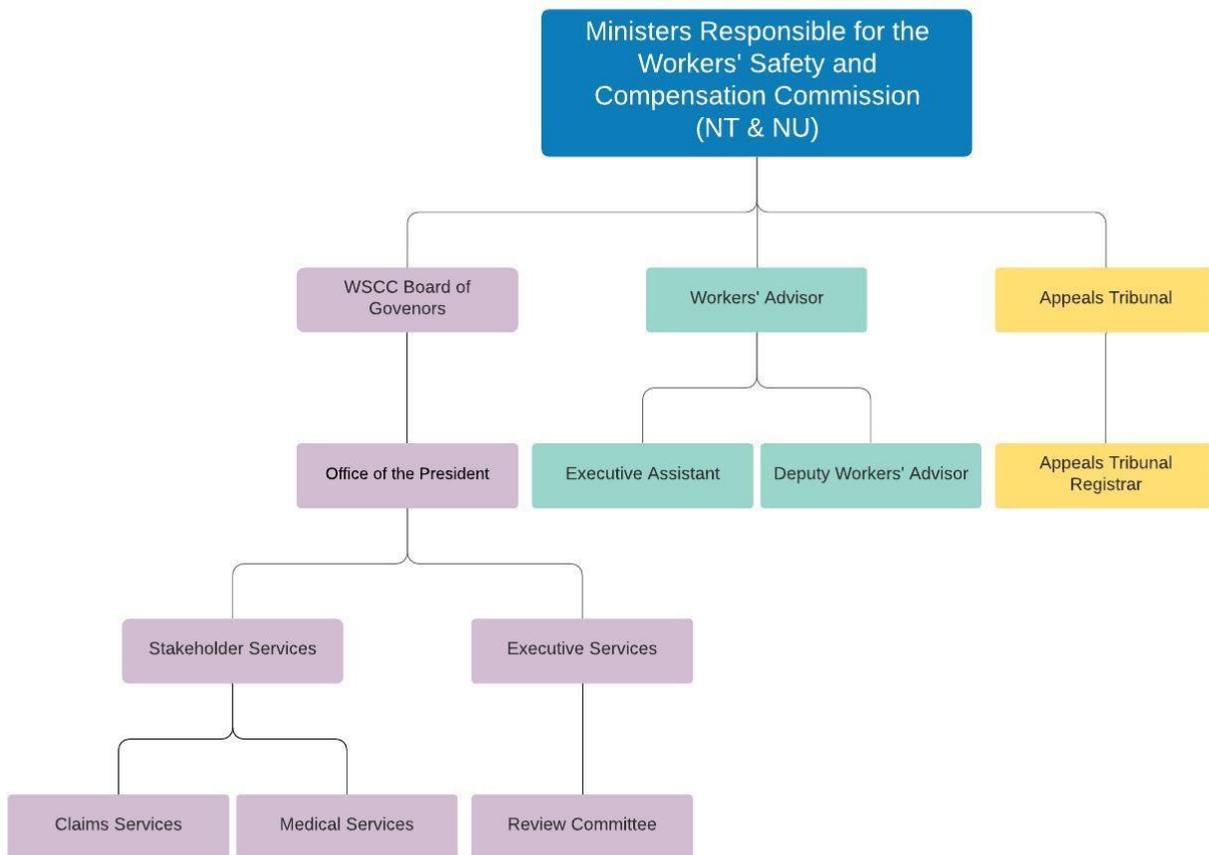
1.1 Who We Are

The Workers Advisor Office of the Northwest Territories and Nunavut was established through legislation to assist workers and others to understand the Workers' Compensation Act and to make claims for compensation.

The office is established under Section 107 of the Workers' Compensation Act in both territories and is designed to be independent from the Workers' Safety and Compensation Commission (WSCC) and the public service. The Ministers Responsible for the Workers' Safety and Compensation Commission appoint the Workers' Advisor, Deputy Advisor and staff. The Workers' Advisor reports directly to the Ministers Responsible for the Workers' Safety and Compensation Commission on a quarterly basis.

To ensure the independence of the WAO, the legislation stipulates that funding for the Workers' Advisor Office be paid from the Workers' Protection Fund.

The WAO for the Northwest Territories and Nunavut is the only Workers' Advisor office in Canada to span two jurisdictions.



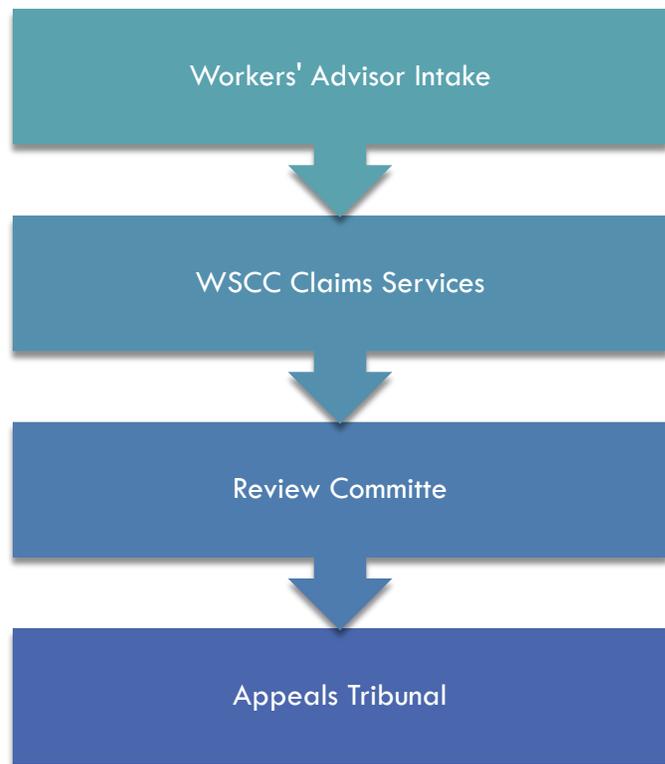
* Although there are more services within WSCC, only the divisions that the Workers' Advisor Office regularly work with are listed.

1.2 What We Do

The Workers' Advisor Office (WAO) provides a range of supports and assistance to workers injured in the Northwest Territories or Nunavut.

These services include:

- Obtaining information from the WSCC on their behalf;
- Helping clients communicate with the WSCC;
- Explaining the WSCC process and decisions;
- Reviewing file evidence, and assisting the worker to obtain further evidence that may be necessary to support their case;
- Assisting workers to prepare and present submissions to all WSCC decision-making levels;
- Referring clients to other community services; and
- Providing stakeholder feedback to WSCC regarding policy and legislation changes



A worker's first contact with the WAO may take place at any stage of their WSCC process.

After discussing the worker's concerns, the WAO usually begins by obtaining and reviewing the worker's WSCC file. It is then possible for the WAO to advise the client of the options available to them.

The WAO aims to resolve issues at the Claims Services level, but in the circumstance where that is not possible, the WAO would also help prepare and represent the worker at the various decision-making authorities within the WSCC system.

The WAO may decline to further assist a client if it is clear there are no grounds on which to further their case. This may be the result of lack of objective medical evidence or a lack of statutory entitlement. In all cases, the WAO does a thorough review of a workers' file and assist as much as we can before declining further assistance.

“You are a godsend to injured workers in helping them get through the very stressful processes of the WSCC. You know the WSCC legislation and policies very well. I appreciate the help I have received so far and the most detailed explanations given to me when I have questions.” – Anonymous (Taken from the WAO Exit Survey Results)

2. Workers' Advisor Summary 2020

2.1 Workers' Advisor Office Summary

General Overview:

Similar to many offices in the NWT, the Office of the Workers' Advisor (WAO) has been closed to the public since March 19, 2020 but has continued to provide services through phone and email.

Workers also saw a pause on services and treatments due to Covid-19, which provided the WAO an opportunity to focus on training. We completed a Psychological First Aid course, administered online by John Hopkins University and found this course highly beneficial and relevant to the work that we do on a regular basis. The effects of trauma manifest in many ways in the workers that contact our office and having a better understanding of the signs and how to respond to them will definitely be an asset.

In March, we were also able to complete a Policy Manual for the WAO. This will be the guiding document for providing cohesive services between the Workers' Advisor Office in Yellowknife and the Deputy Workers' Advisor Office in Cambridge Bay. It will be a living document so that we can adapt to the times, and will be a guide for our work moving forward.

In June, we noticed a trend developing with files we were reviewing. In cases where there were conflicting medical opinions, there was often no indication if the steps to resolve the conflict (which are outlined in policy 04.13) were followed. After a very productive meeting with Vice President Kelly Arychuk and Medical Advisor Dr. Maidment, we feel that WSCC has been very responsive to our concerns and have made changes to appropriately address the concerns raised. We are satisfied with the results currently and are optimistic that these actions will be better documented moving forward.

In September, we were notified by a worker that their emails were regularly rejected by the WSCC server. After working with their Case Manager to find the root of the problem, we were informed that there is a foul language filter on the WSCC server, which rejects all emails that contain profanity. Once rejected, the filter does not necessarily notify the sender or the recipient that this has happened. Steps were taken by WSCC to mediate the issue and processes were adjusted so that the rejected emails are sent for review, but the filter remains. We have remaining concerns around this censorship and will continue to advocate for the removal of any filter that would divert workers emails from their case manager.

Also in September, the WAO provided feedback for the WSCC's Pension Proposal Discussion Paper. While we do commend WSCC for being proactive and working at updating their pension policies, we do not agree with the proposal as it stands. We feel that the changes are drastic and are not to the workers benefit. We are committed to continuing discussions on this proposal and look forward to an agreeable outcome.

While we do have areas where we disagree, the relationship between the WAO and the WSCC has continued to be positive and productive. In 2020, we have noticed a shift with the workers relationship with WSCC as well. Compared with last year's statistics, there have been fewer accounts from workers regarding unreturned phone calls or emails by their case manager (29 workers identified that WSCC was unresponsive to their communication in 2019 vs. 8 in 2020). We found this trend to be very encouraging.

Overall, we are pleased with the forward momentum that was maintained throughout 2020 and are confident for a better 2021.

2.2 Recommendations

A) Recommendations for WSCC:

1. **Emergency Financial Support for Workers' Encountering Delays in the Review Process**

Select reviews with the Review Committee are currently on hold due to Covid related reasons (i.e.: sparse availability of doctors to perform Independent Medical Exams) and/or due to issues with maintaining staff at the Review Committee. This has caused added undue hardships on workers who have been suspended or terminated from WSCC benefits and are in the review process. The process is supposed to take 60 business days, but in one case, a worker's review regarding termination of their benefits has been ongoing since August 2019 (currently at 352 business days). In addition, workers who have been in the WSCC system and not working for any prolonged period have very limited options for wage replacement. They do not meet the eligibility criteria for EI, because workers need to meet a set amount of hours of insurable employment to be eligible and WSCC benefits do not qualify as insurable employment. This further demonstrates a gap in services, especially when the delay in a Review Decision is by no fault of the worker. Consideration should be given to review policies around prolonged deferrals and amendments be put in place in regards to discretionary aid available to workers who are unjustly affected by these delays.

2. **Review Committee Staffing**

The Review Committee is the first level of the Review and Appeal Process, and an essential step in the resolution of issues. Anyone who disagrees with a WSCC decision can only escalate an issue to the Appeals Tribunal once a decision has been rendered by the Review Committee. Staffing has seemingly been an ongoing issue for the Review Committee in 2020 and moving into 2021. A better focus on succession training should be a priority and attempts should be made to have at least one member, or alternate member, hired from outside of WSCC claim services so that issues concerning conflicts of interest can be managed in a timely manner. Proper Administrative Law training should be a prerequisite prior to committee members working on files.

3. **Psychiatric and Psychological Disorders**

Psychiatric and Psychological Disorders represent a large majority of the cases that end up in the WAO. Mental Health needs to be treated differently than a broken bone. We believe that Policy 03.09: Psychiatric and Psychological Disorders should be reviewed and the following taken into consideration:

- a. Workers' and Employers Report of Incident should be revised to better incorporate Psychiatric and Psychological Disorders. We have heard many concerns from workers regarding First Report of Injury forms not being inclusive of their mental health injuries.
- b. Post-Traumatic Stress Disorder (PTSD) should be presumed as part of a claim involving traumatic events. A DSM-5 diagnosis relating to the work trauma should be sufficient for acceptance of a claim if the employer is not contesting the injury.
- c. Many workers' claims for harassment are denied because the policy places the onus on the worker to prove harassment. For most suffering from diagnosed psychiatric/psychological disorders, this approach poses a giant obstacle, as often, an employer will not hold themselves liable. Although the policy is discretionary in regards to external investigations, alternatives like complaints to the Human Rights Commission or Union Grievances have long wait times for a final decision (2+ years). This policy should be revisited and reasonable alternatives considered to help process legitimate claims so workers are able to access supports sooner.
- d. According to this policy, a worker is not entitled to compensation for disabilities that result from mental stress caused by the workers' relations with WSCC. The WAO feel that if there is a diagnoses confirming further injury was caused by the relations between a worker and

WSCC, then the worker should be entitled to compensation. This would be in line with other policies, such as 04.02: Medical Aid and Associated Costs, which allow for compensation in the event of further injuries resulting from treatment.

4. **Adjust TD Payments for Shift and Rotational Workers to be Consistent**

In Policy 03.07: Calculation of Temporary Compensation, it states that “Workers are entitled to compensation for those days they would normally receive remuneration in the course of their usual employment other than the day the personal injury or disease occurred.” While we agree with this principle, we disagree with how this principle is applied to Total Disability (TD) or Partial Disability (PD) payments for Shift and Rotational Workers.

Currently, WSCC will only compensate for the days the workers were scheduled to work, which means that their TD or PD payments change on a regular basis and this creates undue hardship on workers. We recommend that WSCC continue to compensate for days the workers would have normally worked, but do so following the payment schedule adopted by the employer so that payments are consistent and workers are better able to budget. Example: if a worker’s schedule was 2 weeks on, 2 weeks off, currently WSCC operates on a bi-monthly payment schedule. One pay period would receive significant compensation, while the second pay period would receive no compensation. We propose that WSCC alter the policies so the workers entitled compensation is able to be redistributed to be consistent between the two pay periods.

5. **CPP, EI and Tax deductions to Net Annual Remuneration Calculations**

As part of Net Annual Remuneration calculations, Canadian Pension Plan, Employment Insurance contributions, and estimated tax contributions are deducted from the worker’s Year’s Maximum Insurable Remuneration (YMIR). These deductions are being made, but WSCC does not contribute to these plans in the workers name, and further, the workers income from WSCC is not taxable.

In the FAQ section on the WSCC website the question is posed directly: “Does the WSCC deduct taxes from my WSCC compensation payments?” to which the response says, “No. You do not pay Income Tax, Canada Pension or Employment Insurance premiums on your compensation payments. The WSCC sends you a T5007 at tax time and you report your WSCC earnings on your income tax form.”

In Policy 03.07: Calculating Net Annual Remuneration, that response seems to get muddled.

The WSCC determines a worker’s Net Annual Remuneration by deducting the following from the worker’s Annual Remuneration:

- *the income tax payable by the worker for the year under the territorial and federal Income Tax Acts as calculated according to the Workers’ Compensation General Regulations;*
- *the contributions payable by the worker for the year under the Canada Pension Plan; and*
- *the premiums payable by the worker for the year under the Employment Insurance Act (Canada).*

If workers were not able to work during the time they were receiving benefits, they do not meet the eligibility criteria for programs like EI once they are no longer WSCC recipients. Contributions to their pension plans are also not being made and it is a concern for many workers. If WSCC is making these deductions, the deductions should go to the intended program, or the worker should retain that money so that they may make those contributions on their own.

We propose that WSCC reconsider these deductions.

6. **IT Email Filter**

Changes were made in September so that emails that contained profanity were redirected and reviewed by a supervisor. Prior, rejected emails were removed with no follow up and no indication to the intended recipient that this had happened. While Kelly Arychuk did very well in addressing the immediate concerns over the rejected emails so there is now follow up, we would still contend that any sort of censorship of workers' communication is not acceptable.

Profanity is often used to express frustration, and WSCC recipients are often frustrated. There are many reasons to swear and it is likely that the majority of the emails rejected for profanity had no malicious intent.

We recommend that any email filters that redirects workers' communication be reconsidered entirely, and problematic behaviour can be dealt with on a case by case basis.

7. **Investigations of Workers More Transparent**

While Policy 10.04: Preventing and Investigating Abuses and Offences does discuss investigations of workers, the policy is buried in the Finance section of the policy manual. The possibility of investigations and video surveillance should be discussed clearly with workers at the onset of their claim as many workers, especially those with already fragile mental states, are further traumatized by this perceived violation of their privacy. At present time, workers are not entitled to compensation to address any physiological traumas arising from their interactions with WSCC.

8. **Conclusions from Actions Should be Included as Part of Disclosure File**

For reasons unknown to the WAO, findings from WSCC investigations or summaries of third party actions are not contained in worker disclosure. In the spirit of transparency, conclusions from these actions should be included as part of a workers disclosure file.

9. **Medical Escorts Advised of Liabilities**

In the event that a worker requires an escort for any purpose relating to any aspect of their WSCC claim, there should be an official agreement between WSCC, the worker and the escort outlining the responsibilities assumed and potential liabilities (such as coverage in the event of an accident) so that all parties are aware of any risks.

B) Recommendations for Workers' Advisor Office:

1. **Mental Health and Suicide Prevention Training**

The Workers' Advisor Office should continue to encourage staff training, specifically Mental Health and Suicide Prevention training, given the conversations the WAO have with clientele on a daily basis.

2. **CAWAA**

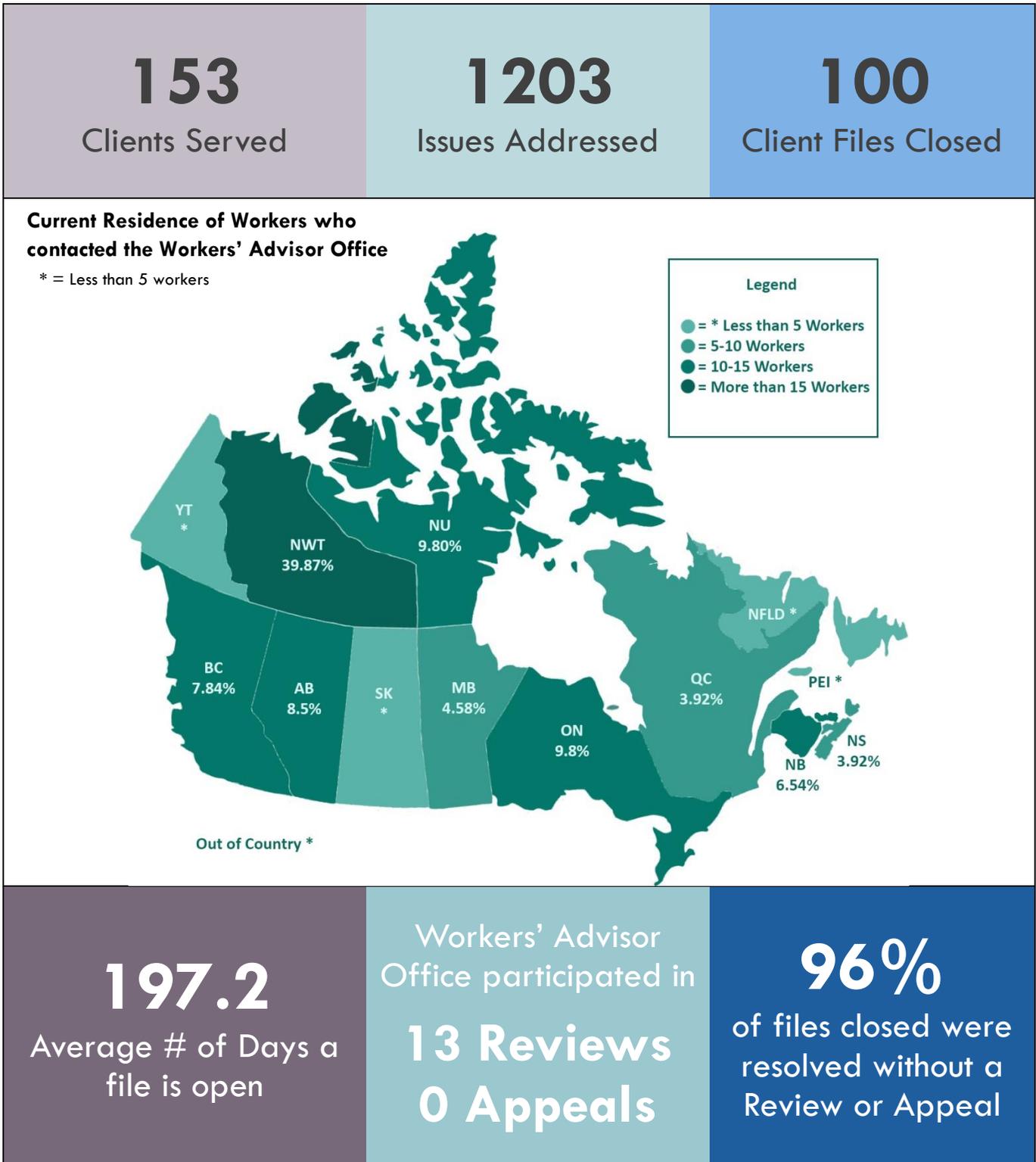
Given the ease of access to cross-jurisdictional information and input, the WAO should continue to take part in the Canadian Association of Workers Advisors and Advocates (CAWAA).

3. **Autonomy**

As directed in the Workers Compensation Act (S.107(b)), the WAO must remain independent from and not form a part of the Workers Safety and Compensation Commission.

3. Statistics and Demographics for 2020

3.1 2020 AT A GLANCE INFOGRAPHIC



3.2 Northwest Territories Demographics

<p>100</p> <p>WAO Cases originated in the NWT</p>	<p>61</p> <p>Clients retained their residence in the NWT</p>	<p>66</p> <p>NT Client Files Closed</p>
<p>34%</p> <p>Clients the NWT Self-Identified as Female*</p>	<p>Workers' Advisor Office participated in</p> <p>5 Reviews</p> <p>0 Appeals</p> <p>For files originating in NWT</p>	<p>66%</p> <p>Clients from the NWT Self-Identified as Male*</p>

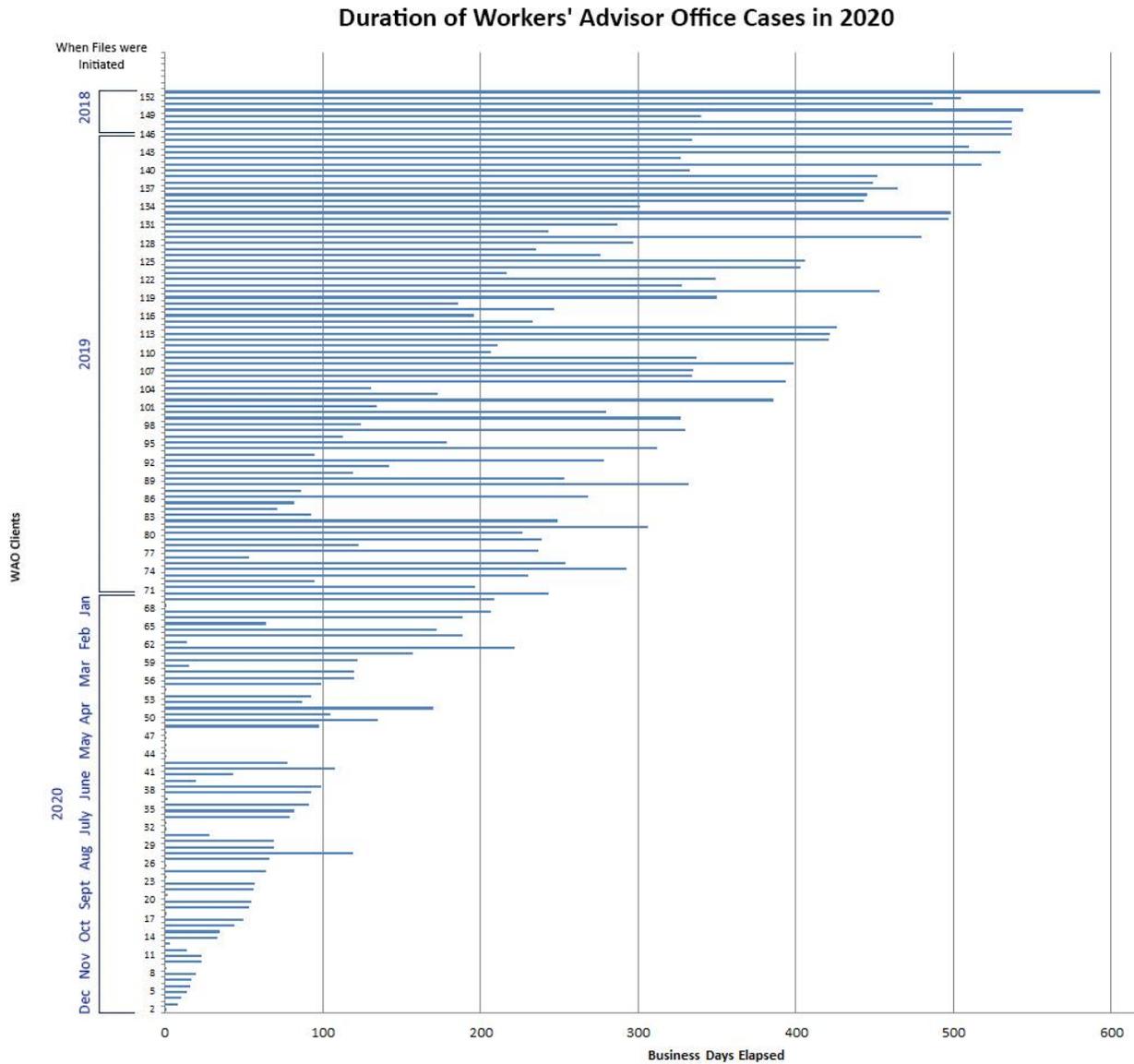
3.3 Nunavut Demographics

<p>53</p> <p>WAO Cases originated in Nunavut</p>	<p>15</p> <p>Clients retained their residence in Nunavut</p>	<p>34</p> <p>NU Client Files Closed</p>
<p>25%</p> <p>Clients from Nunavut Self-Identified as Female*</p>	<p>Workers' Advisor Office participated in</p> <p>8 Reviews</p> <p>0 Appeals</p> <p>For files originating in Nunavut</p>	<p>75%</p> <p>Clients from Nunavut Self-Identified as Male*</p>

*The Workers' Advisor Office uses data provided by clients for identifying gender. The Workers Advisor Office is gender inclusive and will use all gender identities in future reports as they are self-identified.

3.4 Case Management

A case is considered opened when a worker first contacts the WAO. The case remains open until issues are resolved, the worker indicates that they are no longer requiring the services of the WAO, or there has been no contact from a worker in several months. The chart below illustrates the cases that were active during 2020, with the column on the left indicating when they were first opened.



Cases were open an average of 197.2 days in 2020, but this is not necessarily indicative of complex matters. The WAO assists the worker to address their issue in the timeliest manner possible. While some issues are able to be resolved same day, such as explanation of a WSCC process, others may take several months and go through several phases. In some instances, the worker chooses to keep their file active and work with the WAO.

Every case is treated as unique.

Once a file is initiated, issues are identified through discussions with the worker and if needed, through an extensive file review conducted by the WAO. On average, there are seven issues identified per worker.

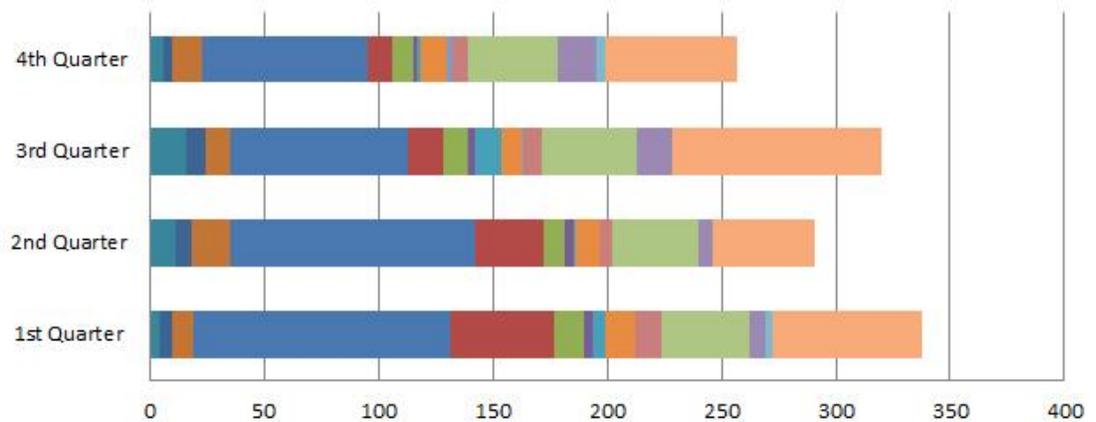
The three most common issues addressed in 2020 were Denial of Claim, Assistance with File, and Assistance with Reimbursements/Payments. These three categories account for 48.75% of the workload in the Workers' Advisor Office. This represents a 6.64% increase over last years' numbers for the same categories, which were also the top three issues addressed in 2019.

Issues Addressed	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Denial of a Claim	54	47	37	25	163
Acceptance of Dependent Claim	0	0	0	0	0
Assistance with File	39	42	53	53	187
Assistance: Addition to Claim	28	26	19	18	91
Assistance: Pension	34	22	29	15	100
Assistance: Reimbursements /Payments	59	52	69	58	238
Assistance: Return to Work	12	6	5	5	28
Assistance: Review/Appeal	30	24	16	16	86
Benefits Advance	0	0	0	0	0
Change in Disability % Level (PMI)	9	7	6	3	25
Explanation of WSCC processes	13	10	21	12	56
Increase in Benefits Amount	7	7	5	3	22
Medical Evidence	11	19	24	17	71
Medical Treatment Requested by Client	20	14	20	21	75
Suspension or Termination	12	12	10	8	42
Vocational Rehabilitation program	5	2	4	3	14
WSCC Not Responsive to Client	5	1	2	0	8
TOTAL ISSUES ADDRESSED	338	291	320	257	1206

Each stage of an issue is dependent on the collection of data from different sources such as decisions from WSCC, reports from doctors' offices or legal opinions from outside council. Each issue is unique and will require information specific to the worker.

The status of an issue may fluctuate on a daily basis but, for reporting purposes, these statuses are captured as a snapshot on the last day of each month. The stats are then grouped into quarters to give a picture of the progress in the WAO over the course of the year.

Status of Issues at End of Quarter



	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
■ Awaiting AT decision	0	0	0	0
■ Awaiting AT hearing	0	0	0	0
■ Awaiting CP assessment	0	0	0	0
■ Awaiting file from Client Services	4	11	16	6
■ Awaiting RC decision	6	7	8	4
■ Awaiting RC Hearing	9	17	11	13
■ Client to Provide Info	112	107	78	72
■ Client to Provide instruction	46	30	15	11
■ Health Care: Awaiting information	13	9	11	9
■ Other: Awaiting info	4	4	3	2
■ WAO: File Review	5	1	12	1
■ WAO: Investigation ongoing	13	11	9	12
■ WAO: Preparing AT submissions	0	0	1	2
■ WAO: Preparing RC submission	12	5	7	7
■ WSCC: Awaiting Decision	38	38	42	39
■ WSCC: Awaiting info	7	6	15	17
■ WSCC: Investigation ongoing	3	0	0	4
■ Resolved	66	45	92	58

Waiting on information or instructions from workers represents an average of 39.05% of issues statuses on a quarterly basis. This figure is also higher than 2019 by 5.3%.

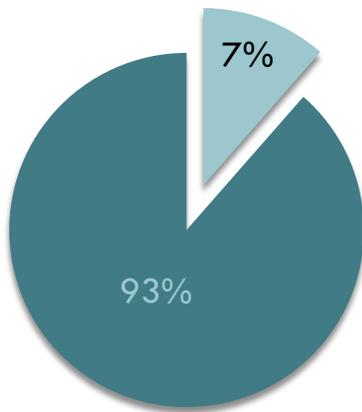
WSCC’s response time over the course of this year has shown dramatic improvement, due in large part to change in protocols and the monthly follow up by the Director of Claims Services.

Overall, the WAO is satisfied with how the majority of issues progress.

	Issues Addressed		Review Submissions		Appeals Submissions	
	Issues Actioned	Issues Resolved	Reviews Requests	Favorable Outcome	Appeals Requested	Favorable Outcome
Pending from 2019			5	4 (1 review still ongoing from August 2019)		
January	113	20				
February	126	29				
March	99	17	1	1		
April	92	17	1	0		
May	96	14				
June	103	14				
July	120	24	1	1		
August	106	38				
September	94	30	1	*		
October	90	24				
November	79	17	2	*		
December	88	17	2	*		
			*No decisions rendered as of Dec 31, 2020			

The WAO may make representations on behalf of a worker in support of their WSCC claim. This applies to submissions to Claims Services, the Review Committee or the Appeals Tribunal. In 2020, 96% of files resolved were able to be addressed without entering a formal review or appeals process.

3.5 Division of Cases between Workers' Advisor and Deputy Workers' Advisor



The Workers' Advisor and Deputy Workers' Advisor offices work closely together, but very few workers realize that position of Deputy Workers' Advisor is not a full time position.

The WAO have been collaborating on more cases since 2019 and having both Advisors' weigh in on complex issues have helped to ensure consistency in the office and provide a foundation for cohesiveness.

At the moment, although the division of labour is weighted to the Workers' Advisor, the division of cases between the offices is manageable.

■ Deputy Advisor ■ Workers Advisor