Workers' Advisor Office
Northwest Territories and Nunavut

2023 ANNUAL REPORT

Submitted to:

Minister Responsible for the Workers' Safety and Compensation Commission (NT)
The Honourable Vince McKay

Minister Responsible for the Workers' Safety and Compensation Commission (NU)
The Honourable Margaret Nakashuk

WSCC Governance Council

Prepared by:

Workers' Advisor for the NT/NU
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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 2023 Annual Report for the Workers' Advisor Office of the Northwest Territories and Nunavut (WAO).

While 2023 may have been our busiest year yet, full of obstacles and wildfires, but we are quite proud of what we were able to accomplish with so many of the workers. We look forward to a calmer 2024 and hopefully a new office and advisor in Iqaluit.

Maia Lepage
Workers' Advisor

1. Purpose of the Workers' Advisor Office

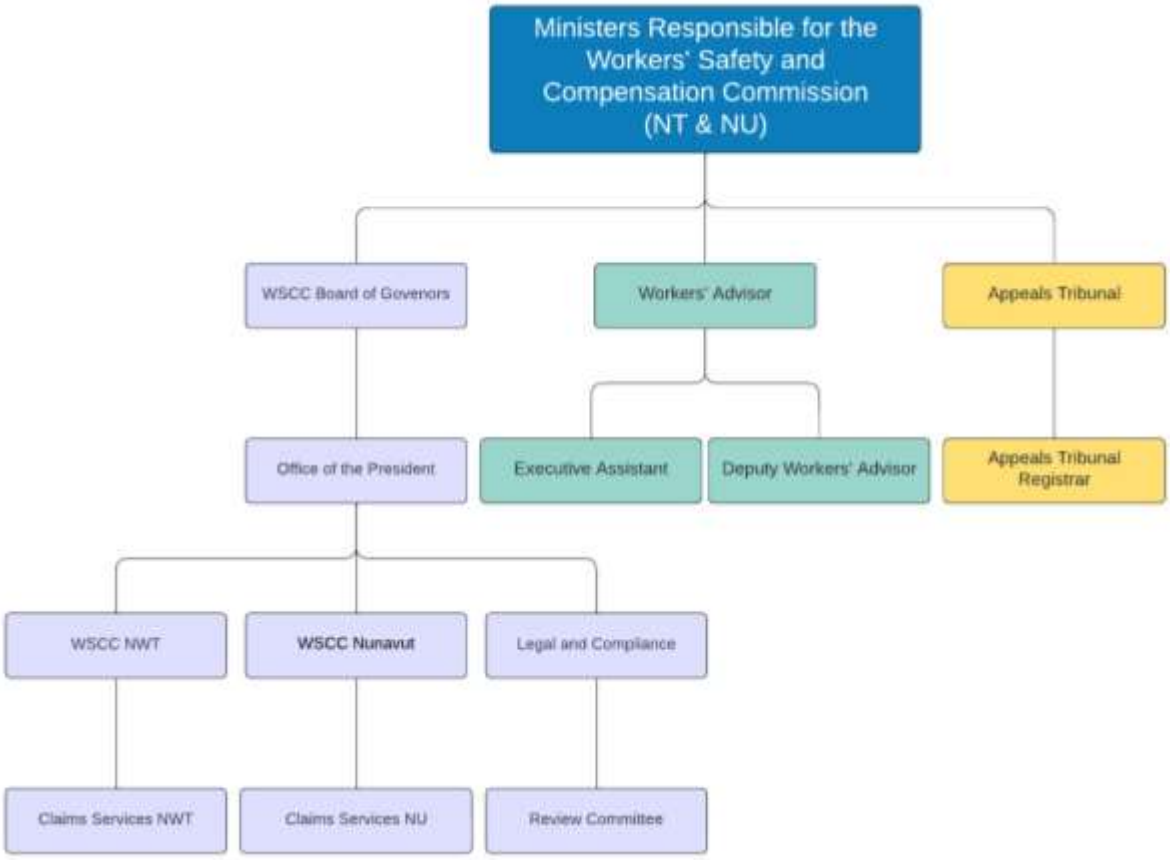
1.1 Who We Are

The Workers Advisor Office of the Northwest Territories and Nunavut (WAO) 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 works with are listed.

1.2 What We Do

The 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 assists as much as we can before withdrawing further assistance.

"This was definitely the detailed summary I needed to truly have a clear understanding of this entire situation. It has truly lifted my spirits quite a bit to have things begin to make more sense." – Worker Comment. Jan 2023

2. Workers' Advisor Summary 2023

2.1 Workers' Advisor Office Summary

General Overview:

Maintaining a trend that emerged in 2022, we have continued to experience a high volume of workers requesting assistance from the Workers' Advisor Office. Over the past three years, the increase in workers has been quite dramatic – increasing 49% since 2021 (155 individual workers accessed services in 2021, compared to 206 individual workers in 2022, and 231 individual workers in 2023).

Of the 231 workers that accessed services in 2023, 45% had never accessed services from the WAO in the past. Like our 2022 reporting, we believe this increase in new workers is reflective of our positive working relations with WSCC and their case managers increasing awareness of our office with their workers.

While our caseload is high, feedback from workers has remained predominantly positive.

Unfortunately, we have not been able to fill the position of the Deputy Workers' Advisor. We held two separate competitions without success, one in the spring and one in the fall. We currently have the posting open and are accepting applications until the position is filled.

The WAO hosted the Canadian Association of Workers' Advisors and Advocates (CAWAA) Annual General Meeting in Yellowknife, August 14th- 16th, 2023. We had seven jurisdictions represented in person, with other jurisdictions joining via live stream. The 3-day meeting was informative and productive.

Yellowknife was evacuated due to wildfire on August 16th, 2023. Thanks to our involvement in CAWAA, we did have offers from several jurisdictions willing to provide office space and accommodations for the WAO, and we temporarily relocated to Alberta. Luckily, we were able to stay operational during the evacuation, but were limited due to WSCC operations. We feel that given the magnitude of the wildfire situation, we did well during this time and were able to address worker concerns in a prompt and efficient manner. The WAO returned to Yellowknife and reopened our office on September 14th, 2023.

Overall, we are pleased with our accomplishments in 2023 and look forward to the new challenges that 2024 will bring.

2.2 Executive Summary of 2024 Recommendations:

1. WSCC should better support workers who are unable to return to work by continuing to pay them a livable wage.
2. WSCC should consider adjustments to the Retirement Transition Benefit so that all workers are better supported financially when they need to consider retirement due to their WSCC compensable injury.
3. Adjustments to the Workers Compensation Act, Section 40 (2): Extended Compensation should be considered to allow WSCC to extend a worker's compensation entitlement beyond the period of disability due to administrative delays beyond the workers' control.
4. WSCC should consider putting together a series of one-page info packages regarding common situations that arise for WSCC claimants.

2.3 Recommendations

A) Recommendations for WSCC from 2023 Report:

1. **Consistent Support for Workers Unable to Return to Work**

   Workers who are not able to return to any form of suitable work represent a small percentage of claims to the WSCC and these workers deserve to be fairly supported.

   According to the Manager of Policy and Legislative Review, once a worker's injury is viewed to be permanent, WSCC would no longer be obligated to provide any wage loss compensation. Workers would only be eligible for their WSCC pension entitlements, which are common recognized to not be a livable wage.

   The direction provided was that workers can apply to outside supports – like CPP disability, Income Assistance, etc. - to cobble together a livable wage.

   a. This is not acceptable.
   b. Discontinuing the wage loss benefits of workers who are unable to return to work because of acquiring a permanent work-related impairment violates the doctrines of the Meredith Principles, specifically the principle that compensation be paid as long as the disability/impairment lasts. The idea of a worker receiving a percentage of their earning power was objectionable even in 1913 when the Meredith Report was written (the report addresses this situation explicitly).
   c. Shifting the responsibility for financially supporting injured workers from the WSCC to public programs also seems to contradict the intention of the Workers' Compensation Act, which was to relieve the public from the burden of maintaining injured workers.

   Prior to January 16th, 2023, WSCC relied on the Term Pension policy, which then became the Transition Assistance Program policy, to determine fair wage loss compensation for workers who were unable to return to suitable employment. While there were still gaps identified in these policies, for the most part they provided security and financial stability for workers unable to return to work. It also provided clear direction to the case manager so it could be applied equitably.

   In October 2023, WSCC revised policy 06.03 Calculation of Permanent Impairment Compensation, and clarified provisions within Additional Compensation to include that WSCC may provide a worker with a 100% increase to their base pension amount if a worker is unable to return to employment (Example: A pension base rate of 15% PMI, could become 30% if a worker is unable to return to suitable employment). While providing an increase is reasonable, typically what these workers are receiving, even with an increase, would still represent a financial hardship and would not be a livable wage by any means.

   There is also a provision in policy 06.03 that states additional increases to the PMI rating may be considered in exceptional circumstances by the VP WSCC Northwest Territories, but this policy offers discretion and does not provide guidance regarding what would qualify as an exceptional circumstance. We feel the change in policy is creating an observable inequity, even in the short time since the change was made.

   A cross jurisdictional scan shows that other Canadian jurisdictions have specific supports in place to accommodate workers who are unable to return to suitable employment, many through an Economic Loss Payment, similar to what was proposed in the WSCC's discussion paper regarding changes to the pension system. These benefits are in place even for workers over 65 who can demonstrate that they would have continued employment had they not been injured.

Further consideration needs to be given to how WSCC will support their most vulnerable workers and ensure that there are provisions in place to ensure that the workers are not placed in undue financial hardship because of their inability to return to employment. Provisions for how these workers will be supported should be clearly articulated and be equitable for everyone accessing the support.

Consideration should be given to backdating any new accommodations for workers unable to return to employment to January 16, 2023, when the Transition Assistance Program was removed from policy. This would ensure that all workers currently subject to this policy gap would have access to appropriate supports.

2. Retirement Transition Benefit

The Retirement Transition benefit was introduced in January 2023, and we do not feel this policy is appropriately serving older workers. Further considerations should be made to better support workers that will need to consider retirement because of their WSCC compensable injury.

A worker nearing the age of 65 may be eligible for the Retirement Transition if the worker is:

- Eligible for vocational rehabilitation services; and
- The Vocational Exploration and VR Plan has determined that the duration of time to complete the plan, and secure a minimum of 2 years of suitable work, cannot reasonably be completed before the worker becomes eligible for an Old Age Security pension, or turns 65.

While in theory, this should support older workers, it only supports older workers who are able to return to some form of work. A gap remains for older workers who do not qualify for Vocational Rehabilitation (VR) but are being forced to retire because of their WSCC injury.

The goal of VR through WSCC is to assist workers to regain employability and/or become employed, so if it is unlikely that a worker will be employable, then WSCC will not proceed with offering a worker VR. Without qualifying for VR, older workers would not be eligible for the Retirement Transition benefit, and their file would be immediately transferred to the WSCC pension department, where they will receive a fraction of their previous income.

While younger workers may be eligible for Additional Compensation, WSCC has confirmed that there are no enhancements or other available wage loss supports for older workers past their pension.

Support should be in place so that older workers have time to transition into retirement if they had not previously expected to retire, which is seemingly the intention of the Retirement Transition benefit.

We feel that consideration should be made for this benefit to be made available to all workers who may not be able to return to work due, at least in part, to their workplace injury. We also feel that the Retirement Transition benefit should be moved to the Pension section of the WSCC policy manual so that it is no longer contingent on qualifying for VR to access this support.

3. Supporting Workers in Returning to Work with Their Pre-Injury Employers

Policy states that the WSCC makes every effort to work collaboratively with the employer, worker and treating health care provider to enable a worker's return to work with their pre-injury employer. In some circumstances, employers need additional time to determine whether they are able to accommodate workers. In policy 04.01 Payment of Compensation, WSCC will continue to pay wage loss compensation until:

a) A worker is able to return to work in accordance with Policy 04.14, Return to Work;
b) The WSCC determines that the worker is fit to safely return to suitable work; and/or

c) The worker has entered a WSCC approved Vocational Rehabilitation (VR) program, at which time they will be eligible to receive other compensation as outlined in Policy 05.01, Vocational Rehabilitation Eligibility and Policy 05.05, Vocational Rehabilitation Allowances and Grants.

When an employer delays a return to work, WSCC has been giving the worker a choice to either end their wage loss compensation based on the fact it was determined that the worker can return to suitable work, or, if the worker cannot afford to miss a paycheck, they can enter VR and begin applying for jobs elsewhere.

We feel that if as long as an employer is in the process of determining accommodations, WSCC should have an obligation to wait for a determination before asking the worker to put themselves in potential financial hardship or forfeit their position with their injury employer.

Adjustments to the Workers Compensation Act, Section 40 (2): Extended Compensation should be considered to allow WSCC to extend a worker's compensation entitlement beyond the period of disability due to administrative delays beyond the workers' control.

4. **Consideration of New Informational Materials for Workers**

There are common situations that arise with a WSCC claim that can cause significant confusion with workers, such as what steps a worker can expect with an acceptance of a claim, what a workers should expect with Medical Travel or what happens when a claim is being transferred from case management to pensions.

Many of the workers who access WAO services are looking for explanations regarding the WSCC processes.

Workers feel the WSCC Policy Manual and Workers' Handbook are daunting, and it is not always obvious where to find the information they need.

The Workers' Handbook and the Passport to Recovery gives a decent overview of a claim but is missing references back to policy or legislation. It also does not provide links to forms workers may need (i.e.: Workers' Report of Injury, travel expense form, Continuity form for reopening a claim, etc.).

We feel it would be helpful if WSCC considered putting together a series of one-page info packages regarding common situations that arise.

The info package could contain any forms or actions the worker would typically need to take, an outline of the typical timeline a worker could expect/ the process that the claim representative would have to follow, and direction on where to find the relevant policies.

If appropriate, these one-pagers could also provide info for the WAO if workers would like further assistance.

While these could be found online for any workers to access, the info packages would also act as a convenient resource for Case Managers to provide to workers to help them better understand the processes they are entering.

B) Recommendations for WSCC from 2022 Report:

5. **Consider a Formal WSCC Complaint Process**

Currently, there are no formal processes in place if a worker wishes to submit a complaint pertaining to their WSCC claim. While complaints will typically escalate to management level when workers are vocal about their grievances, other workers have voiced concern that there was no formal process, so

they felt they were not taken seriously. Some jurisdictions include information regarding the complaint process online so it is clear and easy to find steps a worker should take if they would like to raise concern with their worker's compensation board. We feel it would be beneficial for workers if WSCC could establish processes that are available online. These processes should outline the procedure of a complaint and an estimated timeline for when the workers should expect to receive a reply.

i. No update was received from WSCC regarding this recommendation.

C) Remaining Recommendations for WSCC from 2021 Report:

6. **Investigate the Feasibility of Having Dedicated Support Staff for Claims Dealing with Psychiatric or Psychological Disorders**

We felt this may also help relieve pressure from the case manager and allow for the worker to better understand their claim and feel better supported by WSCC.

i. While no update was received from WSCC regarding this recommendation specifically, policy 03.09 Psychiatric and Psychological Disorders was reviewed by the Governance Council in December 2022.

7. **Employer Advisor**

The establishment of an Employer Advisor Office for the NWT and Nunavut may be reasonable, and we recommend that WSCC explore the feasibility of such an office.

i. Update: The WAO did participate in stakeholder feedback regarding an Employer Advisor Office in April 2022. We did not receive follow-up regarding the outcomes of this engagement.

D) Remaining Recommendations for WSCC from 2019 Report:

8. **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) Post-Traumatic Stress Disorder (PTSD) should be presumed as part of a claim involving traumatic events.

b) This policy should be revisited, and reasonable alternatives considered to help process legitimate claims of harassment so workers are able to access supports sooner.

i. Update: While the majority of the initial recommendation has been addressed, these remaining bullets remain outstanding, and we have not received updates on whether further considerations were made.

E) Recommendations for Workers' Advisor Office:

9. **CAWAA Involvement**

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).

10. **Hire Deputy Workers' Advisor and Establish Iqaluit Office**

WAO will continue to look to fill the Deputy Workers' Advisor position. Once the new Deputy is in place, the WAO and Deputy will work together to establish a new office in Iqaluit.

3. Statistics and Demographics for 2023

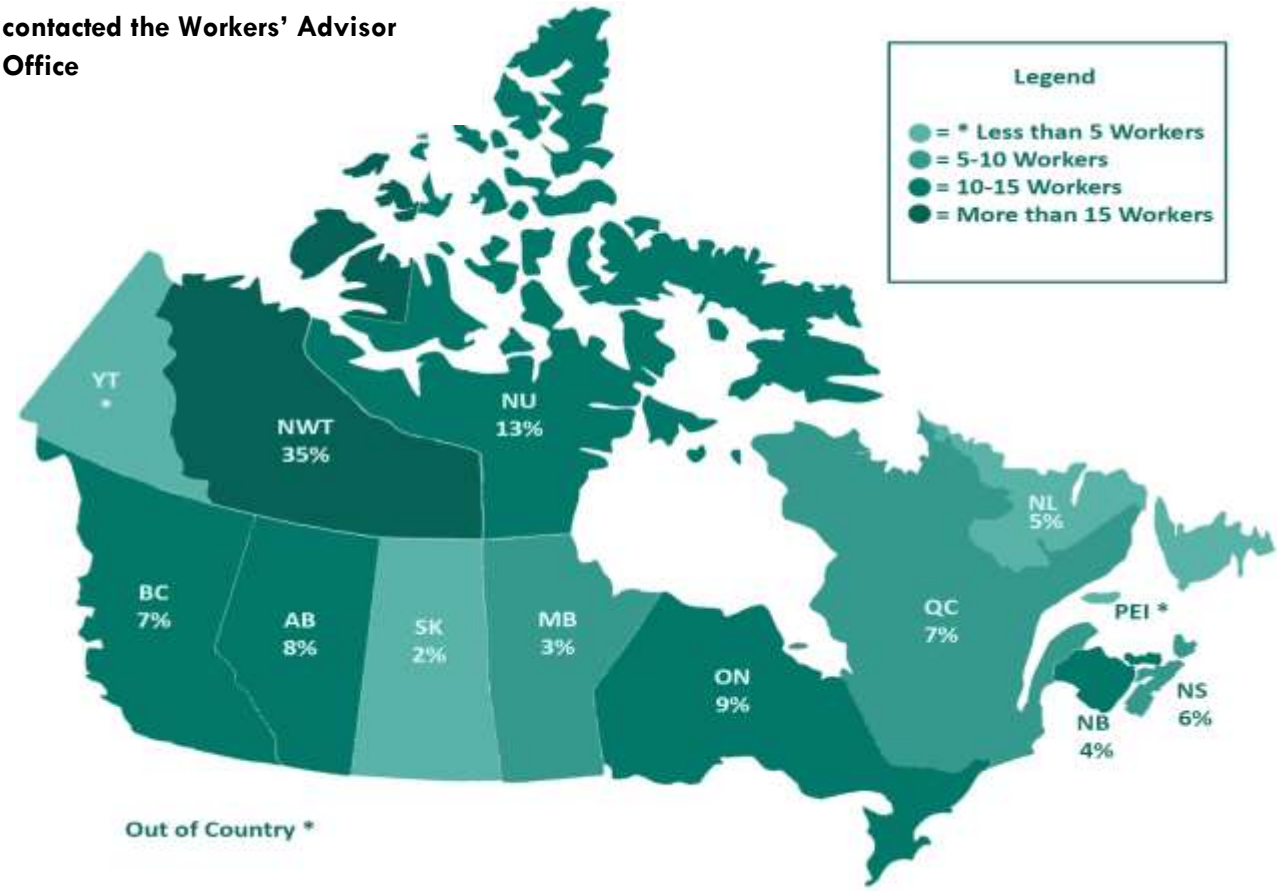
3.1 2023 AT A GLANCE INFOGRAPHIC

231
Workers Accessed WAO Services

1,589
Issues Addressed

162
Client Files Closed

Current Residence of Workers who contacted the Workers' Advisor Office



171.76
Average # of Days a file is open

Workers' Advisor Office participated in

17 Reviews
2 Appeals

92.7%
of files closed were addressed without the need for a Review or Appeal

3.2 Northwest Territories Demographics

122 WAO Cases originated in the NWT	**80** Clients retained their residence in the NWT	**73** NT Client Files Closed
28.7% Clients from the NWT Self-Identified as Female*	Workers' Advisor Office participated in 11 Reviews 1 Appeal For files originating in NWT	71.3% Clients from the NWT Self-Identified as Male*

3.3 Nunavut Demographics

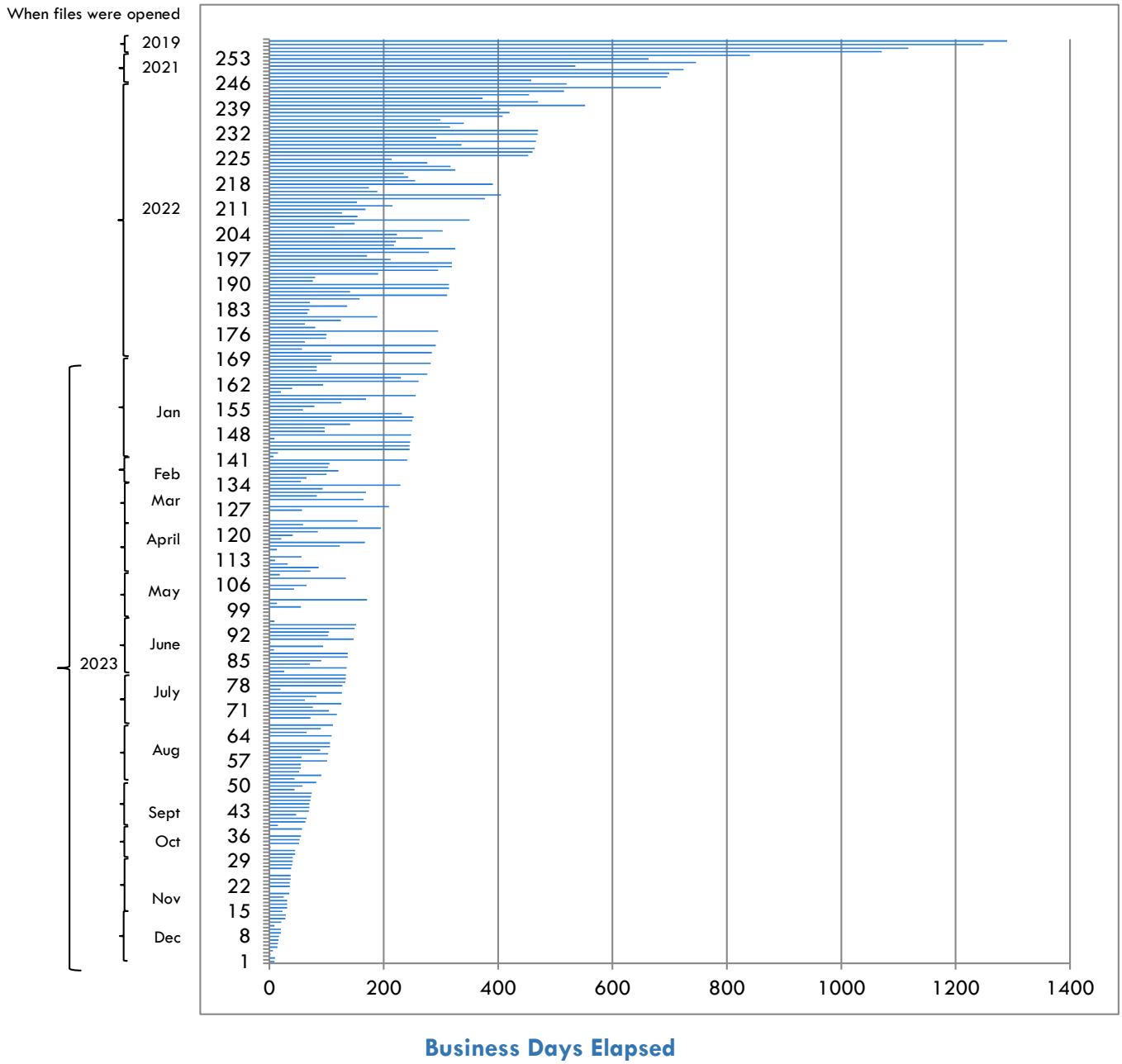
109 WAO Cases originated in Nunavut	**31** Clients retained their residence in Nunavut	**64** NU Client Files Closed
31.2% Clients from Nunavut Self-Identified as Female*	Workers' Advisor Office participated in 6 Reviews 1 Appeal For files originating in Nunavut	68.8% Clients from Nunavut Self-Identified as Male*

*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 2023, with the column on the left indicating when they were first opened. While 231 distinct workers contacted the office during 2023, several workers accessed services on multiple occasions. This is reflected in the number of cases identified.

Duration of Workers' Advisor Office Cases in 2023



Cases were open an average of 171.76 days in 2023, which is higher than 2022 when cases were open an average of 134.20 days. Our higher caseload is a contributing factor to files being open longer.

The WAO assists the worker to address their issue(s) in the timeliest manner possible. While some issues are able to be resolved the 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 on a regular basis moving forward, even when there are no active issues.

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 in 2023, there were 6.8 issues identified per worker.

The three most common issues addressed in 2023 were:

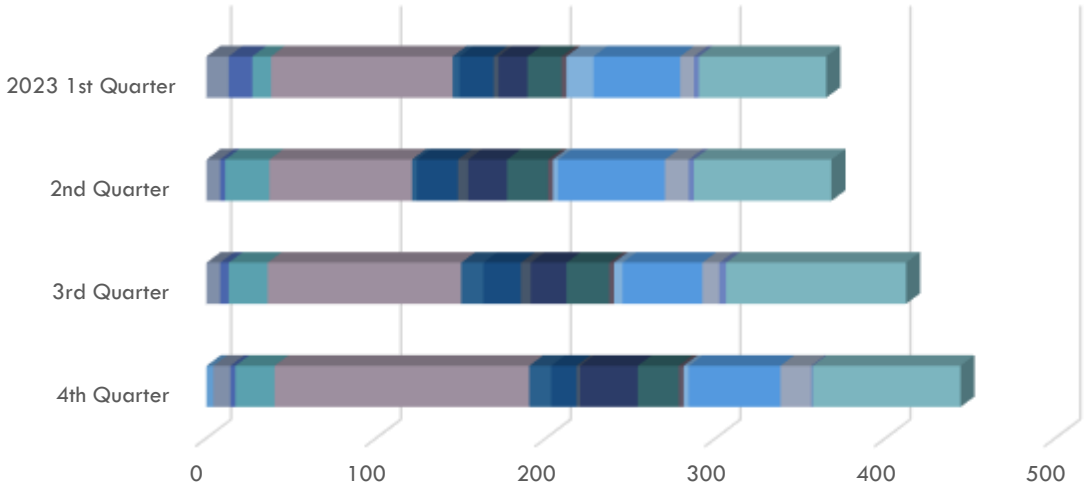
1. Assistance with Reimbursements/Payments (21%)
2. Acceptance of Claim (15%)
3. Explanation of WSCC processes (11%)

These three categories account for 47% of the workload in the Workers' Advisor Office. Acceptance of Claim and Assistance with Reimbursements/ Payments were also top issues addressed in past years as well.

Representations Made	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Acceptance of Claim	68	58	56	60	**242**
Acceptance of Dependent Claim	0	0	0	0	**0**
Assistance with File	44	45	47	36	**172**
Assistance: Addition to Claim	41	46	37	30	**154**
Assistance: Pension	28	32	27	26	**113**
Assistance: Reimbursements/Payments	82	82	73	89	**326**
Assistance: Return to Work	14	9	11	14	**48**
Assistance: Review/Appeal	34	28	16	18	**96**
Benefits Advance	0	0	0	0	**0**
Change in Disability % Level (PMI)	7	6	2	3	**18**
Explanation of WSCC processes	31	31	24	13	**99**
Increase in Benefits Amount	9	3	3	5	**20**
Medical Evidence	20	18	16	14	**68**
Medical Treatment Requested by Client	31	18	16	18	**83**
Suspension or Termination	8	6	6	7	**27**
Vocational Rehabilitation program	26	26	26	27	**105**
WSCC Not Responsive to Client	1	4	8	5	**18**
Total:	**444**	**412**	**368**	**365**	**1,589**

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 daily 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.



	4th Quarter	3rd Quarter	2nd Quarter	2023 1st Quarter
Awaiting AT decision	4	0	0	0
Awaiting AT hearing	0	0	0	0
Awaiting file from Client Services	10	8	8	13
Awaiting RC decision	3	5	3	14
Awaiting RC Hearing	23	23	26	11
Client to Provide Info	150	114	84	107
Client to Provide instruction	13	13	3	4
Health Care: Awaiting information	15	22	24	20
Other: Awaiting info	2	6	6	3
WAO: File Review	34	21	23	17
WAO: Investigation ongoing	24	25	24	20
WAO: Preparing AT submissions	3	3	3	3
WAO: Preparing RC submission	3	5	3	16
WSCC: Awaiting Decision	54	47	63	51
WSCC: Awaiting info	18	10	14	8
WSCC: Investigation ongoing	1	4	3	3
Resolved	87	106	81	75

Waiting on information or instructions from workers represents an average of 32.4% of issues statuses.

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

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 2023, 92.7% of files resolved were able to be addressed without entering a formal review or appeals process.

	Issues Addressed		Review Submissions		Appeals Submissions	
	Representations	Issues Resolved	Reviews Requests	Favorable Outcome	Appeals Requested	Favorable Outcome
Pending from 2021	N/A		1	1	n/a	n/a
Pending from 2022	N/A		4*	3	2	1
January	146	25	2*	1		
February	143	19	3*	2		
March	155	43				
April	148	34	2*	1		
May	137	40	2*			
June	127	32	2*			
July	117	32				
August	118	21				
September	133	28				
October	123	31				
November	127	31	1*			
December	115	13				
Total:	**1589**	**378**	**17**	**9***	**2**	**1**

* = Decisions still pending as of December 31, 2023 (8 Review decisions pending)

4.0 Contact Information

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