



Workers' Advisor Office

Northwest Territories and Nunavut

2021

ANNUAL REPORT

Prepared for:

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

The Honourable Paulie Chinna

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

The Honourable Adam Arreak Lightstone

Prepared and Submitted by:

Workers' Advisor for NT/NU

Maia Lepage, February 2022

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 2021 Annual Report for the Workers' Advisor Office of the Northwest Territories and Nunavut (WAO).

Once again, 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 2022.



Maia Lepage
Workers' Advisor



1. Purpose of the Workers' Advisor Office

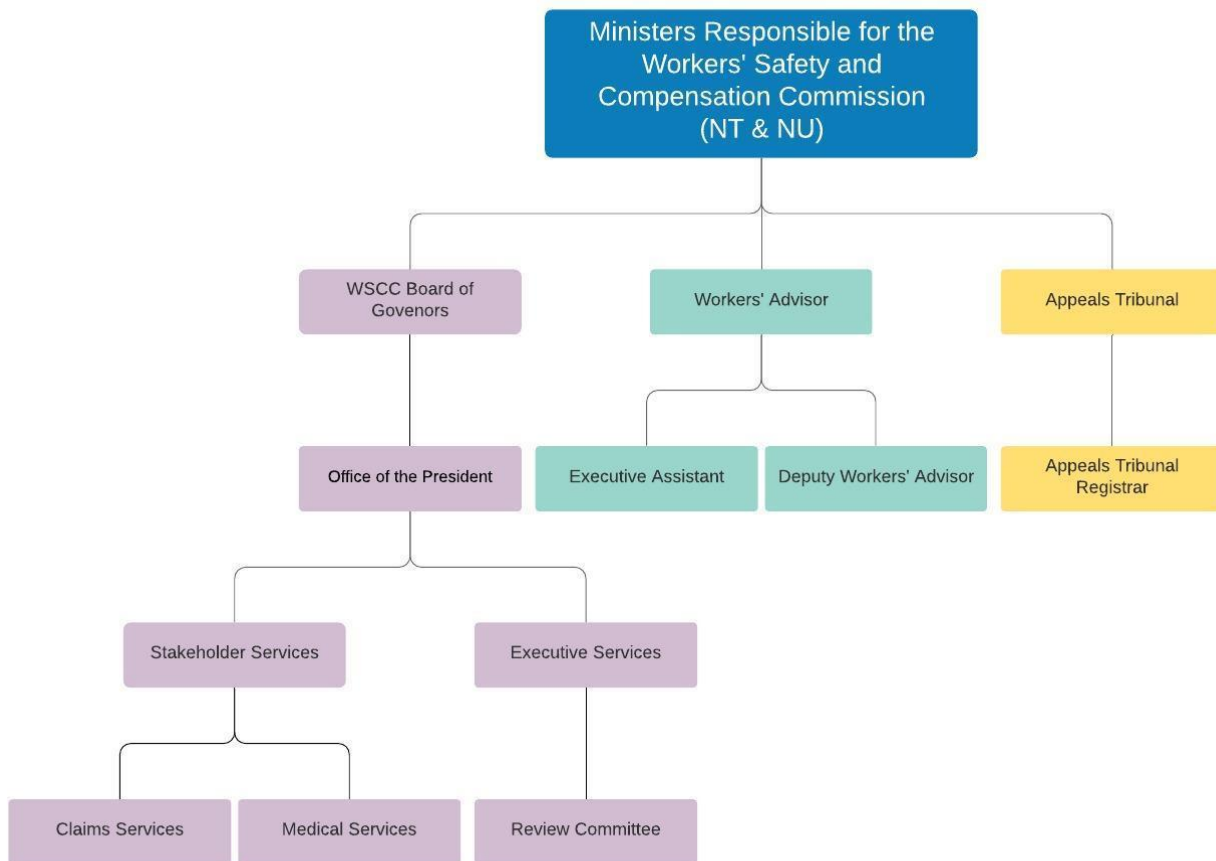
1.1 Who We Are

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.



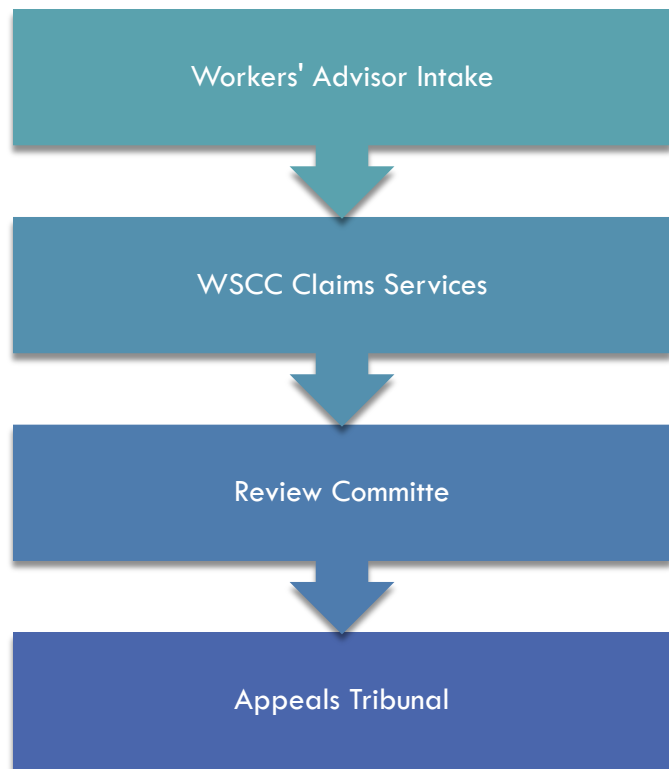
* Although there are more services within WSCC, only the divisions that the Workers' Advisor Office regularly works with are listed.

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 assists 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 2021

2.1 Workers' Advisor Office Summary

General Overview:

2021 has been quite eventful for the Workers' Advisor Office.

Maia Lepage, the Workers Advisor for the Northwest Territories and Nunavut, was elected Chair of the Canadian Association of Workers Advisors and Advocates (CAWAA) for a 3 year term. She previously held the position of Vice Chair since 2019. CAWAA is a national affiliation dedicated to assisting injured workers with their Workers' Compensation claims by fostering a professional system of sharing best practices, ideas and information across Canada's territories and provinces.

In June, Minister Paulie Chinna was appointed the Minister Responsible for Workers' Safety and Compensation Commission for the NWT, replacing Minister Shane Thompson.

In November, Minister Adam Arreak Lightstone was appointed the Minister Responsible for Workers' Safety and Compensation Commission for Nunavut, replacing Minister George Hickes.

The Workers' Advisor Office reports directly to both Ministers Responsible for Workers' Safety and Compensation Commission.

Due to the global pandemic, the Workers' Advisor Office has remained mostly closed to the public but has continued to provide services by phone and email. 155 unique workers requested our assistance in 2021, including 87 workers who were new to the Workers Advisor. This represents a 45% increase from 2020 when there were 153 workers who accessed our services, and only 60 had never accessed our services before.

This increase in new clientele is related to an upturn in referrals directly from WSCC staff and workers who had previously accessed our services. We are appreciative that both groups are confident in our ability to assist workers and are recommending us to others.

We would like to acknowledge the perseverance of the workers and family members of injured workers who contact our office. You often cannot put into words what it means to be injured as a result of your employment but we are thankful that they were able to reach out. Our goal is to assist these individuals to the best of our capabilities and ensure that they are treated with dignity and respect. We are fortunate that we have been successful in addressing concerns and facilitating a positive outcome for workers.

The Workers Advisor Office is separate and independent from WSCC, but we have continued to work closely with all levels of WSCC to ensure that workers needs are met. We are pleased with the progress being made and appreciate that WSCC has been receptive to our suggestions. While we may disagree on occasion, the fact that our offices are able to openly discuss concerns and provide feedback for solutions is a positive indicator. We would like to thank the staff at WSCC for their continued dedication to the workers of the Northwest Territories and Nunavut.

We are actively looking for a suitable candidate to fill the Executive Assistant term position within the Yellowknife office. It has been vacant since December but we are hopeful that we will be able to fill the position soon. The term ends January 2023.

Overall, we are pleased with our accomplishments in 2021 and look forward to the new challenges that 2022 will bring.

2.2 Recommendations

A) Remaining Recommendations for WSCC from 2020 Report (includes WSCC Interim Response):

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

In 2020, select reviews with the Review Committee were 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 caused undue hardships on workers who had been suspended or terminated from WSCC benefits and were in the review process. The review process is supposed to take 60 business days, but in one case, a worker's review regarding termination of their benefits took 546 days before it was found that WSCC terminated the worker's benefits in error. In addition, workers who have been in the WSCC system have very limited options for alternative wage replacement. They do not meet the eligibility criteria for Employment Insurance (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 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.

- a. Update from WSCC: As part of the Comprehensive Policy Review Plan this recommendation will be considered under policy 00.08 Decision Making when it next comes forward to the Governance Council for review in March 2022.

2. **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.
 - i. Update from WSCC: A review will be undertaken of forms currently being used to ensure best practice. As part of the Comprehensive Policy Review Plan recommendation b,c,d will be considered under policy 03.09 Psychiatric and Psychological Disorders when it next comes forward to the Governance Council for review in December 2022.

B) 2021 Recommendations for WSCC:

1. **Criteria for Removal of a Health Care Professional from a Claim Should Be Better**

Recently, there has been an increase in conversations and measures taken by WSCC to remove treating health care providers from long-standing claims, predominately citing that the health care provider has been impeding the recovery of the worker. While I acknowledge that there are provisions in policy for the removal of a health care provider in certain circumstances (Policy 04.03: Choice and Change of Health Care Provider), I feel that better documentation leading up to the removals is needed.

Most Health care professions are guided by standards of ethical practice (ie: CMA Code of Ethics and Professionalism for Physicians, Canadian Code of Ethics for Psychologists, etc). Typically, these standards articulate the ethical and professional commitments and responsibilities of the medical profession. If it is being asserted that a health care provider is impeding the recovery of a worker, thereby breaching their code of ethics, I feel that WSCC has a responsibility to the worker, and the health care provider, to properly document and hold the health care provider to account.

In accordance with the various codes of ethics, there are typically provisions listed for the proper procedure in addressing conflicts. If there is a question of a recovery being impeded, the process should be transparent and all parties aware. The health care provider in question should have the opportunity to be directly addressed regarding the allegations by the WSCC Medical Advisor or WSCC Psychological Advisor (depending on the profession of the health care provider) prior to their removal.

If after a direct conversation, the WSCC Advisor still feels that a health care provider was an impediment in the recovery of a worker, then I believe the Advisor has an ethical duty to inform the appropriate governing body that one of their members has breached their ethical standards. This would ensure that proper investigation was completed and any violations are held to account.

Considering the seriousness of these allegations, with the lack of documentation and discussion that is happening currently regarding removals, I would recommend that each situation be reviewed by the WSCC legal department, as there may be opportunity for legal recourse by workers or healthcare professionals who feel these allegations are defamatory and unfounded.

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

Claims dealing with mental health have been becoming more and more common. Mental health does not have the same recovery expectations as a broken bone or open wound, and recovery will vary for each individual. This makes claims hard to predict and time consuming for case managers.

Workers have expressed a range of emotions for how their claims are treated, and in many cases, we have noticed that most situations are able to be diffused by providing someone to go over decision letters and allow the worker time to process and ask questions. Depending on the individual, this may not be something a case manager would have time for on a daily basis, but if there was dedicated staff that was made available to consistently help with this sort of situation, it may help those working through their mental health injuries to feel better supported by the WSCC. This would also help relieve pressure from the case manager so that they also feel better supported in these claims.

3. Update Worker's and Employer's Report of Incident Forms

Many workers who are looking to file a claim for mental health have commented that the Report of Incident form does not have space to appropriately capture a psychiatric or psychological disorder. A separate section for mental health may help workers feel better supported.

The current form asks for a specific date and does not allow space to indicate if an injury was accumulative. The policy allows for accumulative injuries in both mental health (ie: an emotional reaction to an accumulation of a number of work-related traumatic events over time) and physical (ie: carpal tunnel syndrome, repetitive strain injuries, etc) injuries, but there is only space to write down one date and specific time. Having a check box if an injury is accumulative would help workers better represent their injury and make them feel more confident when filling in the report of injury.

4. Employer Advisor

In other jurisdictions, an Employer Advisor Office exists to help Employers navigate matters relating to WSCC, similar to how the Workers' Advisor counsels workers. In recent months, our office has been receiving more inquiries from employers looking for advice from outside of the WSCC in regards to legislation and policies. In some cases, there have also been requests for myself to act as their advocate. Given that I am the Workers' Advisor, it would not be proper for me to also represent employers. 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.

5. Review Committee Timelines for Review

In 2021, the average time it took for a Review Committee decision to be rendered for a review requested by the Workers' Advisor Office was 160 business days (or 232.91 days including weekends and holidays). For most workers, this is not a reasonable amount of time to wait for a decision. The WSCC website indicates that the Review Committee will hold the hearing within 20 days of the request, and make a decision within 30 business days of the hearing. Of the Reviews that the Workers' Advisor Office worked on in 2021, not one review met those timelines. While there are provisions for deferrals, I would recommend an audit of the reviews being conducted to better understand if the deferrals are reasonable.

C) Recommendations for Workers' Advisor Office:

1. WAO Staffing

We have been attempting to fill the Executive Assistant position on a term basis, but have been unsuccessful. It is not sustainable for the Workers' Advisor to take on this work load alone. I will continue to work with WSCC to address this deficiency and will hopefully have a solution soon.

2. Assessment of the Deputy Advisor Role

Due to extenuating circumstances, the Deputy Advisor was away for an extended period of 2021. This highlighted some areas where improvements can be made in order to better serve workers. I would like to open dialogue around how this role can change to better assist our workers.

3. 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. Statistics and Demographics for 2021

3.1 2021 AT A GLANCE INFOGRAPHIC

155
Clients Served

1056
Issues Addressed

110
Client Files Closed

Current Residence of Workers who contacted the Workers' Advisor Office

* = Less than 5 workers



160.22
Average # of Days a file is open

Workers' Advisor Office participated in
17 Reviews
1 Appeal

86.4%
of files closed were resolved without a Review or Appeal

3.2 Northwest Territories Demographics

<p style="text-align: center;">97</p> <p style="text-align: center;">WAO Cases originated in the NWT</p>	<p style="text-align: center;">67</p> <p style="text-align: center;">Clients retained their residence in the NWT</p>	<p style="text-align: center;">56</p> <p style="text-align: center;">NT Client Files Closed</p>
<p style="text-align: center;">34%</p> <p style="text-align: center;">Clients from the NWT Self-Identified as Female*</p>	<p style="text-align: center;">Workers' Advisor Office participated in</p> <p style="text-align: center;">10 Reviews</p> <p style="text-align: center;">0 Appeals</p> <p style="text-align: center;">For files originating in NWT</p>	<p style="text-align: center;">66%</p> <p style="text-align: center;">Clients from the NWT Self-Identified as Male*</p>

3.3 Nunavut Demographics

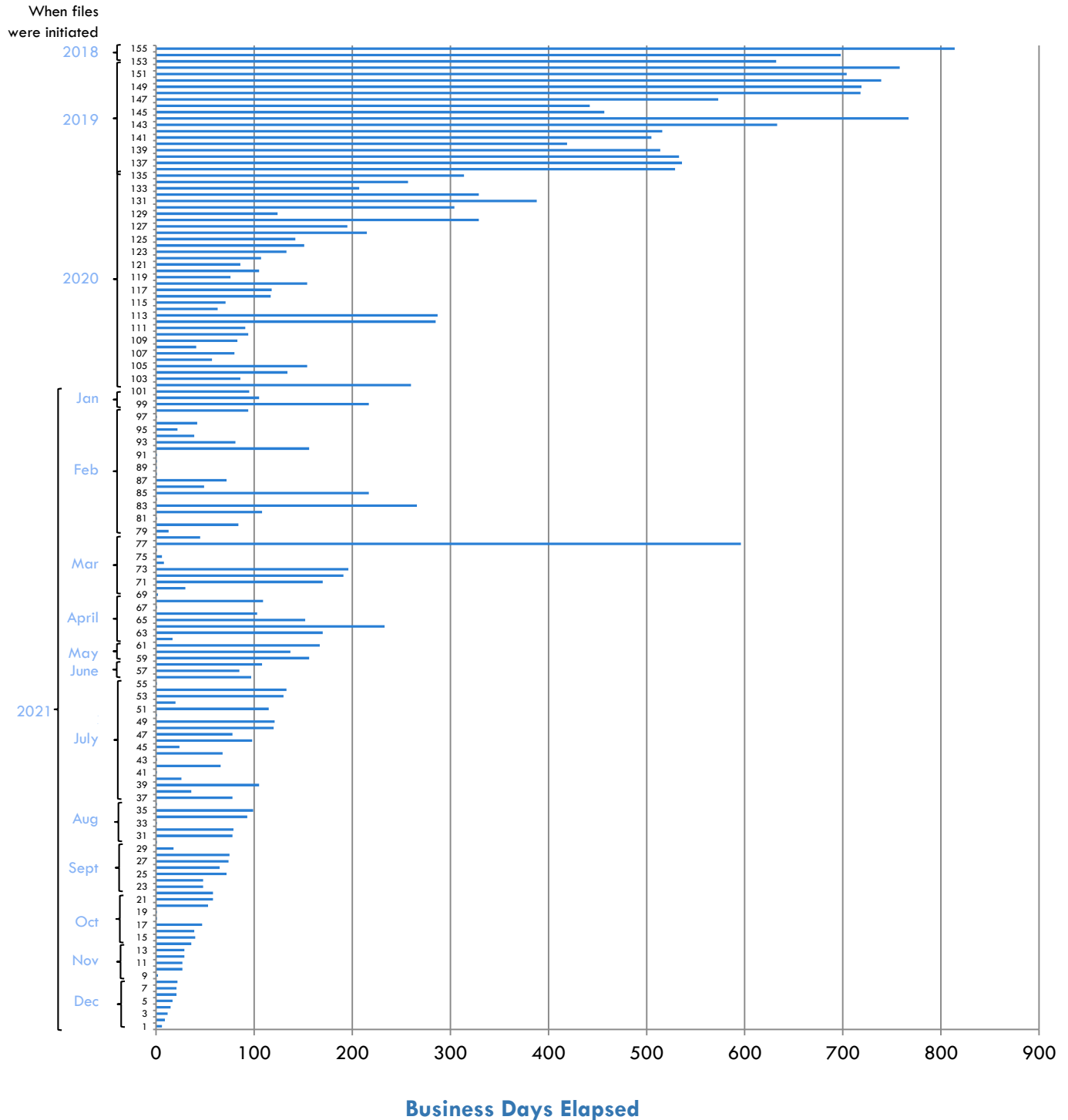
<p style="text-align: center;">58</p> <p style="text-align: center;">WAO Cases originated in Nunavut</p>	<p style="text-align: center;">8</p> <p style="text-align: center;">Clients retained their residence in Nunavut</p>	<p style="text-align: center;">44</p> <p style="text-align: center;">NU Client Files Closed</p>
<p style="text-align: center;">28%</p> <p style="text-align: center;">Clients from Nunavut Self-Identified as Female*</p>	<p style="text-align: center;">Workers' Advisor Office participated in</p> <p style="text-align: center;">7 Reviews</p> <p style="text-align: center;">1 Appeal</p> <p style="text-align: center;">For files originating in Nunavut</p>	<p style="text-align: center;">72%</p> <p style="text-align: center;">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 2021, with the column on the left indicating when they were first opened.

Duration of Workers' Advisor Office Cases in 2021



Cases were open an average of 160.22 days in 2021, which is an improvement from 2020 when cases were open an average of 197.2 days.

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 on a regular basis.

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 2021, there were seven issues identified per worker.

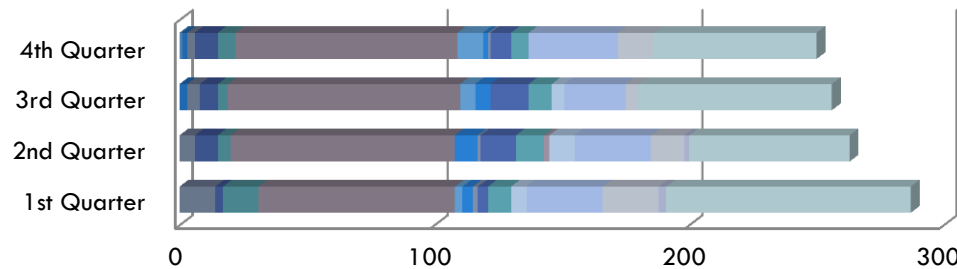
The three most common issues addressed in 2021 were Acceptance of Claim, Assistance with File, and Assistance with Reimbursements/Payments. These three categories account for 45.45% of the workload in the Workers' Advisor Office. All three categories were also the top three issues addressed in 2020 and 2019.

Issues Addressed	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Acceptance of Claim	40	30	26	34	130
Acceptance of Dependent Claim	0	0	0	3	3
Assistance with File	46	40	28	29	143
Assistance: Addition to Claim	18	12	20	25	75
Assistance: Pension	9	17	20	16	62
Assistance: Reimbursements/Payments	65	61	40	41	207
Assistance: Return to Work	8	4	0	1	13
Assistance: Review/Appeal	12	11	18	13	54
Benefits Advance	1	0	0	0	1
Change in Disability % Level (PMI)	10	14	15	15	54
Explanation of WSCC processes	25	17	35	21	98
Increase in Benefits Amount	3	6	3	4	16
Medical Evidence	14	12	8	6	40
Medical Treatment Requested by Client	22	28	24	25	99
Suspension or Termination	6	3	7	4	20
Vocational Rehabilitation program	3	8	12	12	35
WSCC Not Responsive to Client	5	0	0	1	6
Total:	287	263	256	250	1056

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	1
■ Awaiting AT hearing	0	0	3	2
■ Awaiting file from Client Services	14	6	5	3
■ Awaiting RC decision	3	9	7	9
■ Awaiting RC Hearing	14	5	4	7
■ Client to Provide Info	77	88	91	87
■ Client to Provide instruction	3	0	6	10
■ Health Care: Awaiting information	4	9	6	2
■ Other: Awaiting info	2	1	0	1
■ WAO: File Review	4	14	15	8
■ WAO: Investigation ongoing	9	11	9	7
■ WAO: Preparing AT submissions	0	2	0	0
■ WAO: Preparing RC submission	6	10	5	0
■ WSCC: Awaiting Decision	30	30	24	35
■ WSCC: Awaiting info	22	13	5	14
■ WSCC: Investigation ongoing	3	2	0	0
■ Resolved	96	63	76	64

Waiting on information or instructions from workers represents an average of 43.75% of issues statuses. This figure is higher than 2020 by 12%.

WSCC's response time over the course of this year has shown 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.

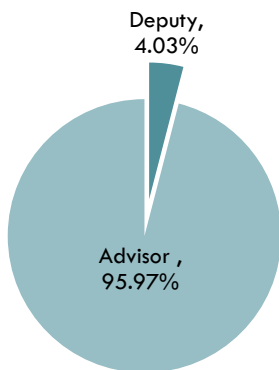
	<u>Issues Addressed</u>		<u>Review Submissions</u>		<u>Appeals Submissions</u>	
	Issues Actioned	Issues Resolved	Reviews Requests	Favorable Outcome	Appeals Requested	Favorable Outcome
Pending from 2020	N/A	N/A	7	4		
January	88	25				
February	108	39				
March	91	32	3	3		
April	87	16				
May	88	17				
June	88	30	1	*		
July	79	22	1	1	1	*
August	88	27	1	*		
September	89	27	2	*		
October	84	20				
November	85	21				
December	81	23	2	*		
Total:	1056	299	17	8	1	0

* = Decision still pending as of December 31, 2021

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 2021, 86.4% of files resolved were able to be addressed without entering a formal review or appeals process.

In 2021, the average time it took for a Review Committee decision to be rendered once a review was requested by the Workers' Advisor Office was 160 days.

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.

In 2021, the Deputy was out of office for a period of time and as a result, it helped highlight some areas where we could be working better together. Our hopes are to have a cohesive office, where both the Deputy and Workers' Advisor are delivering consistent services to the workers. We will continue to work on this goal in 2022.