

Labour & Industrial Relations Division

Faye M. Martin, Manager

The mandate of the Labour and Industrial Relations Division is to assist in providing stable and fair workplace environments for industry and labour thus maintaining uninterrupted production of goods and services.

The labour force totalled 80,700 in February 2016, which is 2.1% less than what it was in February 2015, and the level of employment in the most recent month was 2,200 jobs less than a year ago. Older workers (55 years of age and over) accounted for the vast majority of the year-over-year decrease in employment, particularly older males. There were 1,800 fewer part-time positions in February 2016 compared to a year ago and the number of full-time workers declined by 500 during this period. (Labour Market Bulletin - Prince Edward Island, February 2016) A total of 17,285 persons were unionized as of December, 2015 (2016 Directory of Labour Organizations and Unions).

Labour Canada quotes major collective bargaining settlements for all industries in Prince Edward Island in 2015 / 2016 provided base rate wage adjustments averaging 1.6 percent annually, a decrease from 2.0 percent in 2014 / 2015. Wage adjustments averaged 1.6 percent for the public sector, a decrease from 2.0 percent in 2014 / 2015. No private-sector agreements were settled in Prince Edward Island during the year. (Labour Canada, November 2015)

Statistics Canada shows the Prince Edward Island average weekly earning industrial aggregate for 2015 as \$800.70 compared to \$773.83 in 2014. This represents an increase of 3.4 percent.

The average weekly earning aggregate for Canada for 2015 was \$952.11. (Statistics Canada, March 2016)

The inflation rate from April, 2015 to April, 2016 was 1.7 percent. (Statistics Canada, May 2016)

Conciliation Services

During the reporting period, the Minister appointed a Conciliation Officer for the following cases:

- City of Summerside / International Brotherhood of Electrical Workers, Local 1928 **(settled)**
- Canadian Blood Services / Nova Scotia Union of Public and Private Employees **(on strike)**
- ADL (Greenwood Drive) / United Food and Commercial Workers, Local 864 **(settled)**
- Health PEI / International Union of Operating Engineers, Local 942 **(arbitration)**

- Canadian Staff Union / Canadian Union of Public Employees (**strike / lockout position**)
- UPEI Security Police / Canadian Union of Public Employees, Local 501 (**arbitration**)
- Education Negotiating Agency / PEI Teachers Federation (**arbitration**)
- City of Summerside / Canadian Union of Public Employees, Local 804 (**settled**)
- City of Charlottetown / Canadian Union of Public Employees, Local 830 (**settled**)
- Association of Commercial and Industrial Contractors / United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the USA and Canada, Local Union 721 (**settled**)

Labour Relations Board

Nancy Birt, QC, Chair
Matthew MacFarlane, Vice Chair
Kenneth Clair, QC, Vice Chair
Shawn M. Shea, Chief Executive Officer

Employer Representatives

Fraser MacDougall
Judy Hughes
John Cormier
Linda Gaudet

Employee Representatives

Michael Lund
Raymond McBride
Blair James
Craig Walsh

The Labour Relations Board provides a quasi judicial process to address applications made by either management or labour. The Board provides a timely resolution for matters and strives for balance and fairness in its decision making.

The Board received 8 applications in addition to 9 which were carried over from previous years for a total of 17 applications; 2 of which have been granted, and 15 are ongoing.

The Board held 3 full party hearing dates, 9 panel only hearings and 2 training sessions

The Labour Relations Board is located in the Sherwood Business Centre, 161 St Peters Road.

Employment Standards Division

Robert Yeo, Chief Labour Standards Officer

The mandate of the Employment Standards Division is to administer the *Employment Standards Act*. The Act establishes employee entitlements with respect to payment of wages, vacation pay, statutory holidays, notice of termination, minimum wage rates, overtime pay, maternity and parental leave protection.

The Division, in carrying out its mandate, provides factual information to the public through telephone contact, office interviews, information seminars, routine inspections and distribution of Departmental literature. Information seminars were conducted throughout the province.

Over 7500 pieces of information and legislation were printed and distributed. This information is available to the public at the Regional Services Centres, all Access PEI centres, on our website at www.peiemploymentstandards.ca and at our office in the Sherwood Business Centre, 161 St Peters Road.

During the period 1 April 2015 to 31 March 2016, the Division was called upon to investigate 150 formal complaints, of which, 59 resulted in the collection of \$48,250.89.

The Division issued 16 formal Orders to employers for non-payment of monies owing to former / current employees totalling \$39,881.49.

The Division filed judgments on behalf of 14 employees amounting to \$36,493.28 of which the Sheriff's Office was successful in collecting \$3,332.19.

Under our Reciprocal Agreement with Newfoundland and Labrador, the Division forwarded 32 judgments in the amount of \$86,370.11 for collection. Under our Reciprocal Agreement with New Brunswick, the Division forwarded 1 judgment in the amount of \$4,014.03 for collection.

The Division conducted 4 proactive inspections / audits in the fiscal year 2015/2016 resulting in the collection of \$35,170.79 on behalf of 79 employees.

The Division conducted 65 *Employment Standards Act* information sessions involving 550 employers / employees.

The Division handled 7950 inquiries and conducted 41 office interviews during the period 1 April 2015 to 31 March 2016.

Employment Standards Board

Don MacCormac, Chair
Wayne Vessey, Vice-Chair
Hazel Walsh, Secretary

Employer Representatives

Blair Waugh
Douglas MacKenzie
Elaine Thomson

Employee Representatives

Dianne Arsenault
Vacant Position
Vacant Position

The primary role of the Employment Standards Board is to hear appeal presentations from employers or employees relevant to alleged violations of the *Employment Standards Act*. The Board, in accordance with the *Act*, annually makes a recommendation to the Lieutenant Governor in Council on changes to the Minimum Wage Order.

During 1 April 2015 to 31 March 2016, a Board Panel met on one (1) occasion to deal with an employee claim and on two (2) occasions for full board meetings. The Board also met on one (1) occasion to receive input from both employers and employees on recommendations regarding the Minimum Wage Order.

The Employment Standards Board is located in the Sherwood Business Centre, 161 St Peters Road.

Office of the Worker Advisor
Maureen Peters, Worker Advisor

On January 1, 1995, a new *Workers Compensation Act* for Prince Edward Island became effective. Section 85 of this *Act* provides for the service of a Worker Advisor to assist injured workers in respect of claims for compensation.

Pursuant to section 85.(2) of the *Act*, the Workers Compensation Board (the Board) shall make annual grants to the Province of PEI Department of Community and Cultural Affairs (now the Department of Environment, Labour and Justice) in such amounts appropriate to cover the costs of providing services under this section of the *Act*. For the calendar year 2014, the recorded funding disbursement by the Board for the operation of the Worker Advisor Program was \$169,120.00.

The Office of the Worker Advisor provides information, advice and assistance to workers, and/or their dependants, on matters involving Workers Compensation. This includes issues arising pursuant to the *Workers Compensation Act* and Regulations, the *Occupational Health & Safety Act*, and Board policies and procedures.

The Worker Advisor may assist and/or represent the worker and/or their dependants before the Board at the Customer Service level and the Internal Reconsideration level, as well as before the Workers Compensation Appeal Tribunal and the PEI Court of Appeal. During the fiscal year 2015-2016, the Office of the Worker Advisor noted a substantial increase in the number of new files opened and the number of IR Requests submitted, and recorded the following statistics:

Worker Advisor Activity:

New Files Opened - 82

Internal Reconsideration (IR):

(1st level of appeal)

Requests for IR Submitted - 81

Workers Compensation Appeal Tribunal (WCAT):

(2nd level of appeal)

Notices of Appeal Filed - 36

Hearings Attended - 14

Office of the Employer Advisor

Patricia MacPhail, Employer Advisor
Liz Murray, Program Assistant

This Annual Report highlights the accomplishments of the Office of the Employer Advisor for the period of 1 April 2015 to 31 March 2016.

About the Office of the Employer Advisor

The legislative authority for the Office of the Employer Advisor is contained in Section 85(1)(b) of the *Workers Compensation Act* and it became operational on February 16, 2004. In its 12th year, the mandate is to assist PEI employers and employer associations with the statutory interpretation and application of both the *Workers Compensation Act* and the *Occupational Health and Safety Act*, as well as policies, procedures and practices of the Workers Compensation Board of PEI. The Employer Advisor provides independent advice and assistance in the areas of claims management, classifications and assessments, workplace health and safety and appeals. Services available from the Office of the Employer Advisor include education and training, assistance and representation during the appeal process, research and analysis along with information sharing. Operational funding is provided to the Department of Justice and Public Safety by the Workers Compensation Board of PEI through employer assessments levied by the board. There are no fees charged for our services and the Office operates independently of the Workers Compensation Board. While Patricia McPhail was on leave between the months of July and December, 2015, the position of the Employer Advisor was filled part time by Brian MacKenna, Q.C.

WCB Related Activity

The Office of the Employer Advisor represented a number of Island employers in the preparation and presentation of their appeals or responses to Worker appeals to both the Internal Reconsideration Officer and the Workers Compensation Appeal Tribunal. During the fiscal year thirty-six new files were opened and dealt with matters such as: claim procedure and acceptance, claim costs, new evidence, return-to-work and accommodation, re-employment obligations, appeal procedures, cost relief, pre-existing conditions, rate questions and experience rating. In addition numerous inquiries were handled from individual employers and employer associations on various aspects of both the *Workers Compensation Act* and the *Occupational Health and Safety Act* as well as board policies, procedures and practices. The Employer Advisor submitted feedback on several WCB Draft Policies that were presented for public consultation. The Employer Advisor also attended the WCB Open House.

Professional Development

The Office of the Employer Advisor participated in teleconference calls with the other five members of the Canadian Association of Employer Advisors/Advocates throughout the year. The Employer Advisor also participated in the first two day Conference of the Canadian Association of Employer Advisors/Advocates via telephone. The Conference included such topics as updates on significant policy and legislative changes, updates on significant court cases, and a best practice

session for providing advice to clients. The Employer Advisor also attended the 2015 WCB OH&S Conference held in May.

Communications and Client Relations

During the fiscal year eight issues of *The Employer Advisor* electronic newsletter were produced and circulated via e-mail to employers and their management staff, employer associations, public sector managers, and other interested parties. The Office of the Employer Advisor website address is www.gov.pe.ca/labour/oea and continues to offer copies of our newsletter as well as current information and up-to-date forms on WCB and OH&S matters and links to relevant sites of interest.

The Office of the Employer Advisor reached out to the PEI HR Toolkit to include information its services on the WCB section of their website in order to reach out to Island employers.

<http://www.peihrtoolkit.ca/en/legislation/workers-compensation>

Workers Compensation Appeal Tribunal (WCAT)

Guiding Principles

WCAT's operations are governed by the *Workers Compensation Act* (the "Act") which sets out the structure, jurisdiction, and the responsibilities and functions to be applied. As an administrative tribunal, WCAT seeks to provide quality adjudication on a fair and timely basis.

WCAT's guiding principles include:

- an accessible appeal system for workers and employers;
- easy access to appeal process information;
- superior quality service for all stakeholders;
- independent and impartial decision making; and
- timely and efficient appeal processing and decision making.

Our Mandate

To review final decisions of the Workers Compensation Board and to ensure compliance with the *Act*, regulations and policy.

Our Mission

To provide a timely, fair and independent appeal process consistent with the legislation and the rules of natural justice and to render decisions which are a fair reflection of the case.

About the Tribunal

WCAT is the final level of appeal in the workers compensation structure in Prince Edward Island. It hears appeals from final decisions of the Internal Reconsideration Officer (IRO) of the Workers Compensation Board (WCB). Its role is to review WCB decisions to ensure they are in compliance with the *Act*, regulations and policy.

WCAT is legally and administratively separate from WCB, ensuring an independent and impartial review of WCB decisions. However, it is bound by the *Act*, regulations and policy.

Members are appointed by, and at the pleasure of, the Lieutenant Governor in Council pursuant to Section 56(7) of the *Act*. The *Act* states membership is to consist of a chairperson, one or more vice-chairpersons, and as many members, equal in number, representative of employers and workers respectively. All members are part-time and are assigned hearings on a rotational basis.

Our Values

Respect: We treat people with dignity, respect, care and fairness.

Fairness: We are committed to ensuring all our actions are free of bias and prejudice.

Professionalism: We are committed to delivering the highest standard of quality services, ethics, honesty and accountability.

Sitting members of the tribunal include:

Chairperson

P. Alanna Taylor

Vice Chairperson

John L. Ramsay, Q.C.

Vice Chairperson

Meaghan Hughes

Employer Representatives

Don Cudmore

Scott Dawson

Stu Lavers

Donald Turner

Robert Gallant

Fairley Yeo

Worker Representatives

Leo Cheverie

Gary Paynter

Bruce Gallant

Gordon Huestis

Elizabeth (Libba) Mobbs

Vacant Position

Appeals are heard by a panel of three consisting of the chair or one of the vice chairs, a member representing worker interests and one representing employer interests. Hearings are conducted in accordance with the rules of natural justice and procedural fairness. Simply put, the guidelines of natural justice are the minimum standards of fair decision making and consist of the following elements:

- **The Hearing Rule** This is the requirement that a person has a right to a fair hearing. This involves notification; the opportunity to be heard; the conduct of the hearing; and, the right to representation.
- **The Bias Rule** This is the requirement that the decision-maker must act without bias in all procedures connected with the making of the decision. A decision-maker must be impartial and must make a decision based on a balanced consideration of the information and evidence before them.
- **The Evidence Rule** This rule is that an administrative decision must be based upon logical proof or evidence materials. The decision-maker must be able to clearly point to the evidence on which the determination was made.

WCAT is a non-adversarial forum where parties with a direct interest (the worker, the employer at the date of the accident, WCB, and any designated representative) are given an equal opportunity to present their case. An appeal panel can ask questions or obtain additional information for clarity purposes, but they cannot hear any new evidence which has not been considered by the IRO when making her decision. Should new evidence be presented, WCAT is obligated to return the matter to WCB.

Caseload Activity Overview

Appeals Filed

The number of appeals filed in 2015/16 increased from the previous year. A total of 48 appeals were filed: 44 new worker appeals and 4 new employer appeals. This compares to 37 appeals filed last year.

Appeals Withdrawn

During the year there were 4 files that were withdrawn by the appellant without hearing as the appellant did not wish to proceed.

Hearings

With the increase in appeals filed there was a correlating increase in the number of hearings held. There were 18 hearings held in 2015/16 compared to 16 in 2014/15.

Decisions

The *Act* states, “on hearing an appeal, the Appeal Tribunal may confirm, vary or reverse the decision appealed from and shall, on the written request of a person with a direct interest in the matter, provide a written summary of its reasons within 90 days of the completion of the hearing.”

During 2015/16, 11 appeals were dismissed while 7 were allowed, 1 was allowed in part and 1 was referred back to the Workers Compensation Board.

The public can access WCAT decisions on our website at www.gov.pe.ca/wcat. Decisions made available on the website are written to protect the privacy of all parties.

Appeals from Tribunal Decisions

The Tribunal is the final decision-maker in the workers compensation process on Prince Edward Island. All decisions are final and binding. However, Section 56(2) of the *Act* allows a participant who disagrees with a WCAT decision to ask the P.E.I. Court of Appeal to hear an appeal of the decision. Such an appeal must be filed with the Court within 30 days of the Tribunal’s decision. The Court of Appeal can only allow an appeal if it finds an error in law or jurisdiction.

There were 2 leave applications filed with the Court of Appeal in 2015/16.