

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

In the Matter of the *Workers' Compensation Act*, S.N.W.T. 2007, c.21 and
Workers' Compensation Act, R.S.N.W.T. 1998, c.W-6

And in the matter of the Northwest Territories and Nunavut Workers'
Compensation Appeals Tribunal Decision #23-004 and Decision #24-002R

BETWEEN:

PAUL YURIY

Applicant

-and-

CITY OF YELLOWKNIFE and the WORKERS' SAFETY AND
COMPENSATION COMMISSION

Respondents

MEMORANDUM OF JUDGMENT

[1] Paul Yuriy (the Applicant) seeks judicial review of the Worker's Compensation Appeals Tribunal (the Tribunal) decision denying him an extension of time to seek a re-hearing of his appeal.

[2] The Applicant asserts that the Tribunal's decision was unreasonable, and asks that the request for an extension of time be referred back to the Tribunal for re-consideration.

PROCEDURAL HISTORY

[3] The Applicant filed a claim with the Workers' Safety and Compensation Commission (WSCC) under the *Workers' Compensation Act* (the Act) in September 2020, alleging psychological injury arising from a workplace incident while

employed by the Respondent City of Yellowknife (the City). The decision-making and appeal structure applicable to his claim are set out in the Act.

[4] The Applicant had mixed results in his claim. At first instance, the WSCC denied the Applicant's claim. The Applicant then sought review of the WSCC's decision by the Review Committee. The Review Committee overturned the WSCC's decision and determined that the Applicant was eligible for compensation.

[5] The City appealed the Review Committee's decision to the Tribunal, which is the final level of review under the Act. The Tribunal conducted a documentary hearing on March 17, 2023. The Applicant had notice of the hearing and was given an opportunity to make submissions but did not participate and was not represented by counsel.

[6] On June 24, 2023, the Tribunal issued their decision reversing the Review Committee's decision and denying the Applicant's claim for compensation (the "Compensation Decision").

[7] Under r 57(2)(d) of the *Appeals Tribunal Rules of Procedure*, NWT Reg 049-2010 (the Rules), a party has six months after the Tribunal's decision to seek a re-hearing.

[8] The Applicant did not seek a re-hearing. Instead, on July 27, 2023 he filed an Originating Notice seeking judicial review of the Compensation Decision.

[9] The City brought an application to strike the Originating Notice. They asserted that judicial review was premature, because the Applicant had not sought a re-hearing and therefore had not exhausted his remedies under the Act. The Court found that judicial review was premature and struck the Originating Notice on March 8, 2024. By that time, the six-month deadline for seeking a re-hearing had expired.

[10] On May 6, 2024, the Applicant applied to the Tribunal for an extension of the 6-month deadline and for leave to have the matter re-heard. The Tribunal issued a decision dated August 27, 2024, denying both the extension of time and leave for a re-hearing (the "Re-Hearing Decision").

[11] Following the Re-Hearing Decision, the Applicant filed a new Originating Notice on September 25, 2024, seeking judicial review of both the Compensation Decision and of the Re-Hearing Decision.

[12] At a pre-hearing conference, the parties made submissions regarding the proper scope of the judicial review. The Court ruled that only the Re-Hearing Decision could be judicially reviewed. The Compensation Decision is relevant to whether the Applicant has an arguable case for re-hearing, and it is considered in that context. However, the focus of the Court's review is the Re-Hearing Decision.

ISSUES

[13] The issues to consider are:

- i) What is the standard of review;
- ii) Whether the decision to deny an extension of time was reasonable; and if it was not
- iii) What the appropriate remedy should be.

STANDARD OF REVIEW

[14] The parties agree that the applicable standard of review is reasonableness. This is consistent with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], which confirms that reasonableness is the presumptive standard on judicial review. No circumstances exist in this case that would warrant a departure from that standard.

[15] In their submissions, the Tribunal provided examples of cases where Courts have applied the reasonableness standard on judicial review of workers' compensation appeal tribunal decisions, for example: *Radevicius v Workplace Safety and Insurance Appeals Tribunal*, 2020 ONSC 319; *Liverpool v Workplace Safety and Insurance Appeals Tribunal* 2023 ONSC 2286; *Duffek v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2023 ABKB 18.

[16] The reasonableness standard requires that a significant amount of deference to the administrative decision-maker. As stated in *Vavilov* at para 99:

The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on

by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[17] In assessing reasonableness, the relevant statutory framework informs the analysis. In the Act and the Rules, the Tribunal has broad discretion to consider requests for an extension of time:

- (i) Section 132 of the Act provides the Tribunal the discretion to re-hear an appeal.
- (ii) Rule 57 of the Rules permits a party to request that the Tribunal exercise its discretion to re-hear an appeal. The Rules state that absent new evidence, such a request must be made within six months of the relevant Tribunal decision.
- (iii) Rule 53(1) permits a party to request an extension of time, and Rule 53(4) confirms that the Tribunal may adjourn a proceeding or extend a deadline.

[18] There are no statutory conditions on the exercise of the Tribunal's discretion and no mandatory considerations when deciding to re-hear an appeal or extend a deadline.

[19] The Tribunal's decisions are also protected from review by a privative clause in s 133 of the Act, which limits the availability of judicial review to two specific circumstances: denial of natural justice and excess of jurisdiction.

[20] In this context, I must give a significant amount of deference to the Tribunal's decision-making. The question is not whether I would make the same decision, but whether the decision falls within the range of reasonable outcomes available on the law and the facts.

TRIBUNAL'S RE-HEARING DECISION

[21] The parties agree that the appropriate test for assessing a request for extension of time is set out in *Workers' Safety and Compensation Commission v Petersen*, 2016 NWTCA 1 [*Petersen*].

[22] In considering the Applicant's request for an extension of time, the Tribunal applied the test outlined in *Petersen* and examined the following factors:

- (i) prejudice to the opposing party;
- (ii) the length of and explanation for the delay;

- (iii) whether the applicant had a continuing intention to appeal;
- (iv) whether the applicant has an arguable case; and
- (v) the justice of the case.

[23] The Tribunal characterized the delay as lengthy (over four months past the 6-month deadline) and found there was no meaningful explanation for the delay. They concluded the Applicant had notice of the re-hearing deadline, both at the time he received the Compensation Decision and when the City filed their motion to strike the first Originating Notice. The Tribunal also noted that after the Originating Notice was struck, the Applicant took over 2 months to submit his re-hearing request to the Tribunal.

[24] The Tribunal found that the length of the delay carried inherent prejudice and that there was specific prejudice to the City in the form of increased legal costs and ongoing uncertainty regarding the outcome of the compensation claim.

[25] The Tribunal found that the Applicant had not maintained a continuing intention to seek a re-hearing, characterizing the decision to file the first application for judicial review as a deliberate choice not to pursue the re-hearing route.

[26] The Tribunal assessed the merits of the proposed re-hearing and concluded that the Applicant did not have an arguable case.

[27] Regarding the justice of the case, the Tribunal found that the need for finality and certainty in administrative decision-making was paramount and that the justice of the case did not support granting an extension.

[28] Having considered the foregoing factors, the Tribunal denied the request for an extension of time.

WAS THE RE-HEARING DECISION REASONABLE?

[29] The Applicant submits that the Re-Hearing Decision was unreasonable in the following respects:

- i) The Tribunal found that the Applicant does not have an arguable case for re-hearing;
- ii) The Tribunal based their decision on “pre-emptory” conclusions;
- iii) The Tribunal failed to properly consider the principles that apply to an extension of time; and

iv) The Tribunal made other errors of fact, law, and jurisdiction.

[30] The focus of this judicial review is the Tribunal's decision regarding extension of time. Leave for a re-hearing was not an available remedy if the extension of time was not granted.

[31] I will frame my analysis using the *Petersen* test. It is not strictly necessary that an Applicant satisfy each branch of the test, and each factor must not be weighed evenly. However, the longer the delay the more strictly the decision-maker should apply the test and require that all branches are met (*Peterson* at para 20; *Hughes v GN*, 2016 NUCJ 15 [*Hughes*] at para 13).

Prejudice

[32] The Applicant asserts that the Tribunal overstated the prejudice to the City in granting the extension and ignored the prejudice to him in denying the extension.

[33] The Tribunal characterized the delay in this case as “lengthy”. They found there is inherent prejudice with a lengthy delay and indicated that deadlines promote certainty and finality to administrative decisions. This is consistent with *Petersen* (para 21), as well as *Delwar v Beausejour (Town of)*, 2025 MBCA 84 where the court notes that prejudice can arise from the “inconvenience of litigation and delayed resolution” (para. 51).

[34] The Tribunal did not accept the City's submission that they would suffer “significant prejudice”. The Tribunal acknowledged the delay was not as excessive as in *Peterson* but still found that there was “some prejudice” to the City should an extension be granted. This included increased legal costs and managerial uncertainty. They also found that the prejudice existed notwithstanding that the request for re-hearing was expected. In my view these findings are reasonable.

[35] In terms of prejudice to the Applicant, the *Petersen* factors are focused on prejudice to the opposing party, not the impact to the Applicant if the extension is denied. The impact to the Applicant is more properly considered under the justice of the case.

Continuing Intention to seek Re-Hearing

[36] The Applicant was first notified of his option to seek a re-hearing in a letter from the Tribunal dated June 23, 2023, which accompanied the Compensation Decision. The letter communicates that Tribunal decisions are final, but that a party

may request the Tribunal conduct a re-hearing and indicates such requests must be made within six months of the Tribunal's decision. It also clarifies the Applicant must provide reasons and/or evidence to support the request for re-hearing. The Applicant did not seek a re-hearing and instead filed for judicial review.

[37] When alerted by the City's motion to strike that he had not exhausted his remedies under the Act because he had not sought a re-hearing, the Applicant still did not make the request for re-hearing.

[38] The Tribunal found that the Applicant did not have a continuing intention to seek a re-hearing during the period of delay. The Tribunal held that the Applicant made a deliberate choice to pursue a judicial review instead. They found there was an "obvious distinction" between having an intention to seek the re-hearing remedy and pursuing an alternate remedy of judicial review. The Tribunal found this to be an important consideration that weighed against granting the extension.

[39] In *Petersen*, the claimant was denied compensation under the Act and brought the matter to the Appeals Tribunal, where he was unsuccessful. He first requested a re-hearing from the Appeals Tribunal and was denied. He then requested that the Governance Council direct a re-hearing and was also denied. He then sought to extend the timeline to apply for judicial review. One of the factors that weighed against an extension of time was that he lacked the continuing intention to bring the judicial review application. The Northwest Territories Court of Appeal found that the earlier requests for re-hearing were not necessarily evidence of an intention to seek judicial review (para 23).

[40] In *Hughes*, the Nunavut Court of Justice held that appealing a lower-level decision does not demonstrate a continuing intention to appeal, and that making requests under the *Access to Information and Protection of Privacy Act* also did not demonstrate an intention to appeal. The court stated at para 16:

There is a distinction between challenging a decision through appeal and review processes that are internal to the Government of Nunavut and seeking a review through the courts. A demonstrated desire to pursue one of these courses of action is not necessarily a demonstrated desire to pursue the other.

[41] *Peterson* and *Hughes* demonstrate that the courts have drawn a distinction between a general intention to challenge a decision and the more specific intention about the method for doing so.

[42] Further, in this case, the Applicant told the Tribunal that “proceeding by judicial review before an independent decision maker was preferable to seeking a rehearing before the decision maker which had already decided against our client.” (Record, Volume 3, Tab 37, page 4).

[43] Having considered the foregoing, I find the Tribunal was reasonable in concluding the Applicant did not have a continuing intention to see re-hearing.

Explanation for Delay

[44] It took 7 months from the time the judicial review was filed to the time it was struck by the Court in March of 2024. After the Applicant’s judicial review was struck, he waited another 2 months before submitting his request for a re-hearing to the Tribunal.

[45] In the request for re-hearing, the delay was explained only by the Applicant’s decision to seek judicial review, and the time it took to obtain a decision from the Court regarding their application.

[46] During the hearing of this matter, the Applicant also explained that the 2-month delay in seeking a re-hearing was because his newly retained lawyer required time to prepare his materials and co-ordinate with co-counsel. However, this explanation was not part of their submission to the Tribunal and therefore could not be considered in the Re-Hearing Decision.

[47] The Tribunal found the Applicant’s explanation to be insufficient and characterized their actions as a “deliberate delay to await the outcome of an avenue of recourse that was preferred by the worker but proved unsuccessful” (Re-Hearing Decision, para 41).

[48] I acknowledge the Applicant’s submission that the 30-day timeline for judicial review and the 6-month timeline for seeking a re-hearing could cause procedural uncertainty. In the Re-Hearing Decision, the Tribunal concluded that it in some cases it is prudent to pursue both remedies, and that given the incompatible timelines, a re-hearing is not necessarily a prerequisite for a judicial review application. I agree this is potentially confusing to a litigant, but it is what the statute directs.

[49] In this case the Applicant was not confused about the procedure. As I have noted, he explicitly rejected the re-hearing route and was transparent with the Tribunal about that choice. The Applicant had legal representation during the relevant period of time and had notice of the re-hearing remedy through both the

Tribunal's correspondence and the City's motion to strike, prior to receiving the Court's ruling confirming that the judicial review was premature.

[50] It was therefore reasonable for the Tribunal to conclude that pursuing a judicial review was an insufficient explanation for the delay.

Arguable Case

[51] The Applicant focused on specific examples to support an arguable case for re-hearing, including:

- i) the Tribunal's denial of an extension to make submissions on a new unpublished decision of the Tribunal; and
- ii) the Tribunal's findings of fact not supported in evidence, and
- iii) the Tribunal's misinterpretation of the WSCC policy.

[52] I will reiterate that the Court is not reviewing the Compensation Decision. I have considered the arguments made by the Applicant only to the extent necessary to assess the Tribunal's findings on arguable case.

Denial of Extension regarding the Unpublished Decision

[53] On May 30, 2023, prior to releasing the Compensation Decision, the Tribunal contacted the parties to seek submissions on a newly identified Tribunal decision that had not yet been published (the Unpublished Decision). The Unpublished Decision is important to the Tribunal's decision as it sets out the test to be applied in claims for psychological injury.

[54] The Tribunal wrote to both parties and set a deadline for submissions. The City requested a one-week extension from the deadline, which the Tribunal granted. On the day of the amended deadline, counsel for the Applicant, who had recently been retained, sought a further extension. The Applicant's request was denied and as a result the Applicant did not make submissions on the Unpublished Decision.

[55] Counsel for the Applicant indicated that had the extension been granted, he would have filed additional legal authorities. He argued that these additional legal submissions could have meaningfully impacted the outcome of the hearing, and therefore the denial created a significant fairness issue.

[56] The Tribunal invited the parties to make submissions on a narrow point: the application of the Unpublished Decision to the Applicant's appeal. The hearing was otherwise complete. There was not an opportunity to make further legal submissions on broader points of law or introduce new legal authorities. There was no application to re-open the record.

[57] Further, the Applicant did not participate in the appeal hearing. The Rules contemplate that if a party does not participate in a hearing, they are deemed to have waived their right to participate in the appeal (r 43). The Tribunal was not obligated to offer the Applicant the opportunity to make submissions but did so regardless.

[58] On these facts, the Tribunal was reasonable in finding that there was no arguable case for re-hearing based on denial of the extension.

Evidence Issue

[59] The Applicant highlights a statement from the Compensation Decision (Record, Volume 1, Tab 33, para 31) wherein the Tribunal comments that the forms of discipline the Applicant had been subjected to were standard methods of training in military and paramilitary organizations in the past.

[60] The Applicant argues that these statements were findings of fact not grounded in the evidence, and that this is an error. The Applicant submits that the Tribunal erred by failing to consider this issue when assessing their request for re-hearing.

[61] In the Compensation Decision, nothing turned on the Tribunal's statements about historical practices of military and paramilitary organizations. Instead, the Tribunal was focused on whether the Applicant had experienced a "traumatic event" as defined in the relevant WSCC Policy.

[62] In my view, the Tribunal failing to address this specific argument does not render the Re-Hearing Decision unreasonable.

Additional Errors

[63] The Applicant raised a number of additional alleged errors in their request for re-hearing including failing to apply relevant case law, failing to apply relevant sections of the Act, and failing to consider relevant law and policy.

[64] In addressing arguable case, the Tribunal emphasized that the Applicant did not participate in the compensation hearing. They stated that the Compensation

Decision “cannot be considered to be lacking in analysis on the basis of overlooking authorities only brought forward by the Worker when later seeking to challenge the decision.” (Re-Hearing Decision, para 51).

[65] The Tribunal’s conclusions on arguable case are stated at para 53 of the Re-Hearing Decision:

I have found no arguable case for any breach of the duty of fairness in the manner in which the Tribunal considered the Appeal. I am satisfied that [the Compensation Decision] resulted from careful consideration by the Tribunal of the available evidence, submissions from the participating party, and the applicable legislation and policy. (Record, Volume 3, Tab 42)

[66] The Tribunal is required to “meaningfully account for the central issues and concerns raised by the parties” (*Vavilov* at para 127). However, they are not obligated to address each and every argument made by a party in their decision (*Vavilov* at para 128). The analysis on arguable case does not fully address the merits of every submission made by the Applicant, and it does not have to.

[67] I do wish to address one particular argument that the Applicant made on arguable case. He asserts that the Tribunal has misinterpreted the WSCC Policy and relied on an incomplete definition of “traumatic” in assessing the Applicant’s claim. The Tribunal uses general language to communicate the standard of reasonableness had been met rather than engaging directly with this issue. I agree with the Applicant there is inadequate reasoning on this point. However, I am still required to consider the decision as a whole in determining overall reasonableness. In my view this lack of analysis does not render the decision unreasonable.

Justice of the Case

[68] The Tribunal’s task is to consider whether an extension of time is appropriate and justice is thereby served.

[69] In *Petersen*, at para 39, the Court of Appeal confirmed that the justice of the case should not be looked at in isolation from the other criteria, but rather in conjunction with them.

[70] An important consideration regarding justice of the case is finality and certainty in administrative decision-making, and the Tribunal was explicit that this was a priority in their decision. The importance of these principles is confirmed in cases such as *Petersen* and *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[71] When the Applicant's first judicial review was struck by the Court in March of 2024, the presiding Justice made comments suggesting that an extension of time to seek a re-hearing should be granted to the Applicant. In those same proceedings the Court acknowledged it did not have the jurisdiction to grant an extension of time, and that the decision rests squarely within the Tribunal's jurisdiction. That is why the matter returned to the Tribunal to decide.

[72] The Applicant relies on the Court's comments to support his request for a re-hearing. However, the court's comments were *obiter dicta*. They did not form part of the court's ruling and did not bind the Tribunal. The Tribunal came to their own independent conclusion regarding the strength of the Applicant's case and whether an extension of time should be granted, which was consistent with their statutory role and within their sole discretion.

CONCLUSION

[73] The Tribunal is owed a significant amount of deference in their decision making. My role is not to insert my own views, but to assess whether the Tribunal's decision to deny an extension of time was reasonable.

[74] The Tribunal's conclusions are supported by the evidence and submissions before it. The Tribunal applied the correct legal test. Considered holistically, the decision falls within the range of reasonable outcomes available in the circumstances.

[75] The application for judicial review is dismissed.

K. L. Taylor
J.S.C.

Dated in Yellowknife, NT this
26th day of June 2026

Counsel for the Applicant:
Counsel for the Respondent (City of Yellowknife):
Counsel for the Respondent (WSCC):

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