

# Responding to the Truth and Reconciliation Commission Calls to Action

**WCAT** Workers' Compensation  
Appeal Tribunal

## **WCAT Executive Adoption of Recommendations from the Community Advisory Council**

As part of its commitment to be a part of the reconciliation process called for by the Truth and Reconciliation Commission, WCAT has formed a Community Advisory Council made up of members of the legal community<sup>1</sup> who, through personal and professional experience, are knowledgeable of the circumstances and needs of the Indigenous communities throughout BC.

On July 31 and September 27, 2018 the Community Advisory Council (CAC) held meetings with WCAT team members to review WCAT's practices and procedures, with a view to identifying potential institutional impediments for Indigenous parties at WCAT.

### **Review and Recommendation Process**

In undertaking its review of WCAT's practices and procedures, the CAC identified a number of issues as being endemic to Indigenous peoples of BC, relating to their ability to know about, access, and work their way through WCAT's appeal process.

The CAC considered WCAT's practices and procedures in light of those endemic issues, from first contact by an appellant through to the delivery of a final decision, and made several recommendations for change/improvement to WCAT practices and procedures.

An internal WCAT committee, which included representation from the executive, tribunal counsel, and the registry, considered the CAC's recommendations for change in relation to the potential broader effect on WCAT, legal limitations, and registry management of files, as well as facility capacity.

The following are the recommendations that arose as a result of these consultations and the response of WCAT's executive. Each of the recommendations was accepted by WCAT:

#### **1. Ask Indigenous Persons to voluntarily self-identify to help WCAT gather information on the rate of appeal participation of these communities.**

Knowledge about the participation of Indigenous peoples with WCAT was identified by the CAC as being critical in order for WCAT to respond to the calls to action set out in the TRC report.

It was proposed that WCAT's Notice of Appeal form be amended to include wording which would provide appellants the opportunity to self-identify as an Indigenous person, as follows:

*The purpose of this question is to clarify our understanding about the background of the peoples appearing before WCAT, for statistical purposes, as part of implementing the calls to action of the Truth and Reconciliation Commission (TRC).*

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<sup>1</sup> The members of the CAC, and the participants from WCAT, are identified in Appendix A to this report.

*Are you an Indigenous person (includes a person of Indigenous ancestry: Inuit, Metis, First Nations, non-status, status, and anyone with First Nations ancestry)?*

\_\_\_ Yes

\_\_\_ No

\_\_\_ Other, please explain \_\_\_\_\_

[This recommendation was accepted and was implemented on April 1, 2019.](#)

**2. Optimize the Notice of Appeal form for use with smartphones.**

One of the barriers identified for Indigenous people accessing the appeal process is the lack of access to computers. The members of the CAC indicated that in their experience Indigenous people often do not have access to a computer, perhaps not even through the Band office. The CAC also noted that within the rural population, access to the internet can be problematic. It was suggested, however, that most people do have smart devices, and that even where access to wired internet may be unavailable, people can access the internet where available using their smartphones and download materials as needed.

Optimization of submission of appeal forms using smartphones would assist in addressing this identified barrier.

This was also identified as being a step which provides greater access to all people in BC who do not have computers, making WCAT a more accessible tribunal generally.

[This recommendation was accepted. Updated forms which can be completed with mobile/smart devices were made available on WCAT's website April 1, 2019, with further improvements to be implemented in late 2019/early 2020.](#)

**3. Create a “Navigator” to assist Indigenous peoples in their access and interaction with WCAT.**

The CAC recommended that assignment of a “Navigator” to assist Indigenous appellants in providing them with information regarding their access and interaction with WCAT. The CAC recommended that this role be filled by an individual who has received training in Indigenous cultural competencies and skills training on the issues endemic to this portion of society and on interaction with them.

[This recommendation was accepted. A job description for the Navigator position was created, expressions of interest from staff were obtained, and those staff members have commenced training in respect of Indigenous cultural competencies.](#)

**4. Improve information for the public about WCAT's processes.**

An information sheet which provides a clearer and simpler explanation of WCAT appeal processes and expectations of appellants was recommended.

The materials currently available were felt to be a potential barrier to access on the basis that they include too much "legalese", along with an assumption of a general understanding of the purpose of WCAT and the typical processes of an administrative tribunal.

The CAC noted that prior experiences with the judicial system and government generally have resulted in an aversion to interaction with government agencies which potentially involve conflict. As a result Indigenous peoples may have little understanding of the role and processes of an administrative tribunal.

The CAC also recommended that an updated WCAT information sheet ought to include diagrams or a flowchart, as well as pictures of the hearing rooms, to make WCAT's process more understandable.

The CAC recommend WCAT members collaborate with the members of the CAC in the drafting of a new information sheet.

[This recommendation was accepted. Members of the CAC will work with WCAT's project leaders and legal counsel to re-write WCAT's current information materials for new appellants. In the interim to changing the current information materials \(information and format\) WCAT will develop an information sheet to be included for self-identified Indigenous appellants. WCAT will work with the CAC to receive feedback on the drafting of that information sheet.](#)

**5. Adopt an alternative/adaptive approach for handling appeals from Indigenous peoples.**

The CAC recommended that after self-identification, appeals from Indigenous peoples be assigned by the chair for consideration of an alternative or adaptive approach. It was suggested that this could involve early assignment of a vice chair, and assignment of a Navigator for consideration of issues such as: the need for an oral hearing, the duration of an oral hearing, the use of video-conferencing instead of an oral hearing, or barriers in accessing materials relevant to the appeal.

For example, the generally scheduled time frame of a 1.5 hour oral hearing was identified by the CAC as a potential barrier. The CAC indicated that, culturally, Indigenous peoples address issues in a manner which is circular, rather than linear; and that they traditionally approach problems or conflict by telling a larger, more contextual story rather than identifying and approaching the issues directly. It was suggested that providing sufficient time to allow such a contextual discussion would allow individuals to build trust in WCAT's processes.

The CAC recommended that appeals related to Indigenous appellants be scheduled for 3 hours, or with additional time as indicated by the vice chair assigned to the appeal. The vice chair could also approve adaptive processes for the oral hearing, such as scheduling of video-conferencing (perhaps in the Band office) where the appellant lives. It was suggested that this would be particularly important if the appellant lives in a rural or remote community.

[This recommendation was accepted.](#)

#### **6. Change of set-up of one oral hearing room to make it appear less adversarial.**

The T-shape of the oral hearing tables was identified by the CAC as being a potential barrier to the full participation of Indigenous peoples in the WCAT hearing process.

The CAC suggested that, related to the socio-political experiences of Indigenous peoples, the current hearing room set-up of T-shape of the desks could reinforce the image of an adversarial process, particularly in association with the justice system. It was suggested a round table be used instead to facilitate the “listening” aspect of an oral hearing and to reinforce principles of respect and equality which is accomplished by a more face-to-face presentation.

After meeting with the vice chairs from WCAT’s Occupational health and Safety committee, it was recommended that one hearing room be reconfigured. It was suggested that a half-moon table be constructed and custom fitted to the existing oval table where the vice chair sits. The half-moon table is expected to address the following issues:

- Implementation of a rounder table set-up to address possible perception of the oral hearing as an adversarial process with the appellant sitting across from a perceived adversary;
- Addressing safety concerns of OHS committee, as the appellant would be sitting further away from the vice chair than the current set-up and therefore providing a greater distance barrier;
- The use of a wider half-moon table would increase the physical barrier (access route) between where the vice chair is sitting and where the parties are sitting (side by side);
- This newly configured hearing room could be used for other appellants, beyond Indigenous appellants. Appeals where there is no indication of a threat, appeals with only a self-represented appellant, and with the agreement of the vice chair. If after review of the materials, the vice chair is of the opinion the appeal is not suitable for this hearing room, accommodation through re-scheduling or transfer to another hearing room should be made.

[This recommendation was accepted. One hearing room at WCAT will be reconfigured as recommended by September 2019.](#)

**7. Change the presentation of the oral hearing room to make it more welcoming.**

The CAC indicated that the institutional presentation of the oral hearing room was as a potential barrier to access and participation. It was suggested the room be painted, perhaps in a colour known to result in a calming effect. It was further suggested that artwork, including the possibility of Indigenous artwork, could also be added to soften the appearance of the room. It was noted that Indigenous Services Canada, for example, is transforming their regional offices with this concern in mind<sup>2</sup>.

This recommendation was accepted by WCAT's executive as a future initiative.

**8. Provide mandatory cultural competency and skills-based training for vice-chairs and administrative staff, as well as enhance access for voluntary training and education opportunities.**

The TRC recommends both cultural training and skills-based training for members of the public service and the judicial system. Cultural training is intended to educate, and hopefully improve interaction with the Indigenous population through a greater understanding of their circumstances and knowledge of tribunal structure. Some cultural training has already taken place with an introduction to the TRC report for vice-chairs, but not specifically around these issues.

Cultural training would include identification and explanation of the socio-political environment of the Indigenous population related to their history, culture, and experiences with government and the judicial system including the legacy of the residential school system. It is expected to be more than the telling of any particular individual's history.

Skills-based training would include issues such as:

- the identification of appropriate language for interaction with the Indigenous population (in particular with an explanation why certain terms may be offensive);
- identification of evidentiary barriers such as lack of access to doctors, implicit bias of the medical profession in believing Indigenous peoples or filing reports, and implicit bias of vice chairs in assessing behavior which differs from western cultural standards;
- the possible acceptance/tolerance and comfort of an Indigenous person to a level of discrimination and mistreatment within the workplace related to their ethnicity;
- understanding of potential reluctance and delay in claiming compensation by Indigenous peoples, and particular potential "special circumstances" to explain that delay; and
- awareness of the non-linear method of discussing issues, which differs from the western-based evidentiary standards for assessing credibility.

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<sup>2</sup> <https://www.sac-isc.gc.ca/eng/1534270679518/1534270708021>

It is recommended WCAT hire a professional educator who is trained in effective delivery of this material, knowledgeable about Indigenous history and issues, and has a cultural Indigenous background.

This recommendation was accepted by WCAT's executive.

WCAT acknowledges Indigenous Relations Behavioral Competencies have been recommended for the BC Public Service and apply to all employees no matter where they work. Training sessions have occurred in March and May 2019, and will continue on an ongoing basis.

Andrew Pendray  
Chair

### **Ning Alcuitas-Imperial**

Luningning Alcuitas-Imperial became the registrar of WCAT in June 2016. She has been a WCAT vice chair since its inception in March 2003 and prior to that she was appointed as a vice chair of the Workers' Compensation Review Board in December 2000. Ms. Alcuitas-Imperial worked previously as assistant to the registrar and acting registrar at the Medical Review Panel Department of the Workers' Compensation Board and as an advocate for the Canadian Diabetes Association. At WCAT, she served as the registrar from 2004 to 2006 and as a team leader. She obtained her Bachelor of Arts degree in 1988 and her Juris Doctor degree in 1991 from the University of Manitoba.

### **Rosalind Campbell**

Rosalind Campbell is a member of the Musqueam Indian Band where she is an elected councillor with a seat on each of the Inter-Governmental Affairs and Finance & Administration Committees.

Rosalind is a lawyer practicing Aboriginal Law at the boutique firm of Grant Huberman in Vancouver, B.C. Rosalind's Aboriginal Law practice includes experience in the areas of Rights and Title, corporate commercial, and governance. She graduated from the University of British Columbia with a Bachelor of Arts degree in 2006 and a Bachelor of Laws degree in 2009. Rosalind was called to the bar (Law Society of BC) in 2010.

Rosalind has served on the boards of several non-profits that provide services to indigenous learners, indigenous women and children, indigenous performing artists and women and people who experience gender-based discrimination.

### **Michelle Good**

Ms. Good is of Cree ancestry, a member of the Red Pheasant Cree Nation in Saskatchewan. She has lived the majority of her life in British Columbia. Prior to obtaining her LLB from the University of British Columbia, she worked for twenty years in a variety of capacities with First Nations and their organizations. In 2014 obtained a Master of Fine Arts also from the University of British Columbia. She is a trained mediator and has taught Indigenous Studies and History at UBC Okanagan and the En'owkin Centre in Penticton.

### **Christopher Hiebert**

Chris Hiebert earned a bachelor's degree in English Literature from UBC and a Juris Doctorate from UBC's Peter A Allard School of Law. He is passionate about service, access to justice, and Aboriginal issues in law. Before articling at the Indigenous Community Legal Clinic, he was a student, a research assistant, and volunteer there through his final year of law school. While completing his B.A. Chris lived in the Downtown Eastside and worked with local residents through UBC public programming. Before law school, Chris spent some years in South Korea where he worked with students and North Korean refugees.

Chris is Dene with roots in Saskatchewan. Because he has lived and/ or worked in the Downtown Eastside for much of his time in Vancouver he identifies with the neighbourhood. It was the idea of advocating for this community which drew him to the legal profession. In addition to his direct advocacy of Aboriginal people in the Justice System, Chris is delighted and honoured to consult on policy regarding Indigenous folks more broadly.

**Melissa Louie, Kahahxstahlas**

Melissa is a Citizen of the Tla'amin Nation (Coast Salish peoples) located north of Powell River, BC and also has family ties to the Okanagan (Syilx) peoples of the Penticton Band.

Melissa holds a BA in Criminal Justice from UCFV and an LLB from UBC Faculty of Law, and has worked with Morgan and Associates since 2007. Prior to pursuing a legal career, Melissa worked with a number of First Nations participating in treaty negotiations, including with her own Nation as a member of Tla'amin Nation's treaty negotiation team. Since becoming a lawyer in 2008, Melissa worked with her Nation throughout the treaty implementation process (including assisting in the drafting of the Tla'amin Constitution, setting up the Government structure and drafting a number of key laws and regulations). In addition, Melissa has developed broad and practical experience in providing legal and strategic policy advice on a wide range of treaty-related and Aboriginal title and rights issues and relevant experience working at the international-level to advance Indigenous rights through United Nations mechanisms by supporting the former North American representative to the United Nations Permanent Forum on the Rights of Indigenous Peoples.

**Renee Miller**

Renee Miller obtained her J.D./LL.B. from Osgoode Hall Law School in 1989 and has been a member of the bar since 1991. Her prior work involved private practice in the areas of criminal and immigration law, as well as work with the Law Society of BC and the Continuing Legal Education Society. She was appointed as a vice chair of WCAT in May 2010. Previously she was a member of the Appeal and Refugee Divisions of the Immigration and Refugee Board of Canada and the Mental Health Review Board.

**Miranda K. Seymour**

Miranda was born in Prince George and is a member of the Lheidli T'enneh First Nation. After graduating in 2011 from the University of Northern British Columbia with a Bachelor of Arts degree in Geography she attended the Native Law Centre Summer Program (formerly the Program of Legal Studies for Native People) at the University of Saskatchewan. She then went on to join the inaugural law class at Thompson Rivers University where she was the founding vice-president of the Indigenous Law Students' Association and founding member of the Law Students in Defense of Animal Rights group. Miranda graduated with a Juris Doctorate in 2014.

After law school Miranda articulated with the Ministry of Justice in Victoria. Miranda was called to the bar in 2015, after which she returned to her hometown to begin her legal career. Miranda started with the small general litigation firm of Jon M Duncan Law Corporation and later joined

Marcotte Law to practice in the areas of Real Estate and Wills and Estates. She currently works at Houg Slaney, Lawyers practicing exclusively Wills & Estates.

Miranda is currently working towards attaining a diploma in Legislative Drafting through Athabasca University. She also enjoys spending time in the beautiful outdoors in and around Prince George with her four dogs and being involved with the Lheidli T'enneh community. From 2015-2018 Miranda was part of a working group that helped in the formation of the Prince George Indigenous Court.

### **Jim Sheppard**

James Sheppard was appointed as a vice chair of WCAT on inception in March 2003. Previously Mr. Sheppard served as a non-representational appeal commissioner with the Appeal Division of the Workers' Compensation Board from August 2000 to February 2003. Prior to joining the Appeal Division, he was the senior adviser with the Employers' Advisers Office of the Ministry of Labour. Mr. Sheppard provided assistance, advice, and representation to employers throughout the province on compensation, assessment, and occupational health and safety matters. Mr. Sheppard was called to the bar in March of 1987 and has Bachelor of Commerce and LL.B. degrees from the University of British Columbia. Jim is currently WCAT's Vice Chair, Quality Assurance and Training.