

Workers' Compensation Appeals Tribunal

ANNUAL REPORT
FOR THE YEAR ENDING MARCH 31, 2023



NOVA SCOTIA



Nova Scotia
Workers' Compensation Appeals Tribunal

Bradley H. Johns
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2023.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sandy MacIntosh".

Sandy MacIntosh
Chief Appeal Commissioner

Tribunal Personnel

Colleen Bennett

Supervisor, Office Services

Mary-Ann Arnold

Clerk

Tricia Hines

Clerk/Scheduling Coordinator

Charlene Downey

Secretary/Receptionist

Sandy MacIntosh

Chief Appeal Commissioner

Sharon Pierre Louis

Executive Assistant to the
Chief Appeal Commissioner

Lianne Chang

Alison Hickey

Glen Johnson

Brent Levy

Andrew MacNeil

Diane Manara (Registrar)

Richard Pace-Ola

Valerie Paul (Deputy Registrar)

David Pearson

Andrea Smillie

Appeal Commissioners

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GUIDE

FIELD

POWERBEST

425

LOCAL 625

LOCAL 625
WELDER

HORIZON

Executive Summary

The Workers' Compensation Appeals Tribunal (the tribunal) resolves appeals from final decisions made by hearing officers of the Workers' Compensation Board (the board). We also decide whether the Workers' Compensation Act (the act) bars a right of action against employers.

This report covers our fiscal year, which ran from April 1, 2022, to March 31, 2023.

Our appeal volume increased, and decision output decreased. Our overall inventory of appeals still decreased due to the number of appeals that were withdrawn. The increase in appeals received at the tribunal is largely due to the board's internal appeals addressing appeals more quickly.

We continue to work with participants to resolve appeals more quickly. Most of the unscheduled appeals are waiting for additional medical evidence that has been requested by the Workers' Advisers Program and, on occasion, by employers.

The time to resolve appeals improved this year. Appeal participants are setting down appeals quicker. This has been a positive trend for the last few years.

The most common appeal issues are claim acceptance and entitlement to new or additional temporary benefits. Most appeals proceed by way of oral hearing.

Slightly over half of the appeals were allowed, at least in part. This is an increase compared to last year.

Eight of our decisions were appealed to the Court of Appeal. By consent, two of our appealed decisions were sent back to us for re-adjudication.

The tribunal is taking part in a joint review of the workers' compensation appeals system. A co-operative plan for system improvement is anticipated shortly.

Our total expenditures were within 68 per cent of the original authority and 89 per cent of the final forecast. Net expenditures totalled \$1,891,316, a slight decrease from the previous year.



Sandy MacIntosh
Chief Appeal Commissioner

Introduction

The Workers' Compensation Appeals Tribunal (the tribunal) hears appeals from final decisions of Workers' Compensation Board (the board) hearing officers. We also determine whether the Workers' Compensation Act (the act) bars a right of action against employers.

The tribunal was created to enhance confidence in the workers' compensation system by having an independent organization hear appeals of board decisions. We are legally and administratively separate from the board, which ensures an independent and impartial review of board decisions.

Appeal commissioners decide appeals according to the act, regulations, and board policies. We consider the following:

- the board claim file
- the decision under appeal
- additional evidence the participants may present
- submissions of the participants
- any other evidence we may request or obtain

All decisions are based on the real merits and justice of the case.

Once an appeal is assigned to an appeal commissioner, the chief appeal commissioner cannot intervene to influence the commissioner's judgment. In our adjudicative role, we are guided by the principles of independence, fairness, and consistency.

We are part of the Workplace Safety and Insurance System. The larger system includes the board, the Workers' Advisers Program, and the Occupational Health and Safety Division of the Department of Labour, Skills and Immigration.



Relationship to the Board

We are independent from the board. However, we interact with the board in five ways: funder, appeal participant, policy maker, IT sharer, and system partner.

1. Board as funder

We are funded by the board-managed Accident Fund. Expenses are first paid by the province, then the province is reimbursed from the Accident Fund. The board has no financial influence over us. We are accountable to the legislature for budgetary matters through our reporting to the minister of justice.

2. Board as appeal participant

The board has the same rights and obligations as other participants in a tribunal appeal. As a participant in every proceeding, the board's legal department is aware of the status of every appeal before us. In most cases, the board does not actively participate in appeals. Instead, the board monitors what is happening.

3. Board as policy maker

The board's board of directors adopts policies that all decision makers, including appeal commissioners, must follow. However, we are not bound by board policy if we find a policy inconsistent with the act or the regulations.

The chair of the board may adjourn or postpone an appeal before us for policy development reasons. This can only occur where the appeal raises an issue of law and general policy. We can ask the chair whether an appeal raises an issue that should be reviewed for policy development reasons.

4. Board as IT sharer

The board gives us access to Guidewire, its claims management system. This gives us access to worker claim files and employer assessment information.

5. Board as system partner

We are a partner, as is the board, in the Workplace Safety and Insurance System and participate in joint committees, such as the Heads of Agencies Committee and the Issues Resolution Working Group.

The Heads of Agencies/coordinating committee's mandate is to oversee the implementation of a strategic plan for the system. The mandate recognizes that co-operation and communication between agencies is crucial for the implementation of the strategic plan.

We are careful to ensure that co-operation with partner agencies does not compromise, and must not be perceived to compromise, our independence.

Tribunal Mandate and Performance Measures

We strike a balance between efficiency and fairness in the management and adjudication of appeals.

Our performance is measured using factors drawn from the act and the expectations of participants.

Our decisions are written. The act requires decisions be released within 60 days of a hearing, or, if the appeal proceeded by written submissions, the date on which all submissions have been received. Appeal commissioners often release decisions within 30 days of an oral hearing or the closing of deadlines for written submissions.

New appeals are usually processed and acknowledged within four days of receipt. We can hear an appeal within 30 days of receiving notice the participants are ready to proceed.

Most appeals take much longer to schedule. The biggest factor is participants seeking additional medical evidence, often from specialists. Representatives often limit how many hearings they wish to do in a month. Contested hearings often take longer to schedule. Disputes between participants concerning disclosure can slow the setting down of appeals for hearing.



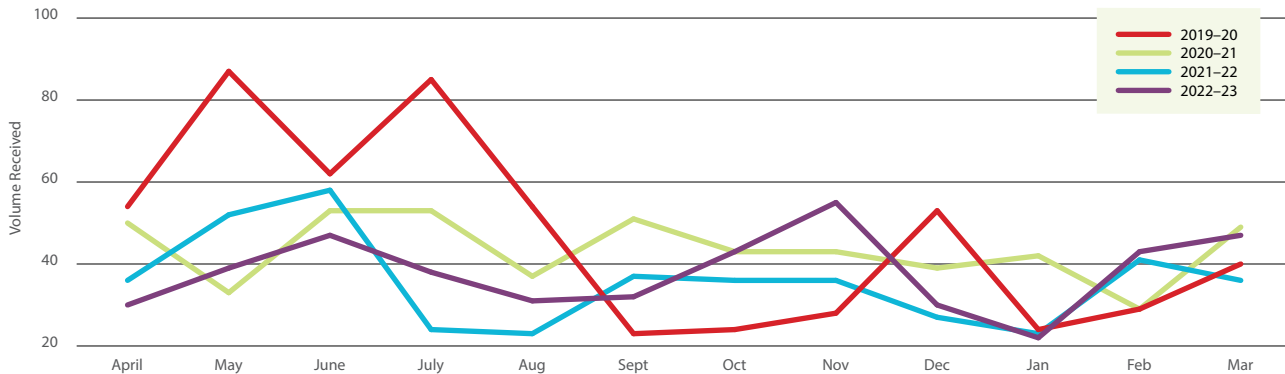
Operations

This report covers our fiscal year, which ran from April 1, 2022, to March 31, 2023. When we refer to the previous year in this report, we are referring to April 1, 2021, to March 31, 2022.

Our appeal volume increased from last year. We received 457 appeals this year, compared to 429 in the previous year (see Figure 1). A significant factor in this was the board's internal appeals addressing appeals more quickly.

Appeals were predominantly filed by workers (91 per cent). A total of 480 appeals were resolved this year, compared with 564 the previous year.

FIGURE 1
Appeals Received



Please see Appendix (pages 22–24) containing specific data for the following figures.

Our decision output decreased this year from 442 to 351 (see Figure 2). The decrease resulted from participants setting down fewer appeals. At year end, 433 appeals remained to be resolved, compared to 465 last year (see Figure 3).

There are 32 appeals that have been with us for over two years, which is a decrease of 10 compared to the end of the previous year. Of those, 29 are represented by the Workers' Advisers Program and 26 of those involve an employer. The tribunal continues to have fewer older appeals at year end.

The oldest appeals at the tribunal are ones that raise a challenge under the Canadian Charter of Rights and Freedoms to the exclusion of gradual onset stress from being an acceptable claim. The deputy minister of Labour, Skills and Immigration announced at the Workplace Safety Insurance System annual meeting two years ago that the stress exclusion is under review for statutory reform. There are 25 appeals on hold at the tribunal in anticipation of legislative reform.

FIGURE 2
Decisions Rendered

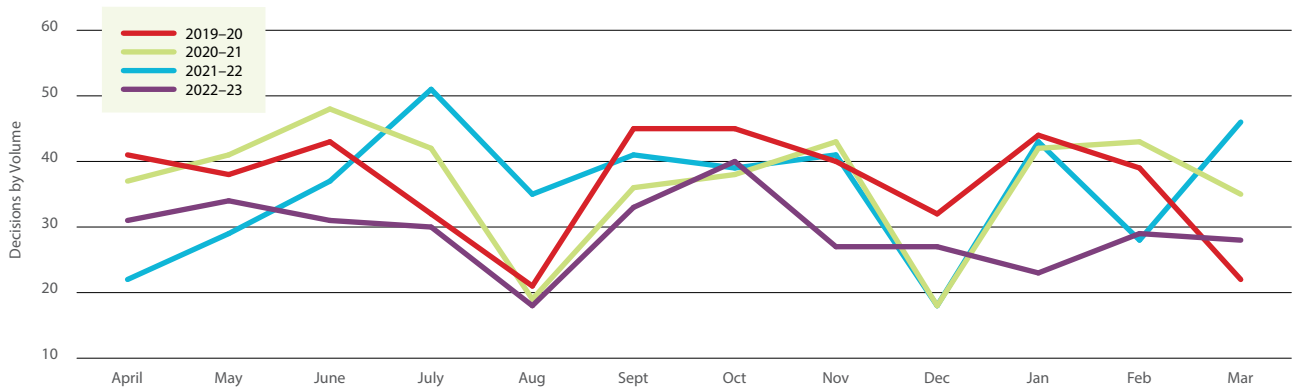
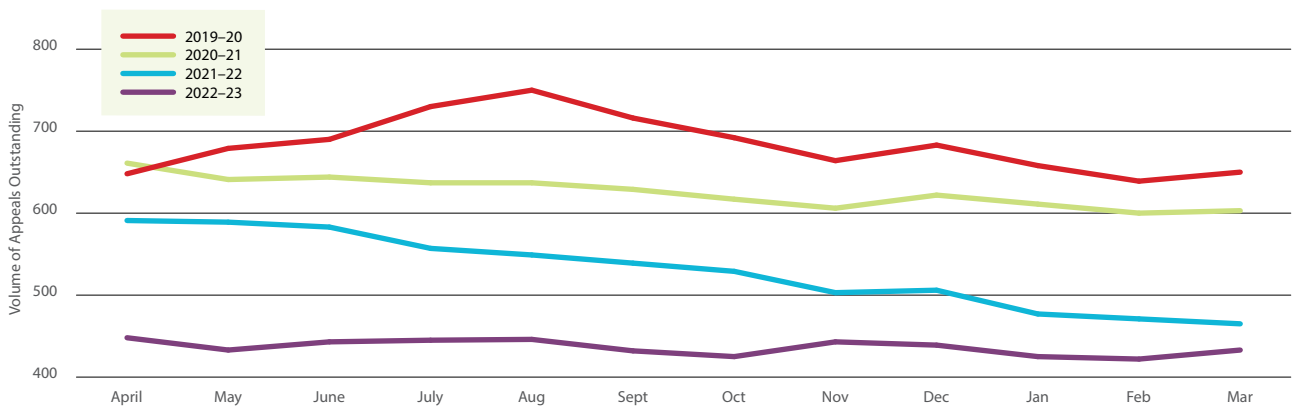


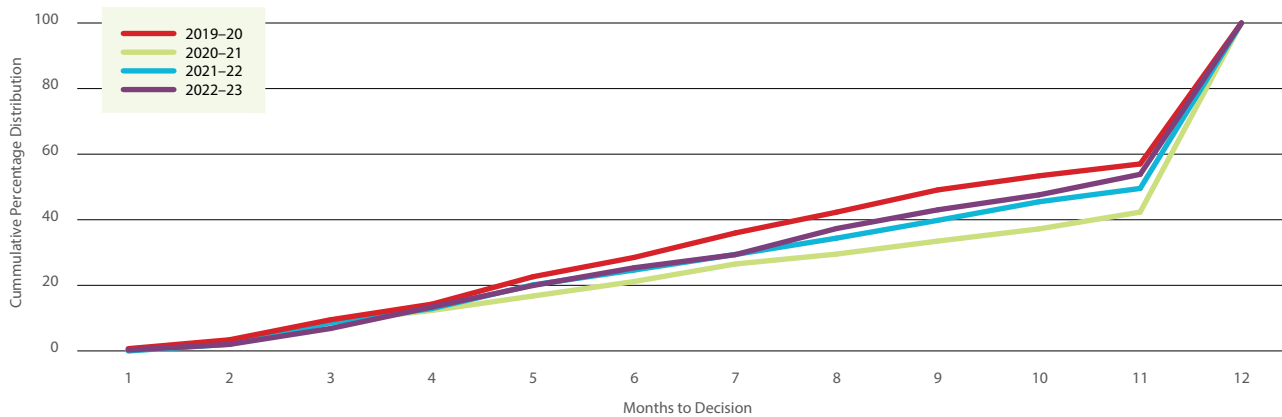
FIGURE 3
Appeals Outstanding at Year End



We must balance between resolving appeals quickly and ensuring maximum fairness. A significant portion of the appeals are awaiting additional medical evidence that has been requested by the Workers' Advisers Program and, on occasion, by employers.

Approximately 25 per cent of decisions were released within six months of the date the appeal was received. Approximately 43 per cent of decisions were released within nine months of the date the appeal was received. About 46 per cent of appeals took more than 11 months to resolve (see Figure 4). Appeals are being resolved at the tribunal more quickly than last year.

FIGURE 4
Timeliness to Decision



We report on decisions by representation at the time of decision release (see Figure 5). Of the 351 decisions issued this past year, 73 per cent of workers were represented by the Workers' Advisers Program, which is consistent with the previous year when it was 71 per cent.

Employers participated in 29 per cent of resolved appeals, about the same as last year. The Office of the Employer Advisor helps some of the unrepresented employers prepare for their appeal.

The issues most appealed to us by workers were recognition of a claim (24 per cent) and new/additional temporary benefits (24 per cent). Employers most often appealed acceptance of claim decisions or the extent of benefits (see figures 6 and 7).

We heard 65 per cent of appeals by way of oral hearing, an increase from last year's total of 60 per cent (see Figure 8). Oral hearings can be in person, by telephone, or by video hearing.

A higher percentage of hearing officer decisions were overturned and there was a decrease in the percentage of referrals back to hearing officers for additional adjudication. The overturn rate (appeals allowed or allowed in part) increased to 56 per cent compared to 49 per cent the previous year (see Figure 9).

The number of appeals returned to hearing officers for reconsideration decreased to 13 per cent from 15 per cent. The need for additional investigations is a typical reason for us to ask a hearing officer to reconsider an appeal. The percentage of appeals denied decreased to 30 per cent from 35 per cent the previous year.

FIGURE 5
Decisions by Representation

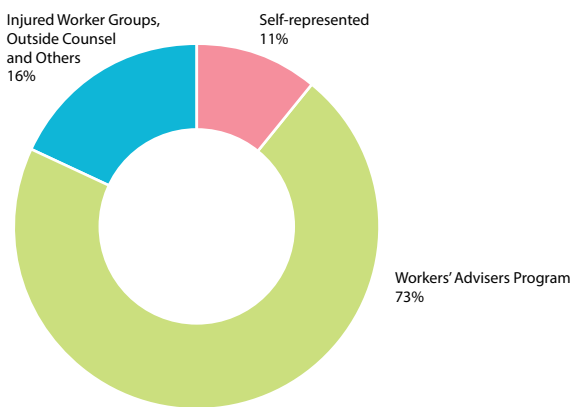


FIGURE 6
Decisions by Issue Categories – Worker

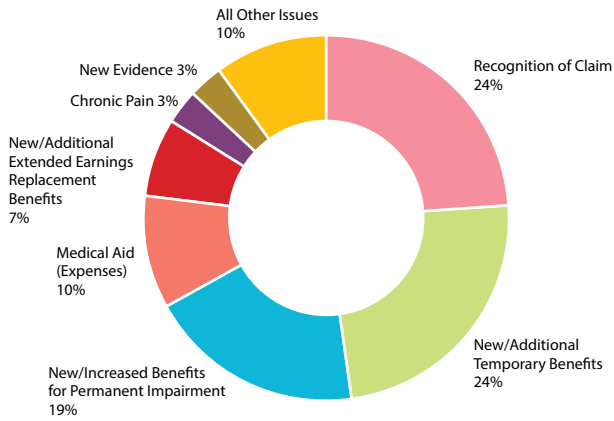


FIGURE 7
Decisions by Issue Categories – Employer

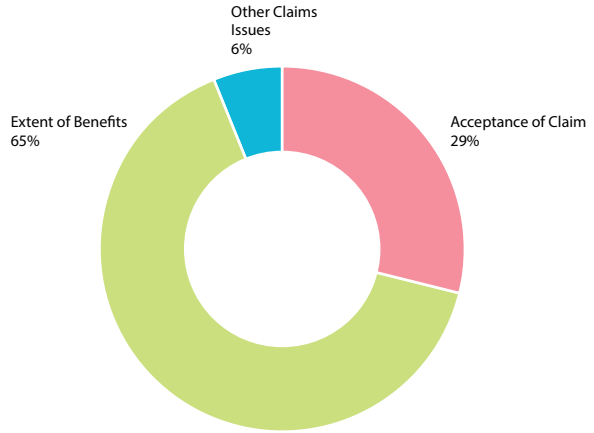
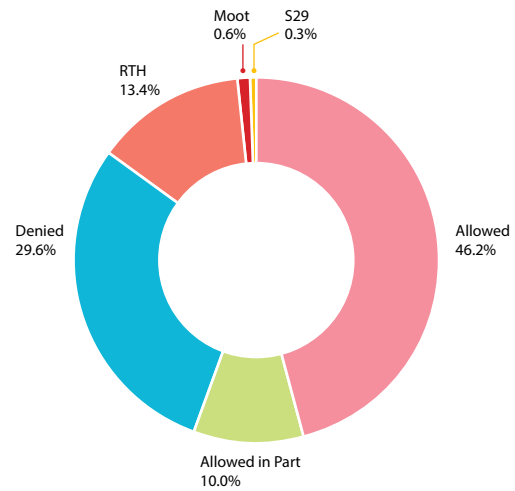


FIGURE 8
Decisions by Mode of Hearing



FIGURE 9
Decisions by Outcome



Ninety-five per cent of decisions resulted from worker appeals (see Figure 10). We resolved 129 appeals without the need for a hearing, an increase from last year's total of 122. The resolution of appeals without a hearing is often achieved by the registrar, prior to the assignment of an appeal to an appeal commissioner.

There were eight appeals to the Court of Appeal. The percentage of decisions appealed was 2 per cent, a decrease from the previous year. At year-end, nine appeals remained at the Court of Appeal (see Figure 11).

Appeal commissioners continue to produce well-reasoned decisions in the face of complex issues and a high volume of evidence.

FIGURE 10
Decisions by Appellant Type

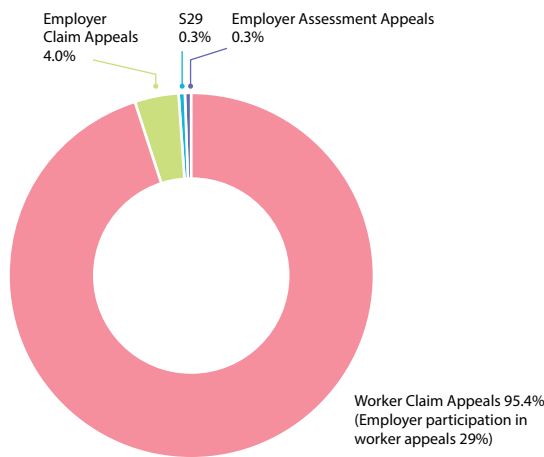
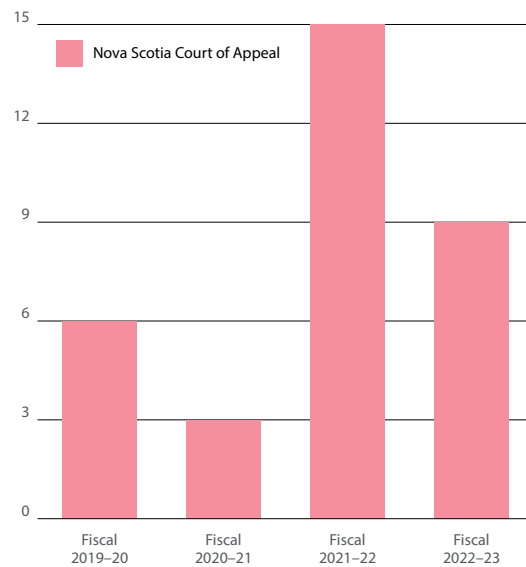


FIGURE 11
Appeals before the Courts at Year End



Appeal Management

Diane Manara, our registrar, and Valerie Paul, our deputy registrar, actively schedule and manage appeals as they are filed.

We are committed to moving appeals through to resolution as efficiently as possible while maintaining fair procedures. The collaborative practices put in place with our system partners are useful in achieving the balance necessary for effective, fair, and timely adjudication of appeals.

Our registrar did a great job helping many participants familiarize themselves with using video to take part in hearings this year.

Communication with appeal participants by telephone is a significant aspect of the registrar's duties. Unrepresented participants are called and given information about the appeal process. We regularly hold conference calls when there is more than one participant to an appeal. This keeps participants informed on the appeal status, ensures compliance with our deadlines, and streamlines issues.

Early identification and resolution of disclosure issues is encouraged. We can refuse late disclosure requests. Some of the more complex files are assigned to individual appeal commissioners who take the necessary steps to move appeals toward a decision.

The tribunal advises participants that it expects appeals to be completed within a year. Generally, we allow appeal participants to schedule appeals at a time of their choosing within the first year of an appeal being filed. After a year, the tribunal is less likely to grant oral hearings and it may schedule appeals even if the participants wish more time. We simplify the process for appeals involving new evidence with short deadlines for quick resolution.



Interagency Co-operation

The chief appeal commissioner is a member of the Heads of Agencies Committee.

The committee meets a few times a year with the Department of Labour, Skills and Immigration's coordinating committee to consider the overall direction of the compensation and safety system. This includes holding a joint public annual meeting.

The tribunal is taking part in a review of the workers' compensation appeals system. The review is looking at all aspects of the appeals system (internal and external to the board). We anticipate the release of a joint plan for appeal system improvement soon.

The Issues Resolution Working Group comprises the chief appeal commissioner, the tribunal's registrar, the chief workers' adviser, the Workers' Advisers Program's registrar, and senior board representatives.

The Issues Resolution Working Group was formed to discuss issues arising from the adjudication of claims and appeals. The committee's mandate is to develop and implement issue resolution initiatives to improve the overall efficiency of the workers' compensation system. The Issues Resolution Working Group holds meetings every two months at which appeal statistics from each agency are shared and methods to improve the appeal system are discussed. The committee provides an open, frank exchange of ideas and information.

The Appeal Issues Discussion Group is a subcommittee of the Issues Resolution Working Group. Its focus is operational. Its membership includes appeal commissioners, hearing officers, and board managers.

We belong to a national association of workers' compensation appeals tribunals. This association allows for the exchange of best practices and new initiatives from across the country.



Freedom of Information and Protection of Privacy

We rarely receive access to information applications. There were no applications this year.

Applications regarding claim files are referred to the board as they remain the property of, and are held by, the board. No access to information application needs to be made by an appeal participant because the act provides for disclosure of claim files to workers, and employers are entitled to relevant documents to respond to an appeal.

Most access to information applications for generic information about us are addressed through our routine access policy, which is posted on our website.

Our decisions contain personal (including medical) and business information. Our decisions are provided to appeal participants, including the worker, the board, and the employer.

Decisions from January 2010 to date are published on the Canadian Legal Information Institute's (CanLII) free public website (canlii.org).

All personal identifiers are removed from published versions of decisions. This includes removing all names of participants and board claim numbers. A small number of decisions are not published because they contain extremely sensitive information.

We have adopted a decision quality guide that outlines standards for decision making. It includes a section concerning privacy issues, which states that “decisions should be written in a manner that minimizes the release of personal information.” However, as decisions must be transparent, they need to include a description of the relevant evidence supporting the findings in the decision.

Worker claim files are released to employers after we have vetted them for relevancy. We are concerned that personal information is not used for an improper purpose, improperly released, or made public by a third party. Our correspondence accompanying file copies reflects these requirements and refers to appropriate sanctions.



Internal Developments

Lianne Chang joined us as an appeal commissioner in 2022. Lianne has a strong background in dispute resolution, having been the director of the Residential Tenancies Program and having worked at the Human Rights Commission. She also has judicial experience having been a senior magistrate in Trinidad and Tobago.

Four members of the tribunal were awarded Queen Elizabeth II's Platinum Jubilee medals. Charlene Downey and Sharon Pierre Louis were awarded medals in recognition of their long history of charitable work. Colleen Bennett and Diane Manara were awarded medals in recognition of their extraordinary public service during the pandemic.



Noteworthy Decisions

Readers of this report may find the following decisions interesting (organized by topic).

Assessment

Decision 2022-143-AD (March 27, 2023, NSWCAT) considered a firm’s argument that fatality claims costs should not be included when setting its rates or experience rating. The firm’s employee was in the course of employment when murdered during the mass casualty event in April of 2020. The board accepted that the fatality was compensable and paid benefits.

The firm was assessed with significant claim costs under policies 9.3.4R and 9.4.5R2. The policies exclude claim costs relating to “disasters” when calculating rates and experience ratings. The term “disasters” is not defined in the policies.

The appeal commissioner noted that the board considered the COVID-19 pandemic a disaster and found that “disasters” should be given its common meaning. The appeal commissioner stated that the firm could not have taken measures to prevent the murder and that the rate model did not work effectively in the circumstances. The appeal commissioner accepted that the employee’s murder resulted from a disaster and that the claim costs should be excluded for assessment purposes.

Claim Recognition

Decision 2022-248-AD (March 15, 2023, NSWCAT) considered the compensability of a first responder’s claim for post-traumatic stress disorder (PTSD). The worker had previously filed claims for PTSD that were statute barred because they were filed too late. Although earlier claims were statute barred, the appeal commissioner accepted that the worker suffered a compensable aggravation of pre-existing PTSD because of later occupational traumas that occurred between July 2012 and 2017.

Earnings-replacement Benefits

Decision 2021-254-AD (June 27, 2022, NSWCAT) considered a worker’s entitlement to earnings-replacement benefits where her unauthorized use of surplus Dilaudid at work led to her suspension. The appeal commissioner found that the worker was performing tasks beyond her abilities, as identified in an interdisciplinary assessment.

The appeal commissioner accepted that the worker used the Dilaudid to manage the pain from her compensable back injury in order to remain at work. The appeal commissioner accepted that there was a causal relationship between the compensable injury and earnings loss and awarded earnings-replacement benefits.

Decision 2021-382-AD (October 12, 2022, NSWCAT) considered a worker's entitlement to earnings-replacement benefits after he was terminated and there was also a serious fire at the workplace. The appeal commissioner addressed whether the four hours per day the worker was unable to work on modified duties was compensable despite the termination.

The appeal commissioner concluded that the series of events leading to the worker's termination would not have occurred without the compensable injury. The appeal commissioner concluded that the worker had a compensable earnings loss that continued after his termination.

Decision 2022-113-AD (October 27, 2022, NSWCAT) considered board policy 1.3.2R, which pertains to the interruption of medical treatment due to circumstances beyond a worker's control. The worker was scheduled to have shoulder surgery because of a compensable injury, but the surgery was postponed because of concerns that a pre-existing personal condition elevated the surgical risk. The board applied policy 1.3.2R and suspended the worker's benefits for approximately four months until she was cleared for surgery.

A panel of appeal commissioners considered the reasons that trigger a suspension of benefits under policy 1.3.2R and concluded that a suspension must be triggered by a circumstance that causes a loss of earnings to be unrelated to the injury. The tribunal concluded that the policy, and ability to suspend benefits, relates to where the causal connection is broken.

The tribunal concluded that the additional medical investigations to assess the surgical risk of the non-compensable condition was not an intervening event and the chain of causation was

not broken. The tribunal concluded that the policy did not apply and benefits were restored for the period of suspension.

Decision 2020-318-AD & 2020-360-AD (January 31, 2023, NSWCAT) considered whether a worker was entitled to earnings-replacement benefits beyond her 0.4 full-time equivalent position. The evidence was that the worker usually picked up extra shifts and her hours worked typically resembled full-time hours. The accident report indicated that she worked 50 to 60 hours bi-weekly.

The appeal commissioner found that the worker's earnings loss benefits should be based on her 0.4 position and her earnings from extra shifts, because this represented her normal earnings pattern. The appeal commissioner found that the employer feared re-injury and limited the worker's hours to the 0.4 position. The appeal commissioner awarded additional earnings-replacement benefits for the lost extra shifts.

Hearing Loss

Decision 2021-285-AD (October 31, 2022, NSWCAT) considered the adequacy of an impairment rating awarded for a compensable hearing loss claim. Instead of using the actual hearing loss thresholds at each frequency, the board's audiology consultant recommended the use of notional maximums based on the values in the American College of Occupational Medicine's (ACOEM) guidance statement for hearing loss. These notional values were used at two frequencies for the right ear and three frequencies for the left ear where the worker's values exceeded the notional maximums.

The appeal commissioner found that the audiology consultant had mischaracterized ACOEM and noted that policy 1.2.5AR2 does not address the use of ACOEM to consider an impairment rating. The appeal commissioner agreed that the

worker's hearing loss at the lower frequencies was likely caused by something other than noise.

The appeal commissioner accepted that apportionment was appropriate but found that the board's approach was not consistent with its apportionment policy. The appeal commissioner noted the challenges of apportioning hearing loss but directed the board to reconsider apportionment in accordance with the apportionment policy.

Long-term Rate

Decision 2021-375-AD (April 14, 2022, NSWCAT) considered a hearing officer's determination of a worker's long-term rate based on his earnings for the 12 months before the April 2019 injury. The worker's residence had burned approximately a year before the injury and the appeal commissioner accepted that this likely affected the worker's subsequent earnings.

The evidence also reflected that the worker switched trade unions before beginning work with the pre-injury employer. The appeal commissioner accepted the worker's testimony that the change in union membership was intended to be permanent in hopes of obtaining steadier hours and higher wages. In reliance on the testimony, the appeal commissioner noted that each union had its own compensation scheme and concluded that it was unreasonable to consider the worker's earnings from a previous trade union.

The appeal commissioner concluded that the best representation of the loss of earnings was the worker's employment in his most recent trade union, and actual earnings with the pre-injury employer, although such employment and earnings began only several months before the injury. This resulted in the award of a higher long-term rate for the worker.

Decision 2021-405-AD (December 19, 2022, NSWCAT) considered the period of time used to calculate the worker's long-term rate and whether the employer's pension contributions should be considered "regular salary and wages" under policy 3.1.1R4. The appeal commissioner considered decisions from Alberta's and Ontario's tribunals and concluded that the employer's contributions to the worker's pension plan were not regular salary and wages and should not be included when calculating the worker's long-term rate.

Medical Aid

Decision 2021-51-AD (June 30, 2022, NSWCAT) considered a worker's entitlement to a community support worker to allow her to participate in activities outside of her home. The worker had a 100 per cent impairment rating for physical and psychological injuries as well as chronic pain. The worker had difficulties with incontinence and relied on a walker or wheelchair. Some medical services were provided in her home.

The appeal commissioner found that the board medical adviser's opinion had been misinterpreted. The appeal commissioner found it expedient to provide assistance because participation in activities outside the home was essential to maintain her physical and mental well-being. More evidence was required to ascertain the scope of assistance and the appeal commissioner recommended an assessment to determine the extent of assistance required.

Decision 2022-167-AD (February 23, 2023, NSWCAT) considered a worker's entitlement to reimbursement for neuro-optometric treatments a worker received after a compensable head injury. The residual symptoms from the injury included difficulties with balance, concentration, nausea, and headaches.

The appeal commissioner accepted the worker's testimony that neuro-optometric treatments were beneficial. The appeal commissioner cited prior tribunal decisions that considered such treatment and found the treatment was necessary and expedient. The appeal commissioner preferred the opinion of the optometrist providing the treatment to the opinions of board medical advisers, who were considered less qualified to comment on neuro-optometric treatment.

Permanent Impairment Ratings

Decision 2021-235-AD (August 22, 2022, NSWCAT) considered whether the worker's permanent medical impairment rating for respiratory problems was appropriately apportioned between compensable and non-compensable factors. The worker objected to the board medical adviser's consideration of a research paper as part of his apportionment analysis. The appeal commissioner concluded that the research paper was relevant and that the board medical adviser's consideration of the paper was appropriate.

The worker's counsel cited several decisions from Ontario's tribunal, one of which found that chronic obstructive pulmonary disease is not a divisible injury unless there is a clearly measurable pre-existing impairment. The appeal commissioner found that the Ontario decisions were influenced by policies in that jurisdiction and declined to follow them. The appeal commissioner concluded that the worker's impairment rating had been properly apportioned.

PTSD Presumption for Front-line Workers

Decision 2020-349-AD (December 22, 2022, NSWCAT) considered a front-line worker who previously filed a claim for PTSD, which was denied. At issue was whether the worker's claim could be refiled and whether the presumption in s.12A of the act was applicable.

The appeal commissioner accepted that the worker could refile her claim and was entitled to the presumption concerning first responders. The appeal commissioner found that the presumption in favour of the worker was not rebutted and that she had a compensable injury.

Decision 2022-307-PAD (January 23, 2023, NSWCAT) considered, as a preliminary matter, the applicability of the presumption in s.12A(2) of the act concerning PTSD claims filed by first responders. The appeal commissioner rejected the worker's request that the tribunal make a stated case to the Court of Appeal concerning the interpretation of s.12A(2).

The worker's counsel argued that because the worker was diagnosed with PTSD by a prescribed diagnostician, the presumption applied. There were, however, differing opinions from other psychological service providers.

The appeal commissioner found that s.12A(2) does not presume that a worker has PTSD. The appeal commissioner rejected the notion that the legislature intended to remove the requirement that workers have to establish a personal injury. Once a worker is found to have PTSD, the presumption is triggered concerning causation. Whether the worker in question had PTSD was to be determined in a subsequent decision.

Section 29 Application

Decision 2022-131-TPA (December 30, 2022, NSWCAT) considered whether a civil litigation action was statute barred. Section 29 of the act gives the tribunal exclusive jurisdiction to determine whether a right of action is barred.

The plaintiff, a subcontractor who had not purchased special protection coverage, was injured while installing cabinets at a new, multi-unit residential building. The board denied benefits on the basis that the individual was not a covered worker under the act. The board's decision led to the commencement of civil litigation. One of the named defendants commenced a section 29 application at the tribunal.

The appeal commissioner concluded that the individual was in business as a person on his own account and was an independent contractor, not a worker. The appeal commissioner also considered whether the individual was a deemed worker under policy 9.1.3R and concluded that he was not. This determination was based on a finding that the individual was a subcontractor and not the worker of a subcontractor.

The appeal commissioner concluded that the individual was not entitled to workers' compensation benefits, so his civil action against the section 29 applicant was not statute barred.

Tribunal Authority

Decision 2022-336-AD (January 31, 2023, NSWCAT) considered a worker's representative's position that the board does not have legislative authority to fund an employer organization that participates in appeals and challenges workers' entitlement to benefits and services. This issue was raised in an appeal of a board decision that overturned recognition of a claim on reconsideration. The employer organization was involved with the appeal.

The appeal commissioner found that issues concerning board funding of worker or employer associations are not something the tribunal can address in a compensation appeal. It is not a matter related to the compensation under appeal.



Appeals from Tribunal Decisions

We are the final decision maker in the workers' compensation system. The act permits appeals from our decisions to the Nova Scotia Court of Appeal.

A participant who disagrees with one of our decisions can ask the Court of Appeal to hear an appeal of the decision. An appeal must be filed with the court within 30 days of the decision. Under special circumstances, the court can extend the time to file an appeal.

The Court of Appeal can only allow an appeal of one of our decisions if it finds a legal error or an error of jurisdiction. The court does not re-determine facts or investigate a claim.

An appeal has two steps:

First, the person bringing the appeal must seek the court's permission to hear the appeal. This is called seeking leave to appeal. Where it is clear to the court the appeal cannot succeed, it denies leave without giving reasons and no appeal takes place.

Second, if leave is granted, there is an appeal hearing and the court will allow or deny the appeal.

Eight appeals were filed with the Court of Appeal:

- six were filed by workers
- two were filed by employers

Thirteen appeals were resolved as follows:

- leave to appeal was denied seven times
- two appeals were sent back to the tribunal for re-adjudication by consent
- one appeal was discontinued
- three appeals were dismissed by the court due to failure to follow rules

At the beginning of the fiscal year, there were 15 appeals before the Court of Appeal. At the end of the fiscal year, nine appeals remained.

Decisions of the Court of Appeal

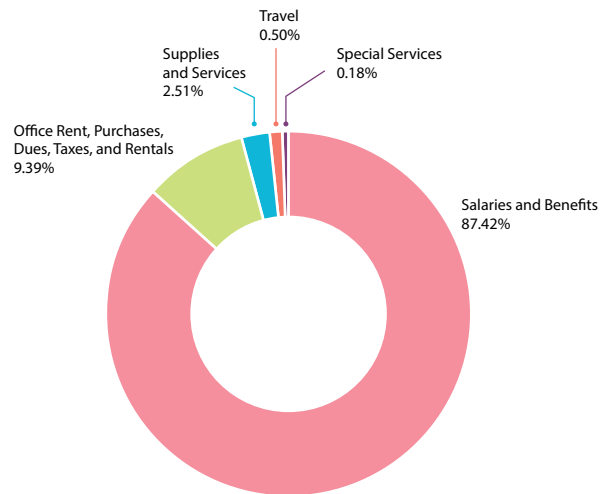
There were no court decisions discussing the merits of the appeal as all appeals were resolved either by leave being denied, discontinuance, dismissal, or by consent.



Financial Operations

Our total expenditures were within 68 per cent of the original authority and 89 per cent of the final forecast (see Figure 12). Net expenditures totalled \$1,891,316, a slight decrease from the previous year.

FIGURE 12
Budget Expenditure
(for the Fiscal Year Ending March 31, 2023)



Appendix

FIGURE 1
Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 2019–20	54	87	62	85	54	23	24	28	53	24	29	40	563
Fiscal 2020–21	50	33	53	53	37	51	43	43	39	42	29	49	522
Fiscal 2021–22	36	52	58	24	23	37	36	36	27	23	41	36	429
Fiscal 2022–23	30	39	47	38	31	32	43	55	30	22	43	47	457

FIGURE 2
Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 2019–20	41	38	43	32	21	45	45	40	32	44	39	22	442
Fiscal 2020–21	22	29	37	51	35	41	39	41	18	43	28	46	430
Fiscal 2021–22	37	41	48	42	19	36	38	43	18	42	43	35	442
Fiscal 2022–23	31	34	31	30	18	33	40	27	27	23	29	28	351

FIGURE 3
Appeals Outstanding at Year End

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Fiscal 2019–20	648	679	690	730	750	716	692	664	683	658	639	650
Fiscal 2020–21	661	641	644	637	637	629	617	606	622	611	600	603
Fiscal 2021–22	591	589	583	557	549	539	529	503	506	477	471	465
Fiscal 2022–23	448	433	443	445	446	432	425	443	439	425	422	433

FIGURE 4
Timeliness to Decision (cumulative age by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
Fiscal 2019–20	0.68	3.39	9.50	14.25	22.62	28.51	35.97	42.31	49.10	53.39	57.01	100
Fiscal 2020–21	0.00	2.33	8.84	12.33	16.74	21.16	26.51	29.53	33.49	37.21	42.33	100
Fiscal 2021–22	0.00	2.04	8.60	12.90	20.14	24.66	29.41	34.39	39.82	45.48	49.55	100
Fiscal 2022–23	0.28	1.99	6.84	13.39	19.94	25.36	29.36	37.32	43.02	47.58	53.84	100

FIGURE 5
Decisions by Representation

Self-represented	38
Workers' Advisers Program	256
Injured Worker Groups, Outside Counsel and Others	57
Total	351

FIGURE 7
Decisions by Issue Categories – Employer

Acceptance of Claim	5
Extent of Benefits	11
Other Claims Issues	0
Assessment Issues	1
Total	17

FIGURE 8
Decisions by Mode of Hearing

	Oral Hearings	Written Submissions	Total
Fiscal 2019–20	287	155	442
Fiscal 2020–21	271	159	430
Fiscal 2021–22	266	176	442
Fiscal 2022–23	229	122	351

FIGURE 6
Decisions by Issue Categories – Worker

Recognition of Claim	98
New/Additional Temporary Benefits	96
New/Increased Benefits for Permanent Impairment	75
Medical Aid (Expenses)	42
New/Additional Extended Earnings Replacement Benefits	29
New Evidence	10
Chronic Pain	14
All other issues	42
Total	406

FIGURE 9
Decisions by Outcome

Allowed	162
Allowed in Part	35
Denied	104
RTH	47
Moot	2
S29	1
Total Final Decisions	351
Appeals Withdrawn	129
Total Appeals Resolved	480

FIGURE 10
Decisions by Appellant Type

Worker Claim Appeals*	335
Employer Claim Appeals	14
Employer Assessment Appeals	1
Section 29 Applications	1
Total	351

*Employer participation in worker appeals 29%

FIGURE 11
Appeals Before the Courts at Year End

	Nova Scotia Court of Appeal	Supreme Court of Canada	Total
Fiscal 2019–20	6	0	6
Fiscal 2020–21	3	0	3
Fiscal 2021–22	15	0	15
Fiscal 2022–23	9	0	9

FIGURE 12
Budget Expenditures

(For the Fiscal Year Ending March 31, 2023)

	Authority	Final Forecast	Actual Expenditures
Salaries and Benefits	\$2,106,000	\$1,763,000	\$1,653,456
Travel	\$56,000	\$21,000	\$9,435
Special Services	\$284,000	\$17,000	\$3,310
Supplies and Services	\$73,000	\$73,000	\$47,510
Office Rent, Purchases, Dues, Taxes, and Rentals	\$245,000	\$245,000	\$177,605
Sub Total	\$2,764,000	\$2,119,000	\$1,891,316
Less Recoveries	\$0	\$0	\$0
Totals	\$2,764,000	\$2,119,000	\$1,891,316

