

Workers' Compensation Appeals Tribunal

ANNUAL REPORT
FOR THE YEAR ENDING MARCH 31, 2024





Nova Scotia
Workers' Compensation Appeals Tribunal

Barbara Adams
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, 2024.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line and a final flourish.

Sandy MacIntosh
Chief Appeal Commissioner

Tribunal Personnel

Colleen Bennett
Supervisor, Office Services

Tiffany Lescadres
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

Contents

Executive Summary	1
Introduction	2
Relationship to the Board	3
Tribunal Mandate and Performance Measures	4
Operations	5
Appeal Management	11
Interagency Co-operation	12
Freedom of Information and Protection of Privacy	13
Internal Developments	14
Noteworthy Decisions	15
Appeals from Tribunal Decisions	19
Decisions of the Court of Appeal	20
Financial Operations	22
Appendix	23



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, 2023, to March 31, 2024.

Our appeal volume increased, and decision output decreased. This resulted in an increase in the overall inventory of appeals at the tribunal.

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 again this year. Appeal participants are setting down appeals quicker. This has been a positive trend for the last few years. So, while the appeal volume has increased, timeliness has continued to improve.

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 less than half of the appeals were allowed, at least in part. This is a decrease compared to last year.

Seven of our decisions were appealed to the Court of Appeal. Two per cent of our decisions were appealed, the same as last year.

The tribunal is implementing a multi-year co-operative plan for appeal system improvement with our system partners. We are also preparing for an anticipated increase in appeal volume resulting from changes in the act which allow for compensation for gradual onset stress injuries.

Our total expenditures were within 72 per cent of the original authority and 83 per cent of the final forecast. Net expenditures totalled \$1,984,377 a slight increase from the previous year.

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 physically 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.

4. Board as IT sharer

The board gives us access to Guidewire, its claim 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.

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.



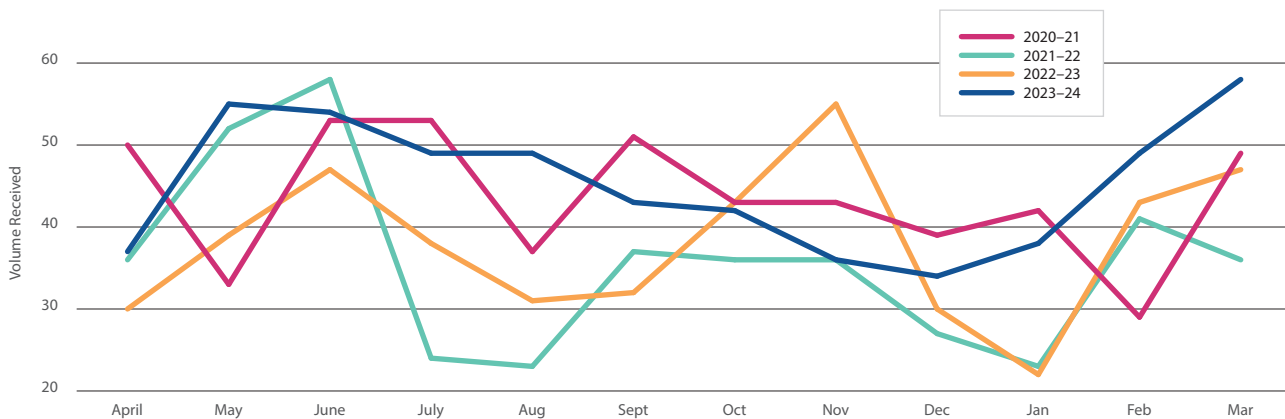
Operations

This report covers our fiscal year, which ran from April 1, 2023, to March 31, 2024 (this year). When we refer to the previous year in this report, we are referring to April 1, 2022, to March 31, 2023.

Our appeal volume increased from last year. We received 544 appeals this year, compared to 457 in the previous year (see Figure 1).

Appeals were predominantly filed by workers (90 per cent). A total of 435 appeals were resolved this year, compared with 480 the previous year.

FIGURE 1
Appeals Received



Please see Appendix (pages 23–25) containing specific data for the following figures.

Our decision output decreased this year from 351 to 321 (see Figure 2). The decrease resulted from participants setting down fewer appeals. At year-end, 534 appeals remained to be resolved, compared to 433 last year (see Figure 3).

There are 33 appeals that have been with us for over two years, which is an increase of one compared to the end of the previous year. Of those, 29 are represented by the Workers' Advisers Program and 22 of those involve an employer.

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. Changes made to the act in late 2023, which will be effective September 1, 2024, allow for compensation for certain gradual onset stress injuries. All appeals at the tribunal that are for acceptance of a stress claim will be automatically sent back to the board to be assessed under the new rules. This means most of the oldest appeals will be sent back to the board in September.

FIGURE 2
Decisions Rendered

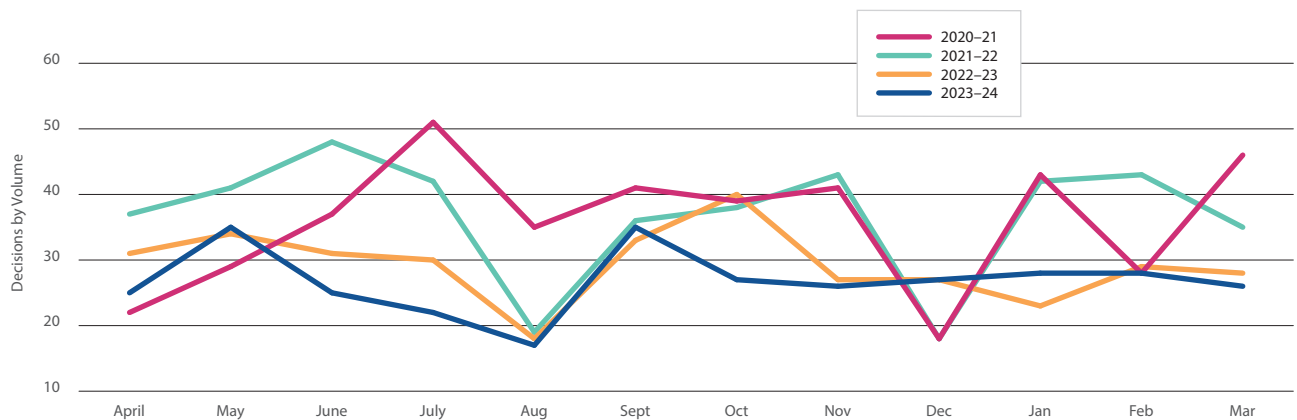
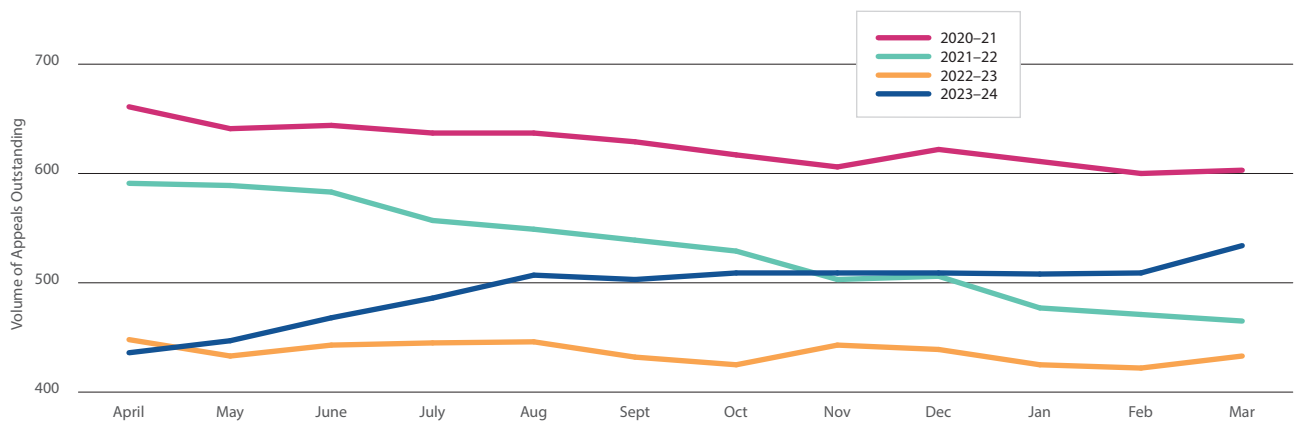


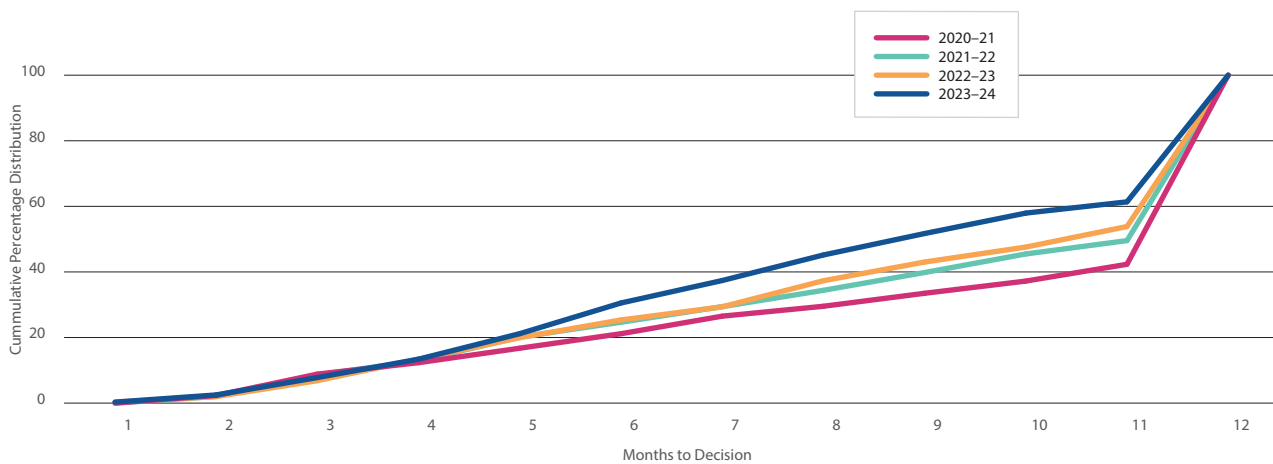
FIGURE 3
Appeals Outstanding at Year-end



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 30 per cent of decisions were released within six months of the date the appeal was received. Approximately 52 per cent of decisions were released within nine months of the date the appeal was received. About 39 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 321 decisions issued this past year, 73 per cent of workers were represented by the Workers' Advisers Program, which is the same as last year.

Employers participated in 30 per cent of resolved appeals, about the same as last year.

The issues most appealed to us by workers were recognition of a claim (24 per cent) and new/additional temporary benefits (18 per cent). Employers most often appealed acceptance of claim decisions or the extent of benefits (see figures 6 and 7).

We heard 70 per cent of appeals by way of oral hearing, an increase from last year's total of 65 per cent (see Figure 8). Oral hearings can be in person, by telephone, or by video hearing.

A lower percentage of hearing officer decisions were overturned and there was an increase in the percentage of referrals back to hearing officers for additional adjudication. The overturn rate (appeals allowed or allowed in part) decreased to 48 per cent compared to 56 per cent the previous year (see Figure 9).

The number of appeals returned to hearing officers for reconsideration increased to 14 per cent from 13 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 increased to 37 per cent from 30 per cent the previous year.

FIGURE 5
Decisions by Representation

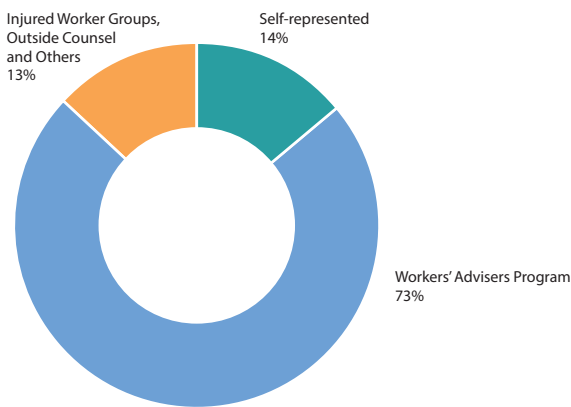


FIGURE 6
Decisions by Issue Categories – Worker

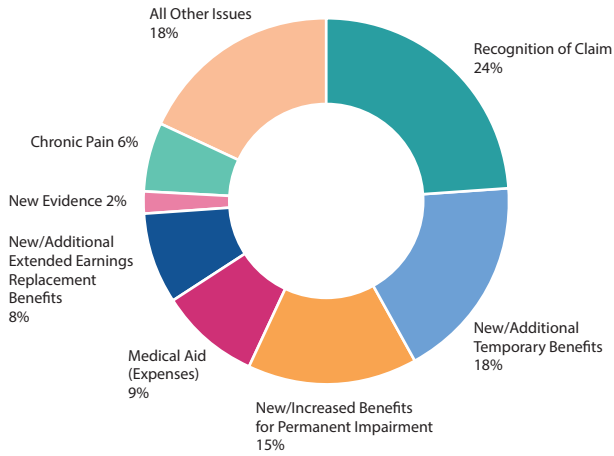


FIGURE 7
Decisions by Issue Categories – Employer

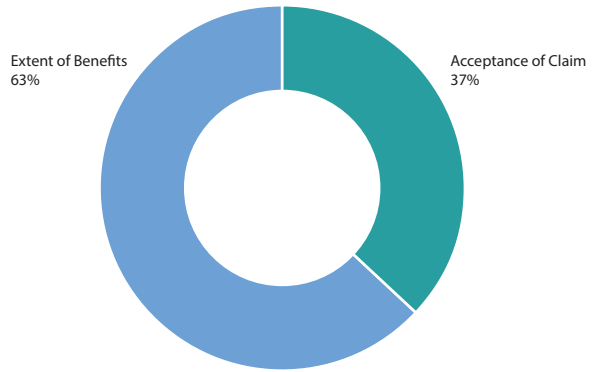


FIGURE 8
Decisions by Mode of Hearing

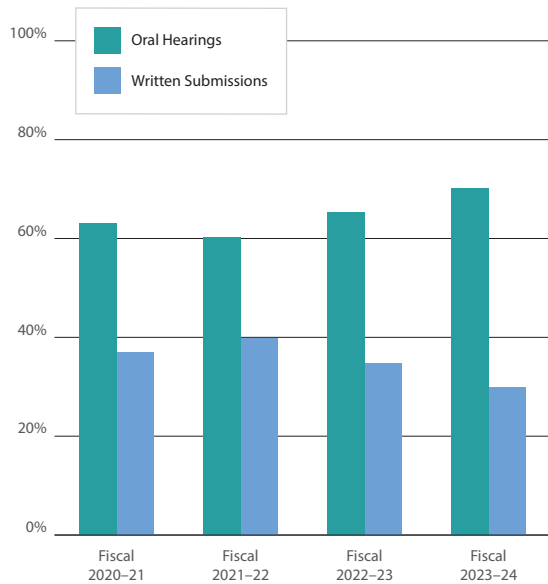
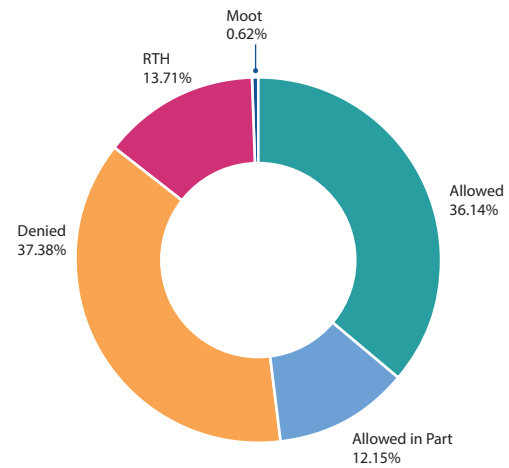


FIGURE 9
Decisions by Outcome



Ninety-five per cent of decisions resulted from worker appeals (see Figure 10). We resolved 114 appeals without the need for a hearing, a decrease from last year's total of 129. 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 seven appeals to the Court of Appeal. The percentage of decisions appealed was 2 per cent, the same as the previous year. At year-end, three 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

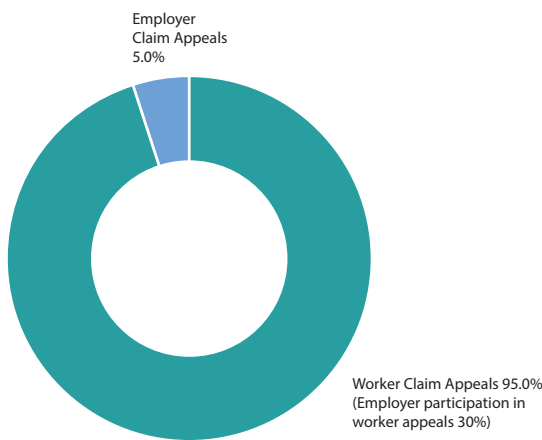
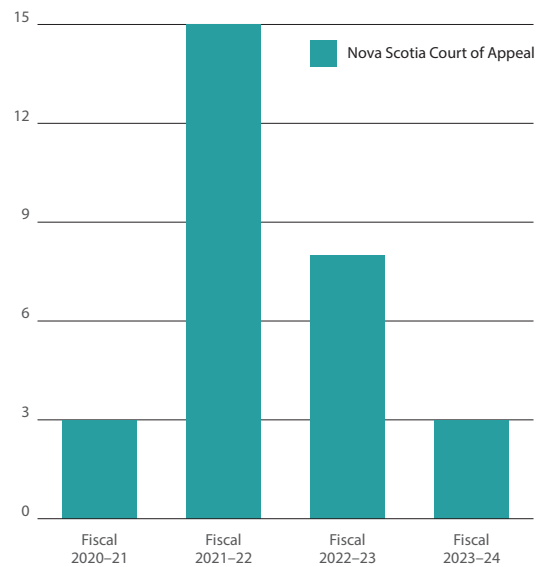


FIGURE 11
Appeals before the Courts at Year-end



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 Heads of Agencies 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 took part in a review of the workers' compensation appeals system. The review looked at all aspects of the appeals system (internal and external to the board). A joint plan for appeal system improvement was developed and implementation of the multi-year plan has begun. A joint committee is ensuring the plan is implemented in a timely manner.

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.

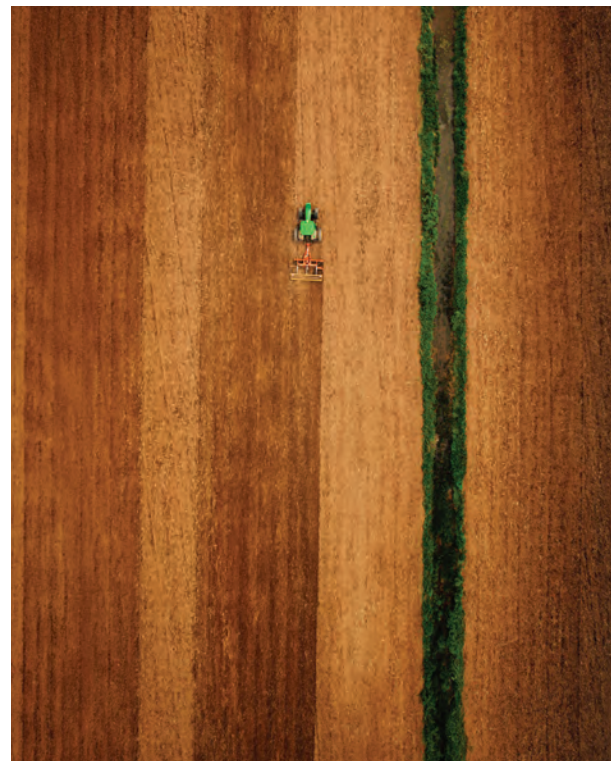
The Issues Resolution Working Group was formed to discuss issues arising from the adjudication of claims and appeals. The committee's mandate is to develop and implement issue resolution initiatives to improve the overall efficiency of the workers' compensation system. The Issues Resolution Working Group 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.

It is anticipated that there will be a noticeable increase in appeals resulting from changes to the act which allow for compensation of gradual

onset stress injuries. A major focus of the Issues Resolution Working Group was preparing the appeal system for the increase. This includes finding ways to make the correct decision at the earliest possible time to reduce the impact of gradual onset stress on the appeal system and improve outcomes for Nova Scotians.

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 workers' advisers. Its work this year included revising the *Workers' Compensation in Nova Scotia Reference Guide*, a consensus document of the rules relating to workers' compensation.

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 managed by 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

Glen Johnson, an appeal commissioner who had been with the tribunal for over 25 years, retired at the end of the year. Glen wrote many leading tribunal decisions. He will be missed by his co-workers.



Noteworthy Decisions

Claim Recognition

Decision 2023-126-AD (March 22, 2024, NSWCAT) found that a worker's stressful working conditions contributed to his heart attack. A cardiologist noted that the worker's diabetes and high cholesterol put him at risk of a heart attack. The cardiologist also felt that the worker's employment, and increased stress in the period prior to the heart attack, made a significant contribution in addition to the risk factors. The appeal commissioner accepted the cardiologist's opinion and found that the worker had an acceptable claim.

Decision 2022-39-AD & 2023-217-AD (March 28, 2024, NSWCAT) considered a first responder's claim for psychological injury. The hearing officer denied the claim relating the psychological symptoms to non-compensable inter-personal relationships.

The worker claimed harassment and also argued that his psychological problems were secondary to a 2018 head injury. The appeal commissioner noted that the recurrence policy, Policy 1.3.8, has less application for secondary psychological injuries, which are governed by a different policy. The appeal commissioner concluded that the evidence of a link between the head injury and psychological problems was little more than plausible speculation.

Although earlier psychological reports attributed the psychological problems to organizational conflict, the most recent opinion before the tribunal stated that it was likely that the worker had post-traumatic stress disorder (PTSD) related to operational calls. The appeal commissioner accepted this opinion, finding that the worker's primary source of stress was occupational traumas, and accepted the claim.

Earnings-replacement Benefits

Decision 2022-409-AD (April 18, 2023, NSWCAT) found a worker was not entitled to additional earnings-replacement benefits. Because of his compensable injury, his employer had permanently accommodated him in an alternate position, and the board awarded him a partial extended earnings-replacement benefit (EERB). After approximately 18 months in the accommodated position, he was laid off.

The workers' adviser argued that the employer's representation of the accommodated position as permanent was a misrepresentation of fact entitling the worker to have his EERB reconsidered ahead of the statutory 36-month review. The appeal commissioner found that an offer of accommodation does not guarantee employment and that the evidence did not support that the offer of accommodation was inaccurate, untrue, or misleading when offered.

The workers' adviser also argued that the worker had a temporary loss of earnings until the 36-month EERB review and should be entitled to temporary earnings-replacement benefits until that review. The appeal commissioner found that "temporary" in s. 73A of the act refers to the injury rather than the passage of time until a statutory review. The appeal commissioner concluded that the earnings loss was caused by a mass layoff due to economic circumstances, rather than the injury.

Decision 2022-378-AD (May 25, 2023, NSWCAT) considered entitlement to earnings-replacement benefits where a worker in receipt of a partial EERB was laid off. The workers' adviser argued that the worker was entitled to earnings-replacement benefits once the accommodated job was no longer available, and no other suitable duties were available.

The appeal commissioner did not award earnings-replacement benefits as of the date of layoff but awarded a temporary earnings-loss supplement as of November 2021, when a secondary injury occurred that affected the worker's functional capacity.

Decision 2020-420-AD (September 25, 2023, NSWCAT) considered a worker's request for earnings-replacement benefits beyond September 2008 and reinstatement of a 6 per cent pain-related impairment rating for chronic pain. Video surveillance from October 2009 was key to the appeal. The appeal commissioner found that the video evidence was reliable and contradicted what the worker had told his doctors.

The video evidence showed the worker working without difficulty at two small businesses that he was operating. In reliance on the video surveillance, the appeal commissioner concluded that the evidence did not support entitlement to earnings-replacement benefits or any pain-related impairment rating.

Decision 2023-218-AD (March 28, 2024, NSWCAT) found that a worker's compensable psychological injury contributed to his earnings loss in January of 2021, when he was fired.

Behavioural issues led to the employer ending the worker's employment. The appeal commissioner noted that the worker's personnel file did not contain any issues related to behaviour before being diagnosed with PTSD. The appeal commissioner found that the worker's inability to cope was caused by his PTSD. The appeal commissioner concluded that the psychological injury contributed to his loss of employment in January of 2021 and awarded earnings-replacement benefits.

Hearing Loss

Decision 2023-35-AD (October 13, 2023, NSWCAT) decided a denied claim for hearing loss could be reopened. The worker's claim was denied in 2015 because his hearing loss was not tested within five years of his retirement, as used to be required. The board received a new audiogram in 2022.

The appeal commissioner noted that the worker's hearing loss in 2015 was insufficient to be considered an injury. The appeal commissioner felt that the real merits and justice of the situation required that the board should review the new audiogram and determine whether the worker now has an acceptable claim.

Decision 2022-319-AD (October 25, 2023, NSWCAT) found that the worker's hearing loss could not be explained by damage progressing after he was no longer working in a noisy environment. The worker provided opinion evidence from an audiologist who felt that recent scientific evidence supports damage continues as people age, which could explain the audiogram patterns which were inconsistent with noise-induced hearing loss.

The appeal commissioner found that the opinion evidence concerning post-exposure changes in hearing due to prior noise exposure is insufficient to rebut the American College of Occupational Medicine's position that hearing loss due to noise exposure does not progress once the noise exposure has ended. The appeal commissioner concluded that the explanation for the audiogram evidence was too speculative and denied the appeal.

Decision 2023-382-AD (March 27, 2024, NSWCAT) found that the worker had filed a claim in time to be considered for compensation. The worker indicated in his hearing loss application that he knew in December of 2011 that his hearing loss was caused by occupational exposures at work.

The worker underwent audiograms in 2011, 2013, and 2021, but it was not until an audiogram in 2023 that the level of hearing loss was sufficient to be considered a workplace injury.

The appeal commissioner found that without a ratable permanent medical impairment there could be no occupational disease, and the time to file a claim does not start to run. The appeal was allowed, and the board was directed to assess the merits of the claim.

Jurisdiction

Decision 2022-100-AD (January 22, 2024, NSWCAT) considered an employer's appeal of a decision accepting the worker had a compensable injury, but which did not determine what compensation resulted from accepting the claim. The employer did not challenge acceptance of the claim but wanted a finding that the worker's time loss was unrelated to the injury.

The appeal commissioner concluded that the tribunal did not have jurisdiction to address the time loss issue. The employer requested the appeal be referred back to the board hearing officer. The appeal commissioner found that benefit entitlement was not part of the decisions under appeal and dismissed the appeal.

Long-term Rate

Decision 2021-224-AD (May 31, 2023, NSWCAT) addressed what pre-accident earnings should be used to calculate permanent benefits. The board based the earnings loss on the worker's income from self-employment in 2017. During the three years preceding the earnings loss, the worker had a mix of earnings from self-employment and as an employee.

The appeal commissioner found that the worker's long-term rate should reflect his earnings during the three preceding years, including his earnings as an employee. The appeal commissioner concluded that this most fairly reflected the worker's earnings pattern before his compensable injury.

Medical Aid

Decision 2022-414-AD (June 20, 2023, NSWCAT) considered a worker's request for psychological treatment for his young child and wife. The worker had an amputation due to his injury. His child had psychological problems resulting from the worker's injury, which, in turn, interfered with the worker's ability to respond to treatment.

The appeal commissioner found s. 112 of the act broad enough to consider such compensation. The appeal commissioner accepted that the child should be provided psychological treatment under s. 112 because the child's mental health was directly impacting the worker's ability to recover and return to work.

Psychological treatment was denied for the worker's spouse because her psychological conditions were unrelated to the injury.

Decision 2023-93-AD (August 10, 2023, NSWCAT) decided not to reimburse a worker for travel expenses to have surgery in Ontario for a compensable hernia. The cost of accommodation, and the surgery, were paid by Medical Services Insurance (MSI) and his own health insurance policy. The worker's adviser argued that the Ontario surgery had a shorter recovery time than if it was performed in Nova Scotia, saving time and money.

The appeal commissioner found that the worker's dissatisfaction with the wait time for surgery in Nova Scotia did not mean that surgery here was inappropriate or inadequate. The appeal commissioner concluded that there were no extraordinary circumstances warranting out-of-province surgery and that the worker was not entitled to reimbursement for his travel expenses.

Decision 2023-30-AD (November 30, 2023, NSWCAT) found that a worker was not entitled to a \$50 per trip flat rate for transportation to physiotherapy rather than the board's usual mileage rate. The worker was driven by his stepfather using his mother's car, with whom the worker lived. The worker wanted the transportation treated the same way the board reimburses the use of taxis to get to medical treatment.

The worker's adviser argued that the terms "taxi" and "private vehicle" are undefined and submitted that the worker had arranged a private taxi and that the term "private vehicle" referred to a worker's own vehicle. The appeal commissioner found that a plain reading of the term "private vehicle" does not support restricting it to a vehicle owned by a worker.

The appeal commissioner concluded that it was unreasonable to characterize the worker's arrangement as a taxi service. The request for \$50 a trip was denied but the worker was allowed normal mileage rates.

Decision 2023-68-AD & 2023-86-AD & 2023-227-AD (November 30, 2023, NSWCAT) considered the worker's request for cannabis with a tetrahydrocannabinol (THC) level significantly greater than 9 per cent, which is the limit set out in the board's cannabis guidelines.

The worker's position was that the products that worked for her had higher THC levels. The appeal commissioner noted that the tribunal has awarded higher THC levels in other appeals where there was medical evidence supporting the requests, but that there was no such evidence in this appeal.

A board medical advisor was supportive of a trial with slightly higher THC levels in the range of 10 to 12 per cent. The appeal commissioner denied the worker's request but allowed the trial as supported by the medical advisor.

Decision 2023-148-AD (January 19, 2024, NSWCAT) awarded a modified vehicle to a worker. The worker's compensable injury resulted in him being a quadriplegic and he was awarded a 100 per cent permanent medical impairment rating. The unusually high impairment rating was an important factor in awarding the modified vehicle.

Suspension of Benefits

Decision 2021-420-AD (July 12, 2023, NSWCAT) considered whether a worker's benefits should have been terminated. The worker was involved in a serious motor vehicle accident. The board learned that the worker returned to a second job while collecting full earnings-replacement benefits.

The worker was charged with fraud but was acquitted at trial. The judge's reasons for decision were filed with the tribunal. The appeal commissioner found that little evidentiary weight could be given to the judge's reasons for decision due to the difference between a criminal matter and a workers' compensation matter.

The appeal commissioner found that the worker breached her obligations to the board by failing to disclose the concurrent employment. The appeal commissioner, however, found that her benefits should not have been terminated because the board had not informed her of her obligations.

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.

Seven appeals were filed with the court of appeal:

- five were filed by workers
- one was filed by an employer
- one was filed by the board

Thirteen appeals were resolved as follows:

- leave to appeal was denied six times
- three appeals were resolved by consent order
- one appeal was dismissed by the court for failure to follow court rules
- two appeals were denied by the court
- one appeal was allowed by the court

At the beginning of the fiscal year, there were eight appeals before the court of appeal. At the end of the fiscal year, three appeals remained.



Decisions of the Court of Appeal

The court decided three appeals.

Tufts v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2023 NSCA 50

While at work, Mr. Tufts performed a religious cleansing ritual which included washing his feet. He injured himself when he slipped while putting his socks back on. The tribunal confirmed the board's finding that Mr. Tufts did not have an acceptable claim.

The tribunal noted that there are times when a worker may be considered in the course of their employment while using washroom facilities or on break. However, the tribunal found that there was no causal connection between Mr. Tufts' injury and the risk created by his employment. It found that Mr. Tufts had taken himself outside the course of his employment when he went to the washroom to perform a personal religious practice.

The court upheld the tribunal's decision. It found that the tribunal applied the correct legal test. It noted that an injury is not necessarily compensable simply because it happened at the workplace.

Titus v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2024 NSCA 39

In a 2018 decision, the tribunal determined what Mr. Titus' EERB would be, assuming he was not in violation of his duty to co-operate. The 2018 decision referred the question of non-co-operation back to the board.

In 2020, a board hearing officer found that Mr. Titus had violated his duty to co-operate by not taking modified employment offered by his employer. However, the hearing officer found that the degree of non-co-operation was insufficient to justify reducing Mr. Titus' EERB.

In 2022, the tribunal agreed with the hearing officer that Mr. Titus should have taken the modified employment but found that the EERB should be reduced by deemed earnings from the refused employment.

The court upheld the 2022 tribunal decision. It rejected the argument from Mr. Titus' counsel that the tribunal had no power to change the amount of the EERB found in the 2018 decision.

Section 73 of the act limits when an EERB can be reviewed. The 2018 decision was not final as it asked the board to consider the issue of non-co-operation. Due to the 2018 decision being incomplete, the review restrictions in s. 73 did not apply and the tribunal was allowed to adjust Mr. Titus' EERB.

Lawen Group of Properties Limited (Dexel Developments) v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2024 NSCA 36

Mr. Purvis, a sole proprietor, was subcontracted to install cabinets at a building project. He was injured at the job site. He had not purchased voluntary workers' compensation (wCB) coverage, which is known as special protection coverage. He started a court action to sue several employers associated with the project who had coverage.

The tribunal found that Mr. Purvis' right to sue was not taken away by s. 28 of the act. The tribunal found that the sole proprietor subcontractor who could have, but did not, purchase special protection coverage was not a "deemed worker." As he was not a deemed worker, he could sue for his injury at a building project.

The court overturned the tribunal's decision finding Mr. Purvis could not sue the employers. Mr. Purvis was performing work under a contract. The company that had subcontracted work to him had been assessed for the labour portion of his contract by the board. Operating as a sole proprietor made him both a subcontractor and a deemed worker.

At paragraph 53, the court wrote:

Policy 9.1.3R is intended to provide protection to principals hiring contractors and contractors hiring subcontractors. It ensures when principals hire contractors with less than three workers the principal's wCB coverage will cover those contractors if they are injured at work, unless the contractor has purchased voluntary compensation coverage. This guarantees that all workers would have compensation, either through the coverage of the principal, through voluntary compensation coverage, or through the requirement to have their own wCB coverage when there are more than three employees.

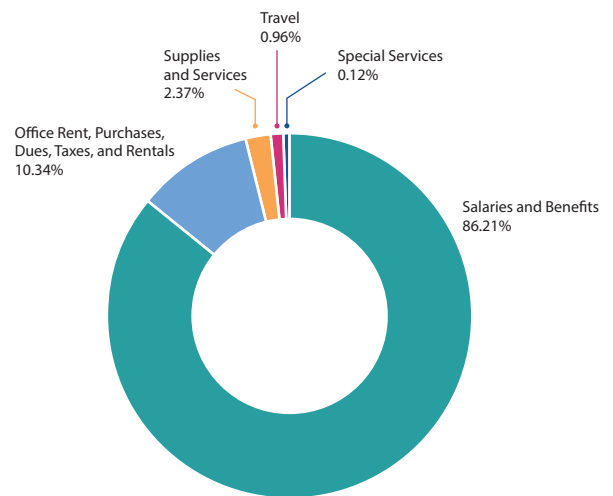
The court noted that purchasing voluntary wCB coverage can be important for small contractors. There would be no wCB coverage for Mr. Purvis if he were hurt while installing cabinets at a residential property for a homeowner.



Financial Operations

Our total expenditures were within 72 per cent of the original authority and 83 per cent of the final forecast (see Figure 12). Net expenditures totalled \$1,984,377, a slight increase from the previous year.

FIGURE 12
Budget Expenditures
(for the Fiscal Year Ending March 31, 2024)



Appendix

FIGURE 1
Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
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
Fiscal 2023–24	37	55	54	49	49	43	42	36	34	38	49	58	544

FIGURE 2
Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
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
Fiscal 2023–24	25	35	25	22	17	35	27	26	27	28	28	26	321

FIGURE 3
Appeals Outstanding at Year-end

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
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
Fiscal 2023–24	436	447	468	486	507	503	509	509	509	508	509	534

FIGURE 4
Timeliness to Decision (cumulative age by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
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
Fiscal 2023–24	0.31	2.49	7.79	13.40	21.18	30.53	37.38	45.17	51.71	57.94	61.37	100

FIGURE 5
Decisions by Representation

Self-represented	44
Workers' Advisers Program	236
Injured Worker Groups, Outside Counsel and Others	41
Total	321

FIGURE 6
Decisions by Issue Categories – Worker

Recognition of Claim	87
New/Additional Temporary Benefits	66
New/Increased Benefits for Permanent Impairment	54
Medical Aid (Expenses)	32
New/Additional Extended Earnings Replacement Benefits	31
New Evidence	8
Chronic Pain	24
All other issues	65
Total	367

FIGURE 7
Decisions by Issue Categories – Employer

Acceptance of Claim	7
Extent of Benefits	12
Total	19

FIGURE 8
Decisions by Mode of Hearing

	Oral Hearings	Written Submissions	Total
Fiscal 2020–21	271	159	430
Fiscal 2021–22	266	176	442
Fiscal 2022–23	229	122	351
Fiscal 2023–24	225	96	321

FIGURE 9
Decisions by Outcome

Allowed	116
Allowed in Part	39
Denied	120
RTH	44
Moot	2
Total Final Decisions	321
Appeals Withdrawn	114
Total Appeals Resolved	435

FIGURE 10
Decisions by Appellant Type

Worker Claim Appeals*	305
Employer Claim Appeals	16
Total	321

*Employer participation in worker appeals 30%

FIGURE 11
Appeals Before the Courts at Year-end

	Nova Scotia Court of Appeal	Supreme Court of Canada	Total
Fiscal 2020–21	3	0	3
Fiscal 2021–22	15	0	15
Fiscal 2022–23	8	0	8
Fiscal 2023–24	3	0	3

FIGURE 12
Budget Expenditures

(For the Fiscal Year Ending March 31, 2024)

	Authority	Final Forecast	Actual Expenditures
Salaries and Benefits	\$2,106,000	1,746,000	\$1,710,775
Travel	\$56,000	56,000	\$18,970
Special Services	\$284,000	284,000	\$2,414
Supplies and Services	\$73,000	74,000	\$46,938
Office Rent, Purchases, Dues, Taxes, and Rentals	\$245,000	241,000	\$205,280
Sub Total	\$2,764,000	2,401,000	\$1,984,377
Less Recoveries	\$0	\$0	\$0
Totals	\$2,764,000	2,401,000	\$1,984,377

