

# Workers' Compensation Appeals Tribunal

ANNUAL REPORT  
FOR THE YEAR ENDING MARCH 31, 2025







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Workers' Compensation Appeals Tribunal Annual Report  
For the Year Ending March 31, 2025  
Workers' Compensation Appeals Tribunal, June 2025  
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Nova Scotia  
Workers' Compensation Appeals Tribunal

Becky Druhan  
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, 2025.

Respectfully submitted,

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

Sandy MacIntosh  
Chief Appeal Commissioner

# Our Team

**Colleen Bennett**  
Supervisor, Office Services

**Klairissa Kassal**  
Clerk

**Averlene Jordan**  
Clerk/Scheduling Coordinator

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**Sandy MacIntosh**  
Chief Appeal Commissioner

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**Brent Levy**  
**Andrew MacNeil**  
**Diane Manara** (Registrar)  
**Richard Pace-Ola**  
**David Pearson**  
**Andrea Smillie**  
**Genna Squires** (Deputy Registrar)  
Appeal Commissioners



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# Executive Summary

The Workers' Compensation Appeals Tribunal (the tribunal) decides 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) prevents legal claims against employers.

This report covers our fiscal year, which ran from April 1, 2024, to March 31, 2025.

The number of appeals received decreased, and our decision output increased. This resulted in a decrease 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 increased this year. This is the first time in several years that timeliness has not improved.

The most common appeal issue is claim acceptance. Most appeals proceed by way of oral hearing.

Slightly less than half of the appeals were allowed, at least in part. There was a slight decrease in appeals allowed compared to last year.

Two per cent of our decisions were appealed to the Court of Appeal, the same as last year. One appeal from a tribunal decision was successful.

Our total expenditure was within 68 per cent of the original authority and 77 per cent of the final forecast. Net expenditure was \$1,891,423, 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) prevents legal claims 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

**W**e 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 do not need to follow a policy if we find it inconsistent with the act or the regulations.

## 4. Board as IT sharer

The board gives us access to Guidewire, its claim management system. This allows us access to worker claim files.

## 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.

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

**W**e 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 to be released within 60 days of a hearing, or the date final written submissions have been received. Appeal commissioners often release decisions within 30 days of an oral hearing or of the final deadline 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.





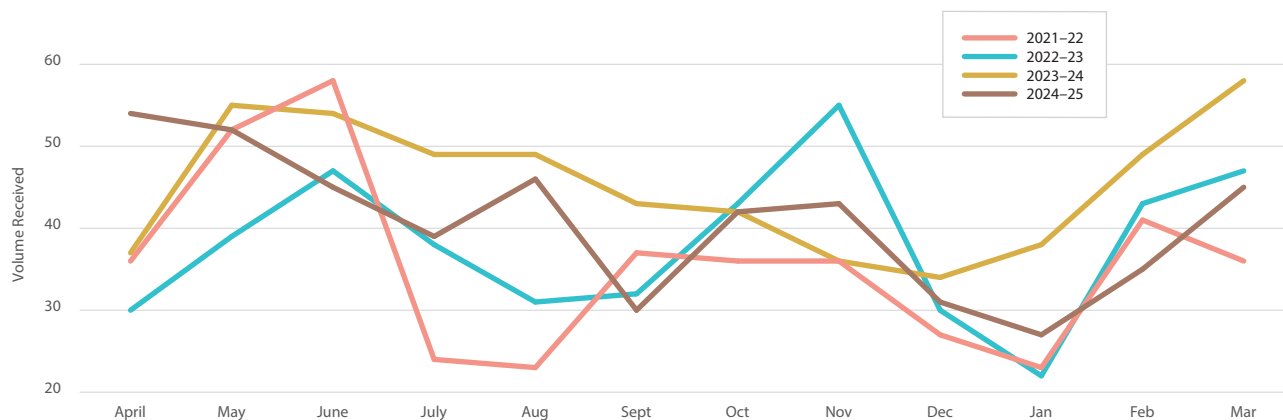
# Operations

This report covers our fiscal year, which ran from April 1, 2024, to March 31, 2025 (this year). When we refer to last year, we are referring to April 1, 2023, to March 31, 2024.

The number of appeals received decreased. We received 489 appeals this year, compared to 544 last year (see Figure 1).

Appeals were predominantly filed by workers (91 per cent). A total of 500 appeals were resolved this year, compared with 435 last year.

**FIGURE 1**  
Appeals Received



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



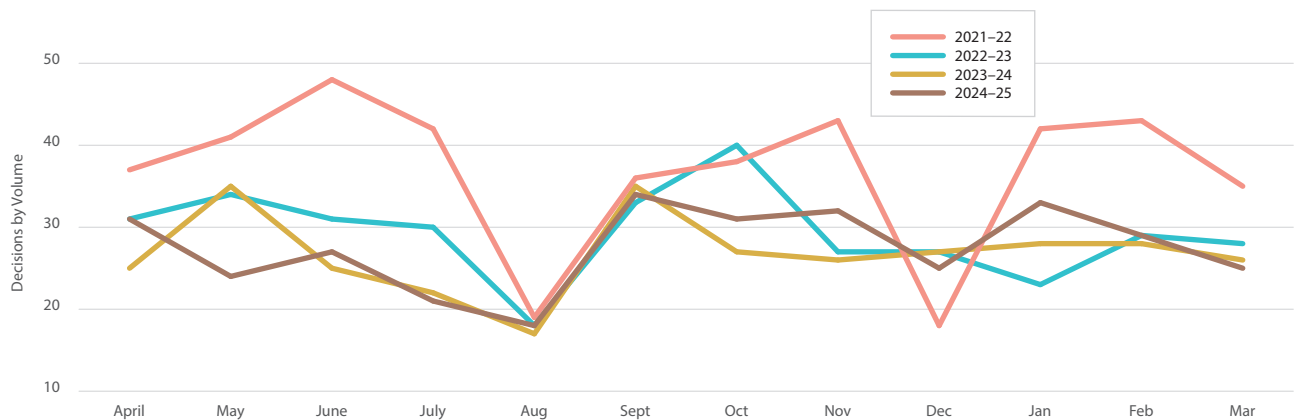
Our decision output increased this year from 321 to 330 (see Figure 2). At year-end, 522 appeals remained to be resolved, compared with 534 last year (see Figure 3).

There are seven appeals that have been with us for over two years, which is a decrease of 26 compared with the end of last year. Of those, six are represented by the Workers' Advisers Program and three involve an employer.

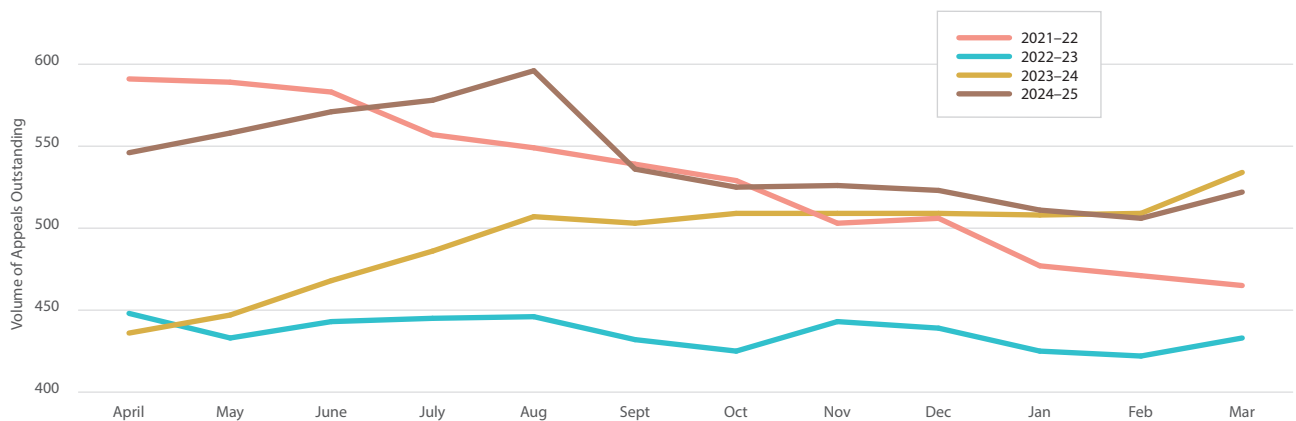
This reduction in older appeals largely resulted from an amendment to the act which sent stress appeals back to the board to be assessed under new rules.

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.

**FIGURE 2**  
Decisions Rendered



**FIGURE 3**  
Appeals Outstanding at Year-end

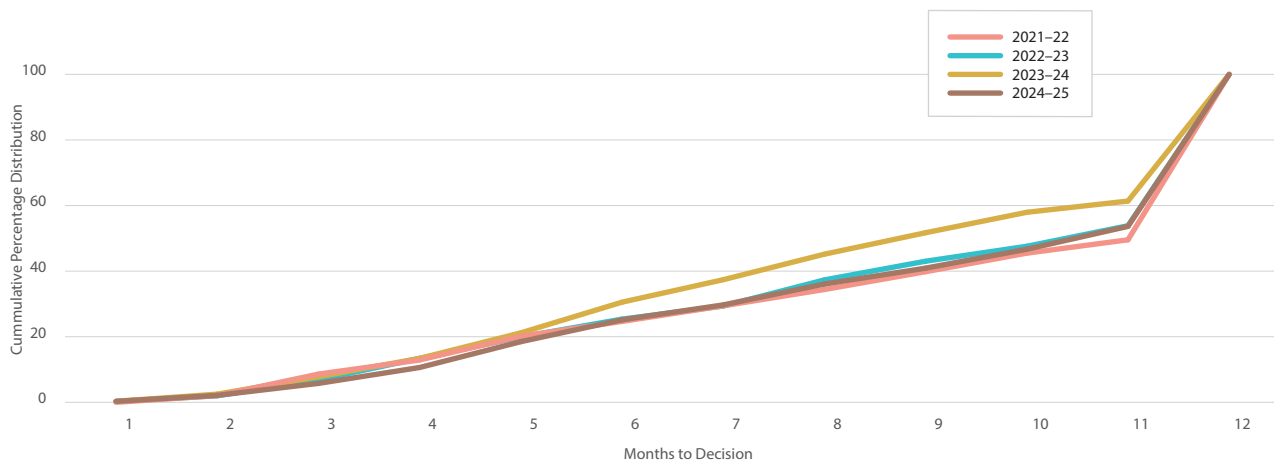




Approximately 25 per cent of decisions were released within six months of the date the appeal was received. Approximately 41 per cent of decisions were released within nine months of the date the appeal was received. About 46 per cent

of appeals took more than 11 months to resolve (see Figure 4). Appeals are being resolved at the tribunal slower than last year. This is the first time in several years that timeliness has failed to improve.

**FIGURE 4**  
Timeliness to Decision



We report on decisions by representation at the time of decision release (see Figure 5). Of the 330 decisions issued this year, 75 per cent of workers were represented by the Workers' Advisers Program, which is consistent with the previous year when it was 73 per cent.

Employers participated in 27 per cent of resolved worker appeals, a slight decrease from last year.

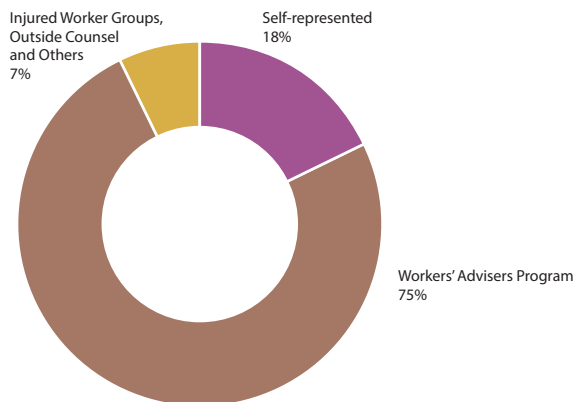
The issues most appealed to us by workers were recognition of a claim (27 per cent) and new/increased benefits for permanent impairment (16 per cent). Employers most often appealed acceptance of claim decisions or the extent of benefits (see figures 6 and 7).

We heard 64 per cent of appeals by way of oral hearing, a decrease from last year's total of 70 per cent (see Figure 8). Oral hearings can be in person, by telephone, or by video.

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 46 per cent compared to 48 per cent the previous year (see Figure 9).

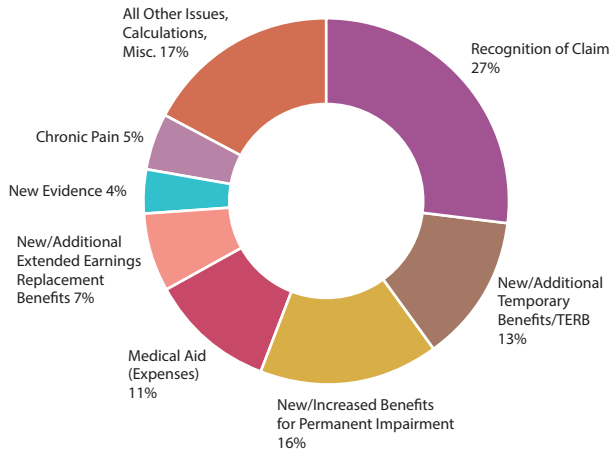
The number of appeals returned to hearing officers for reconsideration increased to 18 per cent from 14 per cent. The need for additional investigations is a typical reason for us to ask a hearing officer to reconsider an appeal. The percentage of appeals denied decreased to 36 per cent from 37 per cent the previous year.

**FIGURE 5**  
Decisions by Representation

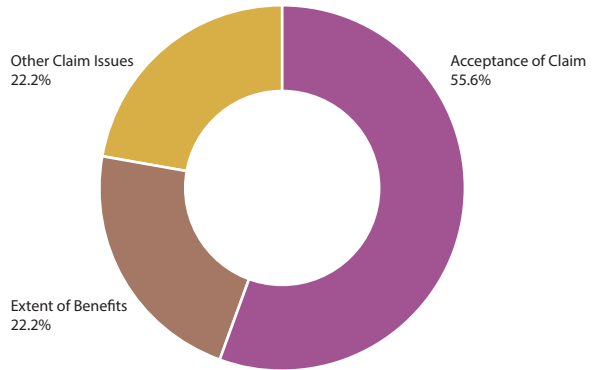




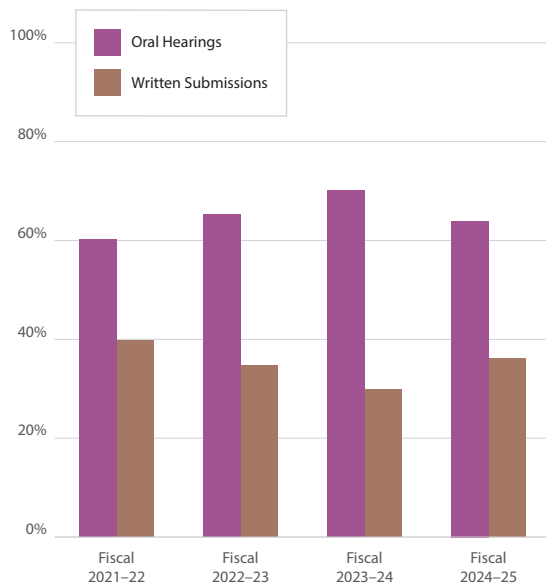
**FIGURE 6**  
Decisions by Issue Categories – Worker



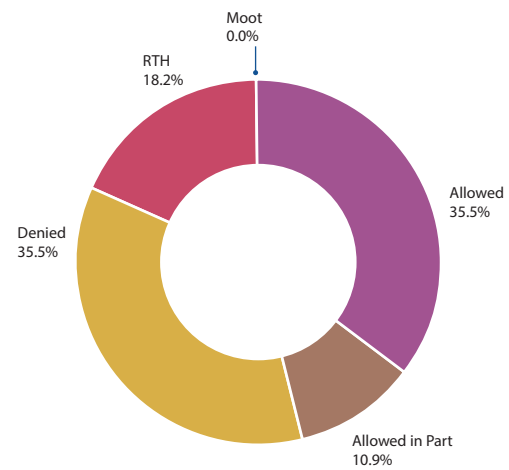
**FIGURE 7**  
Decisions by Issue Categories – Employer



**FIGURE 8**  
Decisions by Mode of Hearing



**FIGURE 9**  
Decisions by Outcome

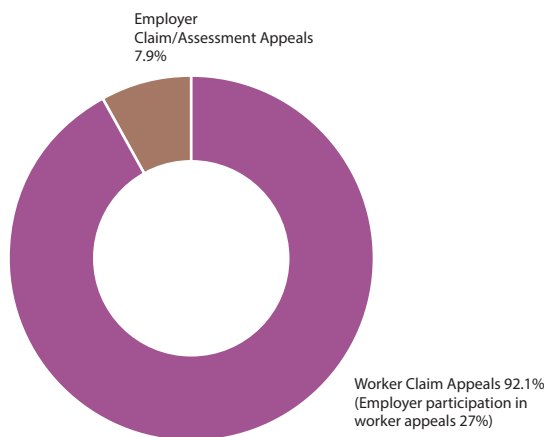


Ninety-two per cent of decisions resulted from worker appeals (see Figure 10). We resolved 170 appeals without the need for a hearing, an increase from last year's total of 114. The resolution of appeals without a hearing is often achieved by the registrar, prior to the assignment of an appeal to an appeal commissioner. This figure includes the appeals sent to the board to be considered under the new stress amendment to the act.

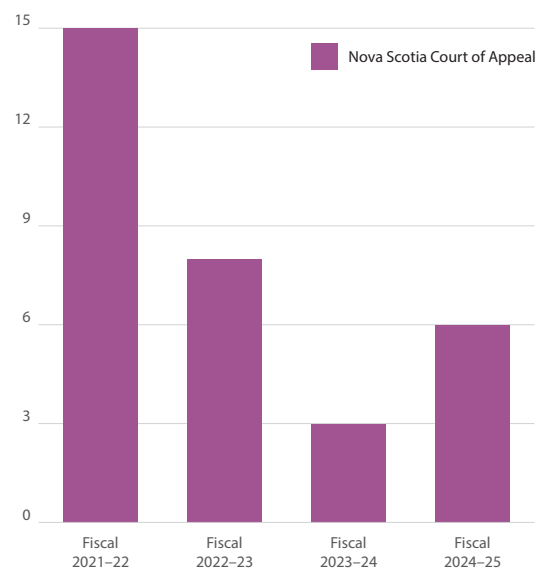
There were seven appeals to the Court of Appeal. The percentage of decisions appealed was 2 per cent, the same as the previous year. At year-end, six appeals remained at the Court of Appeal (see Figure 11).

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

**D**iane Manara, our registrar, and Genna Squires, 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.

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 early 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 a few years ago. This resulted in a multi-year plan for appeal system improvement. An inter-agency committee continues to ensure 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.

The Appeals 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.

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 was one 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](http://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.



# Internal Developments

**V**alerie Paul, our deputy registrar, retired this year. Valerie improved our processes for vetting files for disclosure to employers as well as improving privacy practices.

We are pleased to welcome Genna Squires as our new deputy registrar. Genna is bilingual and has a legal background. She was the manager of the Residential Tenancies Program before joining the tribunal.





# Noteworthy Decisions

## Apportionment

*Decision 2023-408-AD-RTH (April 30, 2024, NSWCAT)* considered whether a worker's permanent medical impairment rating and extended earnings-replacement benefit were properly apportioned. The worker had pre-existing asthma and a lengthy smoking history. He was diagnosed with an occupational aggravation of his asthma and chronic obstructive pulmonary disease.

His 80 per cent impairment rating and full extended earnings-replacement benefit were apportioned by 50 per cent, as recommended by an internal medicine specialist. The worker argued that his benefits should not be reduced because of a smoking history due to the difficulty in separating the contributing causes of respiratory impairment. In support of this argument, his representative referred to a paper prepared for the Workplace Safety and Insurance Board of Ontario, and related policy.

The appeal commissioner found that the Ontario approach did not apply in Nova Scotia. The appeal commissioner found that the board correctly apportioned the impairment rating. The appeal commissioner noted that different criteria apply to the apportionment of extended earnings-replacement benefits and that the opinion did not use the correct criteria. The appeal commissioner returned this aspect of the appeal to the hearing officer for further investigation.

## Claim Recognition

*Decision 2023-198-AD (November 20, 2024, NSWCAT)* involved an employer appeal of the board's accepting that a worker had a compensable injury. The worker's work permit had expired prior to sustaining the otherwise compensable injury. The employer argued that the worker's immigration status should bar accepting the claim.

The worker had an application for permanent residency under active consideration at the time of injury. The appeal commissioner found that the act does not exclude workers from compensation based on immigration status and denied the employer's appeal.

## Commutation

*Decision 2023-480-AD (April 29, 2024, NSWCAT)* considered a worker's request to have his permanent impairment benefit paid as a lump sum. His permanent impairment benefit was based on his 16 per cent impairment rating. The worker was also being paid an extended earnings-replacement benefit.

One of the policy requirements for commutation is that the final scheduled extended earnings-replacement benefit review be completed. The worker argued that this requirement was inapplicable because he was only seeking to commute the permanent impairment benefit.

The appeal commissioner rejected this argument and found that the policy criteria applies to all applications for commutation. The appeal commissioner noted that an extended earnings-replacement benefit can significantly change on review and that the finality is necessary to determine what is in a worker's best long-term interest. His request for commutation was denied.

## Earnings-Replacement Benefits

*Decision 2024-83-AD (December 23, 2024, NSWCAT)* considered entitlement to earnings-replacement benefits where a worker's employment was terminated and she subsequently lost her licence from her governing licensing body. The worker had compensable post-traumatic stress disorder (PTSD).

The appeal commissioner accepted that the worker was unable to return to work because of the compensable injury and that the earnings loss was not caused by labour relations. The appeal commissioner noted that while there were other post-injury stressors, such as grievance processes, the initial trauma was the predominant cause of her PTSD and her loss of earnings.

## Employer Assessments

*Decision 2024-79-AD (December 18, 2024, NSWCAT)* addressed an appeal where a worker sustained a knee injury while undergoing physiotherapy for her compensable back injury. The board accepted the secondary injury to the knee. The employer objected to the claim costs related to the knee injury and sought claim cost relief.

The employer argued that Policy 9.6.3 allows the board to assign costs for secondary injuries to a general account, instead of individual employers. Policy 9.6.3 allows for claim cost relief for injuries that occur during board-sponsored vocational rehabilitation programs. The board argued that there is a distinction between health-care

services, such as physiotherapy, and vocational rehabilitation programs.

The appeal commissioner noted that the board can provide physiotherapy even where there is no earnings loss. The appeal commissioner found that Policy 9.6.3 pertains to "vocational" programs aimed at a return to work. The appeal commissioner found that the board properly assessed the claim costs for the secondary injury to the employer.

## Gradual Onset Stress

*Decision 2014-185-AD (April 29, 2024, NSWCAT)* and *Decision 2017-308-AD (April 29, 2024, NSWCAT)* were two decisions that considered the constitutionality of the exclusion of gradual onset stress from the definition of accident in the act. The tribunal found that an earlier decision, *Decision 2014-706-AD (September 11, 2019, NSWCAT)*, is its leading decision on this issue and should be followed unless the evidence that supported it was wrongly decided.

A panel of appeal commissioners found that the evidence did not support the argument that the stress exclusion was enacted to ensure the financial stability of the accident fund. Rather, the panel found that it was a codification of a practice from 1991. The panel found that the stress exclusion was unconstitutional and that the workers in each appeal had a valid claim.

The act has now been amended to allow for compensation for gradual onset stress.

## Hearing Loss

*Decision 2024-138-AD (October 29, 2024, NSWCAT)* addressed a worker's argument that new evidence was not required to revisit a previously denied hearing loss claim. The worker argued that the prior decision was not final because there was insufficient hearing loss to have an acceptable



claim and therefore no finality attached to the board's prior decision.

The appeal commissioner rejected this argument. The appeal commissioner concluded that this would mean that any decision where the legislative or policy requirements were not met would not be a final decision. The appeal commissioner concluded that the proper route was for the board to decide whether new evidence was filed, which would allow for a reconsideration of the final decision.

## Issue Estoppel

*Decision 2023-134-AD (April 26, 2024, NSWCAT)* considered a worker's entitlement to an extended earnings-replacement benefit. A prior tribunal decision concluded that the worker's earnings loss was not caused by the compensable injury and was due to the termination of his employment. The employer argued that the principle of issue estoppel applied while the worker's position was that the prior appeal dealt with temporary, distinct from extended, earnings-replacement benefits.

The appeal commissioner found that issue estoppel applies, and that the worker could not seek an extended earnings-replacement benefit. The appeal commissioner found that the worker was bound by the tribunal's prior finding of fact concerning the cause of his earnings loss. The appeal commissioner agreed with the finding in any event.

*Decision 2022-419-AD, 2023-366-AD, and 2023-387-AD (June 26, 2024, NSWCAT)* considered appeals involving a worker's attempt to have a prior tribunal decision reconsidered. The tribunal had determined that there was a compensable injury, but that it was a temporary exacerbation of a pre-existing condition.

The employer argued that issue estoppel applied and prevented reconsideration of the tribunal's prior findings of fact. The tribunal reviewed its past decisions finding that the specific provisions of the act can preclude issue estoppel depending on the issue.

While the tribunal cannot reconsider its own decisions on request, the board can reconsider tribunal decisions in certain circumstances. The tribunal found that the additional evidence filed by the worker was "new evidence" allowing the board to reconsider the finding that only an exacerbation occurred.

## Medical Aid

*Decision 2024-193-AD (November 13, 2024, NSWCAT)* dealt with a worker who chose to have private magnetic resonance imaging (MRI) in Nova Scotia before contacting the board. The worker also travelled to another province for surgery and sought reimbursement of the cost of the MRI and expenses related to the surgery.

The appeal commissioner found that it was unreasonable for the board to be responsible for treatment it had no say in approving, or which may have been available at no, or a lower, cost to the board. The appeal commissioner acknowledged that workers are free to make decisions concerning their health care but found that the board was not responsible for the worker's choice to get a private MRI or seek treatment in another province. The appeal was denied.

*Decision 2022-423-AD & 2023-165-AD (November 29, 2024, NSWCAT)* considered a request for the hormone dehydroepiandrosterone (DHEA) to treat compensable PTSD. This medication was not in the formulary for the treatment of PTSD and a board medical advisor opined that there was a lack of evidence supporting such treatment. The appeal commissioner concluded that DHEA treatment was not consistent with the standards of health care in Canada and denied the request.

## Permanent Medical Impairment

*Decision 2023-280-AD (February 28, 2025, NSWCAT)* addressed a worker's appeal of a permanent medical impairment rating. At issue was the application of board Policy 3.3.6, which came into effect on April 1, 2024. This policy states that workers' degree of impairment is to be assessed using the "most current version" of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides), which is currently the sixth edition. The worker's degree of permanent impairment had been assessed using the fourth edition.

The worker and board argued that the fourth edition should apply to the appeal. The appeal commissioner noted that Policy 3.3.6 did not specifically address how appeals in the system as of April 1, 2024, should be treated. The appeal commissioner found that there would need to be express language to apply a policy that was no longer in effect.

The appeal commissioner found that the board should determine the worker's degree of permanent impairment using the sixth edition of the AMA Guides.

*Decision 2023-201-AD (February 28, 2025, NSWCAT)* considered an appeal of a psychiatric impairment rating for a 1968 injury. It had been assessed under the board's former *Guidelines for Assessment of Permanent Medical Impairment* with some of the judgments guided by the AMA Guides fourth edition.

The board argued that the tribunal should use the former guidelines as they were used to assess the worker's impairment. The appeal commissioner noted that it would be unusual to apply law or policy that is no longer in effect in the absence of clear language directing their use.

The appeal was sent back to the board to reassess the worker's degree of impairment using the sixth edition of the AMA Guides.

## Procedural Issues

*Decision 2023-342-RTH (April 22, 2024, NSWCAT)* considered whether a worker's urological problems are related to a compensable psychological injury. The workers' adviser filed additional evidence with the board. The case manager wrote a note indicating the board accepted a causal connection between the compensable injury and urinary symptoms, but did not issue a decision.

Without a written decision, the workers' adviser was unwilling to withdraw the appeal and requested that the appeal be declared moot or returned to the hearing officer. The appeal commissioner expressed concern that finding the appeal moot could appear to be a finding that the urological issues were compensable, a finding to be made in the first instance by the board. The appeal commissioner referred the appeal back to the hearing officer and acknowledged that this differed from the tribunal's approach in at least one other appeal.

*Decision 2024-447-AD (March 28, 2025, NSWCAT)* considered a worker's stress claim. At the tribunal, the worker made clear that she wanted to establish a gradual onset stress claim, not a traumatic claim as first considered by the board. The appeal commissioner noted there was very little evidence concerning the circumstances at work alleged to have caused her symptoms.

The appeal commissioner, however, found that there was sufficient evidence provided to warrant further investigation. The claim was referred to the board for further investigation of whether the worker had an acceptable claim for gradual onset stress.



## Suspension of Benefits

*Decision 2023-490-AD (September 25, 2024, NSWCAT)* considered the suspension of a worker's benefits due to cannabis use that was not board-approved. He was unable to return to his pre-injury work and was offered vocational rehabilitation. He was unable to participate in vocational rehabilitation because his cannabis use caused nausea and vomiting. The worker's benefits were suspended. He then stopped using cannabis and his benefits were restored.

The appeal commissioner accepted that the worker used cannabis to treat his compensable pain. The appeal commissioner, however, found that the worker's failure to stop using cannabis when it first interfered with vocational rehabilitation was a failure to take all reasonable steps to mitigate his loss of earnings. The appeal commissioner found that benefits were appropriately suspended.

*Decision 2022-421-AD (October 30, 2024, NSWCAT)* considered a worker's suspension of benefits due to missed appointments and a determination that she was capable of her pre-injury employment. The appeal commissioner acknowledged that s.84 does not require the provision of notice but noted the lack of communication between the board and physiotherapy clinic concerning the worker's attendance or functional status.

The appeal commissioner found that the information provided by the physiotherapy clinic was inadequate to conclude that the worker reached her pre-accident physical capacity. The appeal commissioner found that only one appointment was missed without notification and considered this insufficient to warrant the suspension of benefits. The appeal commissioner found that the worker was entitled to additional temporary earnings-replacement benefits.



*Decision 2024-303-AD (December 11, 2024, NSWCAT)* considered the suspension of a worker's benefits because of missed appointments and an incident where service providers felt the worker had become volatile. The worker argued that such behaviour was attributable to mental health issues and that it was unfair to use such issues, and his inability to cope, as a basis to suspend benefits under s.84 of the act.

The appeal commissioner concluded that the worker did not have the mental capacity to comply as expected. The appeal commissioner concluded that the application of s.84 was inappropriate and that the worker's benefits should be reinstated.

# Appeals from Tribunal Decisions

**W**e 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-weigh evidence 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:

- six were filed by workers
- one was filed by an employer

Five appeals were resolved as follows:

- leave to appeal was denied twice
- one appeal was dismissed by the court for failure to follow court rules
- one appeal was discontinued
- one appeal was allowed by the court

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





# Decisions of the Court of Appeal

The court allowed one appeal.

*Nove Scotia (Department of Community Services) v. Nova Scotia (Workers' Compensation Board)*, 2024 NSCA 84

A worker was injured at work and the board paid her a full earnings-replacement benefit to compensate her for losing all her income. At the time of her injury, she was working two jobs including part-time work at a government office. A board investigation found that she had returned to her part-time work while still receiving full earnings-replacement benefits. The board terminated her benefits under s.84 of the act. The board found she misrepresented her abilities and failed to disclose earnings.

The tribunal agreed that the worker had breached her obligations but allowed the worker's appeal finding that the board had failed to warn her of her obligations before terminating compensation.

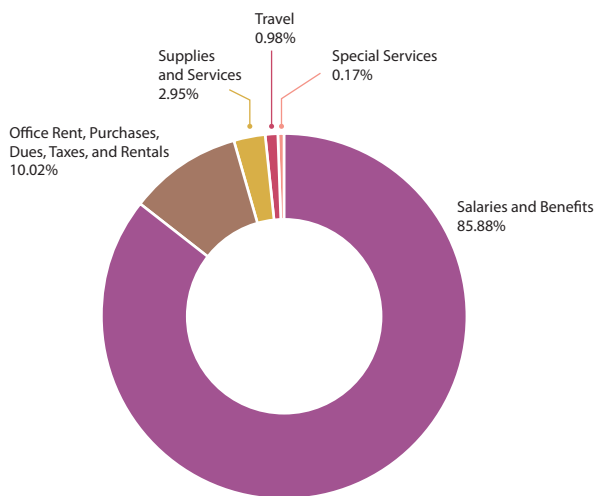
The court overturned the tribunal's decision, finding s.84 of the act puts an obligation on workers to disclose, but not on the board to warn workers of their obligations and the consequences of failing to comply.



# Financial Operations

Our total expenditure was within 68 per cent of the original authority and 77 per cent of the final forecast (see Figure 12). Net expenditure was \$1,891,423, a slight decrease from the previous year.

**FIGURE 12**  
**Budget Expenditures**  
(for the Fiscal Year Ending March 31, 2025)





# Appendix

**FIGURE 1**  
Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
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
Fiscal 2024–25	54	52	45	39	46	30	42	43	31	27	35	45	489

**FIGURE 2**  
Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
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
Fiscal 2024–25	31	24	27	21	18	34	31	32	25	33	29	25	330

**FIGURE 3**  
Appeals Outstanding at Year-end

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
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
Fiscal 2024–25	546	558	571	578	596	536	525	526	523	511	506	522

**FIGURE 4**  
Timeliness to Decision (cumulative age by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
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
Fiscal 2024–25	0.30	2.12	5.76	10.61	18.48	25.15	29.70	36.06	40.91	46.67	53.64	100

**FIGURE 5**  
Decisions by Representation

Self-represented	61
Workers' Advisers Program	247
Injured Worker Groups, Outside Counsel and Others	22
<b>Total</b>	<b>330</b>

**FIGURE 7**  
Decisions by Issue Categories – Employer

Acceptance of Claim	15
Extent of Benefits	6
Other Claim Issues	6
<b>Total</b>	<b>27</b>

**FIGURE 6**  
Decisions by Issue Categories – Worker

Recognition of Claim	100
New/Additional Temporary Benefits/TERB	50
New/Increased Benefits for Permanent Impairment	58
Medical Aid (Expenses)	39
New/Additional Extended Earnings Replacement Benefits	27
New Evidence	14
Chronic Pain	18
All Other Issues, Calculations, Misc.	62
<b>Total</b>	<b>368</b>

**FIGURE 8**  
Decisions by Mode of Hearing

	Oral Hearings	Written Submissions	Total
Fiscal 2021–22	266	176	442
Fiscal 2022–23	229	122	351
Fiscal 2023–24	225	96	321
Fiscal 2024–25	211	119	330



**FIGURE 9**  
Decisions by Outcome

Allowed	117
Allowed in Part	36
Denied	117
RTH	60
Moot	0
Total Final Decisions	330
Appeals Withdrawn	170
Total Appeals Resolved	500

**FIGURE 10**  
Decisions by Appellant Type

Worker Claim Appeals*	304
Employer Claim/Assessment Appeals	26
Total	330

\*Employer participation in worker appeals 27%

**FIGURE 11**  
Appeals Before the Courts at Year-end

	Nova Scotia Court of Appeal	Supreme Court of Canada	Total
Fiscal 2021–22	15	0	15
Fiscal 2022–23	8	0	8
Fiscal 2023–24	3	0	3
Fiscal 2024–25	6	0	6

**FIGURE 12**  
Budget Expenditures

(For the Fiscal Year Ending March 31, 2025)

	Authority	Final Forecast	Actual Expenditures
Salaries and Benefits	\$2,122,000	\$1,784,000	\$1,624,368
Travel	\$56,000	\$56,000	\$18,509
Special Services	\$276,500	\$276,500	\$3,134
Supplies and Services	\$78,500	\$78,500	\$55,880
Office Rent, Purchases, Dues, Taxes, and Rentals	\$247,000	\$247,000	\$189,532
Sub Total	\$2,780,000	\$2,442,000	\$1,891,423
Less Recoveries	\$0	\$0	\$0
Totals	\$2,780,000	\$2,442,000	\$1,891,423

