



THE APPEAL COMMISSION
THE WORKERS COMPENSATION ACT OF MANITOBA

Appeal Commission and Medical Review Panel **2022** **Annual Report**



Letter to the Minister

The Honourable Jon Reyes
Minister of Labour and Immigration
Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

Dear Minister:

I am pleased to present our 2022 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the 12-month period from January 1, 2022 to December 31, 2022.

Respectfully submitted,

Karen Dyck
Chief Appeal Commissioner

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Introduction

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2022 to December 31, 2022 inclusive.

The Appeal Commission is the final level of appeal in Manitoba's workers compensation system, with exclusive jurisdiction to hear and decide appeals that arise from decisions made by the Workers Compensation Board (WCB). The Appeal Commission is separate and independent from the WCB, ensuring that issues on appeal from workers and employers are heard by an impartial panel.

The Appeal Commission consists of full- and part-time appeal commissioners appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under *The Workers Compensation Act* (the Act) as a separate and independent process from the WCB and the Appeal Commission. Medical Review Panels allow questions to be asked of an independent panel of medical experts and an impartial medical opinion obtained on a worker's claim. The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or Appeal Commission.

The Minister responsible for the Act appoints the Medical Review Panel Chair and Alternate Chair. The independence of the Chairs, and the ability of the employer and worker to select physicians who have not previously treated the worker to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar provides administrative support to both the Appeal Commission and Medical Review Panels.

Mission Statement

To ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

Values

Quality Assurance

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision-making, and accountability, while respecting differing and shared values and perspectives.

Public Integrity

The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision-making process.

Responsive to Change

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

Interdependence

All appeal commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision-making.

Respectful Work Environment

Appeal commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

A Message from the Chief Appeal Commissioner

I am pleased to present the Annual Report of the Appeal Commission for the year 2022.

The Appeal Commission serves a pivotal role within the workers compensation and administrative justice systems in Manitoba. As the final level of appeal from decisions made under *The Workers Compensation Act* (the Act), the Appeal Commission provides an independent forum for timely resolution of the concerns of both workers and employers dissatisfied with the decisions of the Workers Compensation Board (WCB). The Appeal Commission also serves as the final appeal body for decisions made under *The Victims' Bill of Rights* for victims of crime in Manitoba and under the *Government Employees Compensation Act* (Canada) for federal government employees working in Manitoba.

This annual report outlines the work of the Appeal Commission in 2022 and demonstrates both the effectiveness of the Appeal Commission in setting, hearing, and deciding the cases that come before it, and the Commission's ability to meet our mandate despite the changing tides arising from the global pandemic and adapting to a new normal. In 2022, the Appeal Commission continued to provide thorough and principled review of appeals, true to our stated values and commitment to ensuring that all appeals receive full and fair consideration. This remains our priority going forward, as we understand this approach to be in the best interests of our stakeholders, Manitoba's employers and workers.

The onslaught of change that began in 2020 with the declaration of a pandemic continued into 2022. Our offices remained closed to the public until the end of the first quarter, and most Commission staff worked remotely until the second half of the year. Most appeals were heard remotely using videoconferencing tools, with appeal commissioners and parties to each appeal participating from a range of locations across the province, but by September 2022, an increasing proportion of hearings were again taking place in the Appeal Commission hearing room. Our successful reliance on technology to facilitate remote hearing processes allowed the Appeal Commission to continue operations through the year without interruption while increasing the accessibility of our processes.

The Appeal Commission again experienced numerous transitions in the year. Our roster of commissioners changed with the addition of two new part-time commissioners, Renée Lemieux Howard and Nicole Smith, both representative of the public interest, who were appointed in July 2022. Part-time commissioners Shauna Briscoe and Marc Payette, representative of workers, and part-time commissioners Renae Campbell, Ron Hambley, Jane MacKay, Danielle Rhoda, and Jim Witiuk, representative of employers, were reappointed to their roles during the year. We also bid farewell to part-time commissioners

Kimberly Gilson, Barry Hartley and Christian Monnin, each representative of the public interest, and are grateful to each of them for their years of capable service to the Appeal Commission.

The Appeal Commission's success is supported by the dedication of our full-time and part-time appeal commissioners in carrying out their work. We appreciate all our appeal commissioners for their hard work, flexibility, and commitment throughout 2022.

Further appreciation is due to all the staff of the Appeal Commission who continue to adapt to doing their jobs in new ways, while providing consistent support to one another, to the commissioners, and to the workers, employers and their representatives involved in appeals. I am deeply grateful to each member of the Appeal Commission staff for their commitment to excellence and their steadfastness in the face of challenges through the past year. In particular, I commend and appreciate the

administrative leadership provided by Peter Wiebe, Registrar, and Roger Lafrance, Assistant Registrar, through managing vacancies and onboarding new commissioners, supporting the staff in adapting to change and maintaining high standards in service delivery through the year.

Finally, I am honoured to have been reappointed to serve as Chief Appeal Commissioner in 2022 and to be entrusted with the continuing responsibility for operations of this adjudicative body. The Appeal Commission's record of service in 2022, as outlined in this report, demonstrates our effectiveness and commitment to our stated values. I look forward to what lies ahead for the Appeal Commission in 2023.

Sincerely,

Karen Dyck

About the Appeal Commission

The Appeal Commission is the final level of appeal in the workers compensation system and operates separately and independently from the WCB. The Appeal Commission hears all appeals from workers and employers concerning decisions of the WCB Review Office or Assessment Committee. The Appeal Commission also acts as the final level of appeal under the *Government Employees Compensation Act* (Canada) for federal employees working in Manitoba and for claims from victims of crime filed under *The Victims' Bill of Rights*.

The full- and part-time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. *The Workers Compensation Act* (the Act) requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the Act.

The Appeal Commission's conduct is governed by the Appeal Commission's Rules of Procedure. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar, and the appeal panels to ensure that the integrity and transparency of the appeal system is protected and maintained.

Appeals are heard by panels of three commissioners, representing public, worker, and employer interests, respectively. The commissioner representing the public interest is the chair of the panel, responsible for the conduct of the hearing or review.

Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness and consistent with the Rules of Procedure. All parties to an appeal (i.e. the employer, worker, and their representatives) are given an equal opportunity to participate and present their case on appeal.

An appeal panel may hear witnesses from either or both parties and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a review of the file which would not require the attendance of any party.

The Appeal Commission functions as a non-adversarial enquiry forum where parties with a direct interest in a matter are able to provide oral or written evidence. An appeal panel can ask questions or obtain additional evidence which ensures that the panel has all the information necessary to reach a fair decision.

Decisions are made and reasons provided within 60 days of the completion of the hearing. Appeal decisions are based on the evidence on file and the evidence presented during the hearing or review, as well as any additional evidence the appeal panel has requested.

The Appeal Commission also provides access to our decisions to all stakeholders. Decisions are publicly available in several ways, including through the Appeal Commission's website – www.appeal.mb.ca. Decisions made available to the public are written to protect the privacy of all parties, in compliance with privacy legislation in Manitoba.

Method of Appeal

Appellants can request a file review or oral hearing; however, the Chief Appeal Commissioner or an appeal panel addressing an appeal has the final authority to determine the most appropriate method for an appeal.

File Review

An appeal may be addressed by a file review if all the issues can be decided based on the file documents and written submissions. The panel reaches a decision after considering the file documentation and any written submissions by the parties with a direct interest.

Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual questions such as the level of average earnings
- appeals of permanent partial impairment awards
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute.

Oral Hearing

Oral hearings are the most common method of appeal. More complex appeals are usually determined by oral hearing. The party requesting the hearing appears in person before the panel through teleconference, videoconference or in-office. The appeal can also be supported by written submissions. Witnesses may appear if the Appeal Commission is advised in advance of their attendance.

Examples of appeals typically conducted by oral hearing include matters where:

- additional evidence is to be presented
- there has been a fatality or serious injury
- an occupational disease is involved
- the decision may have an important impact on how WCB policy is interpreted or applied
- the facts are in dispute or there are issues of credibility.

General Appeal Information

- Hearings and reviews are scheduled as soon as the parties are ready to proceed.
- Access to file information is subject to certain restrictions contained in the Act. File access generally takes up to six weeks, but can be longer if objections to the release of information are received.
- Any evidence and submissions concerning an appeal must be provided to the Appeal Commission at least five business days before the review or hearing.
- A decision will be rendered within 60 days of the completion of the hearing or review.

After an Appeal

Appeal Commission decisions are final. The Appeal Commission cannot clarify or change its decision once it has been made, except to correct typographical errors. The panel is unable to provide any further reasons or explanations for its decision, and cannot consider further arguments or submissions by the parties.

Once a decision has been made, there are limited remedies available to the parties under the Act.

These remedies are:

- 1.** Under Section 60.9 of the Act, if a party thinks the panel has erred in applying the Act, regulations or WCB policy, the party can approach the Board of Directors of the WCB and ask them to review the decision. The party must identify the error made by the panel. Should the Board of Directors consider that an error has been made, they may order that the appeal be re-heard.
- 2.** Under Section 60.10 of the Act, if a party has new evidence that is substantial and material to the decision, they may apply to the Chief Appeal Commissioner and request reconsideration of the decision. The information must not have existed at the time of the original hearing, or been known to the applicant and also could not have been discovered through the exercise of due diligence. If the Chief Appeal Commissioner decides that the evidence meets the reconsideration provisions of the Act, a new hearing on the matter will be ordered. The Chief Appeal Commissioner is unable to consider further arguments about the evidence that was before the original panel.

The Appeal Commissioners

Full-Time Appeal Commissioners

The Chief Appeal Commissioner and full- and part-time commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

As at December 31, 2022, there were four full-time commissioners:

Karen Dyck Chief Appeal Commissioner (Public Interest)	Lynne Harrison Presiding Officer (Public Interest)	Mark Kernaghan Appeal Commissioner (Workers)	Jason Peterson Appeal Commissioner (Employers)
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Part-Time Appeal Commissioners

During 2022, the Appeal Commission had a roster of part-time appeal commissioners representing the public interest, workers and employers. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase, and to maintain their level of expertise.

Public Interest

Kim Gilson
Barry Hartley
Renée Lemieux Howard
Christian Monnin
Nicole Smith
Karen Wittman

Representing Workers

Shauna Briscoe
Phil Kraychuk
Marc Payette
Robert Ripley
Wally Skomoroh

Representing Employers

Renae Campbell
Ron Hambley
Jane MacKay
Danielle Rhoda
Jim Witiuk

Highlights

Karen Dyck, Chief Appeal Commissioner was appointed to the executive on the Manitoba Council of Administrative Tribunals as Treasurer.

Kim Gilson, Christian Monnin and Barry Hartley, part-time Appeal Commissioners Representing the Public Interest concluded their terms with the Appeal Commission in 2022.

Renée Lemieux Howard and **Nicole Smith**, part-time Appeal Commissioners Representing the Public Interest were appointed in 2022.

Commissioner Workshops (continuing education)

Full- and part-time appeal commissioners attend internal workshops and participate in external training throughout the year on topics related to workers compensation and administrative tribunals. Workshops and external training attended in 2022 were:

Law Society of Manitoba:

- Context Matters: Rediscovering the Origins of Manitoba Law

Canadian Bar Association:

- Administrative Law, Labour and Employment Law Conference
- Lawyer Competence: Reconciliation and Working with Indigenous Peoples

Council of Canadian Administrative Tribunals:

- 37th Annual Symposium
- Future of Virtual Hearings
- Performance Management in a Tribunal Setting
- Admin Law Update 2022

Manitoba Council of Administrative Tribunals:

- A Decision Maker's Perspective: Impartiality, Fairness & Self-Representation
- New Member Training

Canadian Institute for the Administration of Justice:

- Decision Writing

Disclosures

under The Public Interest Disclosure (Whistleblower Protection) Act

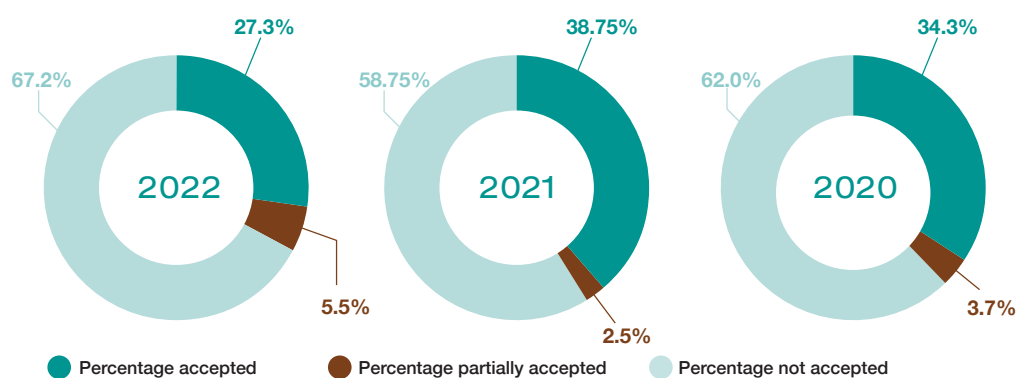
There were no disclosures received in 2022.

Appeal Commission Statistics

Workers Compensation Statistics

Total Appeals	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals carried forward from previous year	26	35	26
Hearings held (by appeal)	122	128	127
Reviews held (by appeal)	13	25	20
Cases in process	[28]	[26]	[35]
Cases adjourned	[5]	[2]	[1]

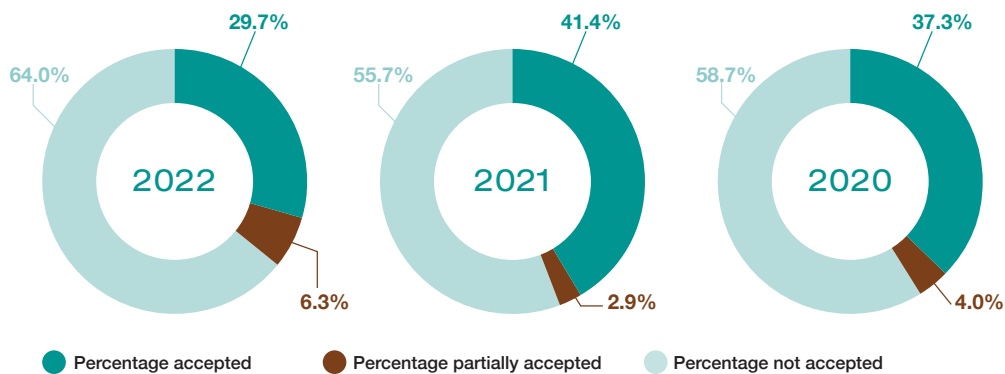
Total Appeals Decided	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	35	62	47
Appeals partially accepted	7	4	5
Appeals not accepted	86	94	85
Total Appeals Decided	128	160	137



Post Hearing Activities (Cases in Process)	Year Ending 2022	Year Ending 2021	Year Ending 2020
Cases awaiting further information requested by the panel	11	8	14
Cases awaiting decision	3	6	3
Decision writing	14	12	18
Total	28	26	35

Total Worker Appeals to Claim/Rehabilitation issues

	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	33	58	47
Appeals partially accepted	7	4	5
Appeals not accepted	71	78	74
Total Appeals Decided	111	140	126

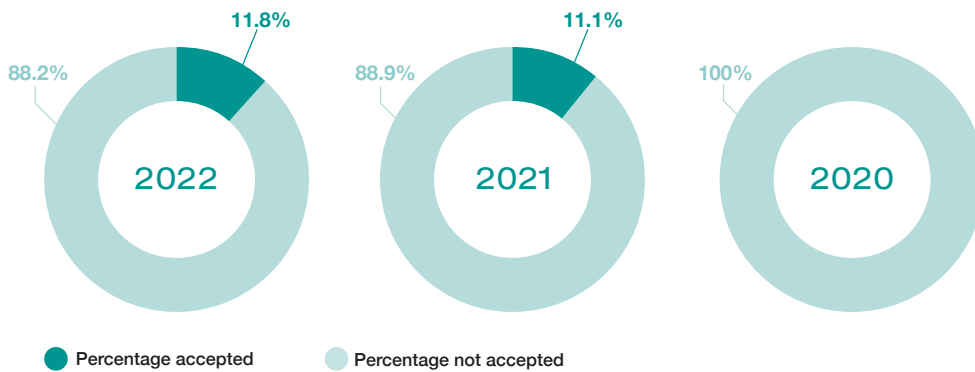


Number of workers represented by:

Legal Counsel	4	5	2
Union Representative	14	16	17
Worker Advisor	38	55	44
Advocate	3	1	4
Self Representation	49	61	55
Other	3	2	4

Total Employer Appeals

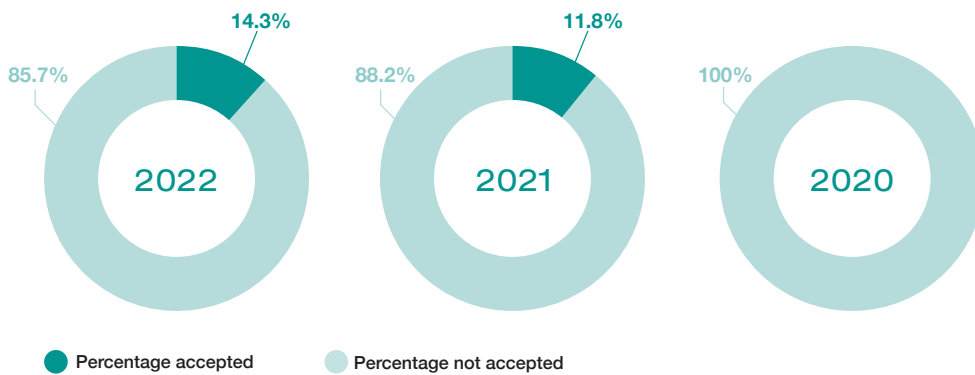
	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	2	2	0
Appeals partially accepted	0	0	0
Appeals not accepted	15	16	11
Total	17	18	11



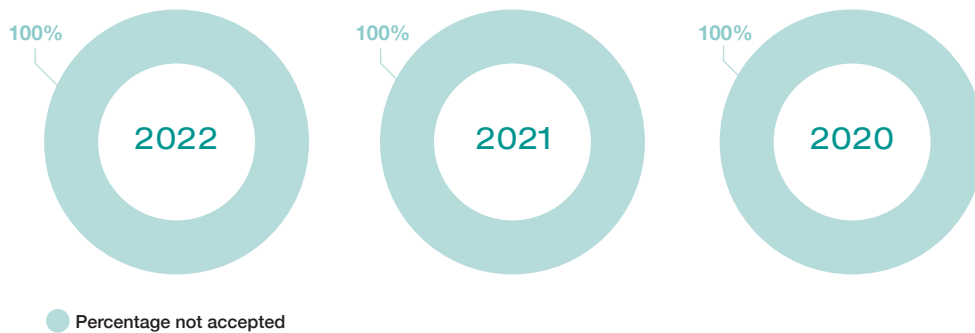
Number of employers represented by:

Legal Counsel	0	1	1
Advocate	8	10	4
Employer Agent	6	7	4
Self Representation	3	0	2

Employer Appeals to Claim/Rehabilitation Issues	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	2	2	0
Appeals partially accepted	0	0	0
Appeals not accepted	12	15	9
Total	14	17	9



Employer Appeals to Assessment Issues	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	3	1	2
Total	3	1	2



Total Third Party Appeals*

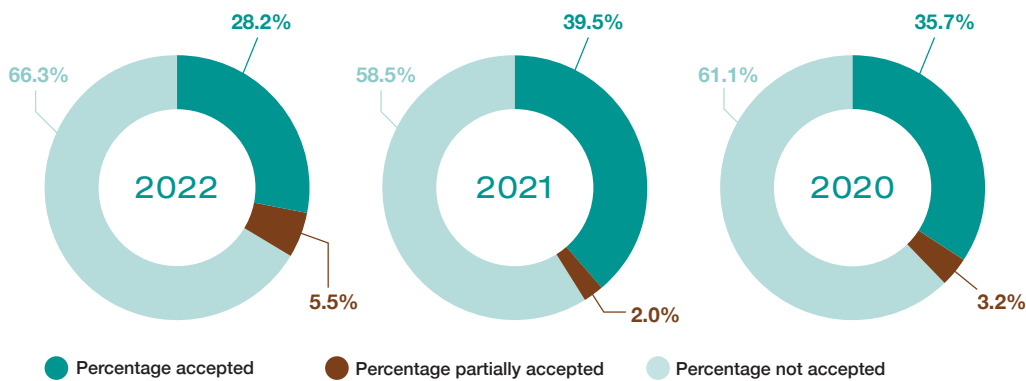
	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	0	2	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
Total	0	2	0

Number of third parties represented by:

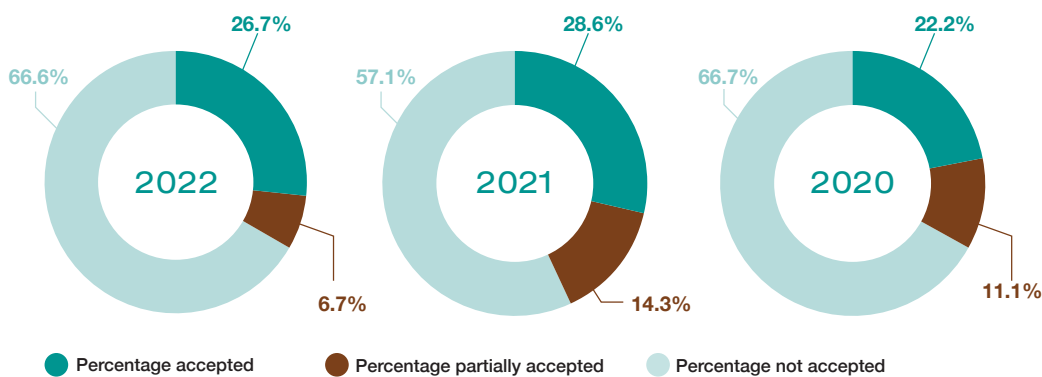
Legal Counsel	0	2	0
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocate	0	0	0
Self Representation	0	0	0
Other	0	0	0

*Appeals by parties other than the worker or employer.

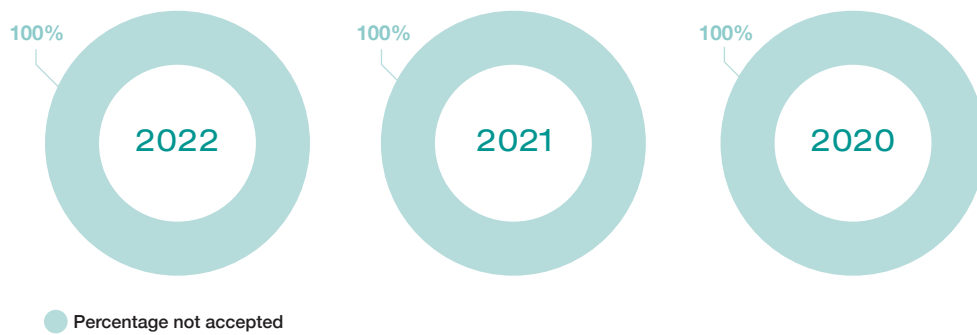
Appeal Type - Claim	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	31	60	45
Appeals partially accepted	6	3	4
Appeals not accepted	73	89	77
Total	110	152	126



Appeal Type - Rehabilitation	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	4	2	2
Appeals partially accepted	1	1	1
Appeals not accepted	10	4	6
Total	15	7	9



Appeal Type - Assessment	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	3	1	2
Total	3	1	2



	Year Ending 2022	Year Ending 2021	Year Ending 2020
Total Appeals Decided	128	160	137

Most Common Issues Addressed	Year Ending 2022	Year Ending 2021	Year Ending 2020
Entitlement to wage loss benefits (post-1992)	61	67	73
Entitlement to medical aid payment	40	48	56
Claim Acceptance	39	52	43
Is present condition related to the compensable injury	11	22	7
Was the vocational rehabilitation plan appropriate	5	2	4
Deeming process	4	1	2
Entitlement to an increase in the permanent partial impairment award	3	5	8
Is the worker entitled to payment for prescription medications	3	4	5
Average Earnings Policy	2	1	0
Is the worker capable of performing modified duties	2	2	2
Is the worker to reimburse the WCB for overpayment of benefits	2	1	2
Is the employer entitled to cost relief	2	5	2
Entitlement to a permanent partial impairment award	2	3	3
Is the worker entitled to further physiotherapy treatment	2	3	0
Did the worker experience a recurrence of their injury	2	1	0
Should responsibility for surgery be accepted	2	3	2
Administrative Penalties	1	1	0
Has the worker been overpaid benefits	1	1	2
Have the firm's assessments been properly calculated	1	0	0
Is the psychological condition related to the compensable injury	1	1	0
Request for a medical review panel	1	1	0
Other issues	7	14	19
Total Issues Adressed	194	238	230

Reconsiderations Under Section 60.10 of the Act

	Year Ending 2022	Year Ending 2021	Year Ending 2020
Number of requests decided	4	15	4
Reconsiderations granted	0	0	1
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

File Access Appeals

	Year Ending 2022	Year Ending 2021	Year Ending 2020
Worker appeals	8	2	4
Employer appeals	0	0	1
Total File Access Appeals	8	2	5

Victim's Rights Statistics

	Year Ending 2022	Year Ending 2021	Year Ending 2020
Appeals accepted	1	0	3
Appeals partially accepted	0	2	1
Appeals not accepted	2	4	4
Total	3	6	8

Service Levels

The Appeal Commission tracks the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.

Appeal Commission staff personally contact all interested parties when scheduling hearings to ensure that the parties are provided sufficient time to fully prepare.

According to the Appeal Commission’s Rules of Procedure, an appeal panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

Service Level Statistics

(Based on decisions published as at December 31, 2022)

	Year Ending 2022	Year Ending 2021	Year Ending 2020
Average time from date appeal received to date of hearing	22.49 wks	27.63 wks	24.91 wks
Average time from hearing date to decision published	11.07 wks	11.08 wks	10.80 wks
AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	33.56 wks	38.71 wks	35.71 wks

*Includes all appeals:

- that awaited the selection of an acceptable hearing/review date;
- that awaited file access and other information sharing;
- where there was an adjournment at the request of the worker or employer; and,
- where additional information was requested after the hearing/review.

About Medical Review Panels

Medical Review Panels allow the WCB and Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the Act provides the WCB or Appeal Commission discretion to refer a medical matter to a Medical Review Panel for an independent opinion. This may occur when a claim is fairly complex and an independent expert opinion is desired.

Subsection 67(4) of the Act establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor and this difference affects the worker's entitlement to compensation. A Medical Review Panel must be convened if a difference of opinion, as defined by subsection 67(1) of the Act, exists.

Subsection 67(4.1) of the Act provides that an employer may request that the WCB refer a medical matter to a Medical Review Panel for its opinion. The medical matter must be real and substantial and affect entitlement to compensation.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the Act appoints the Chairperson and the Alternate Chairperson. The worker and employer select the other two panel

members from a list of physicians, provided by the College of Physicians and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

Medical Review Panel Statistics

Medical Review Panels (MRPs)	Year Ending 2022	Year Ending 2021	Year Ending 2020
Total MRPs convened	0	1	0
INITIATED BY:			
Primary Adjudication	0	1	0
Review Office	0	0	0
Appeal Commission	0	0	0
CONVENED UNDER:			
Subsection 67(3)	0	0	0
Subsection 67(4)	0	1	0
Subsection 67(4.1)	0	0	0

Medical Review Panels Convened by Area of Medical Specialty	Year Ending 2022	Year Ending 2021	Year Ending 2020
Neurology	0	1	0
Total	0	1	0

Service Levels

The convening of a Medical Review Panel is a complex process in which a panel of specialists and consultants are brought together to meet and examine a worker and to answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

Service Level Statistics

Medical Review Panel Service Level Statistics	Year Ending 2022	Year Ending 2021	Year Ending 2020
Average time from date of request to date MRP held	0 wks	100.57 wks	0 wks
Average time from date of MRP to date report is published	0 wks	10.43 wks	0 wks
AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED	0 wks	111.00 wks	0 wks

Notes

A series of horizontal lines for writing notes, with a light blue shaded area on the right side.

A page with a light blue geometric background. The central area is filled with horizontal lines, resembling a writing template. The lines are evenly spaced and extend across most of the page width. The background consists of several overlapping light blue shapes, including a large triangle on the left and a large trapezoid on the right, creating a modern, abstract design.

2022 Appeal Commission and Medical Review Panel Annual Report



THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

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