

2018 Appeal Commission  
and Medical Review Panel  
**ANNUAL REPORT**



**THE APPEAL COMMISSION**

THE WORKERS COMPENSATION ACT OF MANITOBA

# Letter to the Minister

The Honourable Blaine Pedersen  
Minister of Growth, Enterprise and Trade  
Legislative Building  
450 Broadway  
Winnipeg, MB R3C 0V8

Dear Minister:

I am pleased to present our 2018 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the 12-month period from January 1, 2018, to December 31, 2018.

Respectfully submitted,

A handwritten signature in dark ink, reading "Alan Scramstad". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

**Alan Scramstad,**  
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, 2018 to December 31, 2018 inclusive.

The Appeal Commission is the final level of appeal in the workers compensation system in Manitoba. The Appeal Commission has 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 from workers and employers are heard by an impartial panel.

The Appeal Commission consists of full- and part-time appeal commissioners who are 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 2018.

I have had the privilege of providing the Annual Report to the Ministers responsible for workers compensation since 2004 when I was first appointed to serve as Chief Appeal Commissioner. I can advise that this is the final report that I will provide, as I have retired effective March 21, 2019. I am pleased to advise that Karen Dyck has been appointed by the Lieutenant Governor in Council to serve as Chief Appeal Commissioner for a three-year term commencing on March 22, 2019.

The Appeal Commission plays an important role in Manitoba's workers compensation and administrative justice systems. The Appeal Commission is the final appeal body under *The Workers Compensation Act* (the Act). It provides an independent forum for the resolution of concerns for persons who are not satisfied with the decisions of the Workers Compensation Board (WCB). It also serves as the final appeal body under *The Victims' Bill of Rights* for victims of crime in Manitoba and the *Government Employees Compensation Act* for federal government employees working in Manitoba.

This report contains statistics which detail the work of the Appeal Commission over the past year and demonstrates that the Appeal Commission is scheduling, hearing and deciding cases effectively. Throughout 2018 we remained uncompromising in the thoroughness of our review of files. The Appeal Commission's priority has been, and continues to be, a commitment to ensuring that all appeals receive full and fair consideration. We believe this approach is in the best interests of Manitoba's workers and employers.

In 2018 Commissioner Allan Finkel celebrated his 20th year of service as an appeal commissioner. I congratulate him on this important anniversary and thank him for his invaluable, ongoing contribution to the Appeal Commission.

Also in 2018, the Appeal Commission welcomed Jane MacKay as an appeal commissioner representative of employers. Ms. MacKay previously served as an appeal commissioner from 2001 to 2008. In addition, Lynne Harrison, full-time Presiding Officer was reappointed for a five year term and Dale Neal and Marc Payette, part-time appeal commissioners representative of workers, were reappointed for two year terms.

The Appeal Commission's success is dependent on the hard work and commitment of the full-time and part-time appeal commissioners and to the hard work and commitment of Appeal Commission staff.

Thank you to our full-time and part-time appeal commissioners for their dedicated service. Also thanks to staff for their continued support to commissioners and to clients of the Appeal Commission. Finally thanks to Peter Wiebe, Registrar, and Roger Lafrance, Assistant Registrar, for your support and guidance over the years.

I am grateful for having the opportunity to serve as Chief Appeal Commissioner for the past 15 years. It was an honour to be entrusted with the responsibility for the operation of such an important and vital entity.

I am proud of the Appeal Commission's record of service over the years and specifically for the service in 2018. I extend my best wishes to the Appeal Commission for a productive 2019 and beyond.

Sincerely,



**Alan Scramstad,**  
Chief Appeal Commissioner

# 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 WCB Review Office or Assessment Committee decisions. The Appeal Commission also acts as the final level of appeal under the *Government Employees Compensation Act* 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 Regulation 279/91, *Appeal Commission 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 and is responsible for the conduct of the hearing/review.

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

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 is a non-adversarial enquiry forum where parties with a direct interest in a matter 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.

Written decisions are provided to the parties to an appeal within 60 days of the hearing ending. Decisions are made based on the evidence on file, the evidence presented during the hearing/review and 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](http://www.appeal.mb.ca). Decisions made available to the public are written to protect the privacy of all parties, in compliance with the various pieces of 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 will 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 it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a file review, interested parties do not appear in person before the appeal panel.

Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment
- 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 appeal forums and they are where the more complex appeals are usually heard. The party requesting the hearing must appear in person to present the appeal to the panel verbally, although the appeal can be supported by a written submission. In some instances, a party may be allowed to participate via teleconference or video conference. Witnesses may attend in support of the appeal, so long as the Appeal Commission is advised in advance that they will be attending.

When an oral hearing takes place, everyone who participates is given an equal opportunity to present their case.

Some examples of appeals decided by an oral hearing are:

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



# General Hearing/ Review Information

- Hearings and reviews are scheduled as soon as the parties are ready to proceed.
- A worker's or an employer's 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 concerning an appeal must be provided to the Appeal Commission at least five business days before the review or hearing.
- By Regulation, a decision will be rendered within 60 days of the completion of the hearing or review.

## After an Appeal

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.

Appeal Commission decisions are final. 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 acted outside its authority or 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 reheard.
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

## The 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, 2018, there were four full-time commissioners:

- **Allan Finkel**, Appeal Commissioner (Employers)
- **Lynne Harrison**, Presiding Officer (Public Interest)
- **Mark Kernaghan**, Appeal Commissioner (Workers)
- **Alan Scramstad**, Chief Appeal Commissioner (Public Interest)

## The Part-Time Appeal Commissioners

During 2018, 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  
Christian Monnin  
Karen Wittman

### REPRESENTING WORKERS

Shauna Briscoe  
Phil Kraychuk  
Dale Neal  
Marc Payette  
Pete Walker

### REPRESENTING EMPLOYERS

Renae Campbell  
Paul Challoner  
Christiane Devlin  
Ron Hambley  
Pam Marsden  
Jane MacKay

# Highlights

- Alan Scramstad, Chief Appeal Commissioner and Lynne Harrison, Presiding Officer, served as members of the Board of Directors of the Manitoba Council of Administrative Tribunals (MCAT). Mr. Scramstad was chair of the Nominating Committee.

## 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 2018 were:

- Manitoba Council of Administrative Tribunals sessions:
  - 13th Annual Conference
  - Considering Indigenous Perspectives in Decision-Making
- Sorting out Spinal Pain
- Common Elbow, Hand & Wrist Injuries
- Worklessness
- Law Society of Manitoba session:
  - Les ressources juridiques gratuites en ligne et en français
- Council of Canadian Administrative Tribunals sessions:
  - Annual Conference: On the Edge between Sea and Sky, New Horizons for Administrative Justice
  - Dealing with Charter Claims and Values

## Disclosures under *The Public Interest Disclosure (Whistleblower Protection) Act*

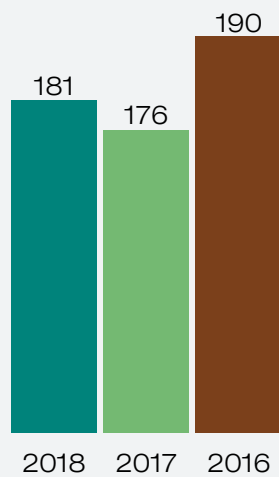
There were no disclosures received in 2018.

# Appeal Commission Statistics

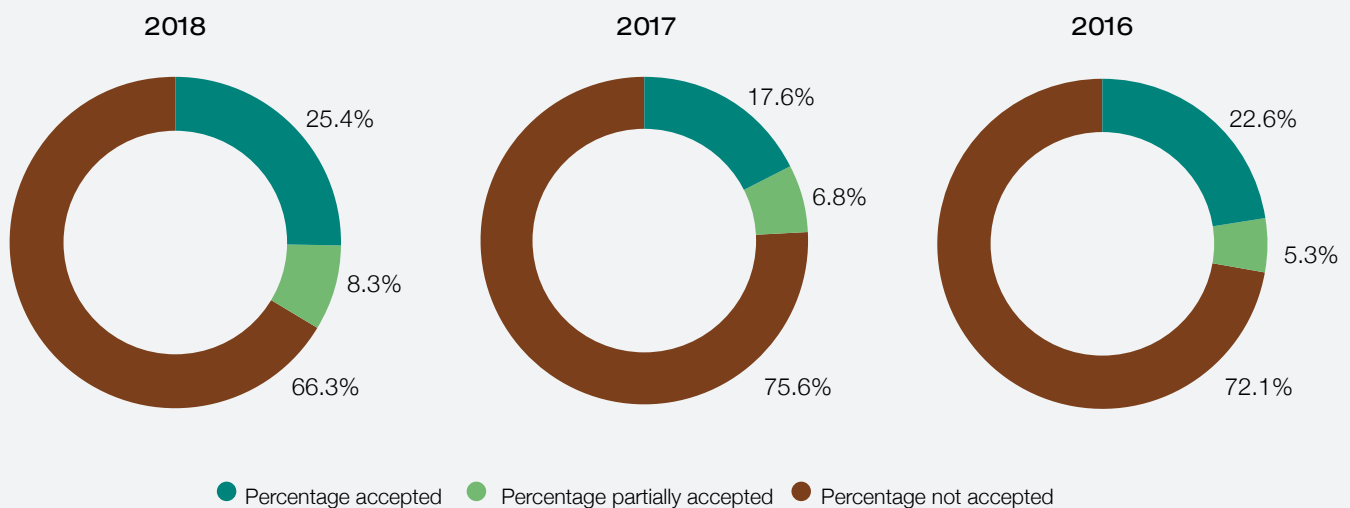
## Workers Compensation Statistics

Total Appeals	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals carried forward from previous year	36	24	30
Hearings held (by appeal)	151	164	147
Reviews held (by appeal)	31	29	39
Cases in process	[34]	[36]	[24]
Cases adjourned	[3]	[5]	[2]

## Total Appeals Decided



Appeals accepted	46	31	43
Appeals partially accepted	15	12	10
Appeals not accepted	120	133	137



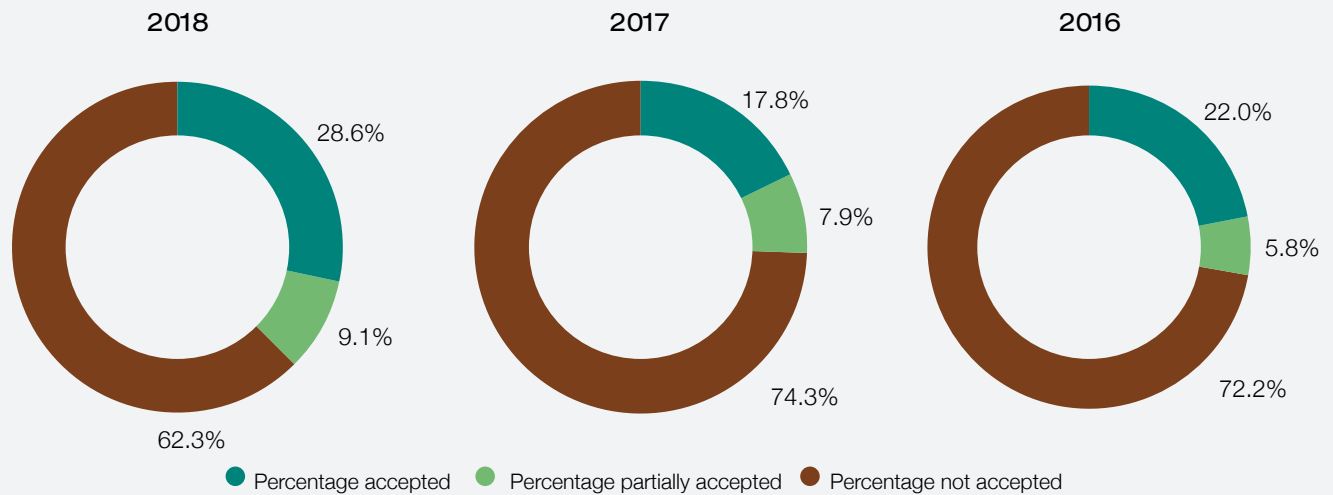
## Post Hearing Activities (cases in process)

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Cases awaiting further information requested by the panel	11	14	5
Cases awaiting decision	4	2	5
Decision writing	19	20	14
<b>TOTAL</b>	<b>34</b>	<b>36</b>	<b>24</b>

## Total Worker Appeals

### To Claim/Rehabilitation Issues

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	44	27	38
Appeals partially accepted	14	12	10
Appeals not accepted	96	113	125
<b>TOTAL</b>	<b>154</b>	<b>152</b>	<b>173</b>

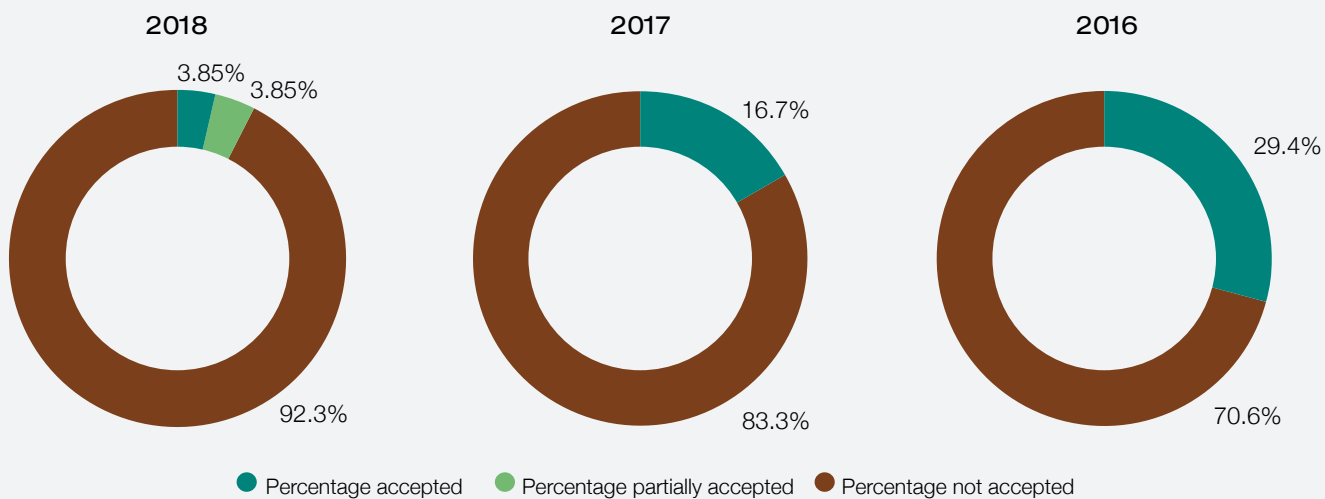


### Number of workers represented by:

Legal Counsel	2	12	11
Union Representative	23	12	17
Worker Advisor	49	44	42
Advocate	8	12	9
Self Representation	67	70	92
Other	5	2	2

## Total Employer Appeals

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	1	4	5
Appeals partially accepted	1	0	0
Appeals not accepted	24	20	12
<b>TOTAL</b>	<b>26</b>	<b>24</b>	<b>17</b>



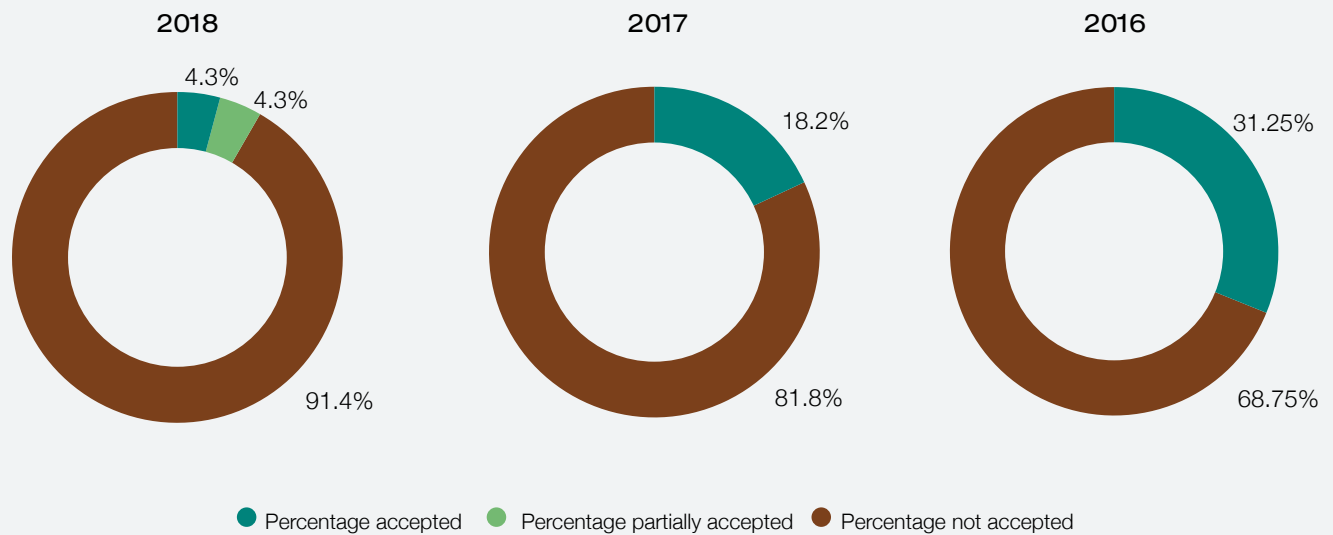
### Number of employers represented by:

Legal Counsel	1	2	0
Advocate	13	18	7
Employer Agent	11	4	10
Self Representation	1	0	0

# Employer Appeals

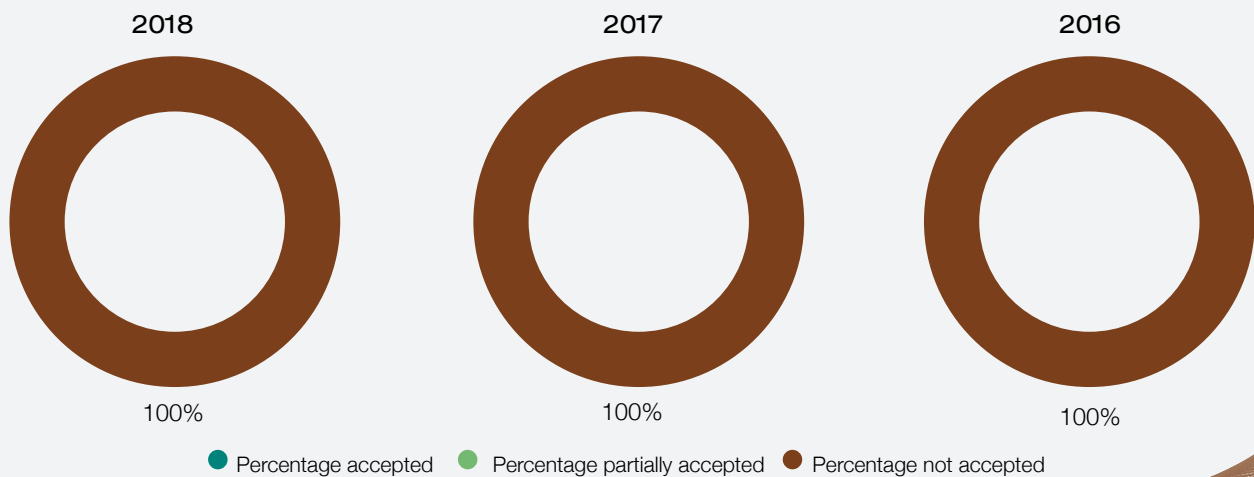
## To Claim/Rehabilitation Issues

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	1	4	5
Appeals partially accepted	1	0	0
Appeals not accepted	21	18	11
<b>TOTAL</b>	<b>23</b>	<b>22</b>	<b>16</b>



## To Assessment Issues

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	3	2	1
<b>TOTAL</b>	<b>3</b>	<b>2</b>	<b>1</b>



## Total Third Party Appeals\*

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	1	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
<b>TOTAL</b>	<b>1</b>	<b>0</b>	<b>0</b>

\*Appeals by parties other than the worker or employer.

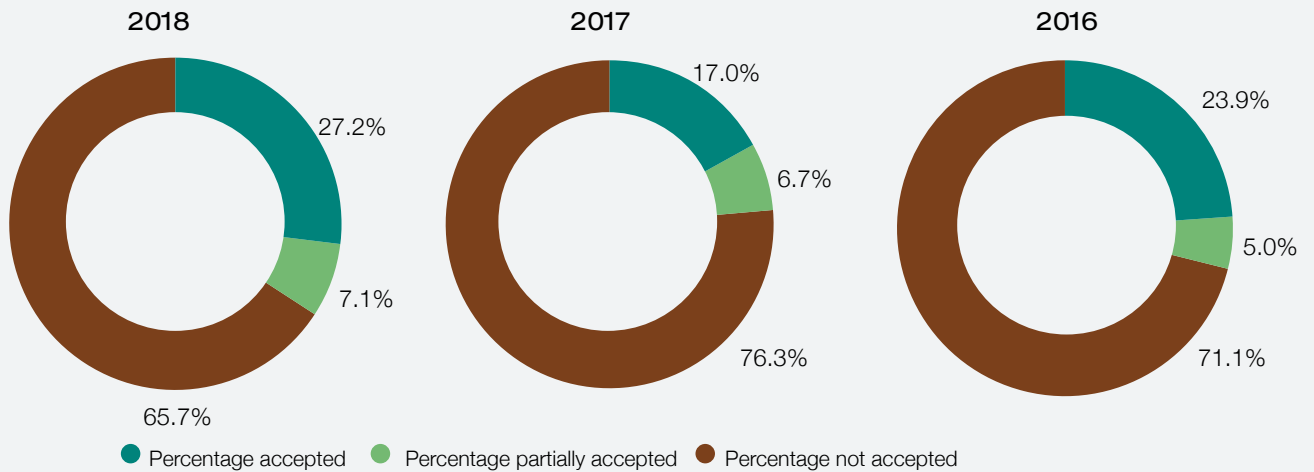
## Number of third parties represented by:

Legal Counsel	1	0	0
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocate	0	0	0
Self Representation	0	0	0
Other	0	0	0



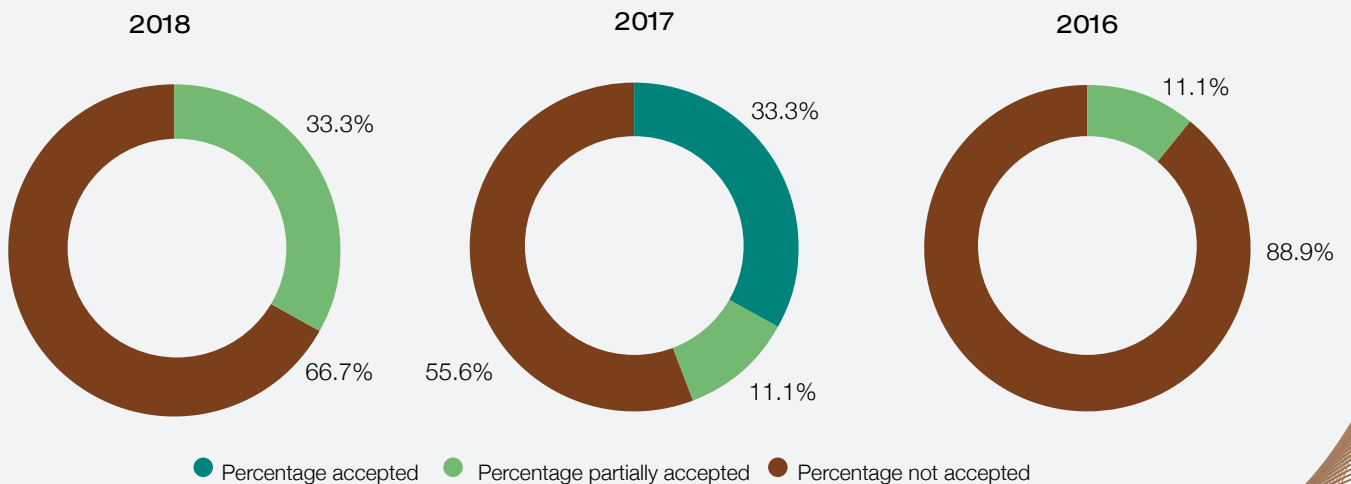
## Appeal Type - Claim

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	46	28	43
Appeals partially accepted	12	11	9
Appeals not accepted	111	126	128
<b>TOTAL</b>	<b>169</b>	<b>165</b>	<b>180</b>



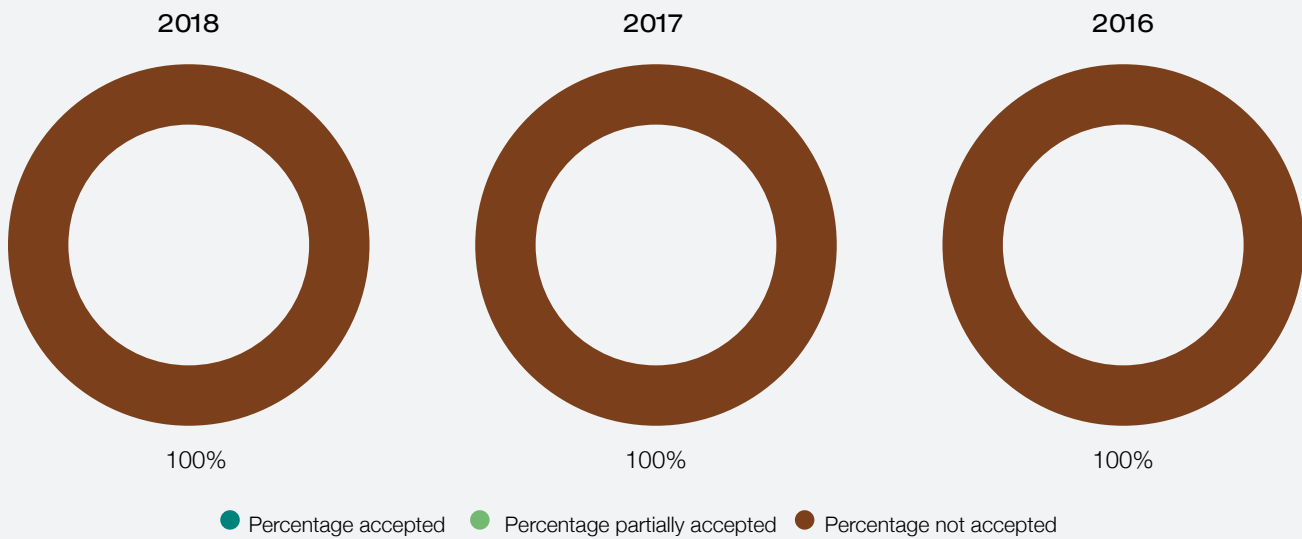
## Appeal Type - Rehabilitation

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	0	3	0
Appeals partially accepted	3	1	1
Appeals not accepted	6	5	8
<b>TOTAL</b>	<b>9</b>	<b>9</b>	<b>9</b>

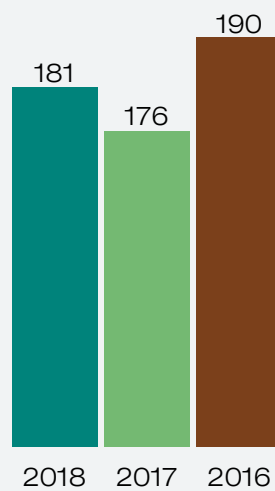


## Appeal Type - Assessment

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	3	2	1
<b>TOTAL</b>	<b>3</b>	<b>2</b>	<b>1</b>



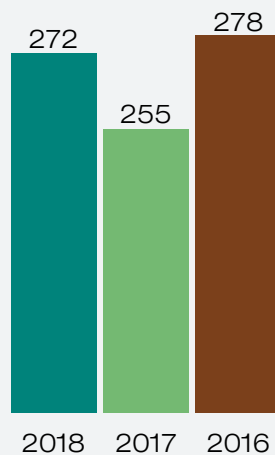
## Total Appeals Decided



## Most Common Issues Addressed

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Entitlement to wage loss benefits (post-1992)	74	65	77
Entitlement to medical aid payment	62	55	58
Claim acceptance	59	60	58
Is present condition related to the compensable injury	18	26	17
Is the worker entitled to payment for prescription medications	6	0	2
Entitlement to an increase in the permanent partial impairment award	5	4	11
Deeming process	4	4	6
Is the employer entitled to cost relief	4	8	3
Entitlement to a permanent partial impairment award	4	2	5
Is the worker entitled to further physiotherapy treatment	4	1	4
Has the worker been overpaid benefits	3	2	2
Applications filed under subsection 68(4)	2	1	0
Average earnings policy	2	3	6
Is the worker capable of performing modified duties	2	1	2
Is the worker to reimburse the WCB for overpayment of benefits	2	3	3
Entitlement to a discretionary rehabilitation expense	2	0	0
Has the permanent partial impairment award been correctly calculated	2	1	3
Is the psychological condition related to the compensable injury	2	1	1
Request for a Medical Review Panel	2	0	2
Should responsibility for surgery be accepted	2	3	5
Was the vocational rehabilitation plan appropriate	2	1	3
Other issues	9	14	10

## Total Issues Addressed



## Reconsiderations Under Section 60.10 of the Act

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Number of requests decided	5	1	6
Reconsiderations granted	2	0	0
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

## File Access Appeals

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Worker appeals	11	6	6
Employer appeals	2	3	1
<b>TOTAL FILE ACCESS APPEALS</b>	<b>13</b>	<b>9</b>	<b>7</b>

## Victims' Rights Statistics

Total Appeals	Year Ending 2018	Year Ending 2017	Year Ending 2016
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	1	1	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>0</b>

# 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 Regulation 279/91, *Appeal Commission 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, 2018)

	Year Ending 2018	Year Ending 2017	Year Ending 2016
Average time from date appeal received to date of hearing	27.45 wks	22.27 wks	22.42 wks
Average time from hearing date to decision published	10.40 wks	7.81 wks	8.62 wks
<b>AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*</b>	<b>37.85 wks</b>	<b>30.08 wks</b>	<b>31.04 wks</b>

*\*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*
- where additional information was requested after the hearing/review.*

# About Medical Review Panels

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

Subsection 67(3) of the Act allows the WCB or Appeal Commission the 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 2018	Year Ending 2017	Year Ending 2016
Total MRPs convened	0	0	0
<b>INITIATED BY:</b>			
Primary Adjudication	0	0	0
Review Office	0	0	0
Appeal Commission	0	0	0
<b>CONVENED UNDER:</b>			
Subsection 67(3)	0	0	0
Subsection 67(4)	0	0	0
Subsection 67(4.1)	0	0	0

## Service Levels

The convening of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and 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.

### Medical Review Panel

Service Level Statistics	Year Ending 2018	Year Ending 2017	Year Ending 2016
Average time from date of request to date MRP held	0 wks	0 wks	0 wks
Average time from date of MRP to date report is published	0 wks	0 wks	0 wks
<b>AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED</b>	<b>0 wks</b>	<b>0 wks</b>	<b>0 wks</b>

2018 Appeal Commission  
and Medical Review Panel  
Annual Report



THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

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