

2019 ANNUAL REPORT

APPEAL COMMISSION AND MEDICAL REVIEW PANEL

Letter to the Minister

The Honourable Scott Fielding Minister of Finance Legislative Building 450 Broadway Winnipeg, MB R3C 0V8

Dear Minister:

I am pleased to present our 2019 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the 12-month period from January 1, 2019 to December 31, 2019.

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, 2019 to December 31, 2019, 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, allow 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 2019. This is my first opportunity to provide the Annual Report to the Minister responsible for workers compensation since my appointment to the role of Chief Appeal Commissioner in March 2019.

The Appeal Commission continues to function in a pivotal role in the workers compensation and administrative justice systems in Manitoba. As the final level of appeal under The *Workers Compensation Act* (the *Act*), the Appeal Commission serves as an independent forum for the resolution of concerns of workers and employers dissatisfied with the decisions of the Workers Compensation Board (WCB). The Appeal Commission 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* (Canada) for federal government employees working in Manitoba.

This report contains details of the work of the Appeal Commission over the course of 2019 and demonstrates the effectiveness of the Appeal Commission in scheduling, hearing and determining cases that come before it. As in the past, we were uncompromising in the thoroughness of our review of appeal files in 2019. The commitment to ensuring that all appeals receive full and fair consideration remains our priority as we understand this approach to be in the best interests of Manitoba's workers and employers.

This was a year of significant transitions in our roster of commissioners. In March 2019, after more than 15 years of dedicated service, Alan Scramstad retired from his role as Chief Appeal Commissioner. We are deeply appreciative of the breadth and depth of his contributions to the Appeal Commission over those many years. In June 2019, after some 21 years of service as an appeal commissioner, Allan Finkel retired. We are immensely grateful to him for his invaluable, longstanding contributions to the Appeal Commission.

Also in June 2019, part-time appeal commissioner Paul Challoner was appointed to a full-time role as an appeal commissioner representative of employers. Three new appeal commissioners were appointed to the Appeal Commission in 2019. The Appeal Commission welcomed Jim Witiuk and Danielle Loewen as appeal commissioners representative of employers and Bob Ripley as an appeal commissioner representative of workers. In addition, Karen Wittman and Christian Monnin were re-appointed as appeal commissioners representative of the public interest.

The Appeal Commission wishes to thank Pete Walker and Christiane Devlin for their many years of service.

The Appeal Commission's success depends upon the hard work and commitment of the full-time and part-time appeal commissioners. We greatly appreciate our full-time and part-time appeal commissioners for their dedicated service.

The success of the Appeal Commission is also due to the staff who provide consistent support both to commissioners and to workers and employers. I am personally grateful to staff for their support in facilitating my transition into this new role, and especially to Peter Wiebe, Registrar, and Roger Lafrance, Assistant Registrar, for their invaluable support and guidance over the past year.

I am honoured to serve as Chief Appeal Commissioner and to be entrusted with the responsibility for the operation of this adjudicative body. The Appeal Commission's record of service in 2019 as outlined in this report is demonstrated evidence of both its effectiveness and commitment to its stated values. I look forward to what lies ahead for the Appeal Commission in 2020.

Sincerely,

Karen Dyck,

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 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 *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, 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 within 60 days of the completion of the hearing. Decisions are made 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 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.

Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters 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 must appear in person before the panel, although the appeal can also be supported by written submissions. To increase accessibility, in some instances, a party may participate via teleconference or video conference. Witnesses may appear if the Appeal Commission is advised in advance of their attendance.

In an oral hearing, participating parties are provided equal opportunity to present their case.

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 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

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 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 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

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, 2019, there were four full-time commissioners:

- Paul Challoner, Appeal Commissioner (Employers)
- Karen Dyck, Chief Appeal Commissioner (Public Interest)
- Lynne Harrison, Presiding Officer (Public Interest)
- Mark Kernaghan, Appeal Commissioner (Workers)

The Part-Time Appeal Commissioners

During 2019, 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	REPRESENTING WORKERS	REPRESENTING EMPLOYERS
Kim Gilson	Shauna Briscoe	Renae Campbell
Barry Hartley	Phil Kraychuk	Christiane Devlin
Christian Monnin	Dale Neal	Ron Hambley
Karen Wittman	Marc Payette	Danielle Loewen
	Robert Ripley	Jane MacKay
	Pete Walker	Jim Witiuk

Highlights

- Alan Scramstad, Chief Appeal Commissioner, served as a member of the Board of Directors of the Manitoba Council of Administrative Tribunals. Mr. Scramstad was chair of the Nominating Committee until his retirement.
- Lynne Harrison, Presiding Officer, served as a member of the Board of Directors of the Manitoba Council
 of Administrative Tribunals.
- Karen Dyck, Chief Appeal Commissioner, was appointed a member of the Board of Directors of the Manitoba Council of Administrative Tribunals in October 2019 and was appointed as a Sessional Lecturer in Legal Profession and Professional Responsibility in the Faculty of Law, University of Manitoba.

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 2019 were:

- Manitoba Council of Administrative Tribunals sessions:
 - 14th Annual Conference
 - New Tribunal Member Training Program
- Hearing Loss
- Council of Canadian Administrative Tribunals 35th Annual Symposium: Common Challenges, Diverse Solutions: Administrative Justice in a World of Change

Disclosures under The Public Interest Disclosure (Whistleblower Protection) Act

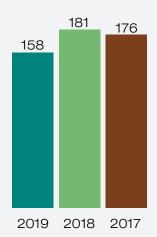
There were no disclosures received in 2019.

Appeal Commission Statistics

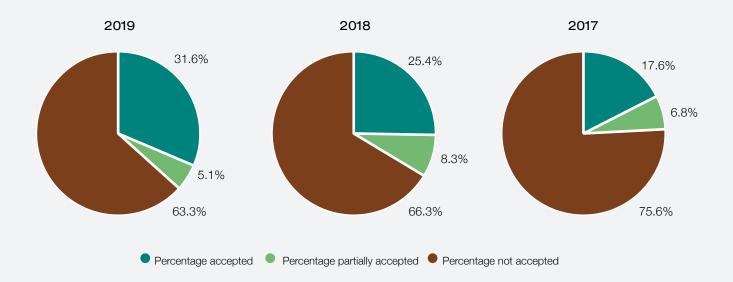
Workers Compensation Statistics

Total Appeals	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals carried forward from previous year	34	36	24
Hearings held (by appeal)	130	151	164
Reviews held (by appeal)	21	31	29
Cases in process	[26]	[34]	[36]
Cases adjourned	[1]	[3]	[5]

Total Appeals Decided



Appeals accepted	50	46	31
Appeals partially accepted	8	15	12
Appeals not accepted	100	120	133



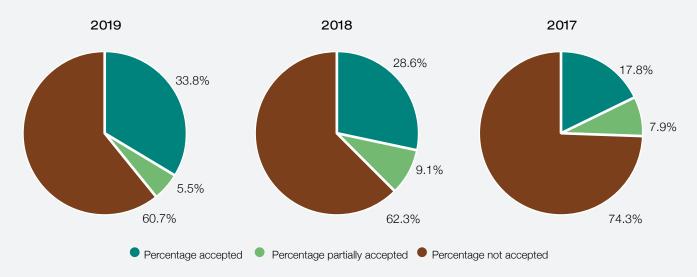
Post Hearing Activities (cases in process)

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Cases awaiting further information requested by the panel	5	11	14
Cases awaiting decision	4	4	2
Decision writing	17	19	20
TOTAL	26	34	36

Total Worker Appeals

To Claim/Rehabilitation Issues

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	49	44	27
Appeals partially accepted	8	14	12
Appeals not accepted	88	96	113
TOTAL	145	154	152

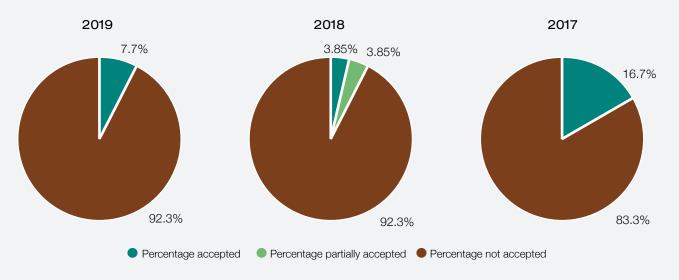


Number of workers represented by:

Legal Counsel	10	2	12
Union Representative	22	23	12
Worker Advisor	36	49	44
Advocate	9	8	12
Self Representation	61	67	70
Other	7	5	2

Total Employer Appeals

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	1	1	4
Appeals partially accepted	0	1	0
Appeals not accepted	12	24	20
TOTAL	13	26	24



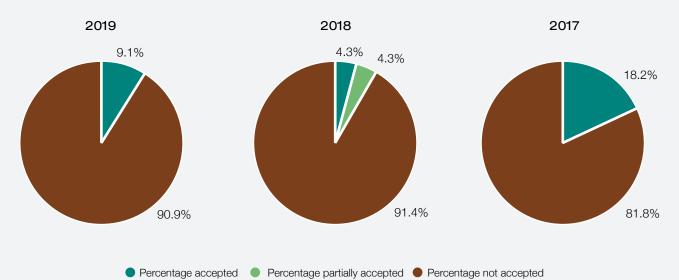
Number of employers represented by:

Legal Counsel	2	1	2
Advocate	4	13	18
Employer Agent	5	11	4
Self Representation	2	1	0

Employer Appeals

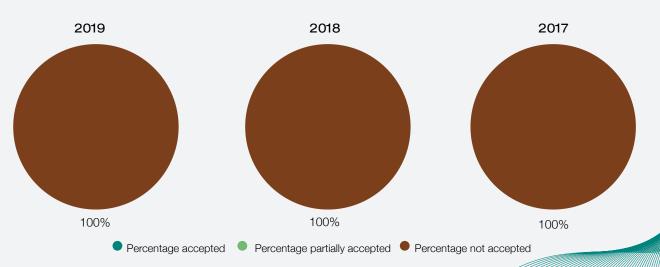
To Claim/Rehabilitation Issues

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	1	1	4
Appeals partially accepted	0	1	0
Appeals not accepted	10	21	18
TOTAL	11	23	22



To Assessment Issues

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	2	3	2
TOTAL	2	3	2



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Total Third Party Appeals*

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	0	1	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
TOTAL	0	1	0

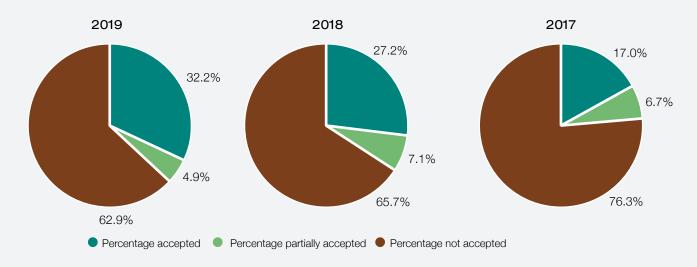
^{*}Appeals by parties other than the worker or employer.

Number of third parties represented by:

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

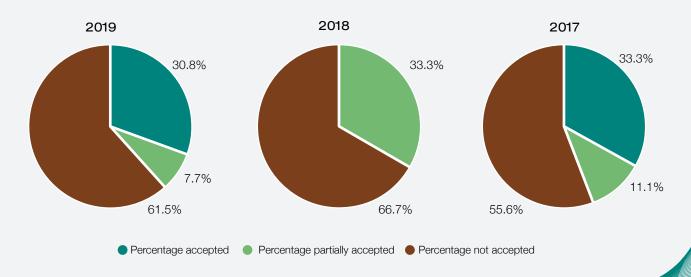
Appeal Type - Claim

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	46	46	28
Appeals partially accepted	7	12	11
Appeals not accepted	90	111	126
TOTAL	143	169	165



Appeal Type - Rehabilitation

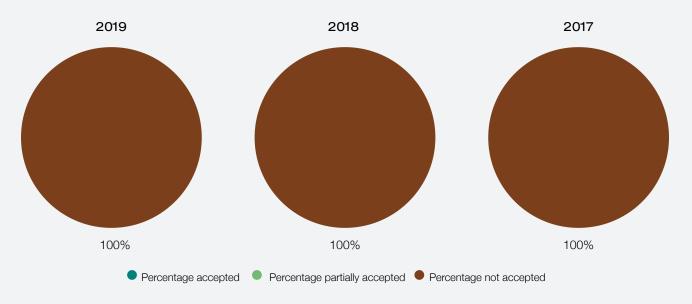
	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	4	0	3
Appeals partially accepted	1	3	1
Appeals not accepted	8	6	5
TOTAL	13	9	9

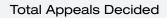


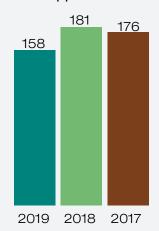
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Appeal Type - Assessment

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	2	3	2
TOTAL	2	3	2



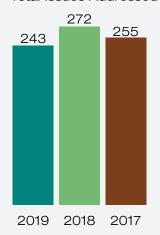




Most Common Issues Addressed

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Entitlement to wage loss benefits (post-1992)	72	74	65
Entitlement to medical aid payment	56	62	55
Claim acceptance	47	59	60
Is present condition related to the compensable injury	23	18	26
Entitlement to an increase in the permanent partial impairment award	7	5	4
Is the worker entitled to payment for prescription medications	6	6	0
Deeming process	4	4	4
Mitigation	4	0	1
Is the employer entitled to cost relief	3	4	8
Has the permanent partial impairment award been correctly calculated	3	2	1
Entitlement to a permanent partial impairment award	2	4	2
Has the worker been overpaid benefits	2	3	2
Is the worker entitled to further physiotherapy treatment	2	4	1
Should responsibility for surgery be accepted	2	2	3
Was the vocational rehabilitation plan appropriate	2	2	1
Are assessments payable to the WCB	1	0	0
Average earnings policy	1	2	3
Is the worker's death related to a compensable accident	1	0	1
Is the individual an independent contractor or a worker	1	1	0
Is the worker's job within the compensable physical restrictions	1	0	0
Is the worker entitled to chiropractic treatment	1	1	0
Is the worker entitled to further chiropractic treatment	1	1	0
Is the psychological condition related to the compensable injury	1	2	1
Other issues	0	16	17

Total Issues Addressed



Reconsiderations Under Section 60.10 of the Act

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Number of requests decided	8	5	1
Reconsiderations granted	0	2	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 2019	Year Ending 2018	Year Ending 2017
Worker appeals	3	11	6
Employer appeals	0	2	3
TOTAL FILE ACCESS APPEALS	3	13	9

Victims' Rights Statistics

Total Appeals	Year Ending 2019	Year Ending 2018	Year Ending 2017
Appeals accepted	0	0	0
Appeals partially accepted	1	0	0
Appeals not accepted	5	1	1
TOTAL	6	1	1

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, 2019)

	Year Ending 2019	Year Ending 2018	Year Ending 2017
Average time from date appeal received to date of hearing	28.59 wks	27.45 wks	22.27 wks
Average time from hearing date to decision published	10.70 wks	10.40 wks	7.81 wks
AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	39.29 wks	37.85 wks	30.08 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
- 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 2019	Year Ending 2018	Year Ending 2017
Total MRPs convened	1	0	0
INITIATED BY:			
Primary Adjudication	1	0	0
Review Office	0	0	0
Appeal Commission	0	0	0
CONVENED UNDER:			
Subsection 67(3)	0	0	0
Subsection 67(4)	1	0	0
Subsection 67(4.1)	0	0	0

Medical Review Panels Convened by Area of Medical Specialty	Year Ending 2019	Year Ending 2018	Year Ending 2017
Orthopaedic Surgery	1	0	0
TOTAL:	1	0	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.

Medical Review Panel

Service Level Statistics	Year Ending 2019	Year Ending 2018	Year Ending 2017
Average time from date of request to date MRP held	186.00 wks	0 wks	0 wks
Average time from date of MRP to date report is published	6.43 wks	0 wks	0 wks
AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED	192.43 wks	0 wks	0 wks

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2019 Appeal Commission and Medical Review Panel Annual Report



THE WORKERS COMPENSATION ACT OF MANITOBA

600 – 330 St. Mary Avenue Winnipeg, Manitoba Canada R3C 3Z5

Phone 204-925-6110 Toll Free 1-855-925-6110 Fax 204-943-4393 Email appeal@appeal.mb.ca Website www.appeal.mb.ca