APPEAL COMMISSION AND MEDICAL REVIEW PANEL

2023 Annual Report





LETTER TO THE MINISTER

The Honourable Malaya Marcelino Minister of Labour and Immigration 156 Legislative Building 450 Broadway Winnipeg, MB R3C 0V8

Dear Minister:

I am pleased to present our 2023 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the 12-month period from January 1, 2023 to December 31, 2023.

Respectfully submitted,

Karen Dyck

Chief Appeal Commissioner

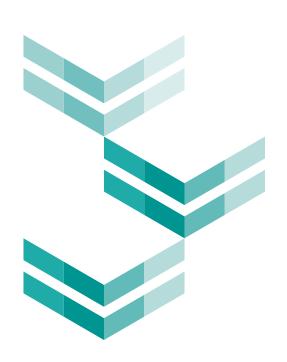




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INTRODUCTION

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2023 to December 31, 2023 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 2023.

The Appeal Commission functions within the workers compensation and administrative justice systems in Manitoba, serving as the final level of appeal from decisions made under *The Workers Compensation Act* (the Act) and 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. As such, the Appeal Commission serves an integral role, providing an independent forum for timely resolution of the concerns of workers and employers dissatisfied with the decisions of the Workers Compensation Board (WCB) and, of victims of crime dissatisfied with the decisions of the Compensation for Victims of Crime Program.

This report outlines the work of the Appeal Commission in 2023, demonstrating 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 and mission. Through 2023, the Appeal Commission continued to provide thorough and principled review of appeals, consistent with our stated values and commitment to ensuring that all appeals receive full and fair consideration. This approach remains our priority going forward, as we understand this to be in the best interests of our stakeholders.

In 2023, the Appeal Commission built upon lessons learned through the years of pandemic-related change, by continuing to offer to hear appeals remotely and in-person, as well as in a hybrid model and through document review, based on the issues under appeal and the preferences and needs of the appellants and other participants. In doing so, we have demonstrated our commitment to our stated value of evolving in a proactive and creative manner to be responsive to change in the arena in which we operate.

As is usual, the Appeal Commission also experienced numerous transitions in the year. In September, Lynne Harrison, a full-time commissioner, representative of the public interest concluded her service with the Commission. We are deeply grateful to Ms. Harrison for her eight years of commitment to the work of the Appeal Commission. In her place, Renée Lemieux Howard, a former part-time commissioner, was appointed on a full-time basis.

A new part-time commissioner, representative of the public interest, Ren Mamacud, was appointed in June. Phil Kraychuk, part-time commissioner representative of workers, was reappointed during the year. 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 2023.

I must also express again my deep appreciation to all the staff of the Appeal Commission who demonstrate our values of providing quality assurance and being responsive to change, while working in ways that promote a respectful work environment. The staff effectively supports one another, the commissioners, and the workers, employers and their representatives involved in appeals. I am grateful to each member of the Appeal Commission staff for their focus on delivering excellent service, their responsiveness to the needs of our stakeholders, and their adaptability and consistency throughout the past year. I especially commend and appreciate the administrative leadership provided by Peter Wiebe, Registrar, and Roger Lafrance, Assistant Registrar, in ensuring that the Appeal Commission delivers on its commitment to a high level of professional conduct, accountability and integrity.

Finally, I am honoured and fortunate to serve in my role as Chief Appeal Commissioner, entrusted with the continuing responsibility for operations of this independent adjudicative body. I am confident that the Appeal Commission's record of service in 2023, as detailed in this report, clearly demonstrates our effectiveness and commitment to our stated values. I look forward to what lies ahead for the Appeal Commission in 2024.

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 Reconsideration 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:

- 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, 2023, there were four full-time commissioners:

Karen	
Dyck	

Chief Appeal Commissioner (Public Interest)

Renée Lemieux Howard

Presiding Officer (Public Interest)

Mark Kernaghan

Appeal Commissioner (Workers)

Jason Peterson

Appeal Commissioner (Employers)

Part-Time Appeal Commissioners

During 2023, 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
Renée Lemieux Howard	Shauna Briscoe	Renae Campbell
Renato (Ren) Mamacud	Phil Kraychuk	Ron Hambley
Nicole Smith	Marc Payette	Jane MacKay
Karen Wittman	Robert Ripley	Danielle Rhoda
	Wally Skomoroh	Jim Witiuk

HIGHLIGHTS

- Lynne Harrison, full-time Presiding Officer, retired from the Appeal Commission in 2023 after 8 years.
- Renée Lemieux Howard was reclassified as a full-time Presiding Officer in 2023.
- Renato (Ren)
 Mamucud, part-time
 Appeal Commissioner
 Representing the Public
 Interest was appointed in 2023.
- Karen Dyck, Chief Appeal Commissioner served as Treasurer of the Board of Directors of the Manitoba Council of Administrative Tribunals.

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 2023 were:

Manitoba Council of Administrative Tribunals:

- · New Member Training
- 15th Annual Conference

Discussion of WCB Policies including new and amended policies as of January 1, 2023

Access and Privacy Training

Psychological Claims

Psychological Conditions NYD (Not Yet Discussed)

Manitoba Bar Association:

· Mid-Winter Conference

Council of Canadian Administrative Tribunals:

- · Annual Symposium
- Reconciliation: A Cross Country Discussion
- Indigenous Legal Systems Learning Series
- Minds Matter: Mental Wellness for Adjudicators and Staff

Canadian Bar Association:

· Administrative Law Conference

Canadian Institute for Administration of Justice:

 National Roundtable of Administrative Law

DISCLOSURES

under The Public Interest Disclosure (Whistleblower Protection) Act

There were no disclosures received in 2023.

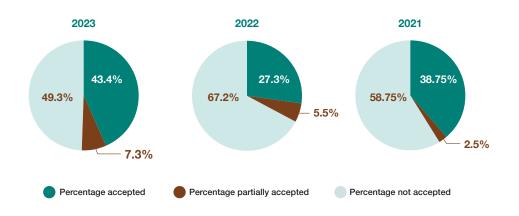


APPEAL COMMISSION STATISTICS

Workers Compensation Statistics

Total Appeals	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals carried forward from previous year	28	26	35
Hearings held (by appeal)	113	122	128
Reviews held (by appeal)	25	13	25
Cases in process	[27]	[28]	[26]
Cases adjourned	[3]	[5]	[2]

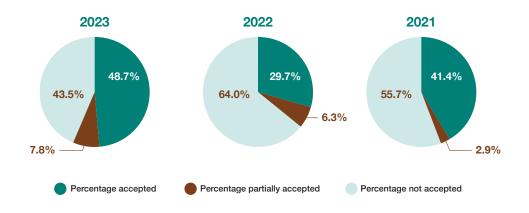
Total Appeals Decided	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	59	35	62
Appeals partially accepted	10	7	4
Appeals not accepted	67	86	94
TOTAL APPEALS DECIDED	136	128	160



Post Hearing Activities (cases in progress)	Year Ending 2023	Year Ending 2022	Year Ending 2021
Cases awaiting further information requested by the panel	13	11	8
Cases awaiting decision	7	3	6
Decision writing	7	14	12
TOTAL	27	28	26

Total Worker Appeals to Claim/Rehabilitation Issues

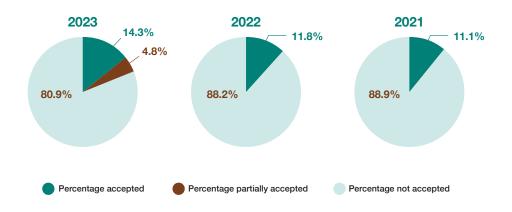
	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	56	33	58
Appeals partially accepted	9	7	4
Appeals not accepted	50	71	78
TOTAL	115	111	140



Number of workers represented by:			
Legal Counsel	10	4	5
Union Representative	10	14	16
Worker Advisor	37	38	55
Advocate	2	3	1
Self Representation	53	49	61
Other	3	3	2

Total Employer Appeals

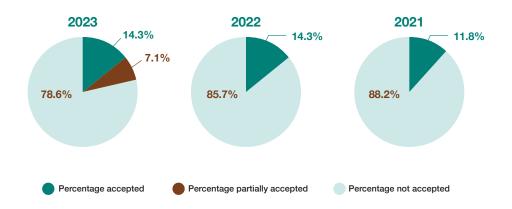
	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	3	2	2
Appeals partially accepted	1	0	0
Appeals not accepted	17	15	16
TOTAL	21	17	18



Number of employers represented by:			
Legal Counsel	1	0	1
Advocate	12	8	10
Employer Agent	4	6	7
Self Representation	4	3	0

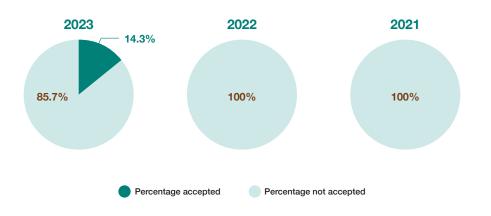
Employer Appeals to Claim/Rehabilitation Issues

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	2	2	2
Appeals partially accepted	1	0	0
Appeals not accepted	11	12	15
TOTAL	14	14	17



Employer Appeals to Assessment Issues

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	1	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	6	3	1
TOTAL	7	3	1



Total Third Party Appeals*

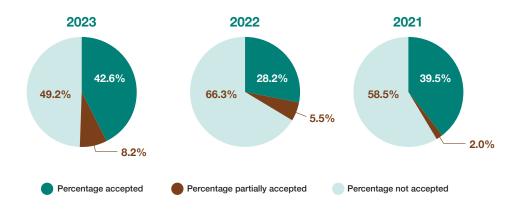
	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	0	0	2
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
TOTAL	0	0	2

Number of third parties represented by:			
Legal Counsel	0	0	2
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.

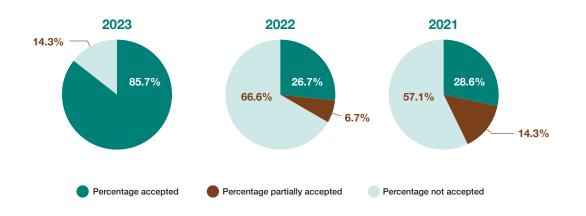
Appeal Type - Claim

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	52	31	60
Appeals partially accepted	10	6	3
Appeals not accepted	60	73	89
TOTAL	122	110	152



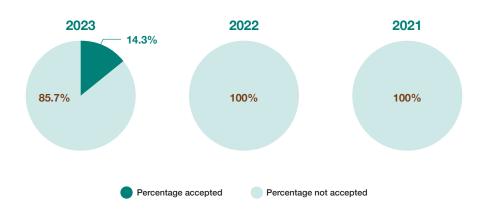
Appeal Type - Rehabilitation

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	6	4	2
Appeals partially accepted	0	1	1
Appeals not accepted	1	10	4
TOTAL	7	15	7



Appeal Type - Assessment

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	1	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	6	3	1
TOTAL	7	3	1



	Year Ending 2023	Year Ending 2022	Year Ending 2021
TOTAL APPEALS DECIDED	136	128	160

Most Common Issues Addressed

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Entitlement to wage loss benefits (post-1992)	63	61	67
Entitlement to medical aid payment	51	40	48
Claim Acceptance	40	39	52
Is present condition related to the compensable injury	12	11	22
Entitlement to an increase in the permanent partial impairment award	8	3	5
Is the worker entitled to further physiotherapy treatment	6	2	3
Has the permanent partial impairment award been correctly calculated	6	1	1
Administrative Penalties	5	1	1
Average Earnings Policy	5	2	1
Is the employer entitled to cost relief	4	2	5
Is the worker entitled to payment for prescription medications	4	3	4
Deeming process	3	4	1
Are the worker's physical restrictions related to the compensable injury	3	0	0
Was the vocational rehabilitation plan appropriate	3	5	2
Entitlement to a permanent partial impairment award	2	2	3
Is the worker entitled to snow removal/lawn care services/equipment	2	1	0
Is the worker to reimburse the WCB for overpayment of benefits	1	2	1
Is the firm in a compulsory industry	1	0	0
Has the worker been overpaid benefits	1	1	1
Have the firm's assessments been properly calculated	1	1	0
Did the worker experience a recurrence of their injury	1	2	1
Other issues	4	11	20
TOTAL ISSUES ADDRESSED	226	194	238

Reconsiderations Under Section 60.10 of the Act

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Number of requests decided	3	4	15
Reconsiderations granted	0	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 2023	Year Ending 2022	Year Ending 2021
Worker appeals	4	8	2
Employer appeals	0	0	0
TOTAL FILE ACCESS APPEALS	4	8	2

Victim's Rights Statistics

Total Appeals	Year Ending 2023	Year Ending 2022	Year Ending 2021
Appeals accepted	2	1	0
Appeals partially accepted	0	0	2
Appeals not accepted	4	2	4
TOTAL	6	3	6

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 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.

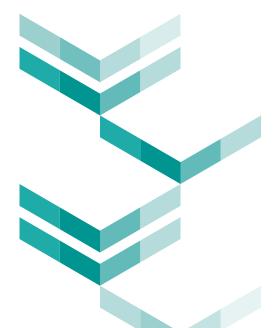
Service Level Statistics

(Based on decisions published as at December 31, 2023)

	Year Ending 2023	Year Ending 2022	Year Ending 2021
Average time from date appeal received to date of hearing	19.31 wks	22.49 wks	27.63 wks
Average time from hearing date to decision published	9.84 wks	11.07 wks	11.08 wks
AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	29.15 wks	33.56 wks	38.71 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.

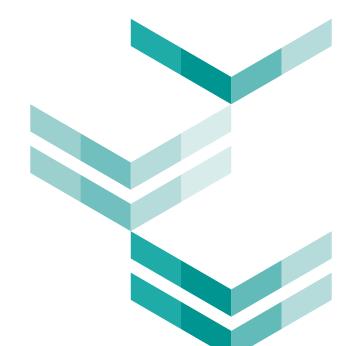
The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

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 2023	Year Ending 2022	Year Ending 2021
Total MRPs convened	0	0	1
INITIATED BY:			
Primary Adjudication	0	0	1
Review Office	0	0	0
Appeal Commission	0	0	0
CONVENED UNDER:			
Subsection 67(3)	0	0	0
Subsection 67(4)	0	0	1
Subsection 67(4.1)	0	0	0

Medical Review Panels Convened by Area of Medical Specialty	Year Ending 2023	Year Ending 2022	Year Ending 2021
Neurology	0	0	1
Total	0	0	1



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

Medical Review Panel Service Level Statistics	Year Ending 2023	Year Ending 2022	Year Ending 2021
Average time from date of request to date MRP held	0 wks	0 wks	100.57 wks
Average time from date of MRP to date report is published	0 wks	0 wks	10.43 wks
AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED	0 wks	0 wks	111.00 wks

NOTES



APPEAL COMMISSION AND MEDICAL REVIEW PANEL

2023 Annual Report

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