

Appeal Commission and Medical Review Panel

2024 ANNUAL REPORT



THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

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 2024 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the 12-month period from January 1, 2024 to December 31, 2024.

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, 2024 to December 31, 2024 inclusive.

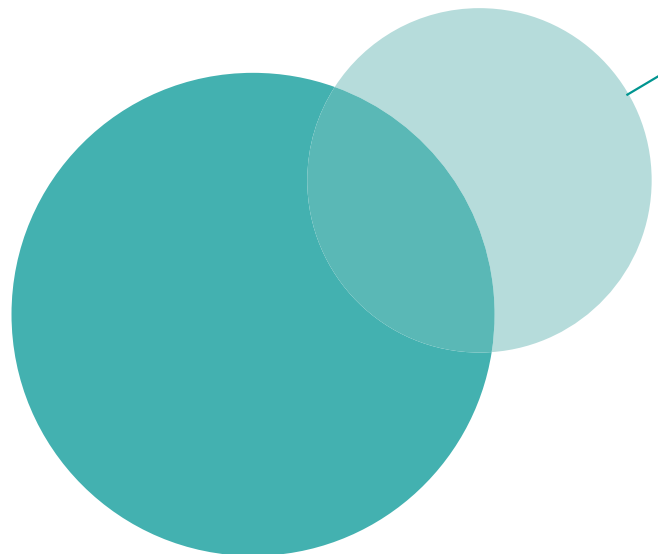
The Appeal Commission is the final level of appeal in Manitoba's workers compensation system, with exclusive jurisdiction to hear and decide appeals that arise from decisions made by the Workers Compensation Board (WCB). The Appeal Commission is separate and independent from the WCB, ensuring that issues 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. Medical Review Panel findings are evidentiary in nature and do not bind 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

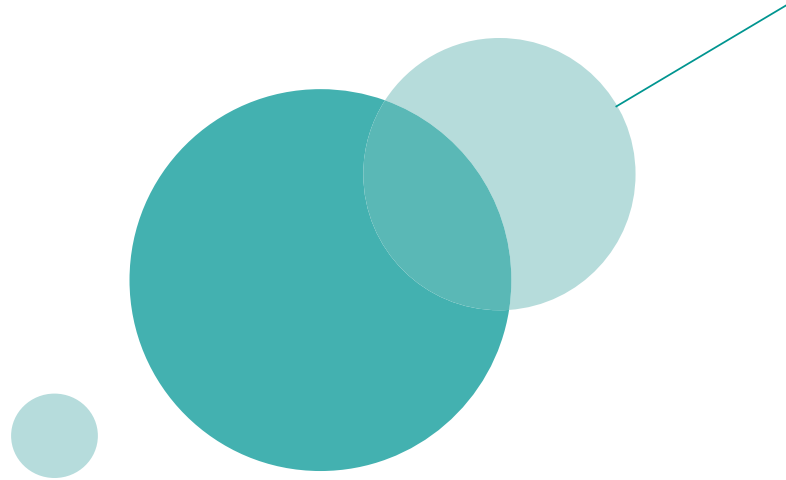
I am pleased to present the Annual Report of the Appeal Commission for the year 2024.

The Appeal Commission is an administrative tribunal created by the provisions of *The Workers Compensation Act* (the Act), which functions as the final level of appeal from decisions made by the Workers Compensation Board (WCB) and also serves as 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. In this role, the Appeal Commission provides an integral and independent forum for the timely resolution of both worker and employer concerns arising out of the decisions of the WCB and of the concerns of victims of crime in relation to the decisions of the Compensation for Victims of Crime Program.

This report, describing the work of the Appeal Commission through 2024, shines a light on the Commission's effectiveness in setting, hearing, and deciding the appeals that come before it, and demonstrates the Commission's ability to meet its mandate and mission. In 2024, the Appeal Commission continued to deliver a thorough and principled review of appeals in a manner that is consistent with our stated values and our commitment to ensuring that all appeals receive full and fair consideration. Looking ahead, this approach remains our priority, as we believe it to be in the best interests of our stakeholders.

The Appeal Commission continued to offer options for appeals to be heard, whether by document review, remote attendance using secure videoconferencing technology, in-person in our hearing room, or via a hybrid model. The mode of hearing of each appeal is determined based on the issues for determination and the preferences and needs of the appellants and other participants. By hearing appeals through various means, we demonstrate our continuing commitment to evolve proactively and creatively and to be responsive to change in the environment in which we operate.

The Appeal Commission experienced some transition to our roster of commissioners in 2024. Part-time commissioners, representative of the public interest, Natasha Brown and Marcelin Murray, were appointed in June. Part-time commissioner Steve Magian, representative of workers, was also appointed in June. In addition, part-time commissioner Renae Campbell, representative of employers, and part-time commissioners Shauna Briscoe and Wally Skomoroh, representatives of workers, concluded their roles with the Appeal Commission. We recognize and acknowledge that the dedication of our full-time and part-time appeal commissioners in conducting their work is essential to the Appeal Commission's success and appreciate all our appeal commissioners for their hard work, flexibility, and commitment throughout 2024.



I must also again express my deep appreciation to the long-serving staff of the Appeal Commission who consistently provide quality assurance and offer responsive service, working together to promote a respectful work environment. The staff supports each other, as well as the full-time and part-time commissioners, and the workers, employers and representatives involved in appeals. I am deeply grateful to all of the Appeal Commission staff for their excellence in service delivery, responsiveness to the needs of our stakeholders and their adaptability and consistency throughout the past year. I especially commend the administrative leadership provided by Peter Wiebe, Registrar, and Roger Lafrance, Assistant Registrar in ensuring that the Appeal Commission delivers on its commitment to serve our stakeholders with professional conduct, accountability and integrity.

Finally, I remain honoured to serve in the role of Chief Appeal Commissioner, entrusted with ongoing responsibility for the operation of this independent adjudicative body. I am confident that the Appeal Commission's record of service in 2024 as outlined in this report demonstrates not only commitment to our stated values but also fair, efficient, and effective service to Manitobans in support of our mandate. I look forward to all that lies ahead for the Appeal Commission in 2025.

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 of the WCB. The Appeal Commission hears all appeals from workers and employers concerning decisions of the WCB Review Office and 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*.

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 outline 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. Panels are chaired by the commissioner representing the public interest, who is responsible for the conduct of the hearing or review.

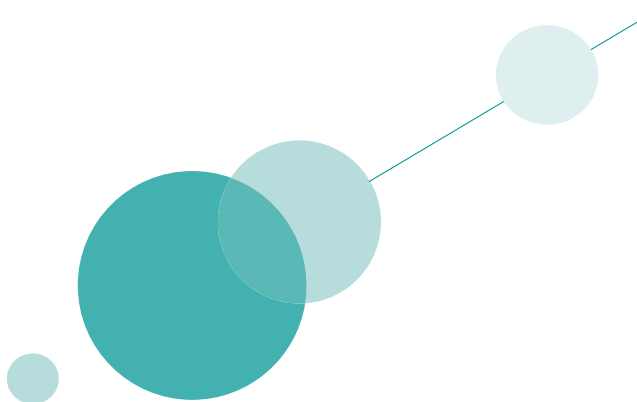
Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness and consistent with the Rules of Procedure. All parties to an appeal (*i.e.* the employer, worker, and their representatives) are given opportunity to participate and present their case on appeal.

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 provide oral or written evidence. An appeal panel can ask questions and 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 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 the issues can be decided based solely on the file documents and written submissions. The panel reaches a decision after considering the file documentation and any written submissions from the parties.

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, and more complex appeals are usually determined by this method. The participating parties appear in person before the panel through teleconference, videoconference or in-office. The appeal may 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

- Appeal hearings and reviews are scheduled when the parties are ready to proceed.
- Access to file information is provided subject to restrictions contained in the Act. The file access process generally takes up to six weeks but can be longer if there are objections to the release of information.
- Documents, evidence and written submissions must be provided to the Appeal Commission at least five business days before the review or hearing.
- The panel will render a decision 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.

After a decision is made, there are limited remedies available to the parties under the Act. These remedies are:

1. Under s 60.9 of the Act, if a party thinks the panel erred in applying the Act, regulations or WCB policy, they 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. If the Board of Directors considers that an error was made, they may order that the appeal be re-heard.
2. Under s 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 be new in that it did not exist at the time of the original hearing, was not known to the applicant at that time, and could not have been discovered through the exercise of due diligence. If the Chief Appeal Commissioner decides that the evidence meets the statutory test for reconsideration, they will order a new hearing on the matter.

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 of December 31, 2024, 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 2024, 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

Natasha Brown

Renato (Ren) Mamacud

Marcelin Murray

Nicole Smith

Karen Wittman

Representing Workers

Shauna Briscoe

Phil Kraychuk

Steve Magian

Marc Payette

Robert Ripley

Wally Skomoroh

Representing Employers

Renae Campbell

Ron Hambley

Jane MacKay

Danielle Rhoda

Jim Witiuk

Highlights

- **Shauna Briscoe, Renae Campbell and Wally Skomoroh**, part-time Appeal Commissioners, heard their last appeals in 2024.
- **Marcelin Murray, Natasha Brown, and Steve Magian**, part-time Appeal Commissioners, were appointed in 2024.
- **Karen Dyck**, Chief Appeal Commissioner, was a guest lecturer at the University of Manitoba Faculty of Law (Preparing for the Practice of Law).
- **Karen Dyck**, Chief Appeal Commissioner, served as Treasurer and Vice-Chair 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 2024 were:

- **Manitoba Bar Association:**
 - Mid-Winter Conference
- **Canadian Institute for Administration of Justice:**
 - Seminar on Personal Prejudices and Cognitive Biases
 - Decision Writing Seminar
- **Council of Canadian Administrative Tribunals:**
 - How to Assess Fairness in Administrative Investigations
 - Navigating Leadership in the Tribunal Context
 - How to Write Concise Submissions and Decisions
 - Towards Equity: Transforming Adjudicative
 - Tribunals through Diversity
 - Update on Judicial Review
- **Manitoba Council of Administrative Tribunals:**
 - Decision Writing Course
 - Annual Conference
 - New Member Training
- **Canadian Bar Association:**
 - Building Indigenous Intercultural Capacity
- **Internal continuing education**
 - Hearing Loss
 - Psychological Conditions NYD (Not Yet Discussed)

Disclosures

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

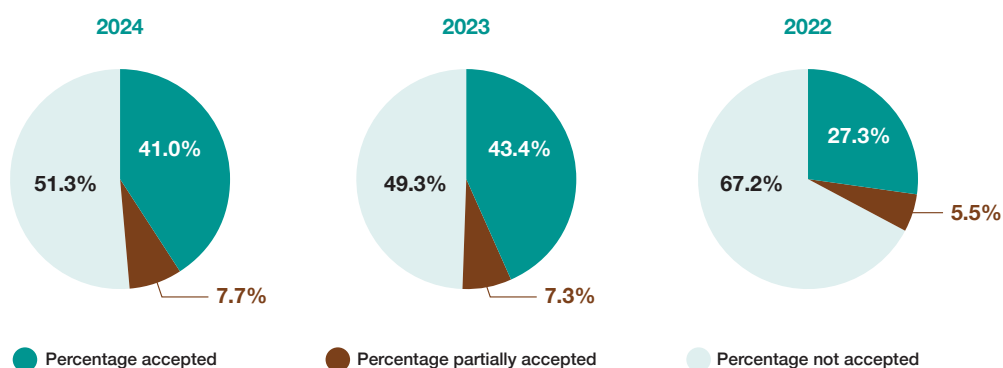
There were no disclosures received in 2024.

Appeal Commission Statistics

Workers Compensation Statistics

Total Appeals	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals carried forward from previous year	27	28	26
Hearings held (by appeal)	95	113	122
Reviews held (by appeal)	16	25	13
Cases in process	[19]	[27]	[28]
Cases adjourned	[2]	[3]	[5]

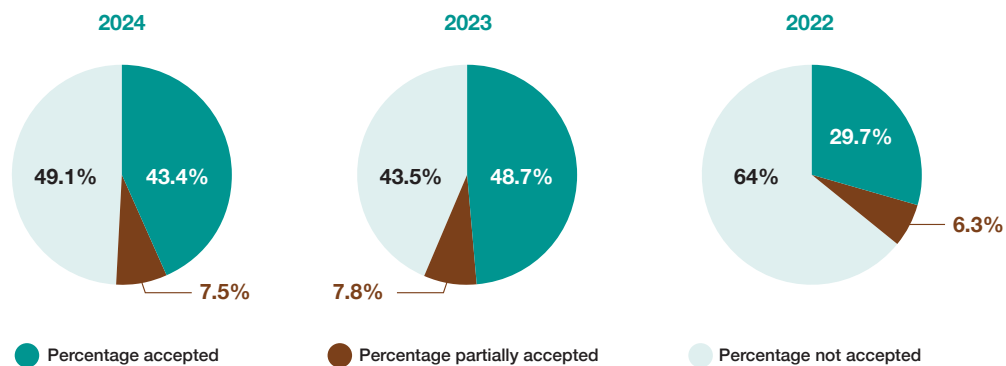
Total Appeals Decided	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	48	59	35
Appeals partially accepted	9	10	7
Appeals not accepted	60	67	86



Post Hearing Activities (cases in progress)	Year Ending 2024	Year Ending 2023	Year Ending 2022
Cases awaiting further information requested by the panel	11	13	11
Cases awaiting decision	1	7	3
Decision writing	7	7	14
TOTAL	19	27	28

Total Worker Appeals to Claim/Rehabilitation Issues

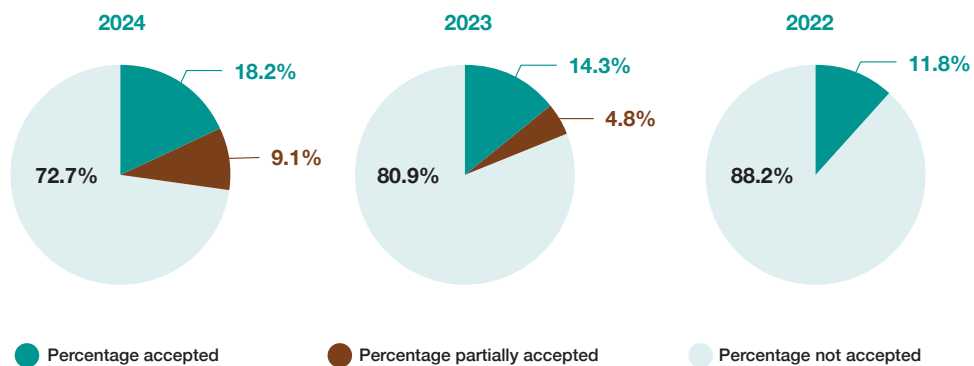
	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	46	56	33
Appeals partially accepted	8	9	7
Appeals not accepted	52	50	71
TOTAL	106	115	111



Number of workers represented by:			
Legal Counsel	3	10	4
Union Representative	8	10	14
Worker Advisor	38	37	38
Advocate	2	2	3
Self Representation	51	53	49
Other	4	3	3

Total Employer Appeals

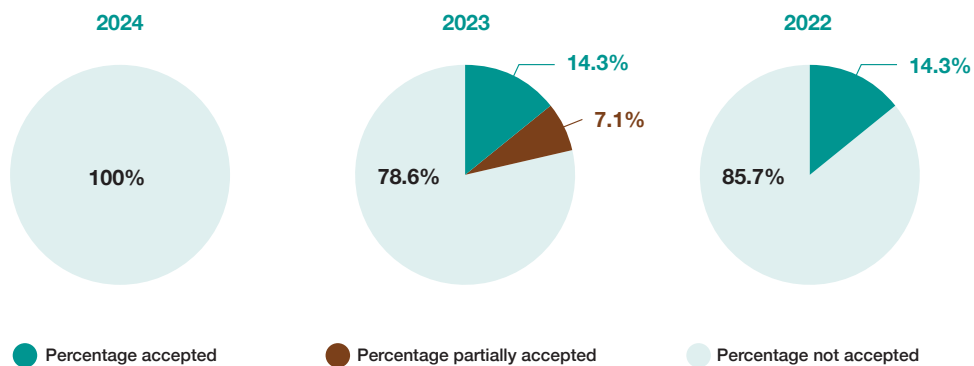
	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	2	3	2
Appeals partially accepted	1	1	0
Appeals not accepted	8	17	15
TOTAL	11	21	17



Number of employers represented by:			
Legal Counsel	2	1	0
Advocate	2	12	8
Employer Agent	7	4	6
Self Representation	0	4	3

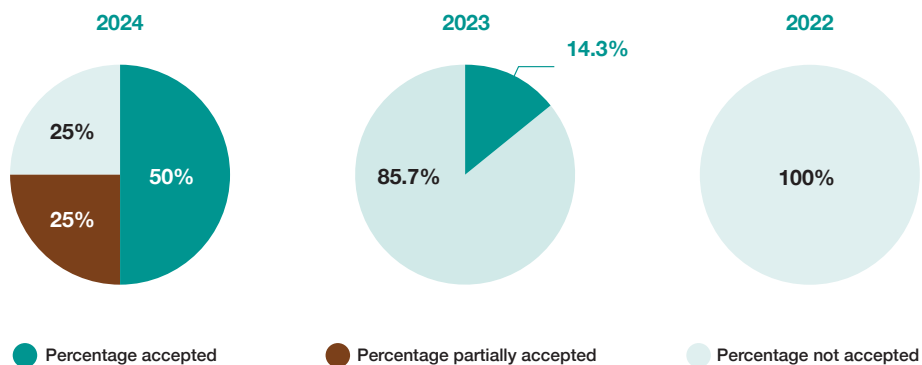
Employer Appeals to Claim/Rehabilitation Issues

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	0	2	2
Appeals partially accepted	0	1	0
Appeals not accepted	7	11	12
TOTAL	7	14	14



Employer Appeals to Assessment Issues

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	2	1	0
Appeals partially accepted	1	0	0
Appeals not accepted	1	6	3
TOTAL	4	7	3



Total Third Party Appeals*

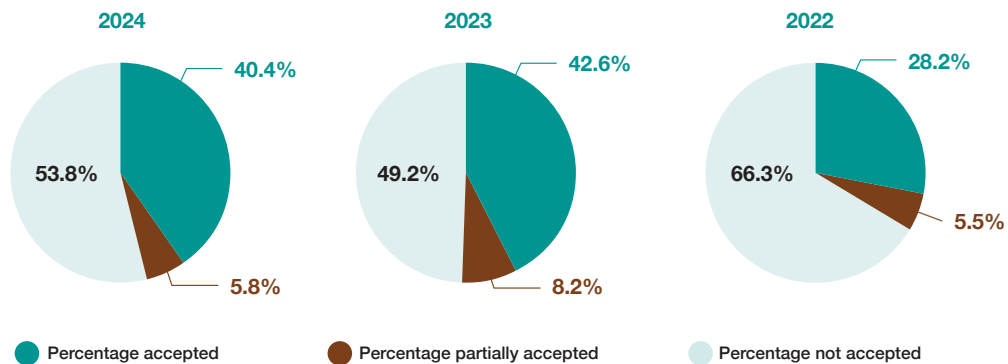
	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
TOTAL	0	0	0

Number of third parties represented by:			
Legal Counsel	0	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

*Appeals by parties other than the worker or employer.

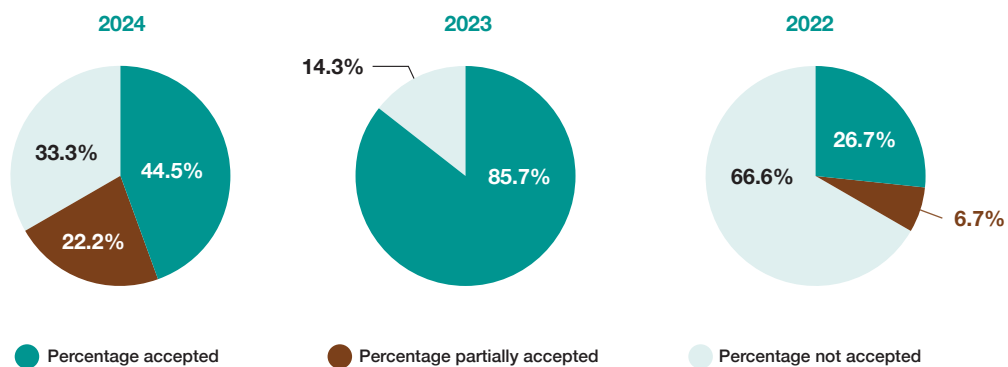
Appeal Type – Claim

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	42	52	31
Appeals partially accepted	6	10	6
Appeals not accepted	56	60	73
TOTAL	104	122	110



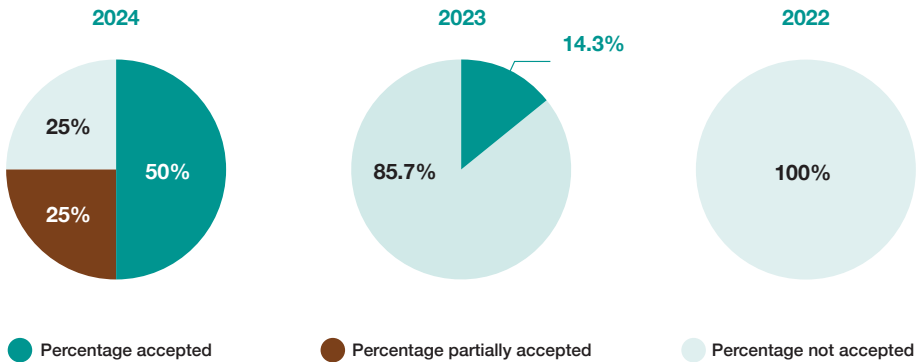
Appeal Type – Rehabilitation

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	4	6	4
Appeals partially accepted	2	0	1
Appeals not accepted	3	1	10
TOTAL	9	7	15



Appeal Type – Assessment

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	2	1	0
Appeals partially accepted	1	0	0
Appeals not accepted	1	6	3
TOTAL	4	7	3



	Year Ending 2024	Year Ending 2023	Year Ending 2022
TOTAL APPEALS DECIDED	117	136	128

Most Common Issues Addressed

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Entitlement to wage loss benefits (post-1992)	52	63	61
Claim Acceptance	45	40	39
Entitlement to medical aid payment	39	51	40
Entitlement to an increase in the permanent partial impairment award	8	8	3
Is present condition related to the compensable injury	8	12	11
Is the worker to reimburse the WCB for overpayment of benefits	5	1	2
Has the permanent partial impairment award been correctly calculated	5	6	1
Administrative Penalties	3	5	1
Average Earnings Policy	3	5	2
Is the worker capable of performing modified duties	3	0	2
Deeming process	3	3	4
Has the worker been overpaid benefits	3	1	1
Is the worker entitled to further physiotherapy treatment	3	6	2
Should responsibility for surgery be accepted	2	1	2
Is the worker entitled to an annuity	1	0	0
Is the employer entitled to cost relief	1	4	2
Is the worker entitled to vocational rehabilitation services (retraining)	1	1	0
Have the firm's assessments been properly calculated	1	1	1
Is the individual an independent contractor or a worker	1	0	0
Mitigation	1	0	0
Is the worker entitled to payment for prescription medications	1	4	3
Other issues	9	14	17
TOTAL ISSUES ADDRESSED	198	226	194

Appeals Received

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Worker appeals	121	137	144
Employer appeals	20	17	24
TOTAL APPEALS	141	154	168

Reconsiderations Under Section 60.10 of the Act

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Number of requests decided	5	3	4
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 2024	Year Ending 2023	Year Ending 2022
Worker appeals	4	4	8
Employer appeals	0	0	0
TOTAL FILE ACCESS APPEALS	4	4	8

Victims' Rights Statistics

Total Appeals	Year Ending 2024	Year Ending 2023	Year Ending 2022
Appeals accepted	1	2	1
Appeals partially accepted	0	0	0
Appeals not accepted	3	4	2
TOTAL	4	6	3

Service Levels

The Appeal Commission tracks how long 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 have sufficient time to fully prepare.

The Appeal Commission Rules of Procedure requires that 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, 2024)

	Year Ending 2024	Year Ending 2023	Year Ending 2022
Average time from date appeal received to date of hearing	17.71 wks	19.31 wks	22.49 wks
Average time from hearing date to decision published	10.77 wks	9.84 wks	11.07 wks
AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	28.48 wks	29.15 wks	33.56 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 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.

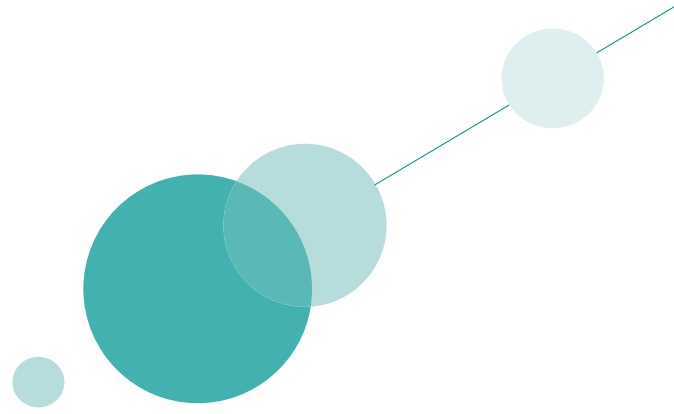
Subsection 67(4.1) of the Act provides that an employer may request that the WCB refer a medical matter to a Medical Review Panel for its opinion. The medical matter must be real and substantial and affect entitlement to compensation.

A Medical Review Panel is comprised of a Chair and two panel members. The Minister responsible for the Act appoints the Chair and the Alternate Chair. 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 2024	Year Ending 2023	Year Ending 2022
Total MRPs convened	0	0	0
INITIATED BY:			
Primary Adjudication	0	0	0
Review Office	0	0	0
Appeal Commission	0	0	0
CONVENED UNDER:			
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 in which a panel of specialists and consultants are brought together to meet and examine a worker and to answer questions. This involves arranging a time convenient for all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

Medical Review Panel Service Level Statistics

	Year Ending 2024	Year Ending 2023	Year Ending 2022
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
AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED	0 wks	0 wks	0 wks

Notes

Appeal Commission and Medical Review Panel

2024 ANNUAL REPORT

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THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA