

A vertical photograph of a lighthouse on the ocean, positioned on the left side of the cover. The lighthouse is a dark tower with a white and green top section, situated on a small island in the middle of the sea. The sky is overcast and the water is calm.

W/CAT

Workers' Compensation
Appeal Tribunal

ANNUAL 2020 REPORT

CHAIR'S MESSAGE

I am pleased to present the 2020 Annual Report for the Workers' Compensation Appeal Tribunal (WCAT). This report is an overview of WCAT's operations in 2020.

2020 saw WCAT continue, as it has throughout its history, to be a high volume tribunal, with workers and employers filing nearly 3,000 appeals and applications. While the number of new appeals and applications received at WCAT remained similar to 2019, the COVID-19 pandemic did cause 2020 to be different from the usual.

With the onset of the pandemic in March, WCAT remained open, and moved quickly to shift its operations to a largely remotely operated workplace. With hundreds of in-person appeal hearings scheduled to occur in locations throughout the province every month, the tribunal pivoted to holding hearings by way of teleconference and videoconference.

In addition to the changes brought about by the pandemic, revisions were made to the *Workers Compensation Act* (Act) in 2020, with an April 6 revision to the Act leading to a renumbering of all sections of the Act, including some that had not changed in more than 40 years. Significant amendments to the Act were also brought into force in August 2020.

While both the pandemic and the amendments to the Act required changes to WCAT business processes and procedures, the WCAT team remained focused on ensuring that parties to an appeal continued to receive information about their appeals, and ultimately the final decisions on the appeal, in a timely manner. WCAT managed, for the fourth consecutive year, to reduce the time period from the filing of a notice of appeal to the issuing of a final decision. That improvement is a testament to the hard work and dedication the tribunal's staff and members brought to work, whether at home or in the office, every day over the past year.

WCAT continued to work to improve accessibility to the tribunal in 2020, with the launch of a new website which uses an inclusive approach to content and design. This new website makes it easier for parties to find and understand information about the appeal process and to get help with their appeals. Looking forward to 2021, WCAT will be focused on continuing to improve accessibility through the development of an online document portal which will enable appeal parties to file an appeal and application, upload evidence and submissions, and view all of the correspondence and evidence on their appeal file in real time.

As always, I would like to take the opportunity to thank all of my colleagues for their efforts in ensuring another successful year, and to particularly note how much I admired their dedication to continue to ensure that the public was served by WCAT throughout the pandemic. It is WCAT's employees and appointees who enable the tribunal to fulfill its mandate to deliver predictable, consistent, and efficient decision-making to the public. I look forward to continuing our efforts to improve WCAT's service to British Columbians in 2021.

Andrew Pendray
Chair

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WCAT'S ROLE WITHIN THE WORKERS' COMPENSATION SYSTEM

WCAT is an independent appeal tribunal external to the Workers' Compensation Board, operating as WorkSafeBC (Board). WCAT's mandate is to decide appeals brought by workers and employers from decisions of the Board. WCAT receives compensation, assessment, and occupational health and safety appeals from decisions of the Review Division of the Board (Review Division). WCAT also receives direct appeals from Board decisions regarding applications for reopening of compensation claims and complaints regarding discriminatory actions. In addition, it receives applications for certificates for court actions.

Some decisions of the Review Division are final and not subject to appeal to WCAT such as decisions respecting vocational rehabilitation.

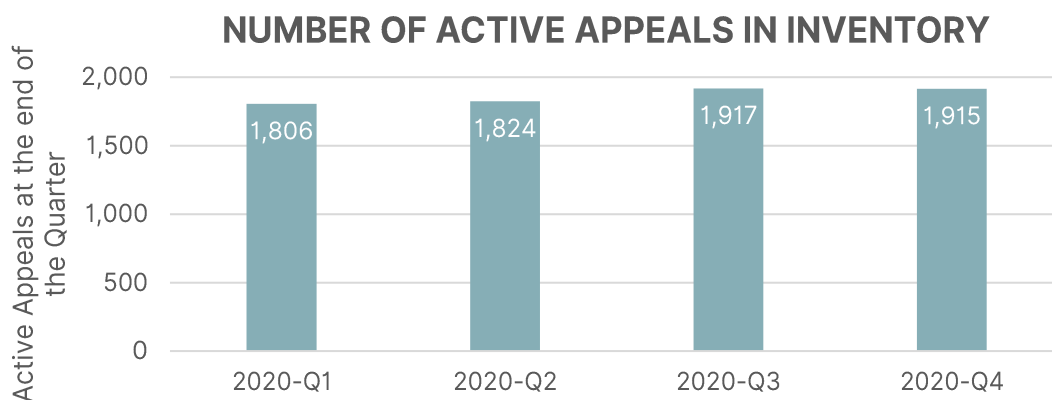
STATISTICS

Overview of Appeals Inventory

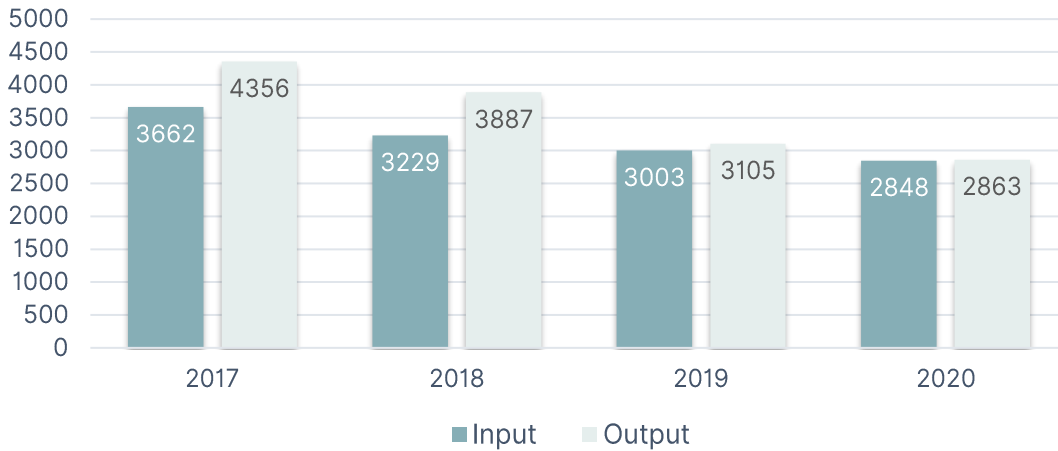
This section contains three charts providing a high-level overview of the status of our appeals inventory for 2020. WCAT records appeals by their date of initiation.

WCAT's total active inventory at December 31, 2020 was 1,915 appeals compared to 1,931 at the end of 2019.

WCAT received 2,848 new appeals in 2020. Intake of new appeals for 2020 was consistent with the volume forecasted, based on an analysis of historical intake and appeal rates.



TOTAL ANNUAL INTAKE AND OUTPUT

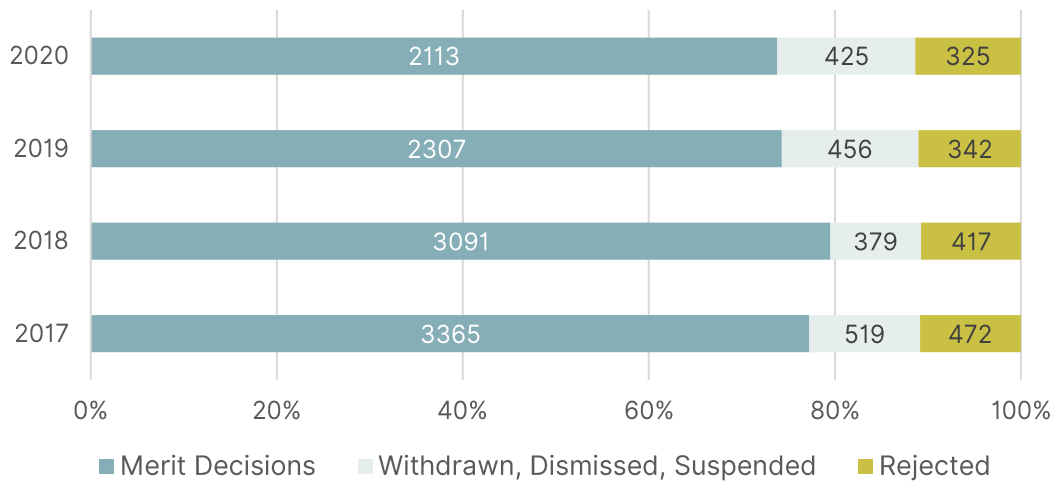


With the vast majority of WCAT appeals coming from decisions of the Review Division, WCAT’s reduced intake of new appeals over the past four years has corresponded with a decrease in the total number of reviews at the Review Division (from 14,482 to 13,825), as well as a decrease in the number of Board decisions confirmed by the Review Division (from 5,907 in 2017 to 5,276 in 2020).

Based on analysis of historical intake and appeal rates, WCAT’s forecast for 2021 calls for similar intake as 2020, with between 2,900 and 3,100 new appeals and applications expected. Whether the ongoing COVID-19 pandemic will have an effect on that forecast is not yet known.

Our output of summary and merit decisions and determinations in 2020 was 2,863.

APPEAL OUTPUT BY TYPE



Time to Decision

Section 306 of the Act requires WCAT to decide new appeals within 180 days from the date that WCAT receives from the Board the records (disclosure) relating to the decision under appeal. The appeal submission process does not begin until WCAT receives that disclosure from the Board.

The chair or the chair's delegate may extend the 180 day statutory timeframe up to a maximum of 90 days if the appellant requests and receives additional time to make submissions or submit new evidence and WCAT grants to the other parties a similar opportunity (additional time for submissions).

The chair or the chair's delegate may also extend the statutory timeframe on the basis of complexity (additional time for decision). For example, additional time may be required where a WCAT panel finds it necessary to pursue further investigations.

Lastly, an appeal may be suspended in situations where WCAT is waiting for any of the following:

- a pending Board determination that was requested by a WCAT panel with respect to a matter that it considers should have been, but was not, determined by the Board;
- a pending Board decision respecting a matter that is related to an appeal; or,
- a pending report from an independent health professional.

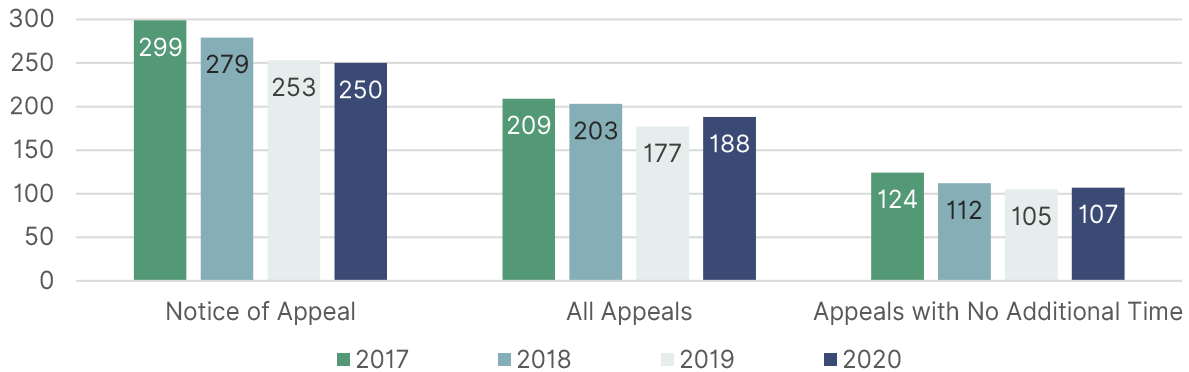
The 180-day statutory timeframe clock is stopped in such situations.

The illustration below reflects the average number of days for completing appeals in 2020, taking into account the various situations described above.

<u>Notice of Appeal</u>	<u>All Appeals</u>	<u>Appeals With No Additional Time</u>
Time from the date of receipt of the notice of appeal to the date the final decision is issued.	Time from the date of receipt of disclosure from the Board to the date the final decision is issued for all appeals (including those where additional time for submissions and additional time for decision was granted).	Time from the date of receipt of disclosure from the Board to the date the final decision is issued (excluding appeals where there was either additional time for submissions or additional time for decision).
250	188	107

As part of its strategic plan, one of WCAT's goals is to provide timely decision-making. As can be seen from the table below, WCAT was able to maintain timely decision-making across all categories in 2020. This was despite a brief period during April and May 2020 when hearings were postponed while the tribunal developed processes for in-person oral hearings to proceed by way of videoconference. All hearings that were postponed in April and May 2020 were heard by September 2020.

TIMELINESS - NUMBER OF DAYS TO DECISION



Appeals and Applications

Appeals and applications comprise:

- appeals to WCAT from decisions made by review officers in the Review Division and direct appeals from decisions of other Board officers;
- applications for certificates for court actions; and,
- applications for reconsideration of WCAT decisions.

The Act provides that parties may appeal to WCAT from compensation, assessment, and occupational health and safety decisions of the Review Division. The Act also provides that some Board decisions are appealable directly to WCAT without being reviewed by the Review Division, and that some other applications are made directly to WCAT. These direct appeals and applications include reopenings on application, discriminatory action complaints, requests for reconsideration of WCAT decisions, and applications for certificates for court actions.

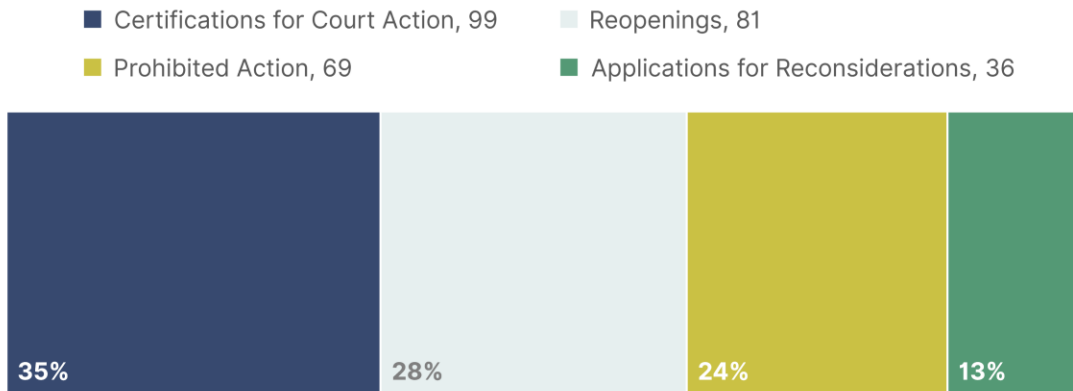
a) Type of Appeal

Of the 2,848 appeals received by WCAT in 2020, 90% arose from decisions of Board review officers and 10% were direct. The vast majority of WCAT appeals relate to compensation matters. The following two charts show the breakdown of the types of appeals and applications we received in 2020:

APPEALS FROM REVIEW DIVISION BY TYPE



DIRECT APPEALS AND APPLICATIONS BY TYPE



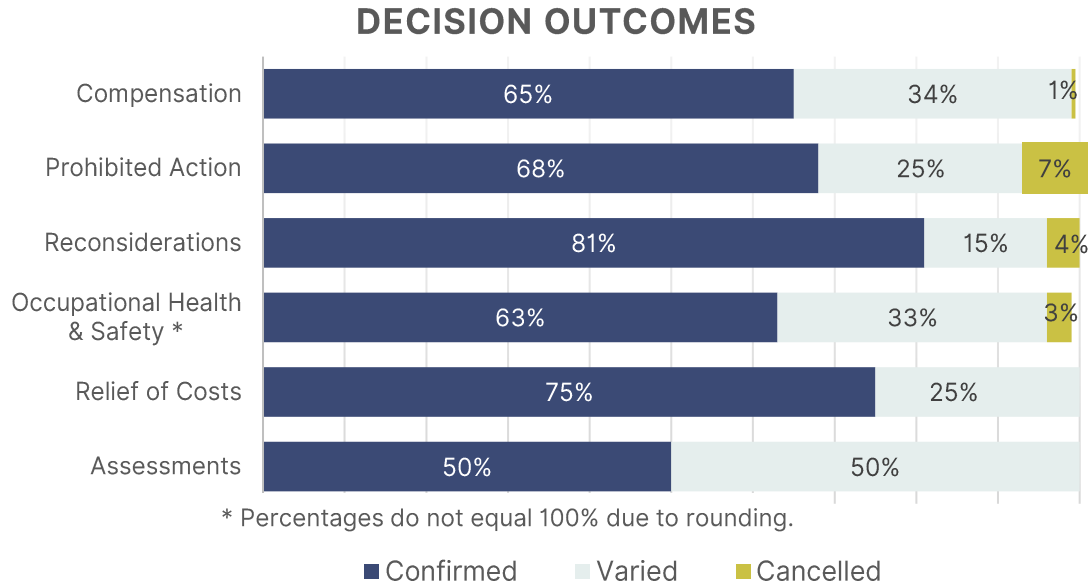
b) Merit Decisions

WCAT made 2,113 merit decisions on appeals and applications in 2020, 48 of which concerned applications for certificates for court actions. The remaining 2,065 merit decisions concerned appeals from decisions of the Review Division or Board officers, which may be varied, confirmed, or cancelled by WCAT.

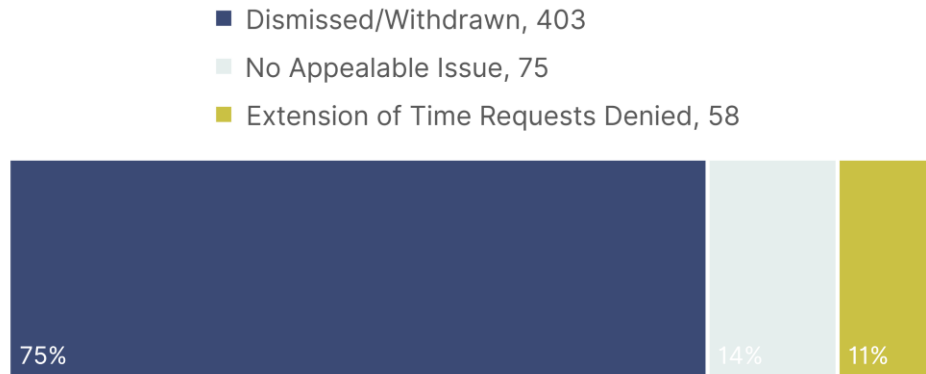
“Vary” means that WCAT varied the previous decision in whole or in part. Accordingly, whether WCAT has fully granted the remedies requested by the appellant on all issues arising under the appeal or merely changed a minor aspect of the previous decision, the decision is considered as “varied.”

“Confirm” means that WCAT agreed with all aspects of the previous decision. “Cancel” means that WCAT set aside the previous decision without a new or changed decision being provided in its place.

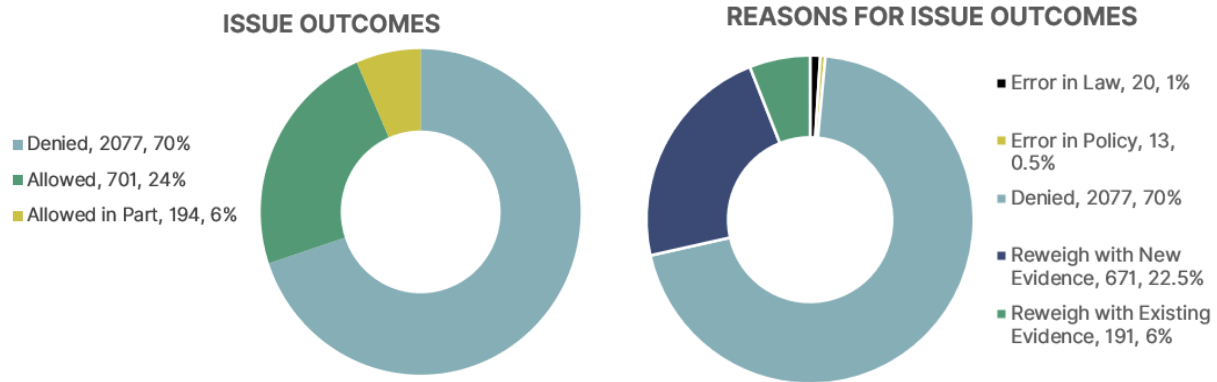
Overall, in 2020, 33% of WCAT appeals were varied, 64% were confirmed, 1% were cancelled and 2% were certifications to court*. The graphics below demonstrate the decision outcomes in the different types of appeals in 2020:



SUMMARY DECISIONS



An appeal may raise numerous issues and WCAT may allow or deny the appeal on each issue. In 2020, WCAT decided 2,972 issues that arose out of the 2,038 appeals that led to merit decisions.



c) Top Five Issue Groups for WCAT Appeals

Appeal Issue	Merit Decisions	Percentage of Total Decisions	Allowed / Allowed in Part	Denied
Compensation For Personal Injury	973	32.7%	26.6%	73.4%
Permanent Partial Disability	413	13.9%	39.4%	60.6%
Temporary Partial Disability	289	9.7%	29.4%	71.6%
Occupational Disease	209	7%	30.8%	69.2%
HealthCare	163	5.5%	35.9%	64.1%

d) Requests for Extensions of Time

WCAT decided 141 requests for extensions of time to appeal; allowing 83 and denying 58.

General

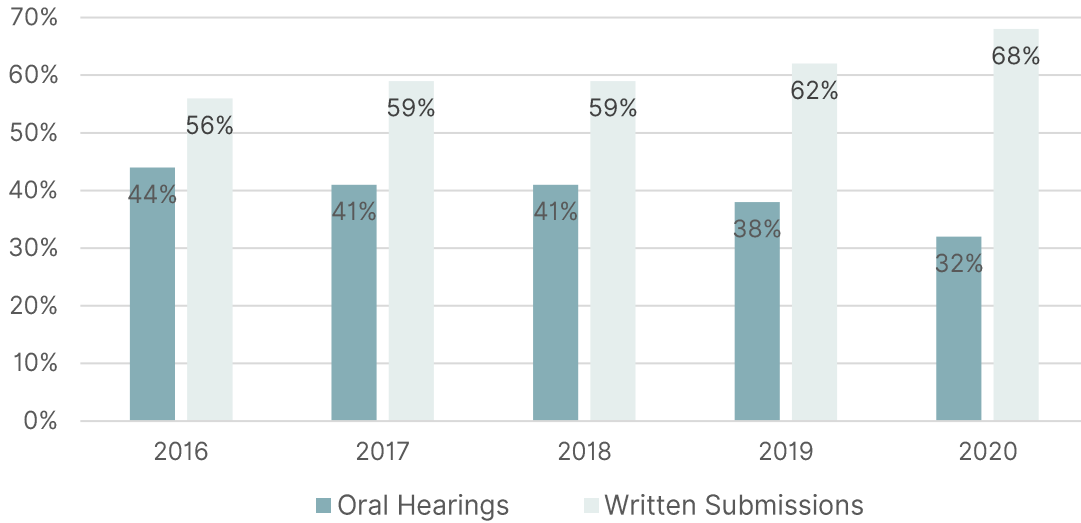
Appeal Paths

WCAT decides appeals and applications in one of two ways:

- 1) after an oral hearing; or,
- 2) after reading and reviewing the Board’s records, any new evidence, and the submissions of the parties.

In 2020, WCAT decided 683 appeals and applications (32%) after convening an oral hearing and 1,427 (68%) after consideration of written submissions.

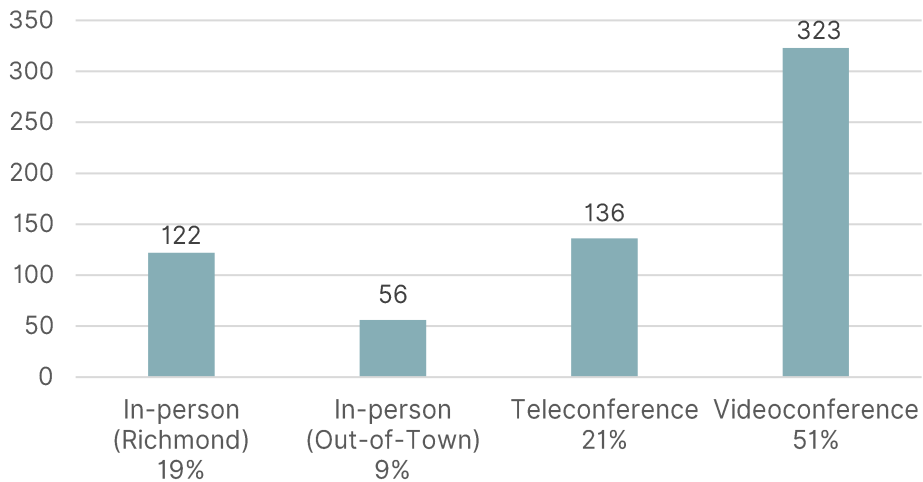
ORAL HEARINGS VS. WRITTEN SUBMISSIONS



Location of Oral Hearings

In 2020, WCAT held 637 oral hearings. Due to the COVID-19 pandemic and ongoing efforts to stop the spread of COVID, WCAT postponed all in-person hearing oral hearing effective March 17, 2020. WCAT reconvened oral hearings by way of videoconference or teleconference. The following table shows the number of oral hearings by type of hearing for 2020:

HEARING LOCATIONS



Oral Hearing Survey

As the use of videoconference technology was new to WCAT in 2020, the tribunal surveyed videoconference hearing participants, with a view to ensuring that the hearings were effective for all parties involved. While there were at times technical challenges, the overwhelming majority of responses, as set out below, were positive.

Question	Percent of Yes Responses
Was it easy to log-in to the videoconference oral hearing system?	90%
Did WCAT provide you with enough information on how to participate in a videoconference hearing?	93%
Would you recommend a videoconference hearing to others?	91%

Looking forward to 2021 and beyond, WCAT intends to offer parties the opportunity to indicate whether they would prefer to have their oral hearing proceed in-person or by way of videoconference.

Appellants and Applicants

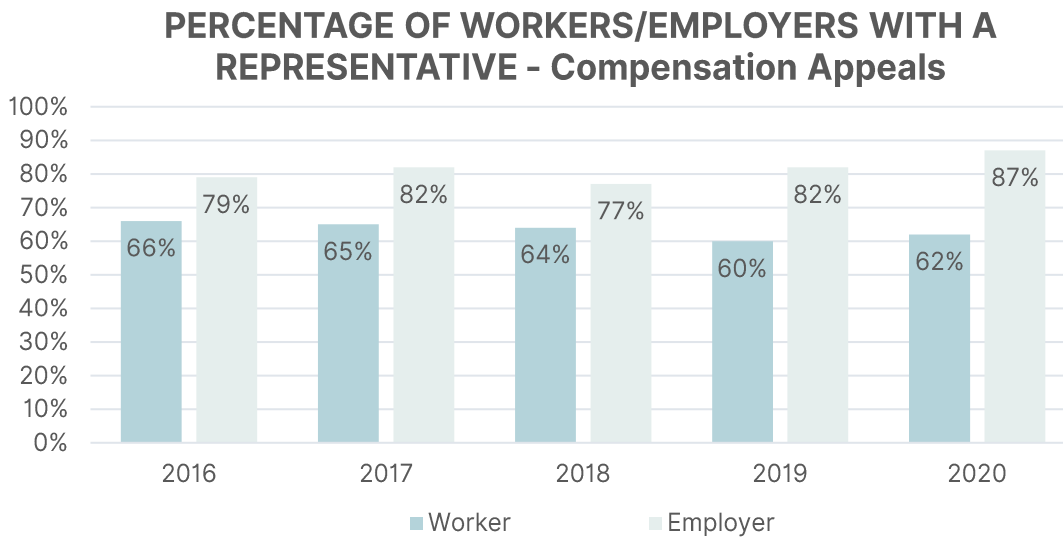
The vast majority of appeals and applications that WCAT received were from workers. The following table shows the percentage of appellants and applicants by the type of appeal or application. The table does not include assessment or relief of costs appeals as the appellant is always the employer.

Type of Appeal or Application	APPELLANT / APPLICANT		
	Worker	Employer	Dependant
Compensation	81.5%	18.2%	0.3%
Direct Reopening	91.5%	8.5%	0%
Prohibited Action	71%	29%	0%
Occupational Health and Safety	17.1%	82.9%	0%
Reconsideration	86.1%	8.3%	5.6%

Representation

The following table shows the percentage of appeals and applications for which the appellant or applicant had a representative. Representatives may be workers' or employers' advisers, lawyers, consultants, family members, or friends.

Type of Appeal or Application	PERCENT REPRESENTED WHERE APPELLANT / APPLICANT IS:		
	Worker	Employer	Dependant
Assessment	0%	67.7%	0%
Compensation	62.2%	86.6%	50%
Occupational Health and Safety	22.2%	84.2%	0%
Prohibited Action	14.7%	81.8%	0%
Reconsiderations	38.5%	50%	0%
Relief of Costs	0%	92.6%	0%



The higher rate of self-representation seen amongst workers underscores the need for WCAT to continue to work to ensure that the tribunal's processes are accessible to all.

NOTEWORTHY WCAT DECISIONS

Noteworthy WCAT decisions are decisions that have been selected by WCAT staff because they may provide significant commentary or interpretative guidance regarding workers' compensation law or policy, or comment on important issues related to WCAT procedure. Decisions are also selected as noteworthy on the basis that they may serve as general examples of the application of provisions of the Act and regulations, the policies of the board of directors of the Board, or various adjudicative principles.

Noteworthy decisions are not binding on WCAT. Although they may be cited and followed by WCAT panels, they are not necessarily intended to become leading decisions. It is open to WCAT panels to consider any previous WCAT decision in the course of considering an appeal or application.

WCAT decisions, including noteworthy decisions and their summaries, are publicly accessible and searchable on the WCAT website at [Search past decisions - Workers' Compensation Appeal Tribunal \(WCAT\)](#). The website contains documents listing all noteworthy WCAT decisions organized by subject and date.

Summaries of New Noteworthy WCAT Decisions in 2020

(a) A1800130 - Decision Date: September 24, 2018 Panel: S. Saini

This decision provides an instructive example of the application of the Permanent Disability Evaluation Schedule ("PDES") to Complex Regional Pain Syndrome (CRPS) and chronic pain. It also provides an example of resolving apparently conflicting medical reports. Normally, permanent functional impairment ratings affecting mobility in the upper limbs are assessed using the range of motion ratings in Part III of the PDES, but in this case the Disability Awards Medical Adviser (DAMA) recommended rating the worker under Part XI of the PDES dealing with central nervous system conditions. Since the DAMA could not adequately assess the worker's motor impairment, it was appropriate to rate the worker's impairment under Part XI of the PDES. Although nothing in the applicable legislation excludes the possibility of an award for chronic pain in addition to an award for CRPS, in this case the chronic pain was not disproportionate to the impairment associated with CRPS; therefore, no addition award for chronic pain was made.

(b) A1800236 - Decision Date: August 28, 2018 Panel: G. Chen

The admissibility of surreptitious audio recordings should be determined by weighing their evidentiary value against any broad policy concerns that may favour exclusion. In general, concerns regarding reliability can be addressed through the weight given to evidence in such recordings.

(c) A1801340 - Decision Date: February 1, 2019 Panel: W. Hoole

In determining a worker's application to exclude evidence under the *Charter of Rights and Freedoms*, the Panel reviewed the case law relating to search and seizure in the context of administrative law. The right against unreasonable search and seizure provides a civil litigant far less protection than a criminal defendant.

The Panel cited *R v. Grant*, 2009 SCC 32 for the proposition that:

- When faced with an application for exclusion under subsection 24(2), the tribunal must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to:
 - the seriousness of the Charter-infringing state conduct (admission may send the message the justice system condones serious state misconduct);
 - the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little); and
 - society's interest in the adjudication of the case on its merits.

The Tribunal's role on a subsection 24 (2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute.

WCAT RECONSIDERATIONS

WCAT decisions are "final and conclusive" pursuant to section 255(1) of the Act, but are subject to reconsideration based on two limited grounds:

- new evidence under section 310 of the Act; and,
- jurisdictional error.

Applications for reconsideration involve a two-stage process. The first stage results in a written decision, issued by a WCAT panel, about whether there are grounds for reconsideration of the original decision. If the panel concludes that there are no grounds for reconsideration, WCAT takes no further action on the matter. If the panel decides that there are grounds for reconsideration, the original decision is reconsidered. On an application to reconsider a WCAT decision on the new evidence ground, the panel will determine whether the evidence is substantial and material to the decision, and whether the evidence did not exist at the time of the hearing or did exist at that time, but was not discovered and could not have been discovered through the exercise of reasonable diligence. If the panel determines that there is new evidence that meets those criteria, WCAT will reconsider the original decision on the basis of the new evidence.

On an application to reconsider a WCAT decision on the basis of a jurisdictional error, a panel will determine whether such an error has been made. If the panel allows the application and finds the decision void, in whole or in part, WCAT will hear the affected portions of the appeal afresh.

During 2020, WCAT issued 26 stage one decisions. Of the stage one decisions issued, four determined that reconsideration grounds existed. The outcomes of the stage one reconsideration decisions were as follows:

Type of Reconsideration	Number of Reconsideration Decisions	Allowed/Allowed in part	Denied
Jurisdictional Error	13	3	10
New Evidence	10	1	0
Both Grounds Alleged	3	0	3
TOTAL	26	4	22

JUDICIAL REVIEW OF WCAT DECISIONS

WCAT decisions are final and conclusive. There is no further avenue of appeal.

A party may apply to the Supreme Court of British Columbia for judicial review of a WCAT decision. On judicial review, the court examines the decision to determine whether the decision, or the process used in making the decision, was outside of WCAT's jurisdiction. The requested remedy will, therefore, be granted only in limited circumstances. A judicial review is not an appeal and does not involve an investigation into the merits of the decision. Under section 57(1) of the *Administrative Tribunals Act* (ATA), an application for judicial review of a final decision of WCAT must be commenced within 60 days of the date the decision is issued. The court may extend the time for applying for judicial review under certain circumstances.

Judicial Review Applications

In 2020, WCAT was served with 25 applications for judicial review of WCAT decisions. No appeals were served on WCAT of a Supreme Court of British Columbia judicial review decision.

Judicial Review Decisions

The following court decisions were issued in relation to judicial review applications in respect of WCAT decisions and related appeals. Only those court decisions made in writing or transcribed (if oral) are included.

a) *Agarin v. British Columbia (Workers' Compensation Board)*, 2020 BCSC 739 (May 13) Decision Under Review: Summary decision

The petitioner brought a judicial review of a WCAT summary decision involving four separate appeals and of a number of decisions of the Review Division. WCAT had determined that it lacked authority to decide the appeals because they arose from decisions of the Review Division relating to extensions of time to request a review and vocational rehabilitation matters. After filing her petition, but before it was heard on the merits, the petitioner, citing dire financial circumstances, brought an application for an injunction against the Board seeking among other things: an order that the petitioner be

declared totally disabled from employment, payment of unpaid temporary disability benefits, payment of specific health care expenses, a direction that the Board replace her current case manager, an order that the Board pay for back surgery in California (including travel expenses), and an order for costs against both the Board and WCAT. The Court dismissed the application on the grounds that it was premature and the Court had no jurisdiction to make the orders sought. The Court found that while the petitioner stated that she was seeking an injunction she was in reality seeking a *mandamus* order and the grounds for such an order had not been met. The issues raised were still live issues before the Board so the petitioner had to exhaust her internal remedies first. Also, the orders sought were either not available in a judicial review proceeding – such as findings of fact regarding her claimed disability – or did not relate to matters at issue in the underlying judicial review proceeding. No cost order was made.

**b) *Stein v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2020 BCSC 772 (May 25)
Decision Under Review: WCAT-2014-02791**

The Court dismissed the petitioner's application for a retroactive anonymization order in respect of her judicial review proceeding and the resulting Court decision dismissing it (which had already been issued and unsuccessfully appealed to the Court of Appeal). The petitioner had been declared a vexatious litigant in an earlier decision of the Court. In dismissing the application the Court said that the petitioner's vulnerability does not give her a privileged status, and in particular does not give her license to abuse the legal system and then use her vulnerability to shield herself from the consequences of her actions. There were legitimate grounds for members of the public, including prospective employers, potentially having an interest in being able to identify her. While the court decisions reveal aspects of her medical history they also, collectively, reveal a pattern of behaviour: the petitioner's willingness to vilify before the Court persons she comes into conflict with, and to subject those persons to the burden of endless litigation. There is a public interest in allowing information as to how the petitioner has conducted herself to remain freely available.

**c) *Singla v. Workers' Compensation Appeal Tribunal*, 2020 BCSC 1227 (July 16)
Decision Under Review: A1801901**

The Court granted the petitioner's application under section 57(2) of the *Administrative Tribunals Act* to extend the time to file a petition for judicial review of WCAT's decision. On the application, the Court determined that the petitioner provided a reasonable explanation for the approximately two month delay in filing (in part because he was misled by his representative who advised that the only thing he could do was to file a reconsideration application); that there was no specific prejudice alleged by the respondent employer; and because there were serious grounds for relief. The serious ground identified was that the panel did not seriously consider evidence supporting work causation, including the temporal connection between the work and the symptoms; the risk of injury that the work posed; the petitioner's prior good health; and the lack of any other causative explanations. The court said that absence of evidence is not evidence of absence.

d) *Morris v. British Columbia (Workers' Compensation Board)*, 2020 BCCA 293 (October 28)**Decision Under Review: WCAT-2013-00635, WCAT-2013-0635a, a WCAT letter and a WCAT summary decision**

The Court of Appeal found that the petitioner could not challenge the Board's reopening decision in court, but was instead obliged to exhaust his internal statutory remedies by pursuing his appeal to WCAT of the Board's decision. The Court also agreed with the B.C. Supreme Court that a Court could not decide whether to award the petitioner's benefits under the Act. That task was for decision makers in the workers' compensation system. Finally, the Court confirmed that it was not open to the petitioner to challenge an earlier WCAT panel's finding that the petitioner condition had plateaued on the basis of evidence that had not been before that panel. Such evidence is inadmissible on judicial review.

e) *Ahluwalia v. Workers' Compensation Appeal Tribunal*, 2020 BCSC 1717 (October 30)
Decision Under Review: A2001088

WCAT summarily dismissed the petitioner's appeal on the basis that it did not have jurisdiction to hear the appeal as it was based on a Board decision that no occupational health and safety order would be issued against the employer in respect of the petitioner's claim that the employer failed to properly investigate her complaint of workplace bullying and harassment. Pursuant to section 288(2)(b) of the Act WCAT does not have jurisdiction to hear appeals in respect of those decisions under Part 2 of the Act. The Court dismissed the petition, finding there was no procedural unfairness or patent unreasonableness. The petitioner's reliance on a notice accompanying the Review Division decision was misplaced because the notice indicated that not all decisions could be appealed to WCAT, and even if it said otherwise, it could not change WCAT's jurisdiction. The petitioner has since filed for judicial review of the Review Division decision but the matter has not yet been heard.

OUTREACH

As the final level of appeal in the British Columbia Workers' Compensation system, WCAT plays a role in ensuring that stakeholders and those appearing before it are well informed regarding its operations and practices. During 2020, WCAT had the opportunity to engage with the Employer's Forum, the BC Federation of Labour, the BC Nurses Union, the Canadian Labour Congress, as well as the Workers and Employers' Advisers offices.

Response to the Truth and Reconciliation Commission's Calls to Action

WCAT continued, in 2020, to act on its commitment to respond to the Calls to Action of the Truth and Reconciliation Commission.

In 2020 all tribunal members and staff undertook cultural competency and intercultural skills-based training, including an education on the history of Indigenous peoples, the history and legacy of the residential schools, and Indigenous law.

In 2020, WCAT received 70 appeals in which a party self-identified as Indigenous. In 66 of those appeals, the self-identified as Indigenous party was an appellant worker, in three of the appeals the self-identified party was an appellant employer, and in one appeal there was a respondent employer who self-identified as Indigenous.

In each of those appeals, a WCAT navigator worked with the self-identified parties to ensure that they are treated in a welcoming and culturally safe manner, and to ensure that WCAT's appeal process was open and responsive. The navigator position was launched in 2019 as part of WCAT's commitment to offering services that are respectful of Indigenous culture and heritage. WCAT's navigators work to build a relationship of trust that is culturally appropriate, and offer assistance throughout the entire appeal; from explaining the appeal process, to detailing how to get access to file disclosure, to assisting with preparation for oral hearings, including assisting in finding suitable hearing locations and noting cultural processes a party may wish to have included in the hearing.

WCAT has recently commenced soliciting feedback on the navigator program from parties who have self-identified as Indigenous, and the tribunal looks forward to receiving that feedback with a view to continuously improving its services and eliminating institutional barriers.

EDUCATION

Internal Education

WCAT is committed to excellence in decision-making. WCAT's MRPP sets out our guiding principles in item #1.4. WCAT strives to provide decision-making that is predictable, consistent, efficient, independent, and impartial. We also strive to provide decisions that are succinct, understandable, and consistent with the Act, policy, and WCAT precedent decisions.

WCAT recognizes that professional development is essential to achieving and maintaining the expected standards of quality in decision-making. Accordingly, WCAT has pursued an extensive program of education, training, and development, both in-house and externally, where resources permit.

Delivery of education and training sessions in 2020 was more difficult, due to restrictions during the COVID-19 pandemic. However, the WCAT education group, led by the Vice-chair Quality Assurance, organized a variety of educational and training sessions. Members of WCAT attended these sessions virtually, both as participants and as educators or facilitators. WCAT is registered as a continuing professional development provider with the Law Society of British Columbia. WCAT continued its commitment to implement the Truth and Reconciliation Commission Calls to Action in the final session of the year, which concerned Indigenous Peoples and trauma informed hearings.

The following is a list of sessions organized by WCAT for vice chairs during 2020:

February 6	<ul style="list-style-type: none"> • Adjudicators and Social Media • Changes to the Rehabilitation Services and Claims Manual. • <i>Workers Compensation Act</i>, revisions and resources
February 13	<ul style="list-style-type: none"> • Oral Hearings vs. Written Submissions
April 24	<ul style="list-style-type: none"> • Aggravation of pre-existing conditions from an adjudication perspective. • Aggravation of pre-existing diseases and conditions from a medical perspective.
September 10	<ul style="list-style-type: none"> • Fraud and misrepresentation • Neuropsychological Validity Testing
October 1	<ul style="list-style-type: none"> • Judicial Reviews of interest • Registry update 2020
November 5	<ul style="list-style-type: none"> • Indigenous Peoples and trauma informed hearings

In addition, many WCAT vice chairs attended the BC Council of Administrative Tribunals (BCCAT) Annual Education Conference on October 26, 2020, or the Continuing Legal Education (CLE) Society Administrative Law Conference on November 20, 2020, both of which were presented virtually.

UPDATE ON LEGISLATION AND PROCEDURES

a) Statutory Changes in 2020

Significant changes were made to the *Workers Compensation Act* in 2020. There were no amendments to the *Administrative Tribunals Act* or to the federal *Government Employees Compensation Act* in 2020.

i. April 6, 2020 Revision

On April 6, 2020 the revision of the *Workers Compensation Act* under the *Statutes Revision Act*, R.S.B.C. 1996, c. 440 came into effect. The revised Act, the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, replaced the former Act.

The Act was reorganized and the sections renumbered. Some sections were consolidated and some divided to be easier to understand. Provisions that had been repealed or were no longer needed were removed. There were minor changes to the language of some sections to meet modern standards for legislative drafting, but there were no substantive changes to the law. Section 8(1) of the *Statutes Revision Act* provides that a revision does not operate as new law but must be interpreted as a consolidation of the law contained in the provisions replaced by the revision. The revision divided the Act into eight parts, instead of the previous four. Part 7 relates to WCAT proceedings.

On November 20, 2019, the Board of Directors of the Board approved consequential amendments to the Board controlled regulations under the then Part 1 of the Act (*Fishing Industry Regulations, Occupational Disease Recognition Regulation, Reports of Injuries Regulations, and Review of Old Permanent Disability Awards Regulation*) to reflect the statutory revisions to the Act. The amendments came into effect on April 6, 2020.

A table of concordance from the former Act to the revised Act is available at: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legislation-policy/legislation-updates/workers-compensation-act>.

ii. *Workers' Compensation Amendment Act, 2020* Amendments

The Act was significantly amended by the *Workers Compensation Amendment Act, 2020*, S.B.C. 2020 c. 20 (Bill 23), which came into force by Royal Assent on August 14, 2020. The legislation amended 34 provisions of the Act. Of the 34 provisions that were amended, 32 came into effect on Royal Assent. Two came into effect on January 1, 2021.

The amendments that directly affect WCAT came into effect on August 14, 2020 and are as follows (references to former section numbers are section numbers before the April 2020 revision):

- Section 285 (11) ("Appeal panels") (formerly section 238(11)) was amended to eliminate the requirement for the chair to obtain the consent of the parties to appoint a new vice chair to continue to hear and determine an appeal in the event that the original vice chair is unable to complete the vice chair's duties. The agreement of the parties as to the terms on which the appeal will proceed is still required;
 - Section 296 ("Application of *Administrative Tribunals Act* to appeal tribunal") (formerly section 245.1) was amended to repeal section 296(e). The effect of this amendment was to permit WCAT to decide issues arising under the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*;
 - Section 307 ("Amendment to Final Decision") (formerly section 253.1) was amended to permit WCAT to clarify its decisions on its own initiative. Before the amendment, WCAT could only clarify a decision if a party requested clarification. It also removed language providing that WCAT could only amend the decision if WCAT considered that the amendment would clarify the decision; and,
 - Section 314(2) ("Confidentiality Obligations") (formerly section 260(2)) was amended to broaden the scope of information in an appeal that must be kept confidential in the absence of a statutorily authorized circumstance. It now includes any information that is about another person. It is no longer limited to information in a claim file and now also applies to workers who are provided information disclosed to them for the purposes of an appeal.
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Amendments to other parts of the Act that came into force on August 14, 2020 include the following:

- Section 123 (“Board authority to reconsider previous decisions”) (formerly sections 96(4)-(6)) was amended to provide the Board the authority to reconsider previous compensation decisions after 75 days have elapsed if that decision contains an obvious error or omission;
 - Section 135 (“Mental disorders”) (formerly section 5.1) was amended to clarify that compensable mental disorders are treated as injuries, rather than occupational diseases. Section 151 (“Application for compensation: form of application and time for making application”) (formerly section 55) was amended to clarify that the “date of mental disorder” is the starting point of the one-year time limit for filing a compensation claim related to a mental disorder, as opposed to the date of the incident leading to the mental disorder;
 - Section 156 (“Health care for injured worker”) was amended to permit the Board to provide preventative health care on pending claims if medical evidence supports that, without such services or supplies, the worker is at risk of a significant deterioration in health. The worker is not required to reimburse the Board if the Board later determines the worker is not eligible for compensation;
 - Section 209 (“Annual determination of maximum wage rate for average earnings”) (formerly section 33) was amended to set a maximum wage rate for 2021 of \$100,000 and to set that amount as the basis for future annual calculations by the board of directors of the Board. The maximum wage rate for 2020 was \$87,100 and was set by the board of directors under the former section 33;
 - Section 238 (“Effective date of Board's compensation regulations”) (formerly section 76) was amended to permit the board of directors of the Board to bring into effect more quickly a change it makes to Schedule 1 of the Act where the change is in relation to an occupational disease that is an infection caused by a communicable viral pathogen. Such regulations must otherwise be held for a 90-day waiting period after deposit under the *Regulations Act* before coming into effect. On July 22, 2020, the board of directors approved amendments to Schedule 1 to add a presumption for infections caused by communicable viral pathogens, which are the subject of a BC-specific emergency declaration or notice. The Schedule 1 amendments were to come into effect on October 26, 2020 but following the amendment to section 238 the board of directors on August 19, 2020 amended the effective date of the Schedule 1 amendments to August 20, 2020; and,
 - Section 268 (“Requests for Review”) (formerly section 96.2) was amended by repealing section 268(2)(i) that prohibited the Review Division from hearing requests for review of a Board decision to reopen or not to reopen a matter on application under section 125(1). The effect of this amendment is that a party may now either request a review of such a decision or appeal to WCAT within 90 days.
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The following two amendments came into effect on January 1, 2021

- Section 196 (“Permanent partial disability: exception to general rules”) (formerly section 23) was amended to require the Board to compare the two existing methods of assessing a permanent disability (loss of function and loss of earnings) and select the method that provides the higher award. Previously, the loss of function method was used unless exceptional circumstances existed. A transition provision provides that the Board and WCAT must apply the amendment after January 1, 2021 to any decision regarding a claim that was made, but not finally adjudicated, before that date, and that involves an injury, occupational disease or mental disorder that occurred before that date.
- Section 201 (“Payment period for worker disability compensation”) (formerly section 23.1) was amended to permit the Board to wait until after a worker has reached 63 years old to make a determination about whether the worker would retire later than 65. Also, the Board may, when making that determination consider the worker’s circumstances at the time of the determination. A transition provision provides that even if a determination under section 201(1) had already been made before January 1, 2021, another determination may be made after that date.

b) Practice and Procedure

WCAT’s *Manual of Rules of Practice and Procedure* (MRPP) was revised three times in 2020. Each revision came into force on the date of the revision.

The April 6, 2020 revision changed the references in the MRPP to the sections of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 to the revised section numbers in the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. There were no changes to the substantive content of the MRPP.

The August 14, 2020 revision followed the passage of the *Workers Compensation Amendment Act, 2020*, necessitating changes to the MRPP. Among other things, the Act removed restrictions on WCAT’s jurisdiction to decide matters arising under the *Canadian Charter of Rights and Freedoms* and the *B.C. Human Rights Code*. It empowered WCAT to clarify its final decisions on its own initiative. It also eliminated the requirement for the chair to obtain the consent of the parties to appoint a new vice chair to continue to hear and determine an appeal in the event that the original vice chair is unable to complete the vice chair’s duties. Related changes were made to items 2.7 (Panels), 3.1 (General), 3.4.1 (Constitutional Questions), 3.4.2 (Human Rights Code), 3.4.3 (*Administrative Tribunals Act*), 20 (Post-Decision), and 20.1.2 (Clarification).

The December 1, 2020 revision amended the following items of the MRPP:

- 3.2.2 Orders under the Occupational Health and Safety Provisions
- 3.4.1 Constitutional Questions
- 4.9 Workers Employed by the Government of Canada and Federal Government Bodies
- 5.1.3.1 Withdrawal of Incomplete Appeals
- 5.3 Service and Delivery of Documents
- 7.5 Appeal Method
- 8.2.2 Special Circumstances Precluded
- 8.5 Withdrawals
- 9.3.3 Panel Site Visit
- 11.4.2 Evidence Received in Confidence
- 11.5.2 Credibility
- 11.5.3 Reliability
- 14.2.4 Participation in Oral Hearings by Telephone
- 13.1.1 Submission Process
- 16.1.3.1 Reimbursement of Expenses for Expert Evidence
- 21.1.2 Duties of a Party.

The most significant changes concern item 18 “Certificates to Court”. The entire item was repealed and replaced. The new item updated and streamlined the process for obtaining determinations of the status of parties to court actions. It provided for a new application form that parties must use when applying for a certificate. It improved the orderly processing of applications by distinguishing between applications which are ready to proceed and applications in which the parties wish to defer providing evidence and submissions, by allowing parties to place applications “on hold”. In many other matters it provided greater guidance to applicants and respondents.

Some of the additional changes made by the revision are as follows:

- clarification that the party who raises a constitutional question may give the notice required by the *Constitutional Question Act*, but if the party fails or refuses to do so, then WCAT may file the required notice;
 - definition of an incomplete appeal as an appeal that has not met the requirements of section 292(2);
 - differentiation between modes of electronic transmission of documents (fax vs. other methods such as email), and what will generally be accepted as proof of delivery;
 - clarification that a WCAT will normally grant “a party’s request” for an oral hearing (from the previous “the appellant’s request”) for an oral hearing where the appeal involves a significant issue of credibility;
 - addition of a factor to consider when determining whether there were special circumstances that precluded the filing of the appeal on time, namely whether there was a clear and significant error of fact, law, or policy in the decision of which the appellant could not reasonably have been aware;
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- clarification that an appellant has a right to withdraw an appeal before a panel has been assigned and must request an extension of time if the appellant later wishes to pursue the appeal;
- changed the example of the kind of extraordinary circumstances in which evidence may be received in confidence;
- distinguished between the concepts of credibility and reliability;
- provided that the appellant may request additional time to make a submission of 14 days or less by telephone or in writing without making a request to extend the time for decision and that a request for more than 14 days will be treated as a request to extend the time for decision and the appellant must provide reasons for the request; and,
- Clarification of the considerations for exercising the panel's discretion to permit a party, representative, or witness to attend an oral hearing by telephone, videoconference, or other electronic means.

WCAT has placed on its website versions of the MRPP that show, for each revision, the changes made. They can be found at <https://www.wcat.bc.ca/home/about/#decisions> under Delegation and procedural decisions.

COSTS OF OPERATION FOR THE 2020 CALENDAR YEAR

Category	Cost
Salaries	8,879,322.58
Employee Benefits and Supplementary Salary Costs	2,298,508.81
Per Diem – Boards and Commissions	343,095.89
Travel	19,815.95
Centralized Management Support Services*	1,276,720.60
Professional Services	387,341.32
Information Technology, Operations and Amortization	1,347,304.19
Office and Business Expenses	348,413.03
Building Service Requests and Amortization	9,020.67
TOTAL EXPENDITURES	14,909,543.04

* These charges represent Building Occupancy and Workplace Technology Service charges.

WCAT MEMBERS

Section 234(2)(b) of the Act provides that the WCAT chair is responsible for establishing quality adjudication, performance and productivity standards for members of WCAT, and regularly evaluating the members according to those standards. Accordingly, the chair has established performance standards and a performance evaluation process. All vice chairs seeking reappointment go through the performance evaluation process. The performance of vice chairs will continue to be regularly evaluated on an ongoing basis.

EXECUTIVE AND VICE CHAIRS WITH SPECIAL DUTIES AS OF DECEMBER 31, 2020

Name	Position	End of Term
Andrew Pendray	Chair (OIC #780)	November 7, 2022
Debbie Sigurdson	Senior Vice Chair and Registrar	February 29, 2024
David Newell	Senior Vice Chair and Tribunal Counsel	January 31, 2025
James Sheppard	Vice Chair, Quality Assurance and Training	February 29, 2024
Beatrice K. Anderson	Vice Chair and Deputy Registrar	February 29, 2024
Hilary Thomson	Vice Chair and Deputy Registrar	October 15, 2025
Randy Lane	Vice Chair and Team Leader	February 28, 2025
Julie Mantini	Vice Chair and Team Leader	February 28, 2022
Susan Marten	Vice Chair and Team Leader	February 28, 2023
Terry Yue	Vice Chair and Team Leader	January 5, 2025

VICE CHAIRS AS AT DECEMBER 31, 2020

Name	End of Term	Name	End of Term
Luningning Alcuities-Imperial	February 28, 2024	Sherelle Goodwin	January 5, 2025
W. J. (Bill) Baker	February 29, 2024	Tamara Henderson	April 15, 2022
Anand Banerjee	October 15, 2025	Janice Hight	January 5, 2023
Hélène Beauchesne	March 31, 2022	Warren Hoole	September 30, 2024
David Bird	January 5, 2025	Nora Jackson	February 28, 2022
Sarwan Boal	February 28, 2023	Kevin Johnson	February 28, 2022
Dana G. Brinley	February 28, 2021	Cynthia J. Katramadakis...	March 31, 2024
Larry Campbell	October 15, 2023	Joanne Kembel	February 28, 2023
Grace Chen	January 5, 2023	Brian King	August 31, 2021
Lesley Christensen	February 29, 2024	Lori Leung	December 21, 2022
Melissa Clarke	September 30, 2025	Deborah Ling	June 21, 2023
William J. Duncan	February 28, 2022	Chad McRae	October 15, 2023
Scott Ferguson	June 21, 2021	Renee Miller	April 30, 2022

VICE CHAIRS AS AT DECEMBER 31, 2020			
Name	End of Term	Name	End of Term
Herb Morton	February 28, 2025	Simi Saini	March 5, 2022
Barbara Murray	October 15, 2023	Shelina Shivji.....	March 31, 2022
Elaine Murray.....	August 31, 2024	Debe Simpson.....	January 5, 2023
Paul Pierzchalski	December 21, 2022	Tony Stevens.....	February 28, 2023
Dale Reid	February 28, 2022	Andrew Waldichuk	April 30, 2024
Deirdre Rice	February 28, 2022	Teresa (Terri) White....	December 31, 2022
Guy Riecken.....	February 29, 2024	Sherryl Yeager.....	February 29, 2024
Ellen Riley.....	January 5, 2023	Lyall Zucko	January 5, 2025

VICE CHAIR DEPARTURES IN 2020	
Name	Departure Date or End of Term
Adam Doherty	November 20, 2020
Rob Kyle	February 29, 2020
Darrell LeHouillier	October 1, 2020
Tim Skagen	March 31, 2020