



ANNUAL
2022
REPORT

CHAIR'S MESSAGE

On behalf of the Workers' Compensation Appeal Tribunal (WCAT), I am pleased to present our 2022 Annual Report. This report gives you an overview of our operations, our plans, and our people.

WCAT continued to operate as a high-volume tribunal, receiving 2,389 appeals and applications from workers and employers and issuing 2,221 summary and merit decisions. You can find more details about our operations in the first section of this report.

In 2022, WCAT continued to adjust to the impacts of the COVID-19 pandemic and the demands resulting from the increasing complexity in our appeals and applications, changes in the demographics of the labour force, and increasing expectations from our stakeholders to access our tribunal through technological means. We discuss these challenges and trends in more detail in this report.

As WCAT looks forward to 2023, in my second year as WCAT's chair, I will lead the ongoing process of reflection and learning and we will be mindful of:

- The need to ensure our processes are people-centred, accessible, and responsive
- Our commitment to continue the journey of reconciliation with the Indigenous Peoples of the province and act to reduce barriers to participation
- Our ability to leverage technology and respond to changing conditions so that our processes remain efficient and accessible, as well as to ensure that the conduct of our oral hearings is safe and efficient for WCAT, its stakeholders, and the public
- The need to maintain strong communication lines and relationships within the workers' compensation system in order to support WCAT's business goals while maintaining our independence
- The essential requirement to maintain cohesion and collegiality amongst all staff in the new hybrid model of work
- The continuing drive to modernize our space, systems, and tools to support vice chairs and staff and
- The need to retain knowledgeable and competent professional vice chairs (decision makers) and staff representative of our province's diversity, while responding to the challenges of changing labour force demographics.

We discuss our plans for the future in more detail in the middle section of this report, as well as details on the costs of our operation.

As I have stated in our 2021 report, WCAT's greatest strength lies in its people. I extend my deep gratitude to my colleagues at WCAT for their ongoing perseverance, dedication, and support for each other in 2022. I am also grateful for their support as I deepened my knowledge about WCAT's operations and mandate in the first year of my leadership role. Through their commitment, the vice chairs and staff of WCAT ensured that the workers, the employers, and the public in BC were served within our guiding principles. You can find more details on the vice chairs at the end of this report.



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Chair

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OUR 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 and applications brought by workers, employers, and dependants of deceased workers 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 prohibited 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.

As the external independent appeal body in the worker's compensation system, WCAT strives to provide:

- predictable, consistent, and efficient decision making
- independent and impartial decision making
- succinct, understandable, and high-quality decisions
- consistency with the *Workers Compensation Act* (the Act), policy, and WCAT precedent decisions
- transparent and accountable management
- communication within the workers' compensation system while safeguarding WCAT's independence
- accountability through performance management
- appropriate balance between efficiency (timeliness and stewardship of scarce resources) and effectiveness (quality decision making)
- prompt, knowledgeable and responsive client service and
- interpretative guidance for the workers' compensation system.



WCAT is an independent appeal tribunal external to WorkSafeBC.

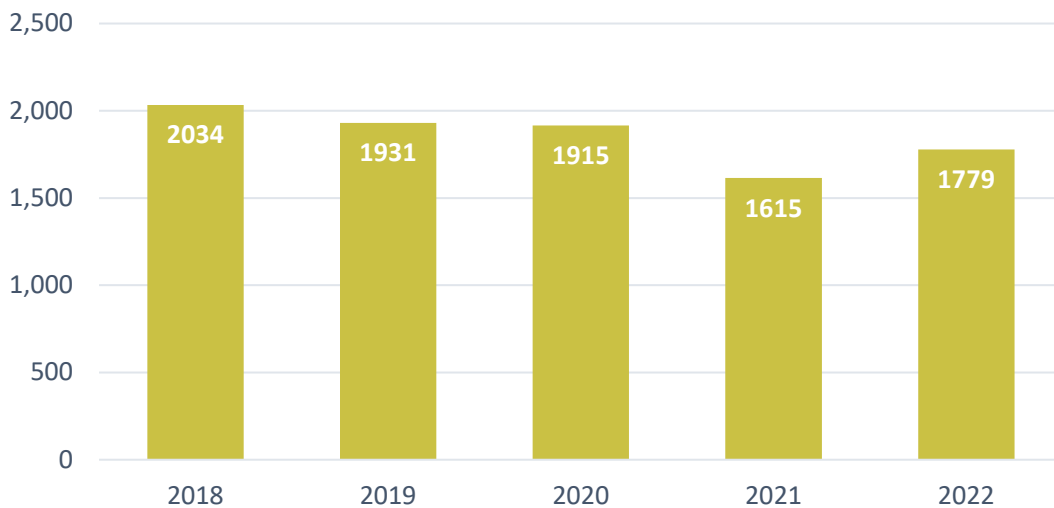
STATISTICS

Overview of Appeals Inventory

This section contains three charts providing a high-level overview of the status of our appeals inventory for 2022. WCAT records appeals by their date of initiation.

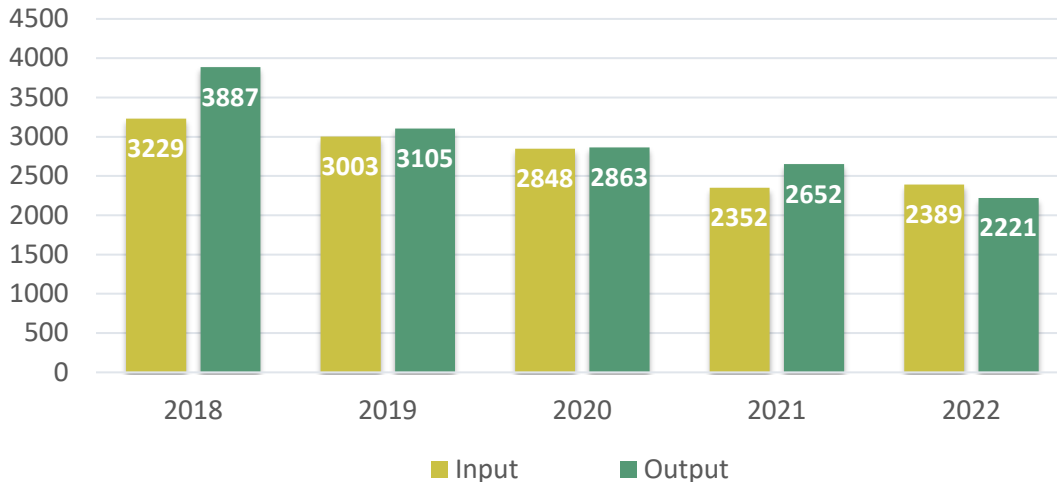
WCAT's total active inventory at December 31, 2022 was 1,779 appeals compared to 1,612 at the end of 2021. This represents a 10% increase.

NUMBER OF ACTIVE APPEALS IN INVENTORY



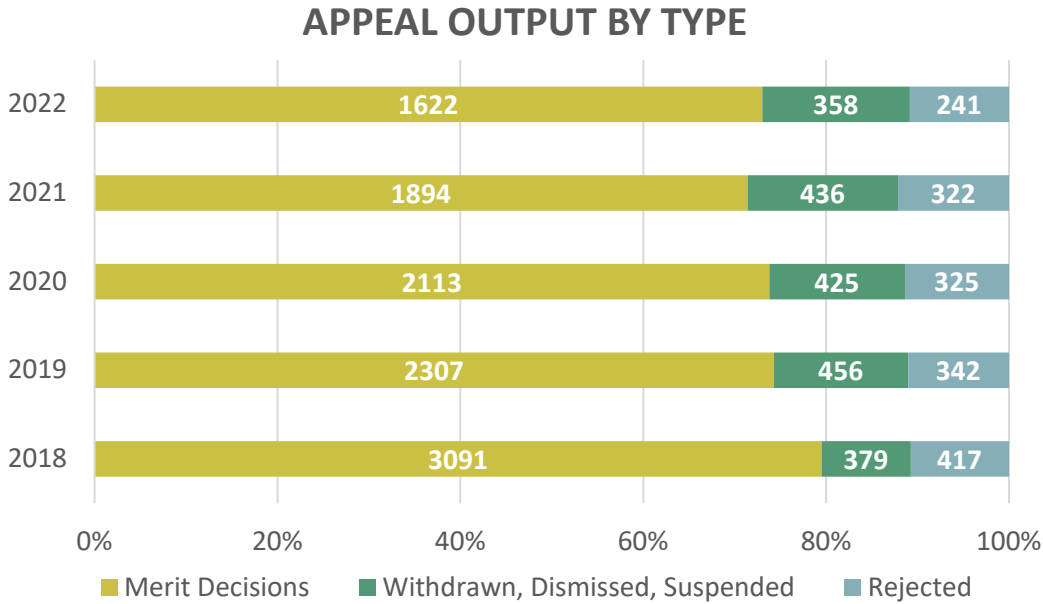
WCAT received 2,389 new appeals in 2022 representing a 2% increase from the 2,352 new appeals received in 2021.

TOTAL ANNUAL INTAKE AND OUTPUT



Based on an analysis of historical intake and appeal rates, WCAT’s forecast for 2023 intake will be similar to 2022. New appeals and applications are expected to be between 2,200 and 2,600.

The output of summary and merit decisions and determinations in 2022 was 2,221, a 16% decrease from 2021. The chart above shows the changes in WCAT’s overall output over a five-year period. Most of the output, as shown below, consisted of merit decisions.



More analysis of WCAT’s intake, inventory, and output is contained in the trends and plans section of this report.

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 (or disclosure) relating to the decision under appeal. The appeal submission process begins when WCAT receives those records 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 based on 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 2022, considering the various situations described above.

Notice of Appeal	All Appeals	Appeals With No Additional Time
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).
290	219	114

Appeals and Applications

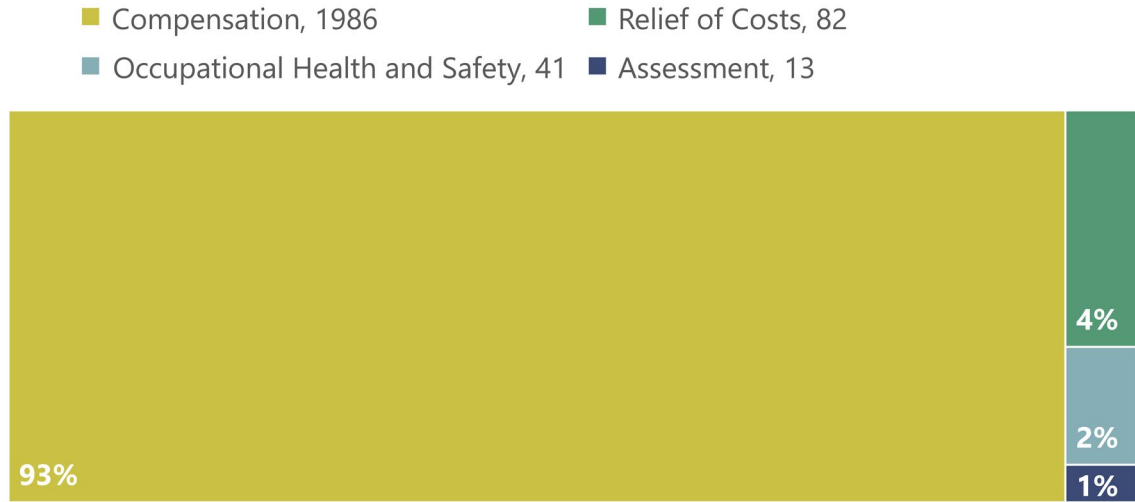
Appeals and applications to WCAT comprise:

- 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.

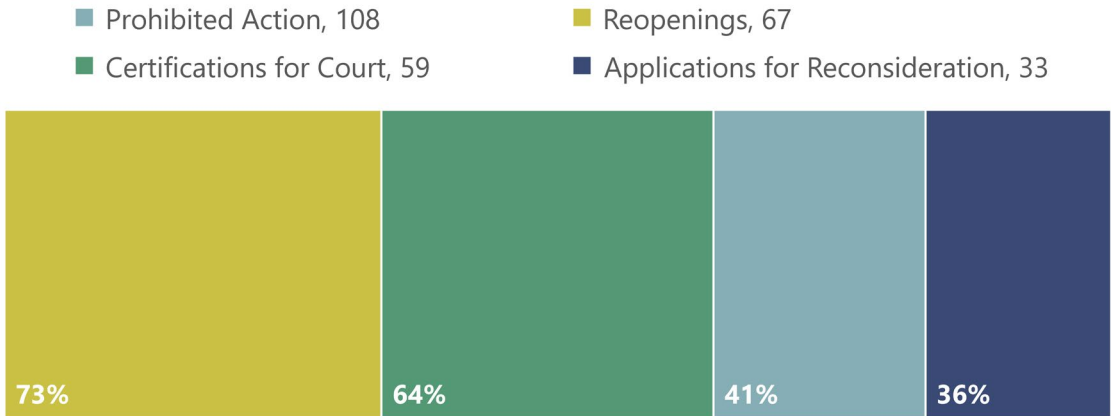
a) Type of Appeal

Of the 2,389 appeals received by WCAT in 2022, 89% arose from decisions of Board review officers and 11% were appeals to WCAT that came directly from Board officers. Most WCAT appeals relate to compensation matters. The two charts on the next page show the breakdown of the types of appeals and applications received in 2022:

APPEALS FROM REVIEW DIVISION BY TYPE



DIRECT APPEALS AND APPLICATIONS BY TYPE



b) Merit Decisions

WCAT made 1,622 merit decisions on appeals and applications in 2022, 32 of which concerned applications for certificates for court actions. The remaining 1,590 merit decisions concerned appeals from decisions of review officers or Board officers.

c) Merit Decision Outcomes

WCAT has the statutory authority to vary, confirm, or cancel the appealed decision or order.

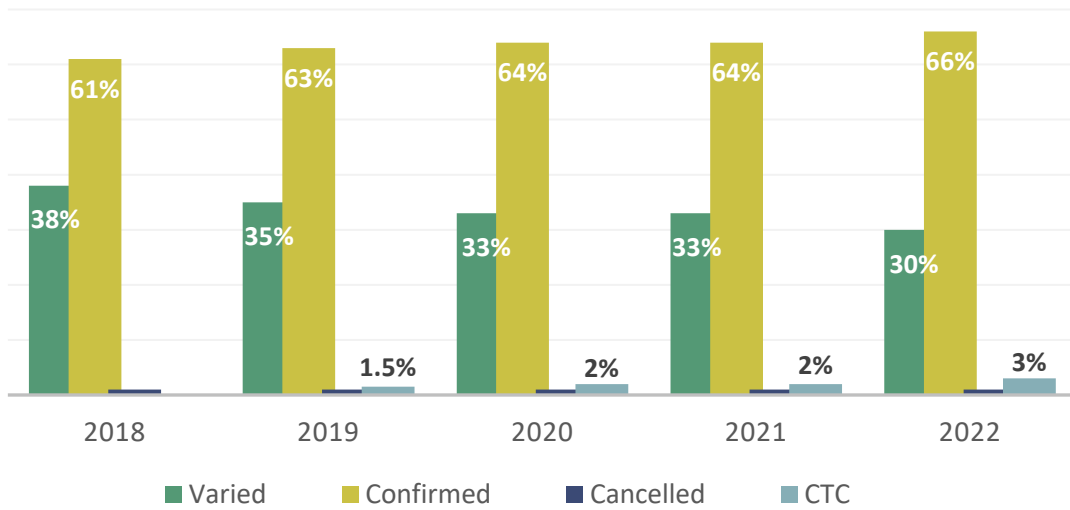
“Vary” means that WCAT changed the previous decision in whole or in part. As a result, whether WCAT has fully granted the remedies requested by the appellant on all issues arising under the appeal or merely changed a minor aspect of the previous decision, the decision is considered as “varied.”

“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.

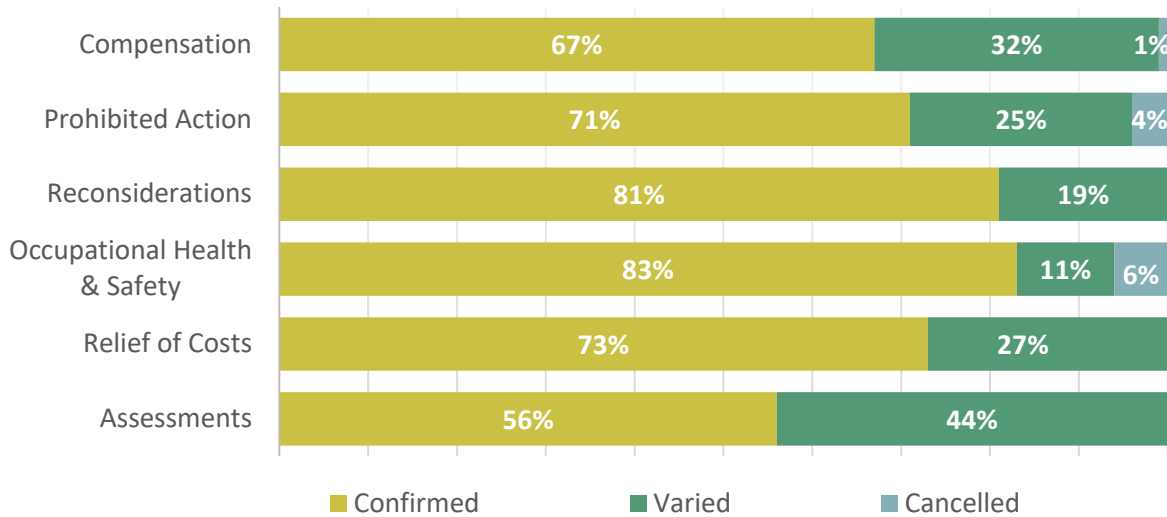
Overall, in 2022, 30% of WCAT appeals were varied, 66% were confirmed, 1% were cancelled, and 3% were certifications to court. The chart below shows WCAT’s merit decision outcomes over a 5 year period.

MERIT DECISION OUTCOMES

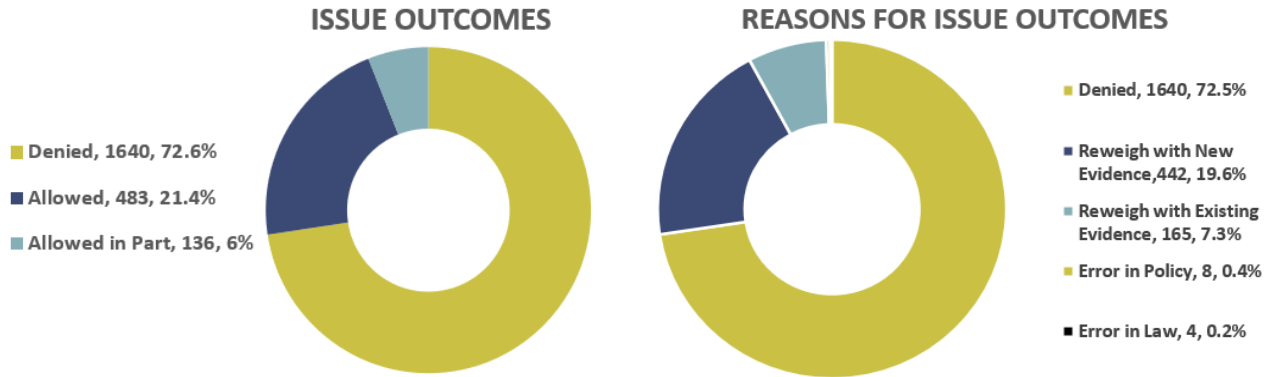


The graphic below shows the decision outcomes for different types of appeals in 2022:

TYPES OF MERIT DECISION OUTCOMES



An appeal may raise numerous issues. WCAT may allow or deny the appeal on each issue. In 2022, WCAT decided 2,259 issues that arose out of the 1,622 appeals that led to merit decisions.

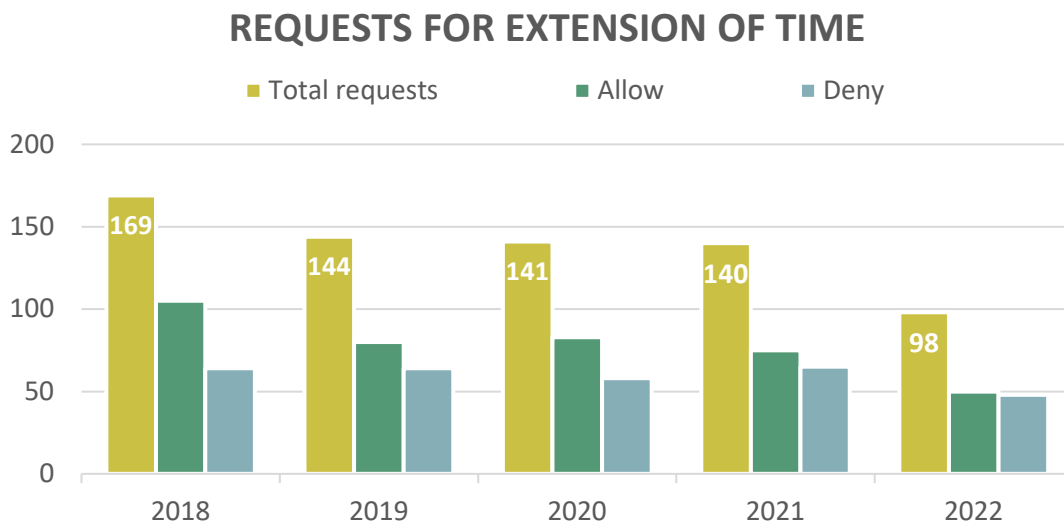


a) Top Five Issue Groups for Appeals

Appeal Issue	Merit Decisions	Percentage of Total Decisions	Allowed / Allowed in Part	Denied
Compensation For Personal Injury	667	29.5%	25.3%	74.6%
Permanent Partial Disability	255	11.3%	36.8%	63.1%
Temporary Partial Disability	218	9.6%	29.8%	70%
Occupational Disease	193	8.5%	27.9%	72%
Health Care	126	5.6%	35.71%	64.29%

b) Requests for Extensions of Time

WCAT decided 98 requests for extensions of time to appeal; allowing 50 and denying 48.



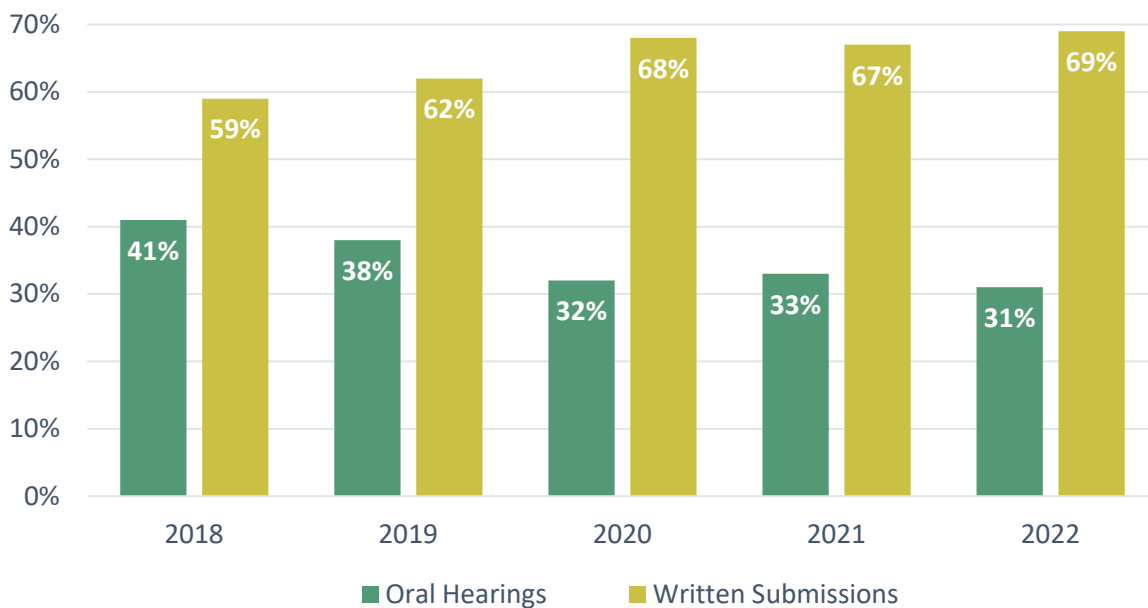
Appeal Paths

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 (written submissions).

The graph below shows that most appeals and applications decided in 2022 were decided by way of review of the written submissions.

ORAL HEARINGS vs. WRITTEN SUBMISSIONS



Method of Oral Hearing

In 2022, WCAT held 463 oral hearings. Due to the COVID-19 pandemic and ongoing efforts to stop the spread of COVID, WCAT continued to limit the number of in-person oral hearings, as well as travel outside the Lower Mainland, in the first half of 2022. In the second half of the year, WCAT began holding more in-person hearings, primarily in the Lower Mainland. Overall, WCAT continued to conduct the majority of oral hearings by way of videoconference in 2022. The following table shows the number of oral hearings by method of hearing for 2022:

METHOD OF HEARING

■ Videoconference, 405 ■ In-person, 32 ■ Teleconference, 26



Appellants and Applicants

A majority (77%) of the appeals and applications that WCAT received in 2022 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 in those appeals is always the employer.

Type of Appeal or Application	APPELLANT / APPLICANT		
	Worker	Employer	Dependant
Compensation	83.4%	16.1%	0.5%
Direct Reopening	91%	9%	0%
Prohibited Action	55.6%	44.4%	0%
Occupational Health and Safety	7.3%	92.7%	0%
Reconsideration	81.8%	15.2%	3%

Representation

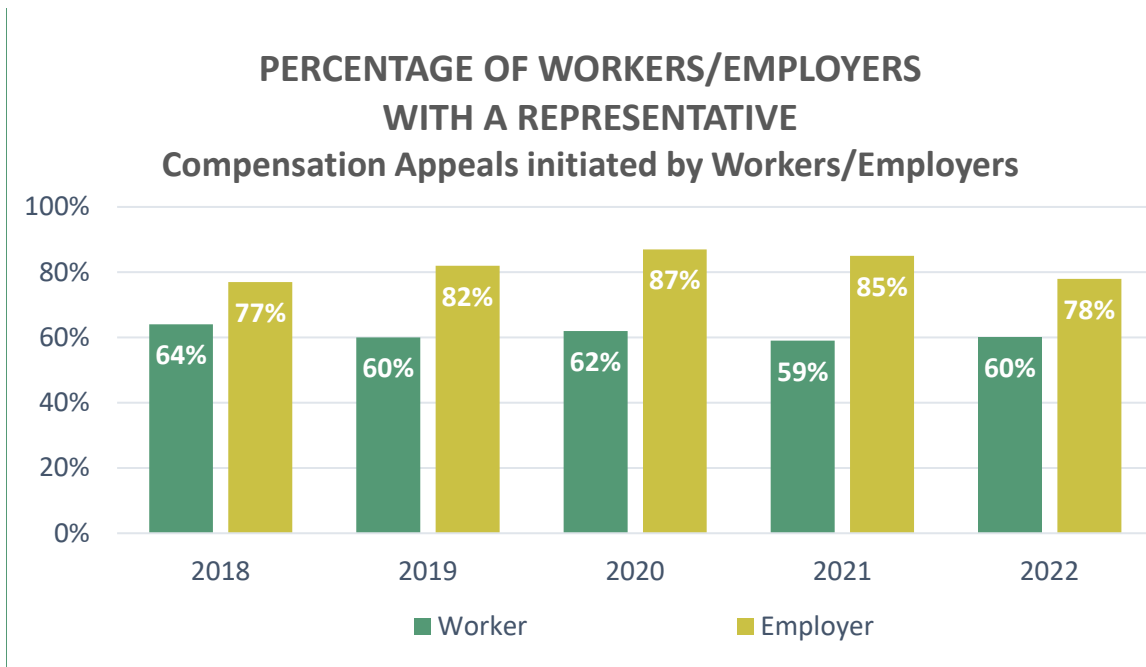
The following table shows the percentage of appeals and applications for which the appellant or applicant had a representative. Representatives may be workers' or employers' advisers, lawyers, consultants, family members, or friends.

Type of Appeal or Application	PERCENT REPRESENTED WHERE APPELLANT / APPLICANT IS:		
	Worker	Employer	Dependant
Assessment	0%	26.3%	0%
Compensation	59.7%	78.2%	60%
Reconsiderations	38.7%	33.30%	0%
Prohibited Action	26.5%	71.4%	0%
Occupational Health and Safety	20%	66.7%	0%
Relief of Costs	0%	91.7%	0%

As compensation appeals make up the vast majority of WCAT's intake, the chart below looks at representation rates for workers and employers when they initiated compensation appeals.

In 2022, the representation rate amongst appellant workers on compensation appeals increased by 1% from the previous year.

As well, the representation rate for appellant employers on compensation appeals decreased by 7% in 2022.



NOTEWORTHY DECISIONS

Noteworthy WCAT decisions:

- provide significant commentary or interpretative guidance regarding workers' compensation law or policy
- comment on important issues related to WCAT procedure
- 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 while considering an appeal or application.

WCAT decisions, including noteworthy decisions and their summaries, are publicly accessible and searchable on the WCAT website at <http://www.wcat.bc.ca/home/search-past-decisions/>.

Summaries of New Noteworthy Decisions in 2022

(a) A1801096 - Decision Date: April 27, 2020

Panel: M. Clarke

Section 303(5) of the Act does not apply in an appeal respecting survivor's benefits; consequently, the standard of proof is the balance of probabilities.

Policy item #C3-22.00 of the Rehabilitation Services and Claims Manual, Volume II (RSCM II) requires the panel to look at compensable consequences broadly and from a common sense point of view. Policy item #C3-22.40 RSCM II states that in the case of suicide, death benefits are payable if it is established that the suicide resulted from a compensable injury. **The fact that the worker was 100% disabled by chronic pain and Complex Regional Pain Syndrome in combination with Pain Disorder and Major Depressive Disorder, together with the fact that the worker stopped taking prescribed pain and antidepressant medications, led to the logical conclusion that his death was a consequence of his compensable conditions.** The panel preferred an expert opinion based on an accurate understanding of the facts over an opinion that considered only the worker's psychological condition.

(b) A1900153 - Decision Date: February 28, 2019

Panel: W. Hoole

An employer appealed the decision of the Review Division confirming a citation penalty levied against it under section 196.1 of the Act. The WCAT panel considered, as a preliminary question, whether WCAT had jurisdiction to hear the appeal.

The WCAT panel interpreted section 239 of the Act using the "modern principle" of statutory interpretation.

Reading the words of section 239 of the Act, read in their ordinary and grammatical sense, and in harmony with the scheme and object of the Act, the panel concluded that **WCAT does not have jurisdiction to hear an appeal from the decision of a review officer concerning a citation penalty imposed under section 196.1 of the Act.**

The panel found support for its interpretation of section 239 in a comparison of sections 196.1 and 196(1) of the Act. Section 239(2) of the Act generally deprives WCAT of jurisdiction over occupational health and safety orders unless an exception applies. The only exception identified is in relation to section 196(1), which concerns administrative penalties. While section 196(1) refers to a refund of an administrative penalty following a successful appeal to WCAT, section 196.1 does not contain a similar reference. Additionally, section 196(1) refers to a defense of due diligence, but section 196.1 does not, suggesting the Legislature did not intend citation penalties to attract the same level of independent adjudicative oversight as administrative penalties. Finally, the panel considered its interpretation of section 239 to be in harmony with the scheme and object of the Act, particularly the Board's health and safety mandate.

(c) **A1902087- Decision Date: June 23, 2020**

Panel: W. Hoole

The Act requires a claim for compensation to be filed with the Board within a specified period. That requirement is satisfied if a claim is filed within the prescribed period, even if the claim is subsequently withdrawn without being adjudicated. In this case the worker filed a claim in 2009 for psychological conditions which he attributed to stressful workplace events between 2004 and 2008. The claim was filed within the prescribed time period. The worker withdrew the claim before it was adjudicated. The worker filed another claim for psychological conditions in 2018. The Board denied the worker's 2018 claim but accepted the psychological conditions under his 2009 claim. The Review Division varied the Board's decision and accepted the conditions under the 2018 claim. On appeal to WCAT, the employer argued that the worker was barred from pursuing his 2009 claim by time limits under the Act. The WCAT panel held that **if an application for compensation is filed in time, the time limits cease to apply, even if the claim is subsequently withdrawn.**

(d) **A2002831- Decision Date: March 16, 2021**

Panel: C. McRae

A single instance of interpersonal conflict between co-workers in which profanity was used but not directed personally, and in which there was neither explicit nor implicit threat towards the worker, may be rude and unprofessional, but does not rise to the level of a significant stressor. In this case, a co-worker, having completed a distressing telephone call, yelled at the worker, using profanity. The co-worker was immediately remorseful, apologized, and tried to explain his behaviour. The panel noted that the profanity was not directed personally at the worker, and there was no threat of violence. The panel found that the co-worker's behaviour was rude and unprofessional, but not threatening or abusive, and did not rise to the level of a significant stressor. As a result, the worker's claim for a mental condition was denied.

(e) **A2101225 - December 22, 2021**

Panel: W. Hoole

The occupational health and safety provisions of the *Canada Labour Code* apply to a worker employed by a municipality in British Columbia but performing a vital or integral role in a federally regulated enterprise. The occupational health and safety provisions of the Act do not apply to such a worker.

The worker was employed by a municipality in British Columbia to manage other municipal employees working as civilian support staff in a detachment of the Royal Canadian Mounted Police (RCMP). The RCMP provided police services to the municipality under a Municipal Police Services Agreement with the Province of British Columbia. The worker made a prohibited action complaint under the Act. The sole issue before WCAT was whether provincial or federal legislation applied.

Following *Tessier Ltee. v. Quebec (Commission de la sante et de la securite du travail)*, 2012 SCC 23, the panel concluded that provincial health and safety laws do not apply to federal undertakings and may not apply to provincial workers who perform a vital or integral role in a federal undertaking. In this case, the panel found that the worker performed a vital or integral role in the RCMP detachment. The worker performed a management function which was significant in the detachment's practical ability to carry out its duties. Additionally, the worker's complaint concerned alleged conduct by the RCMP, thus the genesis of the complaint was within the federal undertaking rather than the provincial sphere of the municipality's operations.

(f) A2102128 – June 10, 2022

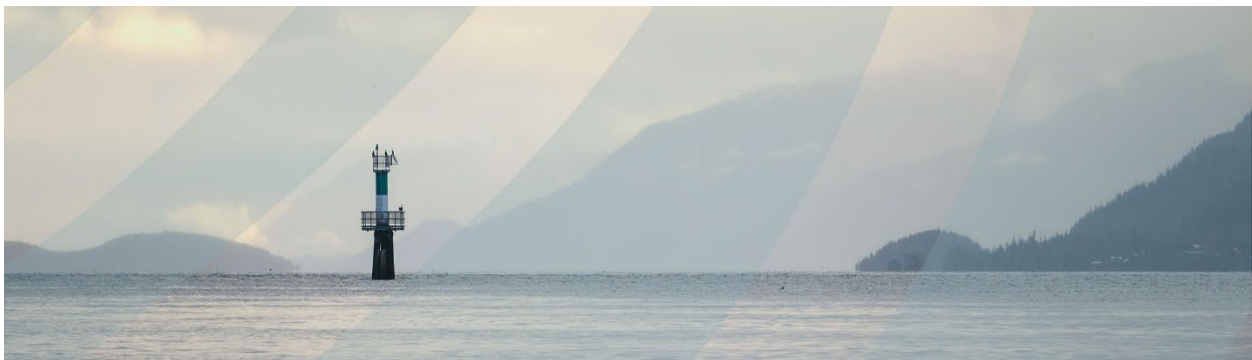
Panel: A. Banerjee

A determination that a worker is capable of some competitive employment, in the context of assessing a functional impairment award, is not inconsistent with a subsequent decision entitling the worker to a 100% loss of earnings award. The task in assessing a functional impairment award is to assess the specific functional effects of the accepted permanent conditions on the worker's earning capacity, without considering whether a suitable job would be available to the worker. In contrast, assessing the worker's vocational ability for the purpose of assessing a loss of earnings award requires determination of whether the worker would be able to obtain suitable employment. That requires consideration of the worker's objective circumstances, including the effect of non-compensable factors such as age, education, language ability, and pre-existing conditions. A worker determined to be entitled to a functional award of 45% of total disability may yet be found to be competitively unemployable and entitled to a 100% loss of earnings award.

(g) A2102407 – March 30, 2022

Panel: W. Hoole

Section 310(1) of the Act permits the WCAT to reconsider a decision in a completed appeal if new evidence has become available. An application for an extension of time to appeal is a preliminary process without which an appeal cannot proceed. A WCAT decision denying an application for an extension of time to appeal is not a "completed appeal" within the meaning of section 310(1) of the Act. Since WCAT's authority to reconsider a decision is limited to a decision in a completed appeal, **WCAT does not have authority to reconsider a decision denying an extension of time to appeal.**



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 second-stage is engaged and the original decision is reconsidered.

The analysis in the first and second stages of the process differs depending on the grounds argued by the party applying for a reconsideration.

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
- determine 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
- determine that there is new evidence that meets those criteria, and reconsider the original decision based on the new evidence
- on an application to reconsider a WCAT decision based on a jurisdictional error, 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 2022, WCAT issued 32 stage one reconsideration decisions. Of the stage one decisions issued, six 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	12	6	6
New Evidence	6	0	6
Both Grounds Alleged	14	0	14
TOTAL	32	6	26

JUDICIAL REVIEW DECISIONS

Judicial Review Applications

In 2022, WCAT was served with 27 applications for judicial review of WCAT decisions and 3 appeals of decisions of the Supreme Court of British Columbia in judicial reviews.

Judicial Review Decisions

A party may apply to the Supreme Court of British Columbia for judicial review of a WCAT decision.

A judicial review is not an appeal and does not involve an investigation into the merits of the 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 remedy requested in the underlying WCAT decision will therefore be granted only

in limited circumstances. The usual remedy is for the court to void the WCAT decision in whole, or in part, and refer the matter back to WCAT to be decided afresh.

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 of the decision. Under certain circumstances, the court may extend the time for applying for judicial review.

The following court decisions were made in 2022 and in relation to judicial review proceedings of WCAT decisions and related appeals. Only those court decisions made in writing or transcribed (if the decision was given orally) are included. A complete list of court decisions involving WCAT are provided on WCAT's website, with summaries, at [Judicial review decisions](#).

a) *Brown Bros. Motor Lease Canada Ltd. v Workers' Compensation Appeal Tribunal*, 2022 BCCA 20

The flight crew of a U.S.-based airline were injured in a car accident while being driven from their hotel to the airport in Vancouver. The crew were on a layover, taking required rest between flights and were scheduled to fly from Vancouver to the United States. Each of the crew members was an American citizen. Each commenced litigation in British Columbia suing those they alleged to be responsible for the accident and their respective damages.

The defendant driver was in the course of his employment when the accident happened, and the defendants pleaded that the action was barred by section 10 of the Act (now section 127) on the basis that the plaintiffs were also in the course of their employment at the time of the accident. The plaintiffs applied to the WCAT under section 257 (now section 311) for a determination of whether their injuries arose out of and in the course of their employment.

WCAT determined, through application of policy item AP1-2-1 of the *Assessment Manual* (now policy AP1-4-1), that the Act did not apply to the plaintiffs because they had no attachment to British Columbia industry. The policy provides, among other things, that the Act will not apply to some workers for constitutional reasons, namely that there is an insufficient attachment to B.C. The B.C. Supreme Court dismissed the defendant's petition for judicial review.



The B.C. Court of Appeal dismissed the defendant's appeal. The Court of Appeal applied a standard of patent unreasonableness to WCAT's decision, finding that WCAT was engaged in a policy interpretation question and not an exclusively constitutional analysis. The Court found that neither the reasons nor the result of the decision were patently unreasonable.

b) *Tran v British Columbia (Workers' Compensation Appeal Tribunal)*, 2022 BCSC 936

WCAT determined that the petitioner's right leg strain had resolved and that he was not entitled to a permanent disability award. On judicial review, the court noted that the petitioner did not address in any specific way how WCAT's decision was patently unreasonable and that he was simply dissatisfied with the outcome and believed that he was treated unfairly. The court found that the evidence clearly supported the result and there was nothing in the WCAT decision that was patently unreasonable. In respect of the petitioner's arguments that documents were manipulated and WCAT is the "big sister" of the Board, the court found that he was essentially alleging institutional bias and a lack of integrity in one form or another, but there was "absolutely no substance to his complaints". The petition was dismissed.

c) *Stilz v. Workers' Compensation Appeal Tribunal*, February 11, 2022, unreported

The petitioner injured her thumb at work in 2013. The petitioner had surgery in 2016, described in the operative report as right thumb carpometacarpal (CMC) joint arthroplasty. The petitioner sought an increased permanent partial disability award to recognize several conditions, including the right thumb CMC joint arthroplasty, which the petitioner argued was equivalent to replacement of the CMC joint. The WCAT panel allowed the petitioner's appeal in part, increasing her award for several conditions, but denied entitlement to an award for permanent right thumb CMC joint arthroplasty, stating in its reasons for decision that although the worker had undergone arthroplasty, it did not involve the right thumb CMC joint.

On judicial review, WCAT consented to setting aside the part of the decision concerning right thumb CMC joint arthroplasty. WCAT conceded that part of the decision was patently unreasonable because it failed to provide an analysis or justification for why the joint arthroplasty is not a joint replacement.

d) *Edens v. Workers Compensation Appeal Tribunal, 2022 BCSC 556*

The petitioner injured his back and other parts of his body in a 1991 work-related motor vehicle accident. Many years later he asked the Board to reopen his claim for adjudication of a compression fracture of his T11 vertebra that he says was caused by the accident. The Board denied his request. WCAT found that he did suffer a compression fracture in the accident but that it had been temporary, and he was therefore not entitled to a permanent disability award.

On judicial review, worker's counsel raised two arguments. One was that because the Permanent Disability Evaluation Schedule (PDES) has an entry for thoracic compression fractures it is deemed that compression fractures are always permanent, at least to some degree, and therefore always subject to evaluation. The other argument was that the medical-legal report commissioned for the appeal was the best and most reliable evidence concerning the worker's conditions.

The court declined to consider the argument concerning PDES because it had not been put to the panel, and in fact counsel on the appeal had acknowledged the possibility that the T11 fracture had indeed healed. Accordingly, it was not open to the worker to make a contradictory argument on judicial review. As for the medical evidence, the court will not reweigh evidence on a judicial review. The petition was dismissed.

e) *Grewal v British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 594*

This judicial review decision dismissed three judicial reviews brought by the petitioner in respect of two WCAT decisions and one decision of the former Appeal Division. The first WCAT decision dismissed a reconsideration application brought by the petitioner on the basis of procedural fairness and new evidence. It was a reconsideration of a WCAT decision that found the petitioner's right shoulder conditions were not compensable. The second WCAT decision under review determined that WCAT did not have the jurisdiction to consider the petitioner's claim for interest on his retroactive income continuity benefits, as a prior Board and two Appeal Division decisions had already been made denying interest (one of which was the Appeal Division decision being reviewed in this proceeding).

The court found that the WCAT reconsideration decision was neither patently unreasonable nor procedurally unfair. The court rejected the submission that WCAT failed to consider certain evidence, as the panel could not be expected to explicitly refer to every piece of potentially relevant evidence. The court found that the petitioner was given a fair hearing as he was provided opportunities to submit relevant evidence. The panel's conclusion that the evidence submitted on reconsideration did not satisfy the statutory test for new evidence was not patently unreasonable.

In respect of the WCAT interest decision, the court found that it was not patently unreasonable as the earlier Board decision was a clear decision on interest and provided adequate notice to the petitioner. Further, the petitioner had failed to address WCAT's finding that an appellate body had confirmed the Board's decision.

In respect of the Appeal Division decision, the court found that the petitioner was out of time as the decision was made in 2001, the Appeal Division no longer exists, and the petitioner had failed to provide an adequate explanation for the lengthy delay in filing the petition.

f) *Aghili v British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 717*

The petitioner filed a claim for compensation after the expiry of the one-year limitation period. The Board decided that his explanations for the delay did not amount to special circumstances that precluded him from filing in time. On appeal, the WCAT panel upheld this decision.

On judicial review, the petitioner tendered new evidence in an affidavit. However, the court noted that the general rule is that new evidence is not admissible on judicial review. The court considered the affidavit as argument, but not as evidence. The court rejected his argument that WCAT's use of the word "panel" led him to expect that his case would be determined by more than one person. The court noted that if a government official makes representations within the scope of their authority to an individual about an administrative process, the government may be held to its word so long as the representations are clear, unambiguous, and unqualified. The court found that WCAT had made no such representations.

The petitioner alleged bias, submitting that the panel denied his appeal as a cost-saving measure. The court rejected this submission, noting that claims costs are the responsibility of the Board, not WCAT, and there was no evidence to support any of his allegations of bias. The petitioner also asserted for the first time on judicial review that the panel should have retained an independent health professional (IHP) to assist in assessing the psychological aspects of his circumstances.

However, the court noted that generally a petitioner will not be permitted to raise an issue on judicial review that could have been, but was not, raised in the appeal. Furthermore, retaining an IHP is a matter of discretion, and discretionary decisions of a tribunal are owed deference by a reviewing court and in any event, there was no evidence of a patently unreasonable exercise of discretion.

In respect of the merits of the WCAT decision, the panel had noted that the petitioner had two prior claims with the Board and was therefore not completely unfamiliar with the claims process. During the material time period, he was able to pursue a complaint against his landlord with the Residential Tenancy Branch in a timely way; he was able to apply for employment insurance to assist with the gaps in his income; and he made an application for workers' compensation for another injury. The court found that there was evidence before the panel to support her conclusions, and therefore they were not patently unreasonable. The petition was dismissed.

g) *Campbell v. Worker's Compensation Appeal Tribunal, 2022 BCSC 862*

This was a worker status certification decision under section 257 of the Act (now section 311). WCAT found that a logging company employee (the petitioner) who was on his way home when his pick-up truck collided with a logging truck was a worker and that his injuries arose out and in the course of his employment. He was left with no memory of the day of the accident. WCAT also determined that the action of the defendants also occurred in the course of their employment. The petitioner argued before WCAT that there was circumstantial and medical evidence to show that prior to the accident he had consumed cannabis and alcohol, and this indicated that he was not in the course of his employment. In its decision WCAT referred to a white paper on cannabis that was obtained by the panel but not disclosed to the parties. The paper noted that a positive test for cannabis does not necessarily indicate impairment.

The court noted that held that there had been no unfairness to the petitioner in this regard since his submissions to WCAT had asserted that he was not impaired at the time of the accident. The court also rejected the petitioner's argument that as the other parties had not brought formal applications requesting determinations about their status, WCAT lacked the jurisdiction to make such determinations, or was procedurally unfair in doing so. Further, the court found that the judicial review could not succeed as the petitioner did not challenge alternative findings made by WCAT that were also determinative. The petitioner has appealed this decision to the B.C. Court of Appeal, but the appeal has not yet been heard.

h) Maloney v. British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 957

The Board set the petitioner's long term wage rate based on the daily rate paid to crew members of the fishing boat he worked on. Following an unsuccessful appeal of his wage rate decision to WCAT, the petitioner successfully pursued a small claims action against his employer for unpaid wages including bonus earnings based on the size of the seasonal catch. He then applied to WCAT for reconsideration based on new evidence, relying on the small claims trial record and order to pay. WCAT held that the small claims documents were not "new" within the meaning of the Act as they were derivative of facts already in existence at the time of the original appeal.

The court found that WCAT's decision was not patently unreasonable. Inconsistent evidence about any entitlement to a bonus was in the record long before the WCAT decision and the petitioner appeared to have done nothing to address the discrepancy. The petitioner was not entitled to litigate one issue at a time. Deciding the appeal without an oral hearing did not prevent the petitioner from advancing evidence on the issue.

i) Pion v. British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 1112

WCAT denied the petitioner's claim for compensation for an aggravation of a pre-existing shoulder condition. The court concluded that WCAT's decision was neither patently unreasonable nor procedurally unfair. It was not patently unreasonable for the panel to not obtain an IHP report as it was for WCAT to determine whether the evidence was sufficiently reliable; to rely on the Board Medical Advisor (BMA) report, given the BMA had all the relevant medical records before her; or to not consider the "critical point" question in item C3-16.00 of the Board's RSCM, as the injury was not a deteriorating condition. WCAT is not required to evaluate the appeal and notify the parties in advance of any deficiencies.

WCAT was not procedurally unfair for not holding an oral hearing. The petitioner did not explain why fairness required permitting him to repeat before WCAT under oath the same evidence that he had already given under oath during the investigation stage. Also, the petitioner did not request an oral hearing and a finding of unfairness would invoke the policy concern that arises if a party is permitted to challenge the fairness of a process only after WCAT has decided against them. Opting for a written proceeding should not provide a free ground of judicial review. The petition was dismissed. The petitioner has appealed the decision to the B.C. Court of Appeal but it has not yet been heard.

j) Maung v British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 1558

The petitioner brought a prohibited action complaint against his employer after his employer terminated his employment. He was employed as a banquet server when he was assaulted by his supervisor, who grabbed and shoved him. The employer disciplined the supervisor, but the petitioner was dissatisfied with the employer's response and circulated emails that the employer considered to be inappropriate. The petitioner also informed management, for the first time, that he had previously witnessed the supervisor commit a theft of food from the employer. The employer issued a written warning to the petitioner citing him for failing to report the theft, and for sending inappropriate emails. The petitioner refused to sign a written acknowledgment of the warning and continued to raise concerns. The employer terminated his employment.

In the prohibited action complaint, the Board found that the employer had rebutted the petitioner's case. On appeal, WCAT found, as the Board had, that the petitioner had made a basic case of a prohibited action, but the employer had rebutted the petitioner's evidence of a causal connection between the termination and those actions of the petitioner which could be said to be the exercise of an occupational health and safety right or obligation. During the WCAT proceeding, the panel had found certain email threads submitted by the petitioner to be irrelevant, refused to order the employer to produce security footage of the assault or meetings, and proceeded with the oral hearing despite an objection from the petitioner that it had been set for only one hour. The oral hearing took one and a half hours, and the petitioner was offered an opportunity to make post hearing submissions.

On judicial review, and in response to the petitioner's arguments, the court found that the panel was not procedurally unfair: the video evidence was not probative to disputed issues; the email threads lacked relevance and any issue in this regard could only be raised by the employer; the petitioner was unable to point to any impingement on his ability to provide submissions either orally or in writing; the petitioner did not request an adjournment despite being asked by the panel; and there was no evidence at all of bias on the part of the panel. The court also found that WCAT's decision was not patently unreasonable. There was evidence to support the panel's findings and there was no basis to the petitioner's argument that a standard of proof other than the civil standard should have been applied. The petition was dismissed. The petitioner has appealed the decision to the B.C. Court of Appeal but it has not yet been heard.

k) Macovei v. Workers' Compensation Appeal Tribunal, July 18, 2022, unreported

The petitioner was the surviving spouse of the deceased worker. The worker sustained compensable injuries to his right knee in 1989 and again in 1998. Chronic pain and depression were accepted on the worker's claim as compensable consequences of his knee injuries. The worker died in 2019 of heart failure secondary to viral pneumonia. The petitioner sought survivor's benefits, arguing that chronic pain and depression led to the worker's sedentary lifestyle, which contributed to the development of heart disease, and that heart disease contributed to heart failure.

On appeal to WCAT, the Board disclosed to the petitioner the contents of the workers 1998 claim file, but due to an oversight did not disclose the contents of the worker's 1989 claim file. The WCAT panel had access to consider the contents of both claim files. The WCAT panel denied the petitioner's claim for survivor's benefits, relying on a medical opinion that cardiac issues and diabetes were unlikely to be more than trivial contributors to the worker's heart failure and death.

The medical opinion was premised on the assumption that the worker was healthy at the time of injury; however, the opinion was ambiguous as to whether the physician was aware that both the 1989 and 1998 injuries were compensable.

On judicial review, WCAT consented to setting aside the decision on the grounds that the Board's failure to disclose the contents of the 1989 claim file resulted in a breach of procedural fairness, and that the WCAT panel's failure to address the ambiguity in the key medical opinion was patently unreasonable.

D) Dhillon v. Workers' Compensation Appeal Tribunal, 2022 BCCA 251

The petitioner was a care aide who helped clients in their homes. She was injured in a motor vehicle accident that occurred when she was driving home, after leaving her last client of the day. The defendant was allegedly responsible for the motor vehicle accident. He was a tow truck driver who had towed a vehicle from one body shop owned by his employer to another and was heading home when the accident occurred. In a determination made pursuant to section 257 of the Act (now section 311), WCAT found that both were workers, they were both traveling employees, and they were both in the course of their employment when the accident occurred.

On judicial review, the court found that the panel's interpretation of Board policy was not patently unreasonable and the panel did not simply adopt the reasoning of previous decisions, but determined that those decisions were consistent with its own reasoning. Accordingly, the B.C. Supreme Court found the WCAT decision was not patently unreasonable and dismissed the petition.

The B.C. Court of Appeal dismissed the petitioner's appeal. With respect to the work status of the petitioner, the court found that WCAT had carried out a reasoned consideration of policies #C3-14.00 and #C3-19.00. WCAT found that the specific provisions of policy #C3-19.00 concerning traveling employees were found to support a more general provision of coverage for a traveling employee throughout their workday (in the absence of a major deviation for personal reasons). The court found that it could not be said that WCAT's conclusions were irrational or could not be supported on the evidence.

With respect to the work status of the defendant, WCAT accepted his evidence that he had towed a vehicle from one body shop owned by his employer to another and was heading home when the accident occurred. The petitioner argued that viewed reasonably, the evidence was incapable of supporting the conclusion that the defendant had been in the course of his employment when the accident occurred. She argued that WCAT had accepted the defendant's evidence as credible, in the absence of any documentary or other corroborative evidence that he was coming home from a towing job. Further, the evidence was that the defendant had engaged in suspicious conduct immediately after the accident. The court found that it was not open to it to reweigh the evidence that had been before WCAT. There was some evidence to support WCAT's conclusion regarding the defendant. It was for WCAT to weigh the evidence before it and draw the inferences it thought appropriate. WCAT's conclusion was not patently unreasonable.

m) Pastega v. Insurance Corporation of British Columbia, 2022 BCSC 2264

The petitioner was diagnosed with a mental disorder. She alleged that she had been bullied by her co-workers, both in the workplace and through social media, and that that had caused her mental disorder.

WCAT found that the diagnostic requirement in section 5.1 (now section 135) of the Act was met, and that the petitioner had identified certain events (including the social media activities) as stressors. WCAT found that two episodes of social media activity constituted bullying and harassment, and therefore significant stressors. The panel accepted that these posts were, at least in part, about the worker and events in the office that took place that day. However, the panel found that the social media posts did not arise in the course of the petitioner's employment and so denied the claim.

The panel relied on several factors, including that the use of the social media platform was not part of the job duties of the petitioner, or her co-workers, and was not for the benefit of her employer, and that while she viewed some of the posts during work hours while in the office she did so on her personal phone. The panel inferred that the use of the social media platform at work, on work computers, was either expressly prohibited by the employer or discouraged. Further, there was no evidence that the co-workers were using work computers to post the social media comments and the posts were created after regular work hours.

On judicial review the court found that it was not patently unreasonable for WCAT to interpret the Act and related Board policies in such a way that bullying and harassment by social media was excluded from coverage, if the social media was used outside of work time, and outside the workplace. It was not clearly irrational, nor did it border on the absurd, to find that personal conduct on semi-private platforms, when not related to job functions, was excluded from coverage under the Act.

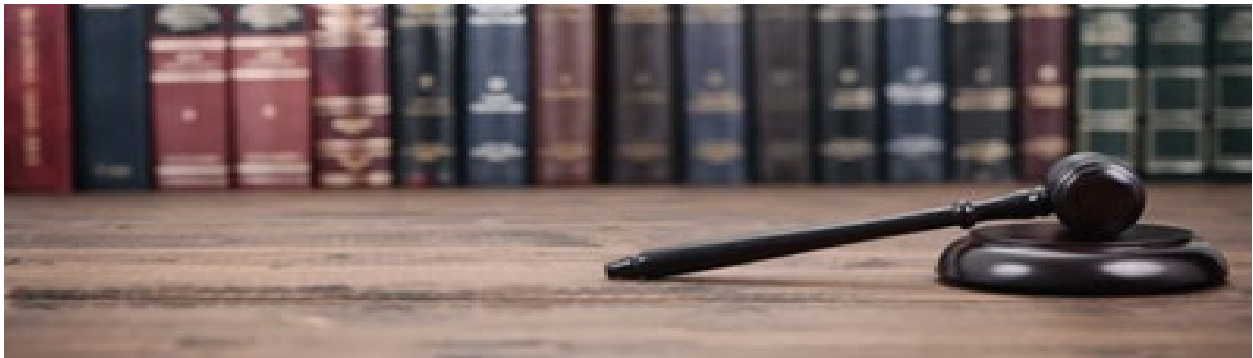
The court also found that it was not patently unreasonable for the panel to have inferred that the employer either expressly prohibited or discouraged social media use at work, as the petitioner's use of her phone to check for posts was some evidence to support the panel's finding. The court also found that it was not patently unreasonable for WCAT to have considered policy C3-14.00 even though the policy is predominantly intended to apply to personal injuries.

Lastly, the court found that in finding that the petitioner did not need to address the postings as part of her employment obligations, the WCAT panel was simply finding that there was no work-related need for the petitioner to address the social media posts. WCAT did not make a finding about whether the worker had an obligation to report bullying and harassment pursuant to section 116 of the Act (now section 22) and the associated health and safety policies. The petition was dismissed.

n) Ahluwalia v. British Columbia (Workers' Compensation Appeal Tribunal), 2022 BCSC 2139

The Board and WCAT denied the petitioner's claim for compensation for a mental disorder that she alleged was due to bullying and harassment by her managers, as well as the petitioner's prohibited action complaint against her employer.

On judicial review, the court confirmed that an assessment of whether a work-related stressor is significant has both subjective and objective elements. The petitioner argued that the employer's investigation of the alleged harassment was flawed. While allowing that the employer could have perhaps handled some aspects better, the court noted that WCAT's role was not to determine the quality of the employer's investigation or an employer's compliance with record-keeping regulations, but rather to assess the evidence to determine whether bullying, harassment, or prohibited actions occurred. The court also rejected the petitioner's argument that WCAT should have given less weight to the employer's evidence because the employer did not actively participate in the WCAT proceedings, as the employer was not required to participate, apart from responding to WCAT's request for documentation, which it had done. The petition was dismissed.



RESPONSE TO THE TRUTH AND RECONCILIATION COMMISSION'S CALLS TO ACTION

WCAT initiated its response to the Calls to Action (CTA) of the Truth and Reconciliation Commission in 2019. In 2022, WCAT continued to act on its commitment to respond to the Calls to Action of the Truth and Reconciliation Commission.

WCAT's internal CTA Committee met five times in 2022 to monitor and chart the progress of WCAT's work on reconciliation. In April, the CTA Committee hosted a Think Tank of prominent Indigenous lawyers and administrative decision-makers to discuss the future of reconciliation at administrative tribunals. The CTA Committee also continued its work recruiting Indigenous doctors and psychologists to work as independent health professionals.

In 2022, WCAT hired an Indigenous co-op student from the University of Victoria Indigenous Law program. The student conducted important research on the question of how administrative tribunals can work to implement reconciliation and the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) through the application of social context evidence specific to the Indigenous participant in our decisions. The student also assisted in creating a database of WCAT's decisions related to the CTA initiatives for reference and data collection.

WCAT and the CTA Committee continued to liaise with other administrative tribunals, both provincial and federal, to discuss initiatives for reconciliation.

In 2022, all vice chairs took training on issues concerning Indigenous Peoples. Vice chairs assigned to hear these appeals also took additional training on cultural competency. WCAT added four additional vice chairs to its CTA team. These vice chairs also met regularly with the navigators to assist with this program.

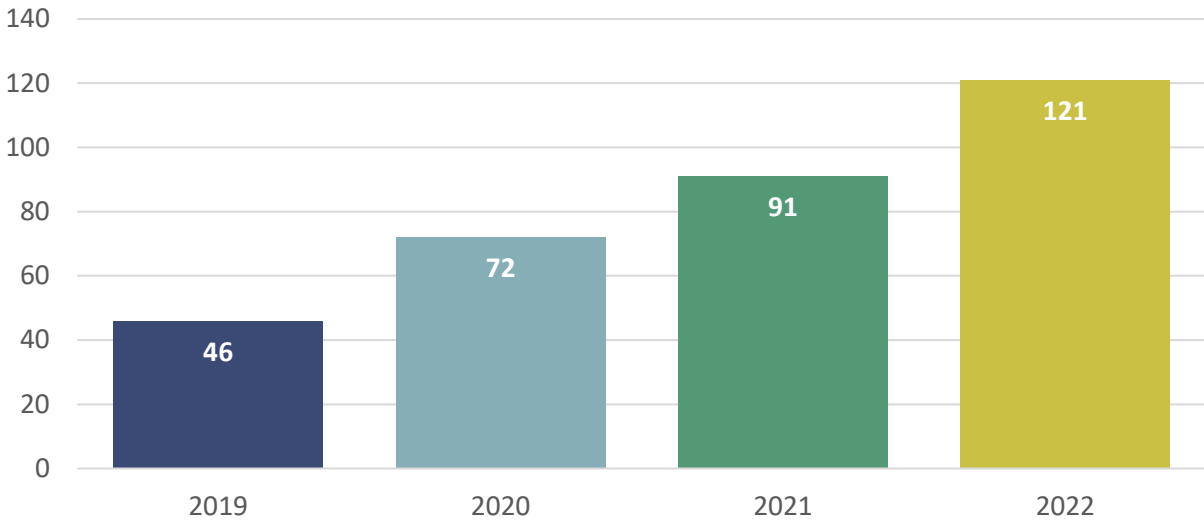
In each appeal involving a self-identified Indigenous party, a WCAT navigator worked with the party to ensure that they were treated in a welcoming and culturally sensitive manner, and to ensure that WCAT's appeal process was open and responsive. WCAT's navigators worked to build a relationship of trust that is culturally appropriate. The navigators help throughout the entire appeal from explaining the appeal process, to detailing how to get access to file disclosure. They also assist with accessing oral hearings, including finding suitable hearing locations and noting cultural processes a party may wish to have included in the hearing. In 2022, the navigators assisted in organizing two Indigenous blessings and ceremonies at oral hearings. WCAT continued to solicit feedback on the navigator program and oral hearing experience from parties who have self-identified as Indigenous. The CTA Committee regularly reviews that feedback with a view to continuously improving its services and eliminating institutional barriers.

Members of the CTA team visited the Indigenous Provincial Courts in North Vancouver and New Westminster in June, August, September, November, and December 2022 to view and understand the different approaches to reconciliation within the judicial system.

The inventory of appeals involving a party who has self-identified as Indigenous the end of 2022 was 124.

In 2022, WCAT received 121 appeals reflecting an increase of 59% from 2021. WCAT's output of CTA appeals in 2021 was 91.

CTA APPEALS RECEIVED BY YEAR



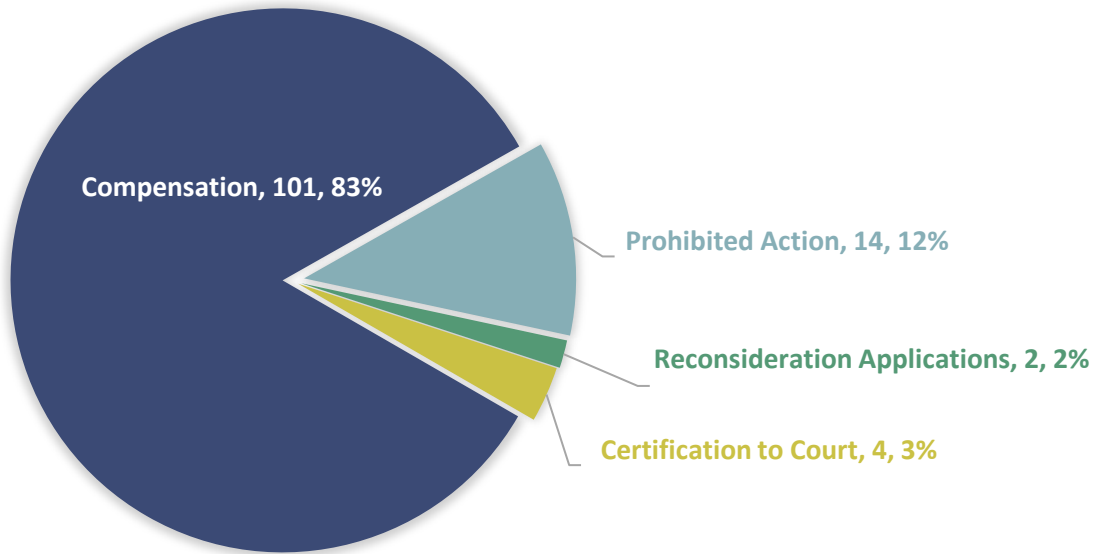
The following graph illustrates which party is self-identifying in these appeals..

INDIGENOUS PARTIES AT WCAT



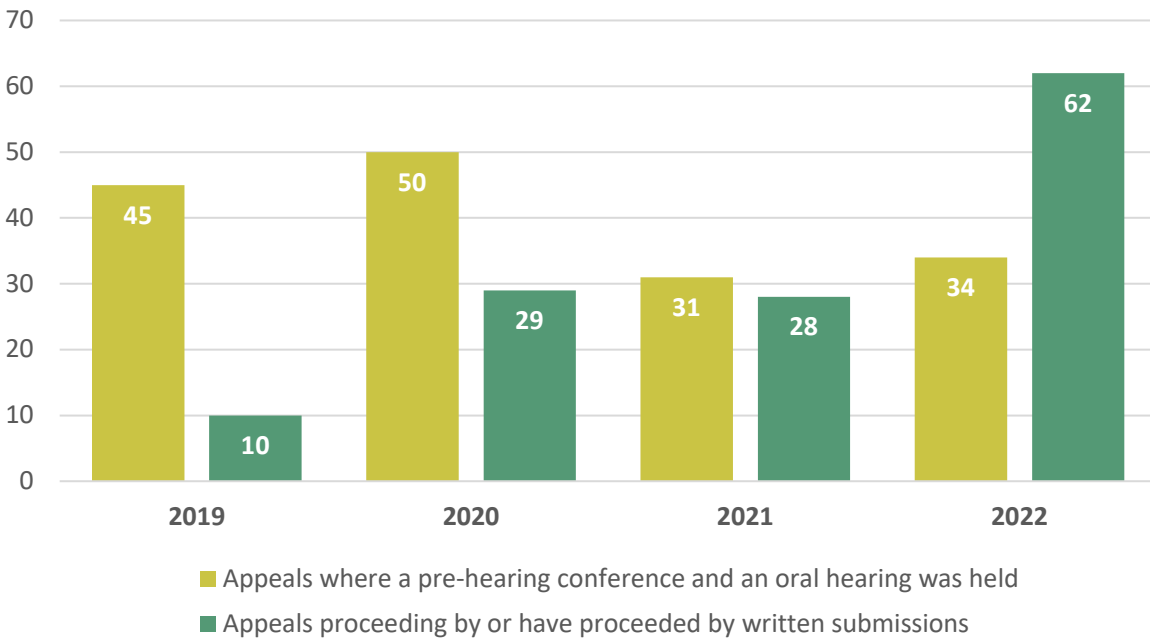
The range of matters involved in these appeals for 2022 is shown below:

WCAT MATTERS ON CTA APPEALS 2022



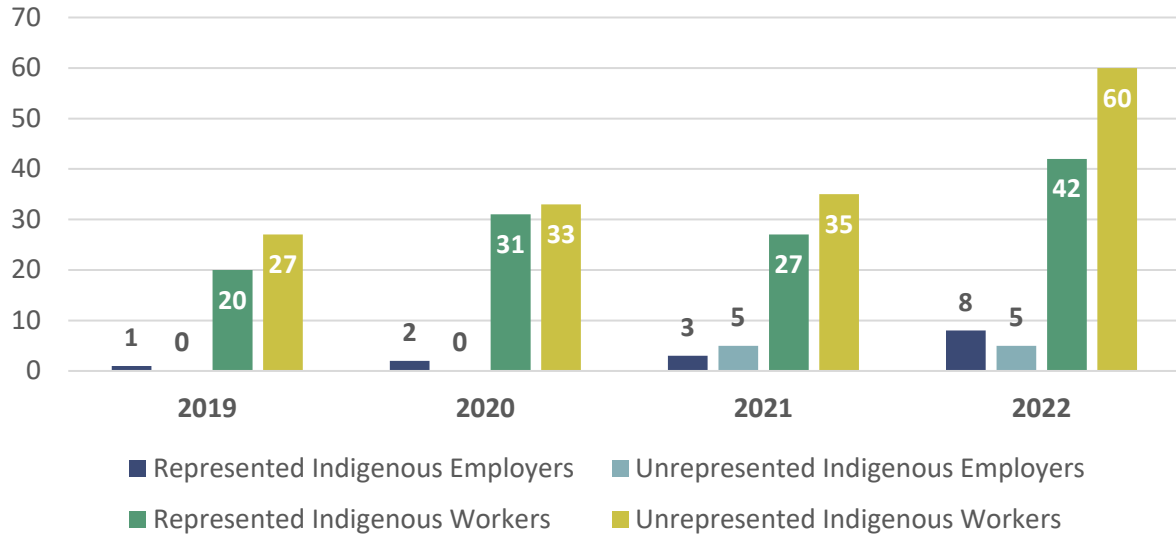
The graph below shows how the appeals were conducted over the last four years.

METHOD OF CTA APPEALS



The chart below shows the differences in representation rates for Indigenous parties.

REPRESENTATION AT WCAT ON CTA APPEALS



EDUCATION

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.

The following is a list of the sessions in 2022 that WCAT participated in:

January 26	• Canadian Association of Workers Advisors and Advocates
February 3	• Compensable Consequences
February 25	• Providing Effective Representation at WCAT
March 3	• Trauma-Informed Practice
April 7	• Skillfully Responding to Distress Part 1
April 21	• Hearing Loss Training
May 5	• Suicide Response Workshop Part 2
May 26	• Concussive / Post-Concussive Syndrome
June 2	• InterOrganizational Conference Resiliency/Wellness/Self Care and Working in a Virtual World (Improving Digital Media Habits for Mental Health and Productivity)
June 16	• COVID-19
August 4	• Preventative Medicine
September 8	• Charter – Practice and Procedure
September 15	• Fair Practices Office / Role of the Case Manager
October 6	• Judicial Reviews
October 18	• Chronic Regional Pain Syndrome (CRPS)
November 8 & 15	• National WCAT Symposium
November 17	• Common Mental Disorders – an overview
December 12	• Tribunal Reconciliation

In addition, many WCAT vice chairs attended the virtual BC Council of Administrative Tribunals (BCCAT) Annual Education Conference from October 19 to 20, 2022, with the first day of the conference broadcast from Tsawwassen First Nation. Some vice chairs also attended the Continuing Legal Education (CLE) Society's Administrative Law Conference on October 21, 2022 which was also held virtually.

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.

In 2022 WCAT attended meetings with the following groups where we provided information about important initiatives, general and operational updates, and received feedback about gaps in our processes and initiatives.

- BC Federation of Labour
- Canadian Association of Counsel to Employers (CACE)
- Employer's Forum
- Employers' Advisors Office (EAO)
- Workers' Advisors Office (WAO)
- Workers' Compensation Advocacy Group (WCAG)

We will continue attending to our stakeholders' interests and working with them to improve WCAT's services.

UPDATE ON LEGISLATION AND PROCEDURES

1. Statutory Changes in 2022

a) *Workers Compensation Amendment Act, 2022* (Bill 5) – March 10, 2022

Division 8.1 – Licensing in Relation to Asbestos Abatement was added to Part 2 of the Act. This division requires asbestos abatement contractors to be licenced. Section 288(2) of the Act was amended to exclude decisions respecting a licence under Division 8.1 from appeal to WCAT.

b) *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41) – November 24, 2022

Sections 301 and 302 of the Act were amended to permit an employer, worker, or dependant of a deceased worker to make a written request that a WCAT panel retain a health professional to provide independent assistance or advice in an appeal. The presiding member of a panel that receives such a request must retain a health professional if the medical condition of the worker is at issue in the appeal, and the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal. These amendments come into force on April 3, 2023.

Other amendments in Bill 41 not directly affecting WCAT include:

- 1) Amendments to section 73 to prohibit an employer or supervisor from impeding or dissuading a worker from making or maintaining an application for compensation or receiving compensation.
 - 2) Adding *Division 3.1 – Return to Work and Other Duties in Relation to Injured Workers* to Part 4 of the Act.
-

- 3) Adding section 231.1 to require payment of interest on compensation determined to be payable by the Review Division or WCAT.
- 4) Adding Division 7 to Part 8 to create a fair practices commissioner.

2. Practice and Procedure

WCAT's *Manual of Rules of Practice and Procedure* (MRPP) was amended to recognize that WCAT has jurisdiction to decide constitutional questions, including application of the *Canadian Charter of Rights and Freedoms*, and to apply the British Columbia *Human Rights Code*. Item #5.1.6 was added to the MRPP to provide Rules and guidance with respect to:

- who may raise constitutional questions, and when constitutional questions should be raised
- the order in which WCAT may address constitutional issues or apply the *Human Rights Code*
- compliance with the *Constitutional Questions Act*
- disclosure to and submissions from the Attorney General of Canada and Attorney General of British Columbia.

Item #12.8 of the MRPP was amended to make it a rule that normally, a panel will only ask a physician employed by the Board to clarify or interpret medical evidence they have previously provided.

3. Precedent Panel

No precedent panels were appointed under section 285(6) of the Act. No precedent panel decisions were issued and no precedent panel appeals were in progress in 2022.

4. Section 304 Lawfulness of Policy Referrals

- a) A2002987 (December 9, 2021)

A panel referred the issue of the lawfulness of portions of policy C3-14.10 and policy 115.30 of the RSCM II to the chair of WCAT. The appeal concerned an employer's entitlement to relief of costs from its employer's experience rating assessment. The panel found there was no rational basis in the policies for the first ten weeks of claim costs to be excluded from relief of costs for a claim involving immediate death that was outside of the employer's control.

The panel withdrew the referral to the chair following amendment of the impugned policies by the board of directors of the Board.

- b) A2200622 (August 30, 2022)

In an appeal concerning the calculation of an administrative penalty levied against an employer for a high risk safety violation, the panel interpreted section 95 of the Act as giving the Board discretionary power to impose an administrative penalty on an employer. The panel interpreted policy item P2-95-2 in the Prevention Manual as excluding any discretion in relation to characterizing certain designated safety violations as "high risk". The panel considered that subordinate legislation such as binding policy may validly guide a statutory discretion but cannot extinguish or otherwise improperly fetter that discretion. As a result, the

panel referred to the chair of WCAT its conclusion that policy P2-95-2 is patently unreasonable to the extent that it mandates a finding that any of the six safety violations listed in Part A of the policy are automatically “high risk” violations.

The chair considered that inviting participation from the workers' compensation community would assist in the full consideration of the issue. The chair invited participation from groups representing the interests of workers and employers, under section 297(2)(g) of the Act. At the time of publication, the chair's decision was pending.

TRENDS AND PLANS

Trends

Based on the statistical and other information gathered in 2022, WCAT notes the following trends:

1. Slight increase in intake in 2022; forecast for 2023 for similar level of intake

In the 2021 annual report, it was noted that WCAT's intake of appeals in 2021 represented the lowest level of intake since 2017. However, in 2022, there was a slight increase of 2% in intake over the previous year. This is likely attributable to the slight increase in the Review Division's confirm rate (up 2% from 2021).

However, when looking at the 5-year period, indications are that the trend towards lower intake will continue. The Review Division's output has decreased since 2018. At the same time, the nature of that output has changed with an increase in the Review Division's vary rate, as well as an increase in the rate of returning matters to the Board for a new decision.

As such, WCAT's forecast for 2023 intake will be similar to 2022. New appeals and applications are expected to be between 2,200 and 2,600.

WCAT will continue to communicate with WorkSafe BC (including the Review Division) to monitor key figures to determine our annual forecast of new appeals.

2. Increased inventory due to increased complexity and changes in Vice Chair complement

WCAT's active inventory increased by 10% over the previous year. This is likely attributable to (1) the increased complexity of the appeals being heard at WCAT (which is also reflected in slightly longer time periods to complete appeals), (2) the decrease in the numbers of vice chairs due to changing labour force demographics and (3) decreased output compared to the previous year. WCAT intends to address the second and third factors by appointing more vice chairs in 2023. WCAT also intends to study further in 2023 the nature of the complex appeals being heard. Principally, this will involve considering how the volumes of complex appeals (such as mental disorders, prohibited actions, appeals involving self-identified Indigenous parties, Charter issues, etc.) have increased or not.

3. Method of Hearing – majority continue to be heard by way of review of the written submissions; where hearing held, majority are by videoconferences

The percentage of appeals being decided by way of review of the written submissions reached its highest level in the last 5 years. As this 5-year period included the pandemic, it is difficult to draw any conclusions about trends in this area.

Where hearings were held, there remained a strong use of videoconferences rather than in-person hearings. However, the number of in-person hearings increased by 6% in 2022 when compared to the previous year. WCAT will continue to monitor if the shifts in the pandemic in 2023 result in any increases in in-person hearings.

4. Good percentage of representation continues on compensation appeals but areas for improvement noted

The statistics show that there continues to be a good degree of representation on compensation appeals (whether for worker or employer appellants or applicants). In 2022, workers were represented in 60% of the worker-initiated compensation appeals (a 1% increase compared to the previous year). As well, employers were represented in 78% of the employer-initiated compensation appeals.

However, WCAT will continue to monitor the percentage of appeals and applications with unrepresented appellants or applicants. Forty percent of workers are unrepresented in the compensation appeals they initiated. Twenty-two percent of employers are unrepresented in the compensation appeals they initiated (a 7% increase from 2021). As well, the majority of self-identified Indigenous workers continue to be unrepresented before WCAT. WCAT will also continue to bring these statistics on representation to the attention of our stakeholders and other agencies and groups within the legal system.

5. Marked increased in volume of appeals involving self-identified Indigenous parties

As noted above, there was a marked increase of 59% in the volume of appeals where parties self-identified as Indigenous. This is a strong indicator of the need for the navigator program.

Plans

The WCAT chair is responsible for the general operation of WCAT. Section 280(2)(c) of the Act also outlines that the chair's responsibilities include developing a three-year strategic plan and an annual operations plan for the appeal tribunal.

WCAT's strategic plan for 2021 to 2023 focuses on continuing to achieve WCAT's guiding principles, while remaining responsive to the external and internal conditions affecting WCAT's operations.

Some of the highlights of our plans include:

1. Electronic communication and launch of web-based portal

WCAT plans to continue to move to electronic communication as the default mode of communication for appeal participants. We are continuing the work begun in 2021 on the launch of a web-based portal. The first phase of the portal will be available to appeal participants with active appeals or applications in the spring of 2023. The second phase of the portal will be available to appeal participants filing new appeals or applications with WCAT.

The portal will allow WCAT to exchange information about appeals in real time, reducing the need for submitting and managing paper documents, emails, and phone enquiries. Appeal participants will be able to log in 24/7 to see the status of an appeal in detail, upcoming submission due dates,

and oral hearing notifications. Appeal participants will receive email notification of any new WCAT documents, letters, and decisions without the use of encrypted emails. Finally, the portal will allow the secure submission of documents through an uploading feature.

2. Hybrid oral hearings

In 2022, WCAT began to offer hybrid oral hearings in Richmond where some parties participated in-person and others participated via videoconferencing technology. WCAT will also explore this option for hearings conducted outside of Richmond. As well, WCAT will provide training and support for virtual and hybrid oral hearings to WCAT vice chairs and to external parties.

3. Modernizing our space, systems, and tools

The WCAT office in Richmond will complete its renovations in 2023. This will make the use of space more efficient, as all vice chairs and administrative staff are working under a hybrid model.

In 2022, WCAT successfully upgraded its case management system. In 2023, we plan to enhance the Scheduler enterprise system, use MS Teams voice, and migrate to the use of Microsoft Office 365.

4. Professional development and support

In 2022, WCAT was able to hold more meetings, gatherings, and professional development sessions in-person. While the pandemic opened up networking and educational opportunities across BC and Canada, the need for in-person collaboration and support was present. In 2023, WCAT intends to improve its professional development program, support for its social committee, and its discussion of topics to support the wellness of vice chairs and staff.

5. Training, knowledge-transfer, and succession planning

As predicted in our 2021 annual report, WCAT, like many organizations, was affected by labour force demographics in 2022. This affected our vice chair and administrative staff complement. In 2022, we enhanced our succession planning through rigorous forecasting and communication with vice chairs and staff, the continued use of per diem vice chairs, and a strengthening of training tools, (such as mentoring, 3-person panels, noteworthy decision identification and publication, cross-training, and other programs). WCAT also hired new administrative staff and will hire more vice chairs and staff in 2023.

6. Equity, Diversity, and Inclusion (EDI)

WCAT is committed to maintaining a knowledgeable and competent professional vice chair and staff complement that is representative of our province's diversity. In 2022, WCAT was not able to launch its EDI initiatives due to competing operational demands. However, these plans will be implemented in 2023. This includes the retention of a consultant to assist and advise an internal committee in this work, an audit of WCAT's recruitment and retention practices, a survey of WCAT's existing vice chair and staff complement, and an invigorated community outreach strategy to increase knowledge of WCAT and career opportunities. WCAT will continue to coordinate our efforts with others in the tribunal sector.

7. Accessibility

As a tribunal, WCAT adjudicates matters involving physical and psychological disability and serves the public in BC, which has diverse needs and experiences. In 2022, WCAT was not able to form a

committee to lead this work due to competing operational demands. However, significant effort was made by WCAT's Registry to understand accessibility issues and to begin to explore how to address them. This included an expansion of the navigator program, as well as a pilot program to streamline processes in the Registry to a single appeal owner. This work will continue in 2023.

8. Reconciliation

In 2023, WCAT plans to continue to deepen its commitment to continue the journey of reconciliation with the Indigenous Peoples of the province and act to reduce barriers to participation. We are hoping to hire another Indigenous coop law student, continue to expand and improve the navigator program, and apply lessons to our processing and decision-making in appeals. The overall aim is to reduce barriers to participation and to transform the understanding of WCAT about its role in the administrative justice system and its relationship with Indigenous Peoples.

9. Continuing our fundamental role

Finally, while WCAT undertakes new initiatives, we will also remain focused upon our fundamental role to issue high-quality decisions in a timely manner. Our guiding principles remain the framework for the conduct of our statutory mandate. We will continue to monitor key performance indicators to ensure timeliness, responsiveness of client service, and quality decisions.

In 2023, we will continue to strengthen our communication lines and relationships within the workers' compensation system (those previously existing as well as those newly-established in 2022). As well, we will continue to provide interpretative guidance for the system. In 2022, we identified a number of noteworthy decisions and we hope to identify more in 2023. We will also address the section 304 lawfulness of policy referral(s) to the Chair. Moreover, we will continue to monitor the effectiveness of the performance management strategy (which was improved in 2022).

WCAT will implement the Bill 41 legislative amendments noted in this report in April 2023. As well, WCAT will develop a privacy management program as required by changes to the *Freedom of Information and Protection of Privacy Act*.

Finally, WCAT looks forward to celebrating its 20th anniversary in 2023.

COSTS OF OPERATION FOR THE 2022 CALENDAR YEAR

Category	Cost
Salaries	8,595,388.32
Employee Benefits and Supplementary Salary Costs	2,205,257.52
Per Diem – Boards and Commissions	369,513.78
Travel	5,308.23
Centralized Management Support Services*	1,645,158.04
Professional Services	375,578.38
Information Technology, Operations, and Amortization	1,773,091.45
Office and Business Expenses	363,645.82
Building Service Requests and Amortization	8,182.49
TOTAL EXPENDITURES**	\$15,341,124.03

* These charges represent Building Occupancy and Workplace Technology Service charges including amortization for tenant improvements.

** The costs of operations include forestry coroner's inquest charges.

VICE CHAIRS

Section 234(2)(b) of the Act provides that the chair is responsible for establishing quality adjudication, performance, and productivity standards for vice chairs, and regularly evaluating the vice chairs 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 continues to be regularly evaluated on an ongoing basis.

EXECUTIVE AND VICE CHAIRS WITH SPECIAL DUTIES AS OF DECEMBER 31, 2022		
Name	Position	End of Term
Luningning Alcuitas-Imperial	Chair (OIC #675)	December 31, 2024
Debbie Sigurdson	Registrar	February 29, 2024
David Newell	Tribunal Counsel	January 31, 2025
James Sheppard	Vice Chair, Quality Assurance and Training	February 29, 2024
Beatrice K. Anderson	Deputy Registrar	February 29, 2024
Lesley Christensen	Deputy Registrar	February 29, 2024
Hilary Thomson	Deputy Registrar	October 15, 2025
Randy Lane	Vice Chair and Team Leader	February 28, 2025
Julie Mantini	Vice Chair and Team Leader	February 28, 2027
Susan Marten	Vice Chair and Team Leader	February 29, 2028
Terry Yue	Vice Chair and Team Leader	January 5, 2025

VICE CHAIRS AS OF DECEMBER 31, 2022			
Name	End of Term	Name	End of Term
W. J. (Bill) Baker	February 29, 2024	Joanne Kembel	February 29, 2028
Anand Banerjee	October 15, 2025	Brian King	August 31, 2024
Hélène Beauchesne	March 31, 2027	Lori Leung	December 21, 2027
Sarwan Boal	February 29, 2028	Deborah Ling	June 21, 2023
Larry Campbell	October 15, 2023	Chad McRae	October 15, 2023
Melissa Clarke	September 30, 2025	Renee Miller	April 30, 2027
Jyoti Dasanjh	September 12, 2024	Herb Morton	February 28, 2025
William J. Duncan	February 28, 2025	Barbara Murray	October 15, 2023
Scott Ferguson	June 21, 2024	Elaine Murray	August 31, 2024
Sherelle Goodwin	January 5, 2025	Kristina Nelles	September 12, 2024
Cynthia J. Katramadakis	March 31, 2024	Christopher Ramsay	September 12, 2024

VICE CHAIRS AS OF DECEMBER 31, 2022			
Name	End of Term	Name	End of Term
Dale Reid.....	February 28, 2025	Shelina Shivji.....	March 31, 2027
Deirdre Rice	February 28, 2027	Tony Stevens.....	February 29, 2028
Guy Riecken.....	February 29, 2024	Andrew Waldichuk	April 30, 2024
Ellen Riley	January 5, 2028	Sherryl Yeager.....	February 29, 2024
Simi Saini.....	September 5, 2023	Lyall Zucko.....	January 5, 2025
Dawn Shaw-Biswas.....	September 12, 2024		

VICE CHAIR DEPARTURES IN 2022	
Name	Departure Date or End of Term
David Bird	November 24, 2022
Grace Chen	January 31, 2022
Paul Pierzchalski	December 21, 2022
Teresa (Terri) White	December 31, 2022