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2019-2020  
**ANNUAL  
REPORT**

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**APPEALS**  
**COMMISSION**  
FOR ALBERTA WORKERS' COMPENSATION

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## Message from the Minister



As Minister of Labour and Immigration, I am committed to ensuring workers and employers have the tools to manage disputes arising from the workers' compensation system and have the supports to appeal and question decisions.

The Appeals Commission operates under the authority of the *Workers' Compensation Act* and is the final level of appeal for decisions made by the Workers' Compensation Board. The Commission's focus over this past year has been on engaging with employees and external stakeholders to reduce red tape and improve services to clients, based on nationally recognized best practices.

The 2019-2020 annual report reflects the actions taken to ensure workers and employers continue to be treated fairly in the workers' compensation system in our province. Together, we are continually reviewing and strengthening our workers' compensation system, helping to build a system that meets the needs of Albertans.

[Original signed by]

**Honourable Jason Copping**  
*Minister of Labour and Immigration*

## Message from the Chief Appeals Commissioner and CEO

It is my pleasure to present the 2019-2020 annual report for the Appeals Commission for Alberta Workers' Compensation. I am proud that in this past fiscal year we have moved forward with several important initiatives, while continuing to provide high quality, timely, and fiscally efficient services for our clients.

This past year was a busy one at the Commission. In addition to focusing on our core business and meeting our key target of 98% of challenged decisions upheld, we took on several projects designed to enhance our culture and the service we provide to our clients, while reducing red tape. We take seriously the stewardship of the resources allocated to us, so I am pleased to share that these projects have added minimal (often zero) expenditure, thanks to the efforts of our talented team.

Incorporating feedback from our staff, adjudicators, and external stakeholders, we updated the Commission's vision, mission, and values for the first time in more than a decade. Our new vision, mission, and values, which place additional emphasis on the clients we serve, will be rolled out in the coming months. Stakeholder feedback was essential for this project, and is a core element in the comprehensive stakeholder engagement program which began in the summer of 2019. We are now assessing ourselves against national best practices, gathering feedback from external stakeholders who regularly interact with the Commission, and encouraging feedback within the Commission about our programs and standards. We are also developing new ways for stakeholders to interact with us.

Our stakeholders have confirmed how important it is that our clients easily understand Appeals Commission decisions and materials. In 2019, we began a plain language initiative that will see us transition to a new style of writing. Changes will first be apparent in the structure of our decisions – they will contain the same level of analysis you have to come to expect, but will be shorter and organized differently. We look forward to your feedback as this project moves forward.

Early in 2019, we undertook to review and revise our method of booking and scheduling hearings, with the goal of better managing adjudicator capacity and decreasing our timelines. Moving to a new, more efficient system resulted in a temporary increase in timelines, but ultimately will have the effect of reducing our overall timeline from Notice of Appeal to decision.

No reporting from this time period is complete without commenting on the effect of COVID-19 on our workplaces, colleagues, clients, and operations. Our top priority has been the health and safety of our clients and our team, and the maintenance of our services. By the time we closed our offices in Calgary and Edmonton to the public in mid-March, our entire team had transitioned to working remotely, and I am proud that we have continued to operate without interruption. I wish to thank our stakeholders for their patience and flexibility during this time.

The Appeals Commission continues to be a leader among tribunals in Alberta and across Canada. This is possible because of the willingness of our stakeholders to engage with us and identify areas of improvement, and the dedication of our outstanding team of staff and adjudicators. Together, you are the foundation for the Commission's ability to be nimble, adaptable, responsive, and client-focused.

Sincerely,



**Dale Wispinski**

*Chief Appeals Commissioner and CEO*

## Introduction to the Appeals Commission

This document reports on the performance of the Appeals Commission from April 1, 2019 to March 31, 2020 inclusive.

### Who We Are

The Appeals Commission for Alberta Workers' Compensation is a quasi-judicial tribunal operating under the authority of the *Workers' Compensation Act*. It is the final level of appeal for decisions made by the Workers' Compensation Board (WCB). The mission of the Appeals Commission is to provide a timely, fair, and efficient appeal process that is client-focused, and consistent with legislation, policy, and the principles of natural justice. The Appeals Commission is independent from the WCB and arm's length from the Government of Alberta. The Minister of Labour and Immigration is responsible for the Appeals Commission. This relationship is guided by the Appeals Commission's Mandate and Roles Document, which is housed with the Agency Governance Secretariat.

### Our People

Adjudicators, including the Chief Appeals Commissioner, are recruited through public competition. The competition process is based on a competency matrix, which ensures that our adjudicators meet a high standard of clear and unbiased decision making. Adjudicators are appointed by the Lieutenant Governor in Council.

Presently, the Appeals Commission has 37 adjudicators consisting of 16 full-time hearing chairs and 21 part-time commissioners. The Chief Appeals Commissioner also acts as the CEO of the Commission, directing its operations with the support of an executive team comprised of two vice-chairs, general counsel, and an executive director.

### Appeal Process

Appeals are heard by panels made up of three adjudicators who issue a decision that is binding on, and must be implemented by, the WCB within 30 days. Decisions of the Appeals Commission are published on the Canadian Legal Information Institute website (<https://www.canlii.org/en/ab/abwcac/>).

## Client-Focused Services

In 2019-2020, our team took on a suite of projects designed to enhance the Appeals Commission's service and culture.

### Vision, Mission, and Values Update

Over the course of the 2019 fiscal year, the Appeals Commission took steps to update its vision, mission, and values. This was an important project because our vision, mission, and values were last updated more than 13 years ago. Stakeholder feedback was consistent that a greater emphasis was required on the clients that the Appeals Commission serves.

Our leadership team, with feedback and assistance from our team of adjudicators and staff, developed the following vision, mission, and values, which will officially come into effect over the coming months.

**Our vision:** We are committed to a fair, client-focused appeal experience.

**Our mission:** In serving our clients, we understand their needs, offer user-friendly resources, guide them through the appeal process, create a safe and respectful place to be heard, and provide clear, timely, independent, and unbiased decisions.

**Our values:** Respect, service, integrity, and accountability.

### Stakeholder Engagement

With a view to understanding the needs of our stakeholders, we initiated a comprehensive engagement project in the summer of 2019. We approached this project from three perspectives:

- Assessing the Commission in relation to national best practices for tribunal excellence, access to justice, and client service;
- Gathering feedback from external stakeholders who interact with the Commission on a regular basis; and
- Continuing to encourage internal feedback about the services provided across the Commission.

The feedback we received validated the work currently being done by the Commission and the priorities of the organization. It also generated helpful suggestions for how we might enhance the services we provide. Much of the feedback has informed our business planning and project development. We are grateful to our engaged and candid stakeholders for sharing their perspectives and ideas, and will continue our practice of seeking regular stakeholder engagement in the future. We will also continue to deliver stakeholder information sessions and develop our educational materials.

## Booking and Scheduling Process Review

Early in the fiscal year, we identified that the method of booking and scheduling hearings used by the Commission had the unintended consequence of overloading adjudicator capacity and increasing decision timelines. We undertook a project to review and revise our booking and scheduling process with the goal of improving both of these metrics. By necessity, this required us to pause hearings for July and August 2019, to allow for a transition from the old scheduling system to the new. This temporary pause is reflected in increased timelines from Notice of Appeal to first available hearing date for this fiscal year, but commencing in September 2019, we began to see a strong downward trend in decision timelines (see page nine for more information). We expect that our Notice of Appeal to first available hearing date timelines will also trend downwards in the 2020-2021 fiscal year.

## Plain Language Initiative

Our summer 2019 engagement also told us that about half of the stakeholders who participated think our decisions are written in a way that makes them difficult for clients to understand. This aligns with anecdotal feedback and our ongoing efforts to make our decisions clearer and easier to read. In 2019, we introduced an initiative that will make plain language a priority for all our written materials. Making our decisions easier to read is a work in progress. Changes will first be apparent in their structure: while they will contain the same level of analysis you have come to expect, decisions will be shorter and organized differently. We look forward to your feedback as the Appeals Commission continues to transition to a more comprehensible style of writing and expands its plain language initiative to written materials beyond decisions.

## Respectful Workplace

In 2019-2020, the Appeals Commission demonstrated its commitment to a respectful workplace by working with Government of Alberta human resource experts to design and deliver custom training on respectful workplace expectations in the Commission's unique context. These interactive training sessions were mandatory for all of our team members and took place in both our Calgary and Edmonton offices. The sessions were very well-received and reflect our high standards for how we interact with each other and with our clients.

## COVID-19 Response

In March 2020, the Appeals Commission responded rapidly to COVID-19, ensuring the safety of our clients and our team. We closed both our Calgary and Edmonton offices to the public and moved our entire team to working remotely, while continuing to operate without interruption. We were able to do this by fast-tracking several process-enhancing and red-tape-reduction projects that were already in progress before the pandemic emerged. With this increased use of technology, we also put in place several new processes to protect client privacy. We continue to

seek opportunities to ensure that our new way of working is as secure and seamless as possible. The Appeals Commission thanks its stakeholders for their patience and flexibility during this time, and for their feedback that, on the whole, our altered service model has resulted in positive experiences for them. During this time, it has been necessary to increase our focus on maintaining core services and revise some project timelines, but we are pleased to report that we have taken, and continue to take, substantial steps to respond to stakeholder feedback and enhance the services provided by the Appeals Commission.

## **What's Next**

Over the coming year, our stakeholders can expect to see enhanced opportunities to engage with the Commission in a variety of ways. This will include the ability to submit forms through our website, an invitation for parties to submit real-time feedback immediately following a hearing, and client resources that are as helpful and accessible as possible.

## 2019-2020 Appeals

The Appeals Commission provides prompt and high quality service, processing appeals and scheduling hearing dates for parties as quickly as possible. The appeal cycle includes the combined average number of days from the date the appeal is filed to the first hearing date offered, and the average number of days from the hearing to the decision issue date. The Appeals Commission continuously reviews appeal-related processes, procedures, and technology to ensure that they are as effective and efficient as possible.

### **Average number of days from the date the appeal is filed to the first hearing date offered.**

Our project to revise the Appeals Commission's booking and scheduling process resulted in a temporary increase in the Notice of Appeal to first available hearing date timeline. This timeline has already begun to trend downward, and should continue to do so in the 2020-2021 fiscal year.

| Target   | 2017-2018 | 2018-2019 | 2019-2020 |
|----------|-----------|-----------|-----------|
| 150 days | 127 days  | 137 days  | 170 days  |

### **Average number of days from the hearing to the decision issue date.**

Clients are advised that their written decision will be available in six to eight weeks, but we always strive for decisions to be issued within 30 days. In this fiscal year, we implemented a decision timeline policy that allows us to better manage decision timelines to ensure we are consistently meeting stakeholder expectations. As a result of this policy, and our enhancements in booking and scheduling, the average number of days from the hearing to the decision issue date in the second half of the 2019-2020 fiscal year was 29.

| Target  | 2017-2018 | 2018-2019 | 2019-2020 |
|---------|-----------|-----------|-----------|
| 30 days | 37 days   | 44 days   | 46 days   |

## Types of Hearings

The Appeals Commission holds in-person and documentary hearings. The type of hearing is requested by a party and ultimately decided by the Appeals Commission. In 2019-2020, the Appeals Commission conducted 308 in-person hearings in our Edmonton and Calgary offices – this includes hearings by teleconference. We also held 103 documentary hearings. Towards the end of the 2019-2020 fiscal year, when we shifted to delivering our services remotely, we quickly and successfully transitioned to documentary or teleconference hearings only. We also began testing options for videoconference hearings and considering options for safe and appropriately distanced in-person hearings.

## Representation Before the Appeals Commission

The majority of appeal participants appear before the Appeals Commission with the assistance of a representative. In 2019-2020, 290 appeal participants appeared with a representative from the Fair Practices Office, 206 appeared with other representatives (for example, lawyers or family members), and 33 represented themselves.

## Appeals Received

The number of appeals received is affected by a variety of factors, including the economic environment, changes in legislation and policy, and the rate of resolution at the WCB.

| Application Type | 2017-2018 | 2018-2019 | 2019-2020 |
|------------------|-----------|-----------|-----------|
| Time Extensions  | 30        | 18        | 11        |
| Reconsiderations | 66        | 45        | 50        |
| Initial Appeals  | 710       | 552       | 507       |

## Appeals Concluded

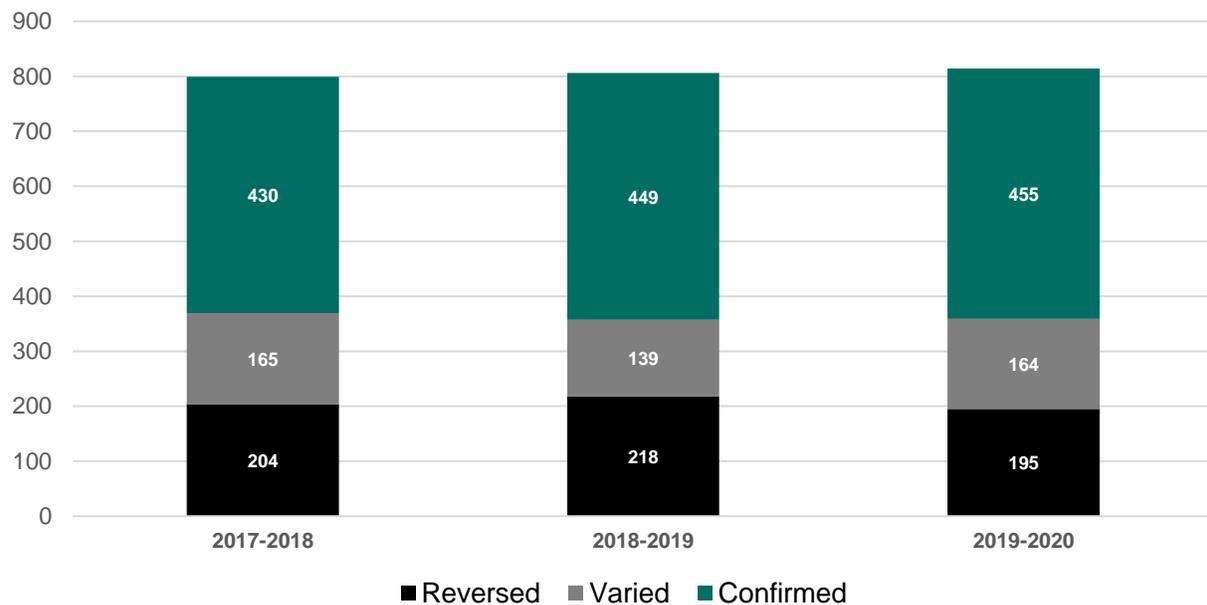
The Appeals Commission remains committed to an efficient appeals process, minimizing any potential backlog. The number of appeals concluded includes appeals dismissed and withdrawn.

| Application Type | 2017-2018 | 2018-2019 | 2019-2020 |
|------------------|-----------|-----------|-----------|
| Time Extensions  | 27        | 22        | 16        |
| Reconsiderations | 63        | 33        | 62*       |
| Initial Appeals  | 590       | 619       | 529       |

\*As a result of legislative changes in 2018, the Appeals Commission processed three types of reconsideration applications in 2019-2020. We concluded five pre-2018 reconsideration requests, 41 applications underwent preliminary reviews, and 16 applications proceeded to a threshold test.

## Finalized Issues of Appeal

Each appeal received may contain multiple issues, resulting in a variation in the number of issues concluded from year to year. In the past three years, there has been an increase in the number of issues decided by the Appeals Commission alongside a slight decline in the number of new appeals received. An increasing percentage of appeals contain multiple issues, making them more complex.



## Top Five Issues of Appeal

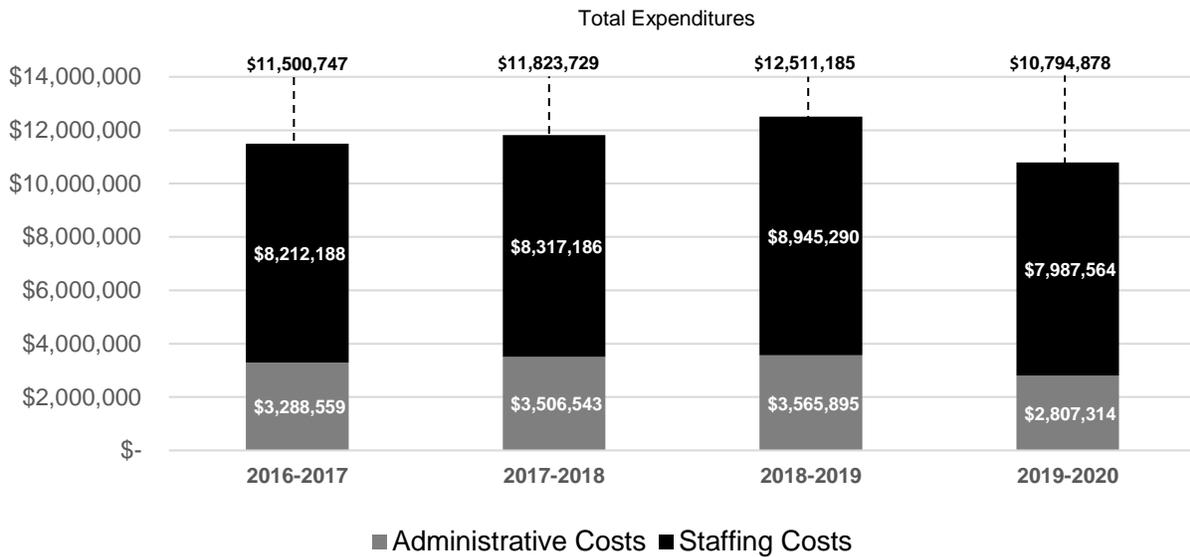
The most frequent issues of appeal have remained relatively stable over time.

| Issues of Appeal              | 2018-2019 | 2019-2020 |
|-------------------------------|-----------|-----------|
| 1. Additional Entitlement     | 189       | 176       |
| 2. Acceptability of Claim     | 149       | 127       |
| 3. Temporary Total Disability | 102       | 95        |
| 4. ELP Calculation            | 88        | 91        |
| 5. Rehabilitation Services    | 69        | 67        |

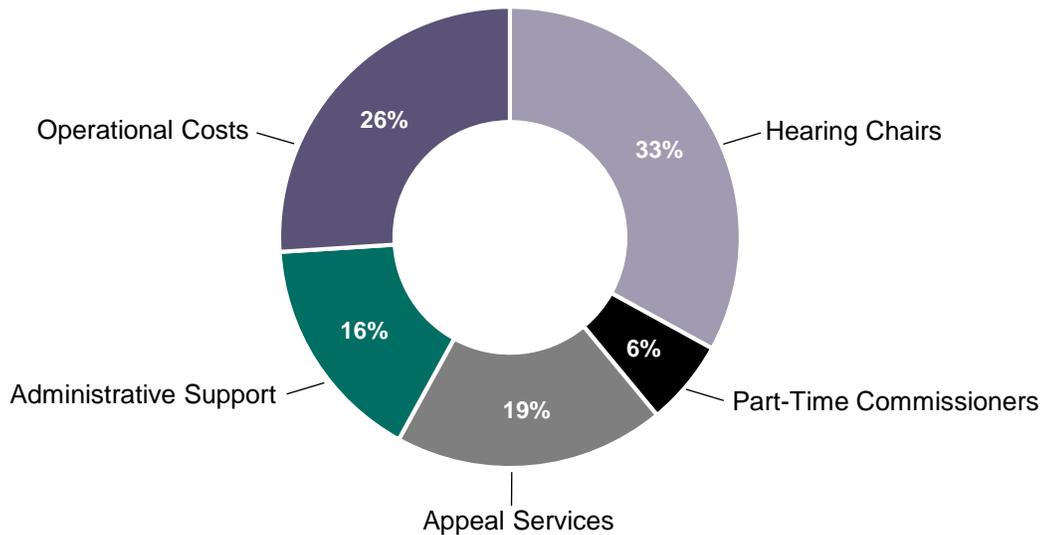
## Finance

Fiscal responsibility continues to be a top priority for the Appeals Commission. In this fiscal year, we made every effort to shift in house projects that might typically be outsourced, and to avoid all unnecessary expenditures. As a result, our total expenditures in 2019-2020 amounted to 84% of our budget with no impact on service delivery.

### Cost Overview



### Expenditure Details



## Decision Review

Appeal participants who are dissatisfied with an appeal decision have several options for further review, including a reconsideration, judicial review/appeal application to the Court of Queen's Bench, or a complaint to the Alberta Ombudsman or the Fair Practices Office. In 2019-2020, the percentage of decisions unchallenged or upheld was 99.16%.

### Review by the Courts

From April 1, 2019 to March 31, 2020, the Alberta courts issued four decisions with respect to judicial review/appeal of decisions of the Appeals Commission.

1. In *Pierce v. Appeals Commission*: The worker alleged that the Appeals Commission erred in its interpretation of the WCB policy, that the hearing was procedurally unfair and that the Appeals Commission did not comply with the rules of natural justice. In a written decision, the Court dismissed the worker's application, finding that the Appeals Commission's decision was reasonable and that there were no issues regarding procedural fairness.
2. In *Schlapsi v. Appeals Commission*: The Court did not review the Appeals Commission's decision relating to the worker. The worker's application was struck for failing to meet the filing deadline.
3. In *Gezehegn v. Appeals Commission*: The worker alleged that the Appeals Commission erred in its interpretation of the WCB policy, that the hearing was procedurally unfair and that the Appeals Commission did not give proper weight to the medical evidence before it. In an oral judgment, the Court dismissed the worker's application, finding that the Appeals Commission's decision reasonable and that there were no issues regarding procedural fairness.
4. In *Fairholm v. Appeals Commission*: The worker sought a *mandamus* order from the court requiring that the WCB implement a 2011 decision of the Appeals Commission. The Court found that Mr. Fairholm's application did not meet the legal test for a *mandamus* order and the application was dismissed.

In addition, three cases were discontinued, two cases were adjourned, and two cases have pending or outstanding decisions.

### Review by the Ombudsman and Fair Practices Office

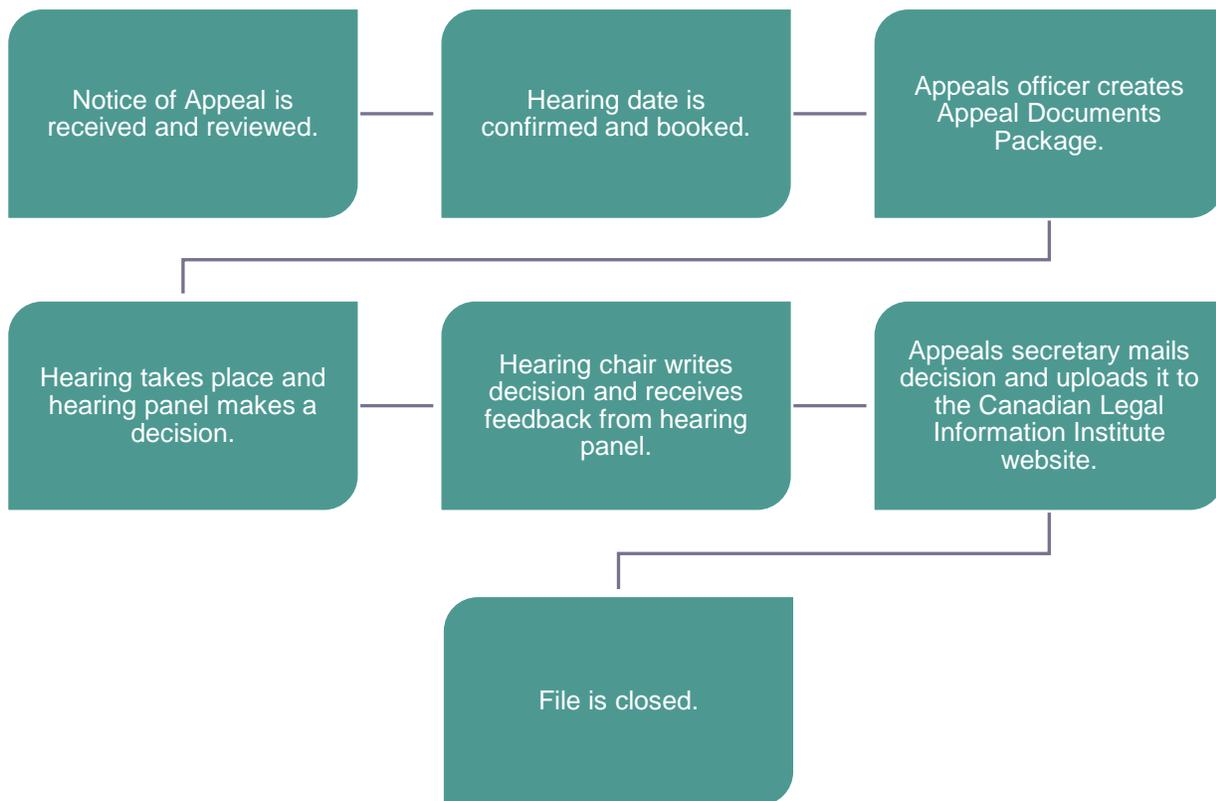
There were three formal complaints about the Appeals Commission made to the Office of the Ombudsman. No formal recommendations have been received from the Office of the Ombudsman in response to these complaints. In the 2019-2020 fiscal year, the Appeals Commission received no formal complaints from the Fair Practices Office, but we did address 19 informal requests for information or other resolutions.

## Appeal Process

The Appeals Commission is committed to reaching high standards of service for our clients and stakeholders. We provide independent and fair appeals, which involve a seven-stage process that relies on the knowledge of our experienced team.

### The Life of an Appeal

The appeal process, from the first step of receiving an appeal from a client to the final step of closing an appeal file, includes several stages and incorporates the expertise of our appeal services team and hearing panels. Our process is designed to provide our clients with timely and fair appeals, and the information and support they need at each stage.



## Position Profiles

During the appeal process, clients will interact with several members of our team. Our entire staff, including the following groups of individuals, are dedicated to providing a positive Appeals Commission experience.

### **Receptionist**

The receptionist is the first point of contact for anyone calling the Appeals Commission or visiting one of our offices. In this role, the receptionist responds to inquiries about Appeals Commission processes and procedures, greets appeal participants arriving for their hearings, and provides administrative support for other staff at the Appeals Commission. The receptionist also makes weekly phone calls to remind participants of the date, time, and location of any upcoming hearings.

### **Appeals Secretary**

Appeals secretaries provide administrative and clerical services for appeals officers, vice-chairs, and hearing panels. In the overall appeal process, appeals secretaries have a variety of responsibilities, including assisting appeals officers with correspondence to clients and producing appeal-related documents. An appeals secretary is present during hearings and is responsible for setting up any special equipment, creating a digital audio recording, and providing administrative support.

### **Appeals Officer**

Appeals officers oversee the case management and preparation of an appeal, and are responsible for a consistent appeal process. This includes preparing and managing the appeal file, educating stakeholders, and coordinating the pre-hearing process. As the central point of contact, the appeals officer communicates with the appellant, respondent, representatives, and any other parties involved in an appeal, as well as individuals within the WCB.

### **Hearing Panel**

Presiding over the hearing is a panel that consists of a hearing chair and two appeals commissioners. In preparation for the hearing, the panel reviews the appeal file, which includes focusing on relevant facts and evidence, preparing questions, and seeking legal guidance, if required. After a hearing, the hearing panel makes its decision and the hearing chair writes the decision, referring to relevant sections of the *Workers' Compensation Act* and WCB policy. The written decision is distributed to the hearing panel for final review, formatted by the appeals secretary, and then published on the Canadian Legal Information Institute website.

### Contact Information

For more information, please contact the Appeals Commission at:

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# APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION