



ANNUAL REPORT
2014 - 2015

APPEALS
COMMISSION
FOR ALBERTA WORKERS' COMPENSATION

MESSAGE FROM THE MINISTER

Our government is dedicated to the establishment of the conditions necessary to support the success of workers, employers and workplaces. Central to our strategic plan is the development of a skilled, resilient and protected workforce that will enhance prosperity for the benefit of all Albertans.

Over the coming year, we will review the Workers' Compensation Board as part of our government's larger goal of reviewing all provincial agencies, boards and commissions. This review will encompass the Appeals Commission for Alberta Workers Compensation. The Appeals Commission is integral to the functioning of the workers' compensation system in Alberta. It is an independent, quasi-judicial tribunal embedded within the Ministry of Jobs, Skills, Training and Labour. The Commission is the final level of appeal from decisions made by the Workers' Compensation Board's decision review body.

Cabinet makes appointments to the Commission based on my recommendations. We select commissioners because of their competency and demonstrated achievement.

It is important that Albertans have safe, healthy and fair workplaces. The Appeals Commission plays a vital role in this objective by ensuring Albertans have access to a timely and fair workers' compensation appeals service independent of the WCB. I look forward to seeing the Commission's accomplishments in the coming year and congratulate them on their achievements in the year past.

Lori Sigurdson

Minister: Ministry of Jobs, Skills, Training and Labour



INTRODUCTION



The Appeals Commission is quasi-judicial tribunal operating under the authority of the Workers' Compensation Act as the final level of appeal from decisions made by a review body appointed the Workers' Compensation Board (WCB). Our mission is to provide a timely, fair and independent appeals process consistent with the principles of natural justice. As a Government of Alberta entity independent of the WCB, the Commission reports to the Minister of Jobs, Skills, Training and Labour. This reporting relationship is guided by the commission's Mandate and Roles Document, which is housed with the Agency Governance Secretariat.

Commissioners, including the Chief Appeals Commissioner, are merit-based appointments recruited through public competition. They are appointed by the Lieutenant Governor in Council as representative of either the interests of employers or the interests of workers. Presently, there are 53 commissioners.

Panels of three commissioners, hear appeals and issue decisions that must be implemented by the WCB within 30 days. We publish our decisions on the Canadian Legal Information Institute website (CanLII).

The Chief Appeals Commissioner acts as the CEO of commission, and directs its operations with the support of a five-person executive team comprising two Vice-Chairs, General Counsel, and an executive Director.

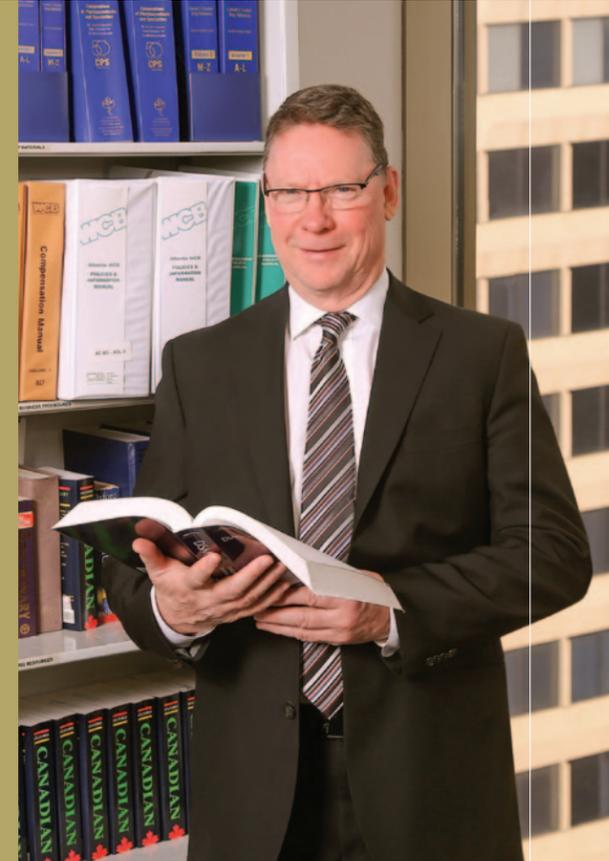
This is the 14th Annual Report of the Appeals Commission Reporting to the Ministry and various stakeholders, this report is a summary of the Appeals Commission's activities and operations from 2014-2015 which are based on priorities outlined in the Commission's Business Plan.

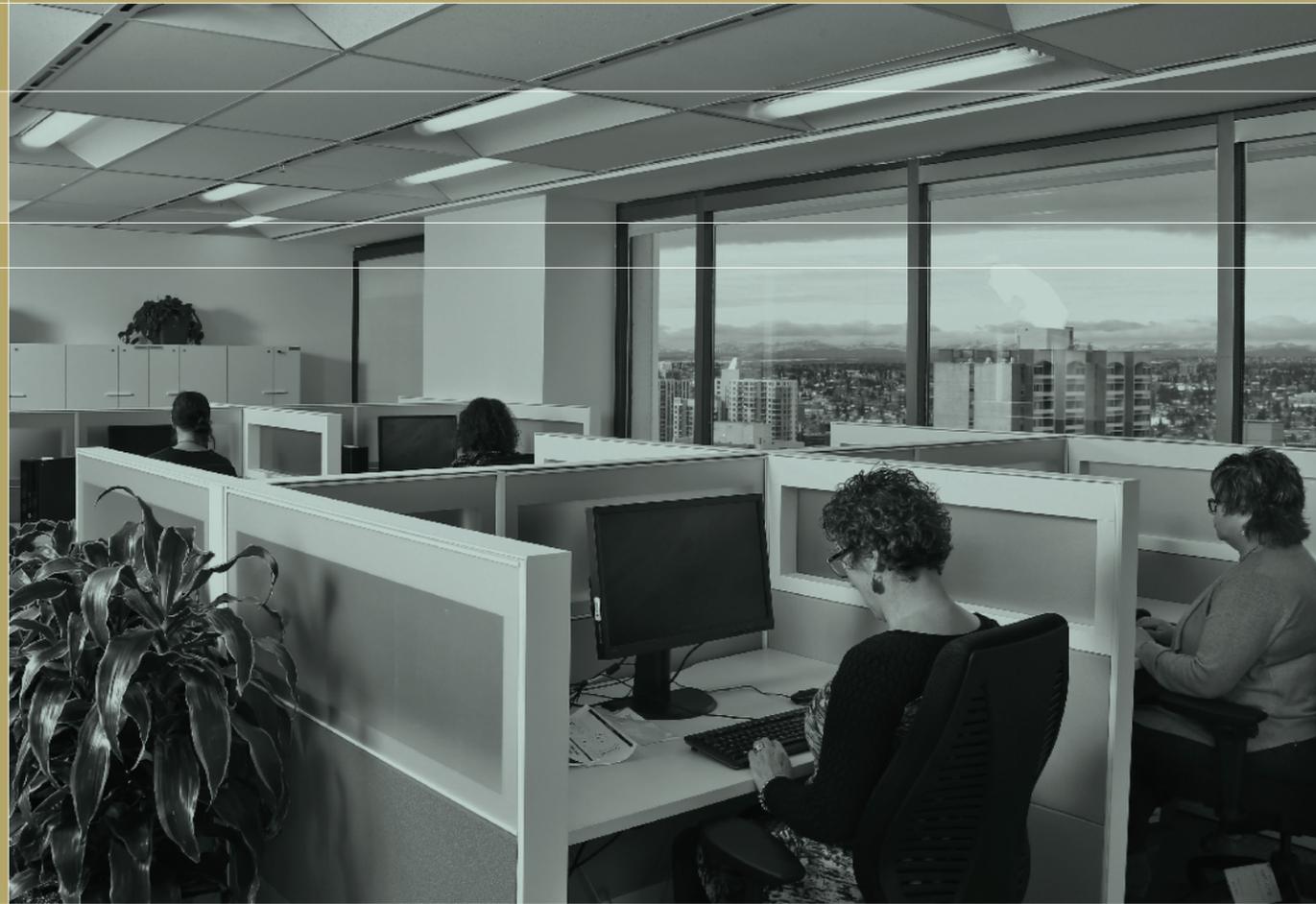
MESSAGE FROM THE CHIEF

Dear participants in Alberta's workers' compensation system,

Together, we have weathered enormous change. The financial crisis of seven years ago, the extraordinary growth and development of the oil sands, the industrialization of northern Alberta, the advent of temporary foreign workers, and the rapid growth in the number of accounts administered by the Workers' Compensation Board cumulatively have presented unprecedented challenges. In the past 30 months, the Appeals Commission moved from the Ministry of Human Services to the Ministry of Job Skills Training and Labour and responsibility for the Commission shifted between six different ministers and four different deputy ministers. During the same timeframe, the Commission accommodated the loss and replacement of more than 40% of its commissioners, many of whom were its most experienced members, largely because of the attrition demanded by the 12-year term limits set by the Alberta Public Agencies Governance Act.

Despite this turmoil, the past year has seen the Appeals Commission grow stronger, quicker and more flexible. We have never lost sight of our mission: to provide timely, fair and independent adjudication of appeals arising from decisions of the Workers' Compensation Board review body. I feel privileged to work for this great institution with such talented people. Our commissioners, management team and staff do outstanding work every single day — sometimes under enormous pressure -- while dealing with an extreme number of complex issues and often highly stressed individuals. The way our people and our organization are able to address these challenges and simplify





our processes while continuing to serve those who come before us for a final decision on their compensation claim fills me with pride.

As you review our results, you will see that despite the challenges, we reduced the time required to complete an appeal. From start to finish, it now takes on average 176 days from start to finish of an appeal. Arguably, this is the best record in Canada. Our timeline from conclusion of a hearing to publication of a final decision averages 26 days. No similar tribunal in Canada matches this performance. This is despite the fact that we adjudicate with three-person panels and we hear more than 96% of all appeals in person -- unlike the documentary processes and single adjudicators largely adopted by other jurisdictions.

We have improved quality while expanding our service. In the fiscal year beginning April 1, 2014, the courts upheld more than 99% of our decisions. The Alberta Court of Appeal recently said this about the Commission:

This Court has made it clear that the weight given by the Appeals Commission to expert medical evidence is highly fact intensive. Indeed, this Court has recognized that the Appeals Commission has more expertise than the courts in considering and weighing medical evidence to determine a worker's entitlement to benefits under the workers' compensation scheme, which demands a high degree of deference.

The court in the same decision went on to state:

The Appeals Commission's interpretation and application of the applicable policies was transparent, intelligible and rooted in the evidence and the decision showed, again, a clear line of analysis within the given reasons that reasonably leads the Appeals Commission from the evidence to its application of the WCB policies. [Boyd]

We achieved these advances in efficiency and quality because of the talent and dedication of our people. Commissioners, who we recommend to the Minister for appointment, are recruited based on objective competencies and demonstrated leadership. We draw commissioners from a diverse pool of expertise. We have commissioners with strong labour, management, medical, legal or public service backgrounds. The strength of the commission is its diversity. We expect the face of the commission to reflect the diversity of our community. I'm particularly proud of the fact that representatives of our prime constituents, the Alberta Labour Coalition and the Industry Task Force participate in the final selection of all commissioners including our vice chairs. This reflects our commitment to working both within and with our labour and industrial stakeholders.

The Commission's staff comprises a remarkably motivated team. Many are pursuing higher education while in the employ of and with the support the Commission. Most have advanced training in administrative law offered by the Alberta Foundation

of Administrative Justice. This capable group is leading the Commission's transformation from a paper-based institution to a leader in the digital age. Because of this group's initiatives, we have eliminated the production of over 1.5 million pieces of paper annually and reduced our appeal processing time. We are on the cusp of permitting the attendance of remote witnesses by video conference, as well as the exchange of electronic documents with appellants and interested parties. Other exciting advances are on the drawing board. I am particularly proud of our progress in information security and the protection of the privacy interests of those who appeal to us. The Commission has made strong advances in its records management protocols. Internal training on privacy matters is now a regular feature of our commitment to privacy rights. These developments are directly attributable to the energy and knowledge of our outstanding staff members.

Together, we are building the Commission for the long-term. We are building on the shoulders of my predecessors who laid our foundation based on independence, competency and empathy for the appellants we serve. Over the last two years, we completed the relocation and buildout of our offices and hearing rooms in both Edmonton and Calgary. These modern facilities offer our clients and staff a professional and secure environment. Leases on both facilities are 20 years in length. Infrastructure Alberta, our partner, negotiated these leases, leveraging the bargaining power of the Province. These facilities provide a foundation for the continuation of the Commission for the next two decades. We now house within our facilities both the Medical Panel Office and the Occupational Health & Safety Council. In the case of the Occupational Health & Safety Council, we now provide all administrative support including the use of our hearing facilities. We did this without incremental cost to the government.

I am confident that we will continue to meet the demands before us. The source of my confidence originates in the qualities of my fellow commissioners and our staff members.



Together, we are determined to maintain our high standards in the face of change. Our culture of commitment to public service, effectiveness and justice supports our determination, and the determination of the government, to continue to offer an effectual appellate process independent of the Workers' Compensation Board. We are committed to ensuring every appellant who appears before us receives a fair hearing and a clear and comprehensive decision, all within the shortest practical time.

I feel fortunate to be part of the 26-year journey of this exceptional institution. I wish you all could see our commissioners, management team and staff at work, particularly in these challenging times. If you did, I know that you, like me, would be bursting with appreciation and pride and take comfort in knowing that our legacy will continue.

Sincerely;

Douglass Tadman QC
Chief Appeals Commissioner

Records and Information Management (RIM)

In 2014, the Commission completed an independent assessment of the current state of Records and Information Management in order to identify gaps and recommendations. Based on the report's findings, a Senior Records Officer was delegated in the fourth quarter of 2015 to oversee the development of a Records and Information Management (RIM) system. A RIM project plan was developed in alignment with the Commission's business priorities. The Senior Records Officer was also delegated the public body's FOIP Coordinator to oversee all records subject to the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Review and development of foundation RIM policies as well as an updated version of the Commission's Records Retention and Disposition Schedule was commenced.

Legislative Changes

In December, 2014, the legislature passed Bill 6. Bill 6 amended the *Workers' Compensation Act* to expressly permit information sharing between the WCB and the Appeals Commission. The amendment did not change the quantity or quality of information previously provided by the WCB to the Appeals Commission, workers and employers in the context of an appeal. In fact, it codified routine disclosure that has occurred for decades. However, the amendment opened the door to electronic file transfers and the Appeals Commission's ability to efficiently operate within an electronic document environment. Any personal information disclosed pursuant to the amendment continues to be governed by the *Freedom of Information and Protection of Privacy Act* and is subject to a rigorous review and redaction process to ensure only necessary information is disclosed.



The effects of Bill 6 have been positive. Electronic file transfers between the WCB and the Appeals Commission have reduced the risk of privacy breaches, and have provided the foundation for moving from paper-based to electronic-based adjudication by the Appeals Commission. The largest impact, however, is that the Appeals Commission's average timeline from receipt of a Notice of Appeal to a hearing date has decreased. This has a positive impact on efficiency and access to justice.

Review by the Courts

From April 1, 2014 to March 31, 2015, the Courts issued six decisions in respect of judicial review/appeal of decisions of the Appeals Commission.

- In *Patrus v Alberta (Workers' Compensation Board)*, 2014 ABCA 117, the Court of Appeal considered whether the Court of Queen's bench properly allowed the appeal of an unskilled manual labourer on the basis that the Appeals Commission erred in determining that he was suitable for employment. The Court of Appeal overturned the decision of the Court of Queen's Bench and upheld the decision of the Appeals Commission.
- In *Flint Field Services v Appeals (Appeals Commission for Alberta Workers' Compensation)*, 2014 ABQB 382, Flint sought judicial review of a reconsideration decision issued by the Appeals Commission. The Court confirmed that the original decision was not under review and it could only consider the decision of the reconsideration panel. Ultimately, it held that the reconsideration decision was reasonable and the application for judicial review was dismissed.
- In *Boyd v Alberta (Workers' Compensation Board)*, 2014 ABQB 433, the Court of Queen's Bench considered an application for judicial review of an Appeals Commission decision that denied Mr. Boyd's claim for benefits. Mr. Boyd claimed that the Commission erred in determining that his employment duties did not cause or contribute to his neck injury. Specifically, he alleged that the Commission failed to appreciate the true nature of his job demands and that the medical evidence relied upon by the Commission was based on an inaccurate understanding of these duties. The Court agreed with Mr. Boyd and remitted the matter back to the Appeals Commission for reconsideration. This matter is scheduled to be heard by the Court of Appeal in December, 2015.



- In *Challenger Geomatics Ltd v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2014 ABQB 712, the Court of Queen's Bench reviewed an Appeals Commission decision that held that Challenger Geomatics Ltd. was required to participate in the Industry Custom Pricing Program effective 2012 and was not entitled to any cost relief from a 2009 claim for 2012. The Court held that the Appeals Commission was neither unreasonable nor wrong. The application was dismissed.
- In *Schulte v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2015 ABQB 17, Mr. Schulte sought judicial review of two Appeals Commission decisions. He also sought declaratory relief concerning the constitutional validity of certain WCB Orders. The Court held that Mr. Schulte failed to establish that the WCB or the Appeals Commission breached any constitutional obligation to him or violated any of his Charter rights. He did not show that the WCB or the Appeals Commission acted with bias or breached any of their procedural fairness obligations. He also failed to demonstrate that the specific decisions under review were unreasonable. All aspects of his applications were dismissed.
- In *Belkadi v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2015 ABCA 100, the appellant challenged three decisions of the Appeals Commission which denied or terminated his entitlement to benefits and were upheld on judicial review before the Court of Queen's Bench. The appellant applied to the Court of Appeal and argued only one issue. That issue was not presented to the Appeals Commission or the Court of Queen's Bench. Raising issues for the first time on appeal is strongly discouraged and the Court of Appeal was not prepared to dispose of the appeal on that basis. The appeal was dismissed.

Review by the Ombudsman

From April 1, 2014 to March 31, 2015, the Appeals Commission was notified of 25 complaints to the Office of the Ombudsman regarding decisions made by the Commission. In the same time period, the Ombudsman concluded 23 investigations dealing with Appeals Commission matters.

While most of the investigations resulted in the Ombudsman not supporting the complaint, the Ombudsman made recommendations in one case. The results are as follows:

- In this case, the issue was whether the Appeals Commission decision was administratively fair. The complainant was injured in January 2009 but did not report the accident until November 2009. The Appeals Commission accepted the claim in 2011. The Appeals Commission referred the file back to the Workers' Compensation Board for adjudication. The January 2012 decision of the Dispute Resolution and Decision Review Body ("DRDRB") was appealed to the Appeals Commission. The Ombudsman determined that the 2012 decision of the Appeals Commission was not administratively fair. Administrative fairness issues occurred when the Appeals Commission panel acknowledged the evidence and arguments put forward but did not state how they weighed these arguments and evidence when they reached their conclusion. The 2012 Appeals Commission decision was not administratively fair when it made incomplete reference to the policies relied on. This case was referred to a new Panel to re-hear the January 2012 decision of the DRDRB.

Performance Measure A: Timeliness

Significant changes to Appeals Commission business processes were implemented in November 2012 that have impacted the way in which appeal timelines are calculated. The new standards and benchmarks reported in this Annual Report accurately reflect the true timeline and work of the Commission as they take into consideration all external factors.

Average number of days from the date the appeal is filed to the first hearing date offered:



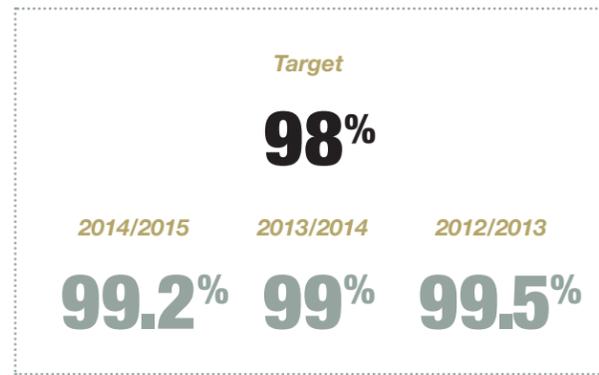
Average number of days from the hearing to the decision issued date:



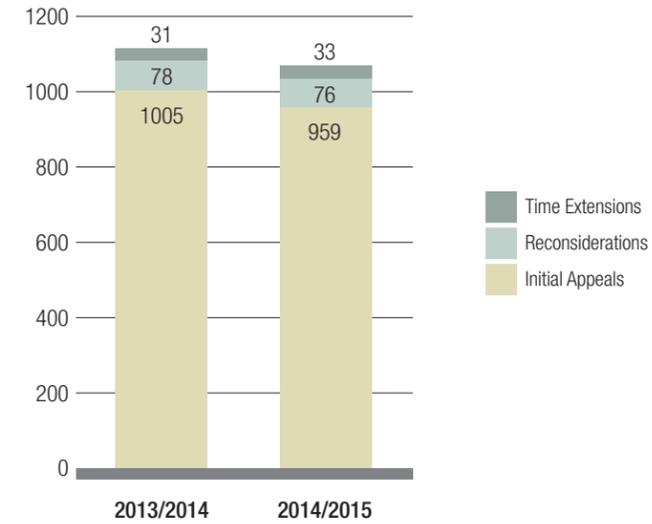
Performance Measure B: Quality

Based on the percentage of decisions supported when:

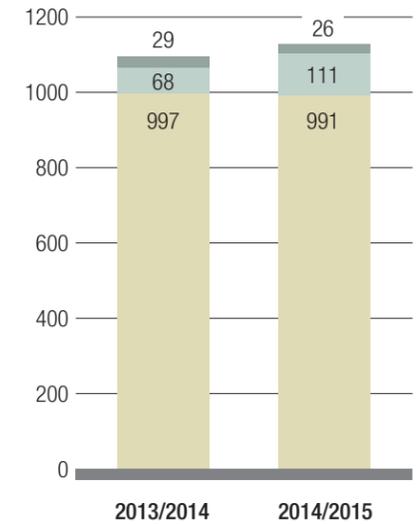
- reviewed by the courts,
- investigated by the Ombudsman, and
- reviewed by a Reconsideration panel.



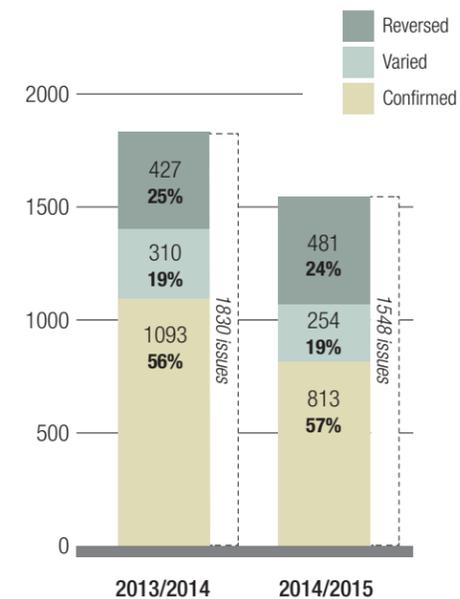
Annual Appeals Received



Annual Appeals Concluded



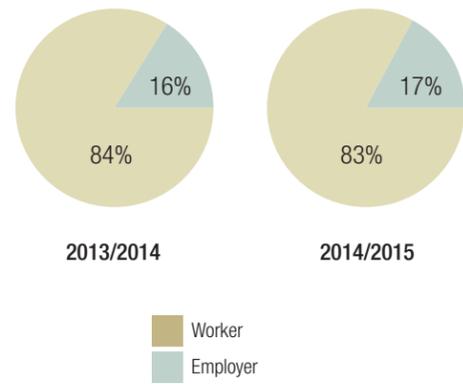
Finalized Issues of Appeal



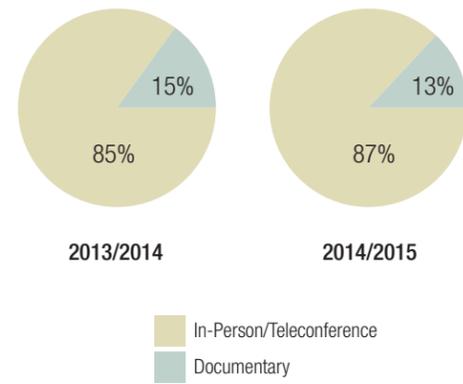
Top Five Issues of Appeal



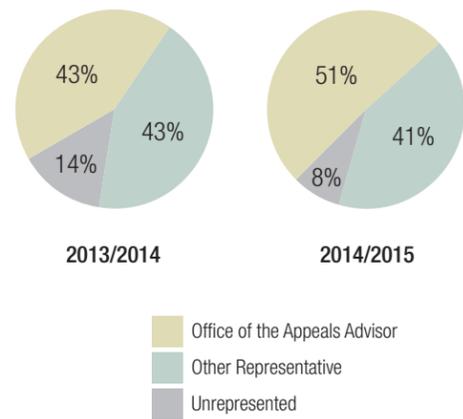
Appellant Type



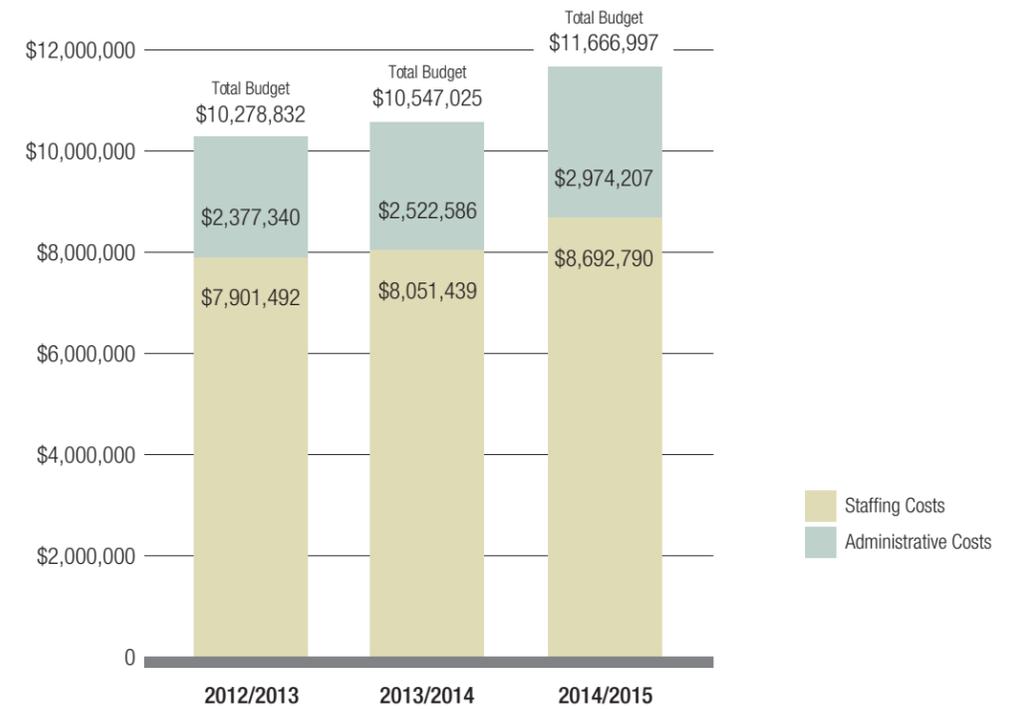
Hearing Type



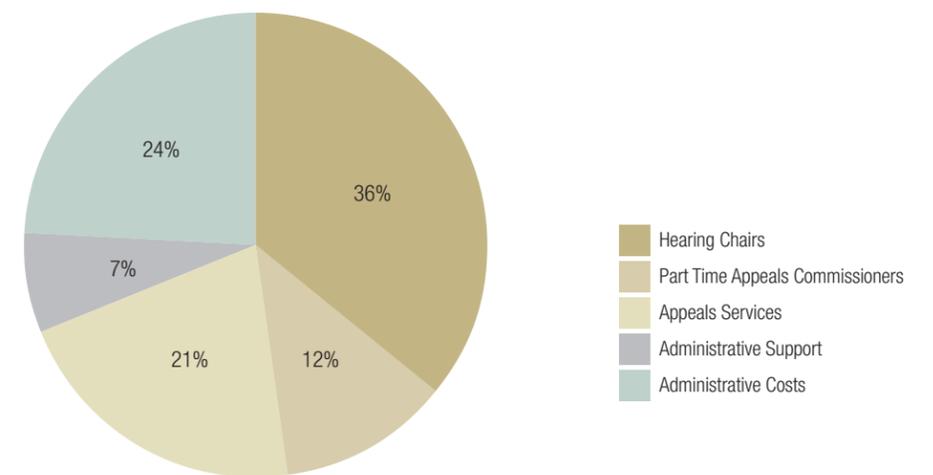
Representation before the Commission



Budget Overview



Budget Details for 2014/2015



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