



APPEALS
COMMISSION
FOR ALBERTA WORKERS' COMPENSATION

ANNUAL
REPORT
2013 - 2014



ALBERTA

JOB, SKILLS, TRAINING AND LABOUR

*Office of the Minister
MLA, Calgary-Hays*

November 4, 2014

The Government of Alberta created the Ministry of Jobs, Skills, Training and Labour (JSTL) to do the important work of building a skilled workforce, maintaining safe workplaces that protect workers and treat them fairly, and ensuring Alberta remains Canada's economic driver for years to come.

The Appeals Commission for Alberta Workers' Compensation is integral to these objectives through its contribution to safe, fair and healthy workplaces. The Commission is an independent and impartial tribunal established to hear worker and employer appeals from decisions made by the review body of the Workers' Compensation Board.

The Commission plays a vital role in maintaining an independent and fair appeals service in relation to workers' compensation matters. The Government of Alberta is committed to establishing and maintaining an effective regulatory framework through the Commission to ensure the timely delivery of fair appeals services to workers and employers in Alberta.

I congratulate the Appeals Commission on its 25 years of service to the residents of Alberta, and I look forward to working with the Commission as it continues to develop and evolve to meet the challenges of the future.

Ric McIver
Minister



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Rifath Mohammed, Vice-Chair



Donna Maxwell, Vice-Chair

The Appeals Commission for Alberta Workers' Compensation 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 by the system administrator, the Workers' Compensation Board (WCB). Our mission is to provide a timely, fair, and independent appeals process consistent with legislation, policy, and 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 Appeals Commission's Mandate and Roles Document, which is housed with the Agency Governance Secretariat.

Adjudicators, including the Chief Appeals Commissioner, are merit-based appointments recruited through public competition. Commissioners are appointed by the Lieutenant Governor in Council as representative of either the interests of employers or the interests of workers. To ensure impartial and unbiased adjudication, legislation prohibits the appointment of WCB employees or members of the WCB Board of Directors as commissioners. Presently, there are 55 adjudicators – 20 full-time hearing chairs and 35 part-time commissioners. The Chief Appeals Commissioner also acts as the CEO of the Appeals Commission, directing its operations with the support of an executive team comprising two Vice-Chairs, Lead Counsel, and the Director.

Appeals are heard by panels made up of three adjudicators, who issue a decision that must be implemented by the WCB within 30 days. Decisions of the Commission are published on the Canadian Legal Information Institute website (www.canlii.org).



This is the 13th Annual Report of the Appeals Commission published in conjunction with our 12th Annual General Meeting. Reporting to the Ministry and various stakeholders, this report is a summary of the Appeals Commission's activities and operations from April 1, 2013 to March 31, 2014, which are based on priorities outlined in the Commission's Business Plan. In addition, this Annual Report is a celebration of the Commission's 25 year anniversary since its inception in 1988.

Three of our Order in Council appointed hearing chairs in discussion.



I am pleased to deliver the Appeals Commission's Annual Report for the 2013/14 fiscal year. It covers the period between April 1, 2013 and March 31, 2014. This report is in partial fulfillment of section 13(2) of the *Workers' Compensation Act*, RSA 2000 c. W-15 requiring that the Commission hold an Annual General Meeting open to the public. This is a significant report because it heralds the beginning of the second 25 years of service by the Commission.

The year past has been characterized by significant change. The Commission began the year under the auspices of the Ministry of Human Resources and ended the year under the auspices of the Ministry of Jobs, Skills, Training, and Labour. During this time, I had the opportunity to work with and report to Minister Dave Hancock, Associate Minister Frank Oberle, Minister Thomas Lukaszuk, Minister Kyle Fawcett, and most recently Minister Ric McIver.

Against this backdrop of governance change, the Appeals Commission also underwent a number of noteworthy changes, including the departure of the Commission's former Chief Appeals Commissioner and its General Counsel, both of whom had served the Commission for approximately 16 years.

In addition, we recruited ten new commissioners, including two hearing chairs,

to fill vacancies left by the departure of a similar number of commissioners in April 2014. The 12-year term limit imposed on members of quasi-judicial tribunals by the *Alberta Public Agencies Governance Act* largely inspired these changes. Since November 2012, the Commission has recruited and trained 19 commissioners to accommodate attrition representing approximately 35% of the knowledge base of the Commission.

To accommodate the pressures associated with this magnitude of change, the Appeals Commission expanded the number of full-time chairs from 18 to 22, recognizing the fact that developmental chairs initially have less capacity than experienced chairs. We also initiated an *ad hoc* chair program to permit part-time

members the opportunity to chair hearings to develop bench strength. In January, we completed a knowledge retention initiative that incorporated substantial elements of corporate knowledge into an accessible and searchable database. In addition, we broadened our mentorship program and strengthened our orientation and training resources both internally and through external providers including the Law Society of Alberta, University of Alberta, Society of Ontario Adjudicators and Regulators, and the Alberta Foundation for Administrative Justice.

During this year, we completed our transition to ACES, the Commission's electronic management system, and decommissioned its predecessor, AMS, which had become obsolete and could no longer be updated or modified. To recognize the Commission's movement towards electronic documentation and filing we hired an Information Technology Manager, who is also responsible for statistics and website development. This addition to our staff recognizes the increasing necessity that we support electronic documentation, as well as the need to enhance access to justice for appellants by delivering appropriate information through an electronic portal.

In 2014, the Appeals Commission moved its Edmonton office to the Standard Life Centre. Our former offices were last developed over twenty years ago and no longer served the purposes of the Commission. Ingress and egress for disabled stakeholders was insufficient, offices failed to reflect current government standards regarding the use of square footage, and appropriate security standards for the protection of both the public and our staff and members were not met. A complete report of our relocation follows on page 6.

The coming year presents further opportunity to meet the challenges facing the Appeals Commission. We will undertake the redevelopment of our Calgary offices, continue with recruitment, hiring up to five chairs this year to meet predicted attrition, and continue with the enhancement and development of our quality assurance program that will affect every operating area of the Commission.

Our members and staff are looking forward to meeting the challenges before us in the coming year and to continuing the high level of service that characterizes the Commission. We are all committed to further enhancing our standards in relation to the quality and timeliness of the decisions published by the Appeals Commission and to minimizing the disruption associated with the attrition facing our most experienced members.

Finally, I hope you'll enjoy our new logo and branding. It is an integral part of the Commission's facelift as we enter the second 25 year period of our development. It is simple, open and modern; we are hopeful that it signifies our commitment to access to justice, the removal of barriers to participation in the appeals process, and our pledge to transparency and accessibility.

Douglass M Tadman, QC
CEO and Chief Appeals Commissioner

The Edmonton Appeals Commission offices were last developed in the late 1980s. Since then, our scope of activity has increased exponentially. The original logic of the office was lost in the accommodation of this growth and our prior space no longer met current or future needs.

Plans for the redevelopment of the Edmonton offices were approved in late 2013. Throughout the planning stages, the Commission ensured that the new office would meet the highest standards. Floor plans were reviewed by a security consultant, who guided the installation of security equipment and the implementation of improved secure access to our hearing rooms. The new hearing rooms come equipped with the ability to video conference, as well as improved sound proofing between rooms to ensure the privacy of all hearing participants. New workstations are equipped with high-low desks, adjustable monitor stands, and ergonomic seating. Additionally, the new office is environmentally conscious, from the installation of energy-saving automatic light switches, to the use of recycled paper and furniture, and the integration of environmentally-sound construction materials.

The move was completed on September 23rd, 2014. The project was delivered at approximately 70% of the cost projected by Alberta Infrastructure.

The new offices, located on the 11th floor of the Standard Life Centre, capture the inherent efficiencies of the new Government of Alberta standards, encouraging increased collaboration and efficient workflows. The new building comes equipped with wheelchair access and facilities, while the central downtown location increases proximity to major bus routes and the LRT. The expanded floor plate of the Standard Life Building has facilitated the consolidation from three floors to a one-floor, open concept design that takes advantage of natural light and utilizes floor space in a more effective manner:

- Adjusted office configuration that makes better use of square footage, with an overall reduction in the number of offices to increase collaborative work.
- Filing room needs were reduced by 2,400 linear inches through the reduction of duplicate space.

THE APPEALS COMMISSION IN 25 YEARS

1988

The Appeals Commission is created on July 27th, 1988. Work begins with two hearing chairs and eight part-time members. Morris Bahry was appointed as the first Chief Appeals Commissioner on November 1st, 1988. (1)



1

1991

The first Rules of Procedure (2) are published and the Commission develops its first visual identity to emphasize its independence from the WCB. (3)



2



3

- The number of workstations for part-time Commission members was reduced from 23 to 10, resulting in 48% space reduction from 2,270 to 1,080 square feet.
- Two lunch rooms on separate floors were replaced by one social common area with a 10% reduction in floor space.
- Three meeting rooms on separate floors became five collaborative work areas on one floor. Enhancements in the meeting rooms will allow for better collaboration between the Edmonton and Calgary offices with the availability of up to date video conferencing equipment, reducing travel costs.

Additional benefits of the new building include around-the-clock building security, improved amenities, such as a staff fitness facility and building food court, along with Wi-Fi access for clients and staff.



Two of the Commission's Appeals Officers.

- 1993 Full-time operations begin in the Calgary office with one hearing chair. (4)
- 1996 George Pheasey is appointed Chief Appeals Commissioner on July 1, 1996. (5)
- 1997 The Appeals Commission defines and adopts its current Vision, Mission and Values along with a new visual identity. In addition, the Commission creates its own Legal Services department separate from the WCB. (6)



4 5





In conjunction with the move, the Appeals Commission also undertook an update to its visual identity, which had been in place since 1997. This project was undertaken by a committee made up of Appeals Commission members and staff who engaged Wei Yew & Co. in the creation of a new logo and appearance for all Commission publications and correspondence.

Our new visual identity, as seen throughout our annual report, demonstrates our commitment to openness and access to justice. For the Commission, access to justice means removing barriers to participation in our appeals, facilitating open access to information, and providing education to our stakeholders. We are committed to evolving a technologically competent and modern environment facilitating efficient, open, and prompt appeal resolution while identifying and eliminating participation barriers wherever possible. The logo's simple and modern appearance reflects these ideals, inspiring confidence amongst our stakeholders in the Commission's transparency and accessibility.



THE APPEALS COMMISSION IN 25 YEARS

- 1998** Open competitions for Appeals Commissioners are held for the first time.
- 1999** The first electronic Appeals Management System (AMS) is operational.
- 2000** The Commission begins distributing an Appeal Documents Package (ADP) to all parties in advance of hearings, and hearing chairs begin writing decisions instead of registrars.
 -  The same year, the Commission plays a key role in establishing the Foundation of Administrative Justice.
- 2001** The Appeals Commission launches its first website.
- 2002** The Appeals Commission becomes part of the Government of Alberta, independent of the WCB. The same year, the Commission begins recording in-person hearings.
- 2003** The Appeals Commission holds its first Annual General Meeting. The Commission also begins publishing decisions on the Canadian Legal Information Institute website (www.canlii.org).

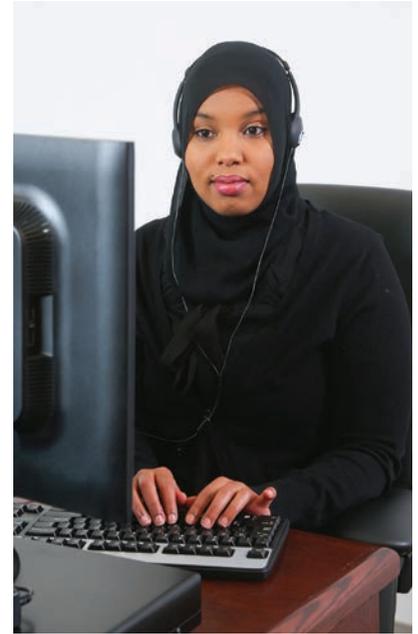
The Appeals Commission is dedicated to the continuous improvement of its Information Technology and records management to facilitate the improvement of the appeal process, enhance access to justice, and increase productivity while reducing operational costs.

In 2010, the Commission began a project to create a claims management application that would support the appeal process by being a single, integrated solution for the intake, review, case management, hearing, and decision-making process of an appeal. This project led to the creation of the Appeals Commission Electronic System (ACES), based on Microsoft Dynamics CRM 2011. Development of ACES was completed in conjunction with the CGI Group, which continues to provide primary information technology support for the Commission. At this time, the Commission's appeal files and performance metrics are managed using ACES.

Although ACES has assisted in cutting down on paper consumption, the appeal process is still based largely on the copying and circulation of printed documents. At present, the current volumes of paper used approximate more than 1.5 million pieces of paper annually. This traditional practice is out of sync with the Commission's progression towards a modern, electronic-based information management system. In addition, the current practice presents privacy risks, preparation inefficiencies associated with circulating and working on large paper files, and significant circulation, storage, and shredding costs.

To mitigate these factors, the Appeals Commission is proposing direct access to WCB electronic claim files to allow for the selection and compilation of documents relevant only to the appeal at hand. Legal Services, from both the Appeals Commission and the WCB, have been working together to facilitate the necessary legislative changes that will address current privacy issues with regard to the sharing of the electronic information.

To complement the proposed direct access to WCB electronic claim files, the use of an application with annotation and sorting tools will be employed to create Appeal Documents Packages (ADP) for document deployment and manipulation.



Appeals Commission secretary records an in-person hearing.

- 2007** The first Practice Guidelines and forms are published.
- 2012** The Appeals Commission Electronic System (ACES) is implemented late in the year.
- 2013** Douglass M Tadman, QC, is appointed Chief Appeals Commissioner on February 20, 2013.
- 2014** The Edmonton Appeals Commission relocates its premises to the Standard Life Centre.





Currently, the Commission has a pilot project to explore the efficacy of using iPads for the adjudication of appeals. Investigation is underway to determine appropriate applications that will facilitate secure document transfer from ACES to the iPad, along with suitable annotation and sorting tools. Despite the Commission's move towards electronic documents, we intend to continue accommodating individuals who are not yet ready to manage an electronic interface by providing paper files.

With the adoption of a new visual identity, it was apparent that the Appeals Commission's current website required a facelift to maintain consistency in branding. The update to the website features a modern interface and contains extensive materials to assist interested individuals in understanding the processes of the Commission. The website will continue to serve as an effective guide to the Commission's policies, rules, and practice procedures. It contains active links to related resources including CanLII, a free database maintained by an association of Canadian Law Societies that has full-text, searchable copies of all Appeals Commission decisions.

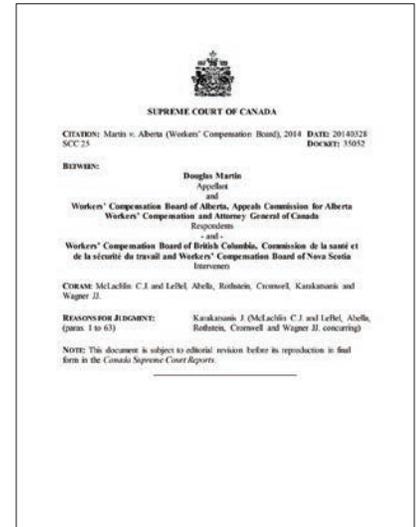
Upon the completion of the website's facelift and update to content, the Appeals Commission will undertake a project that will solicit input from stakeholders regarding functionality that would assist in expediting the appeal process. Once that information has been gathered, an additional update to the website will occur. This will align with the Commission's consistent efforts towards access to justice, allowing all parties to easily access necessary and up-to-date information on our appeals process. The completion of the facelift is anticipated for January 2015, when the Commission will begin seeking stakeholder input.

From April 1, 2013 to March 31, 2014, the Courts issued four decisions in respect of judicial review/appeal of decisions of the Appeals Commission.

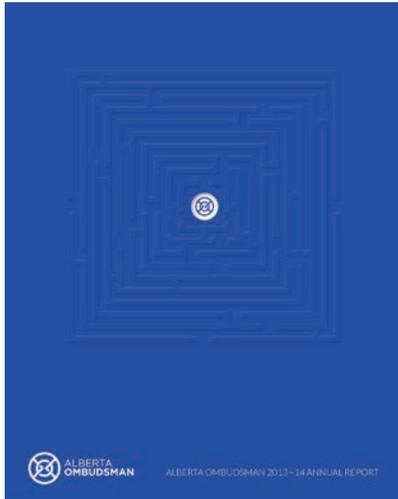
- In *Martin v Alberta (Workers' Compensation Board)*, the Supreme Court of Canada reviewed an Appeals Commission decision relating a federal government employee working in Alberta who initiated a claim for compensation for chronic onset stress. The claim was denied because Mr. Martin did not meet the criteria set out in the relevant WCB policy. Mr. Martin argued that as a federal employee, he did not need to meet the requirements of provincial policy in order to be entitled to compensation, so long as the less specific requirements of the federal *Government Employees' Compensation Act* were met. The WCB and the Appeals Commission disagreed and denied compensation.

The Supreme Court ultimately concluded that the Commission was required to apply provincial law and policy to determine entitlement to and rate of compensation for federal employees, despite the fact that this may mean federal employees across the country receive different compensation for workplace injuries based on the province where they work. Importantly, with respect to the Appeals Commission, the Supreme Court stated: “this expert tribunal is entitled to deference.”

- In *Alberta (Workers' Compensation Board) v Alberta (Appeals Commission for Alberta Workers' Compensation)*, the Alberta Court of Appeal held that the Commission is not necessarily bound to apply the “but for” test, as it is not required to apply common law principles of causation. The Commission can depart from the common law so long as its test is reasonably consistent with the *Workers' Compensation Act* (the Act) framework and does not preclude compensation where it would otherwise result under the common law. By considering the relevant provisions of the Act and WCB Policy, in light of the overall purpose of the workers' compensation scheme, the Commission reached a reasonable decision. The Commission's decision was upheld.
- In *Miller v Alberta (Workers' Compensation Board, Appeals Commission)*, the Court of Queen's Bench heard an application for judicial review of a reconsideration decision of the Appeals Commission. The reconsideration decision reviewed two initial decisions and two preliminary decisions made by the Appeals Commission. On the basis of concerns about the evidence relied upon by the Appeals Commission in one of the initial decisions, the Court directed the Appeals Commission to conduct a new reconsideration threshold hearing.
- In *Peace River Timothy Inc. v Alberta (Appeals Commission for Alberta Workers' Compensation)*, the Court of Queen's Bench heard an application for judicial review brought by an employer on the issue of its industry classification. The Court held that the Commission's conclusion that the employer was not exempt from the Act was a reasonable determination. However, the Court also held that the Commission's decision that the employer was not part of the farming industry was unreasonable. This matter is proceeding to the Court of Appeal and will be heard in 2015.



The Appeals Commission now has the distinction of being the subject of a Supreme Court of Canada decision.



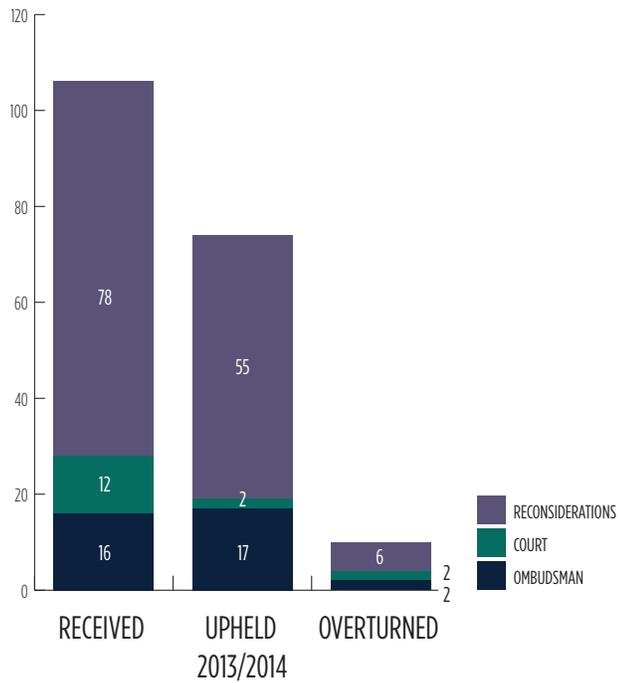
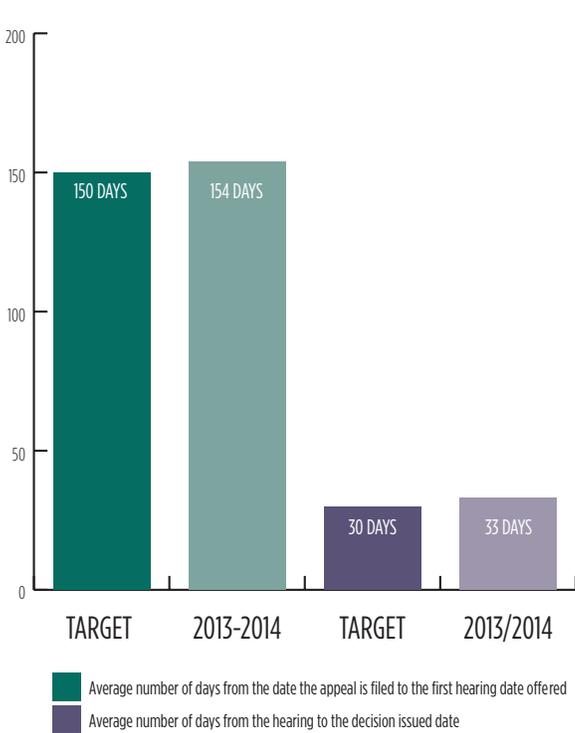
The 2013-2014 Alberta Ombudsman Annual Report. This report has additional information on the operations of the Ombudsman's office.

From April 1, 2013 to March 31, 2014, the Appeals Commission was notified of 16 complaints to the Office of the Ombudsman regarding decisions made by the Commission. In the same time period, the Ombudsman concluded 19 investigations dealing with Appeals Commission matters. While most of the investigations resulted in the Ombudsman not supporting the complaint, the Ombudsman made recommendations in two cases. The results are as follows:

- In one case, the Ombudsman found that the Appeals Commission's reconsideration decision was unfair as the panel relied on current policy rather than the policy in effect at the time the WCB review body made its decision. The Appeals Commission reviewed the appropriate policy, confirmed that it did not affect the outcome of its decision, and issued an amended decision confirming the same.
- In another case, the Ombudsman found that the Appeals Commission's decision failed to consider the entirety of the medical reporting on file and to address and demonstrate the weighing of submissions from the parties. As the result of a recommendation from the Ombudsman, the Appeals Commission reviewed the matter and decided to conduct a rehearing.

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.



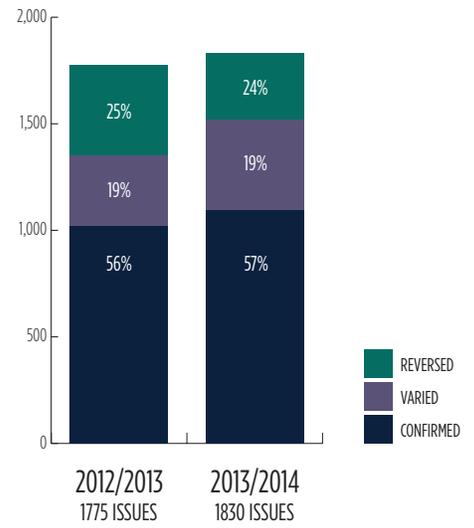
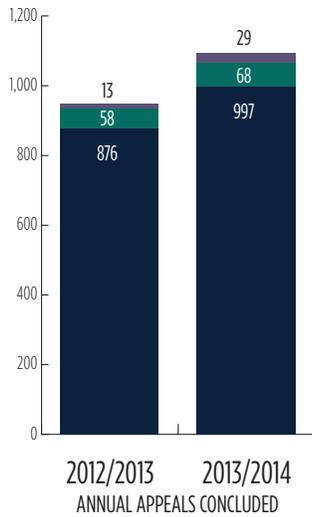
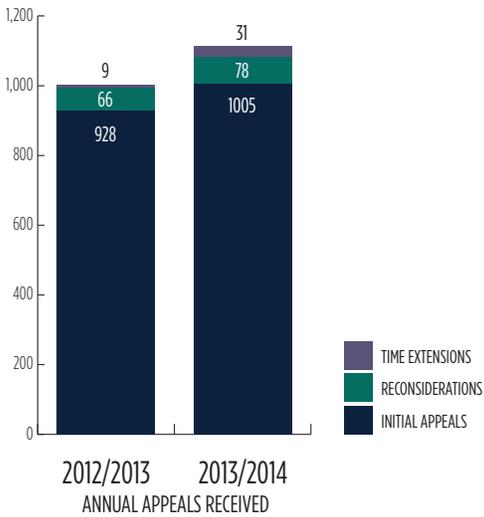
Performance Measure A: Timeliness

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.

Target **98.0%**
 2011/2012 **99.2%**
 2012/2013 **99.5%**
 2013/2014 **99.0%**

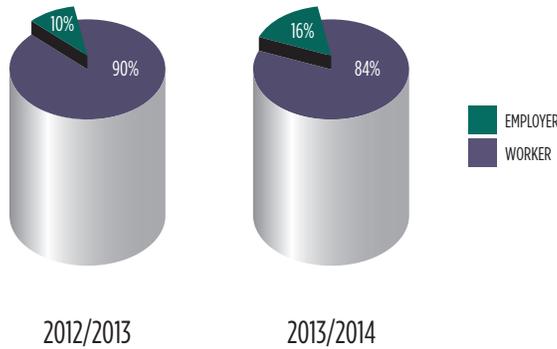


Annual Workload

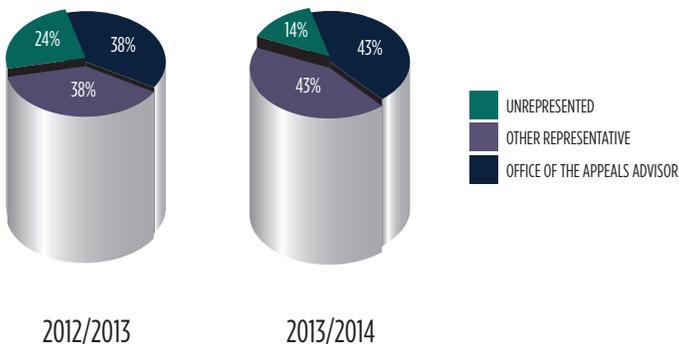
Finalized Issues of Appeal

Top Five Issues of Appeal

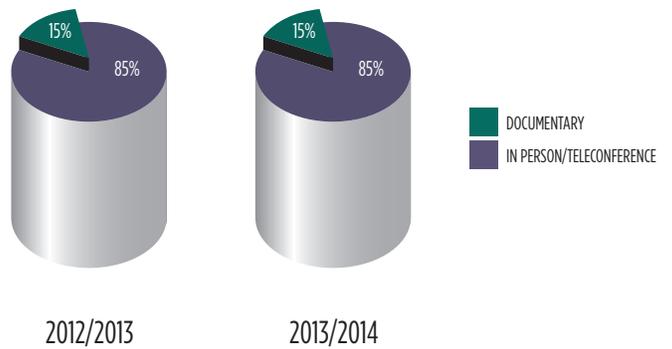
- Additional Entitlement 17%
- Temporary Total Disability 12%
- Acceptability of Claim 12%
- Rehabilitation Services 9%
- Medical Aid Responsibility 7%



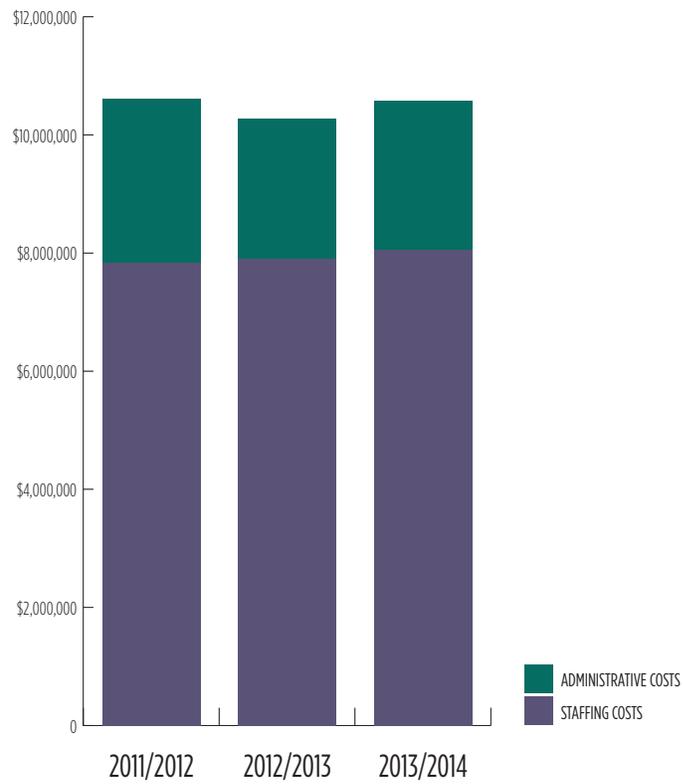
Appellant Type



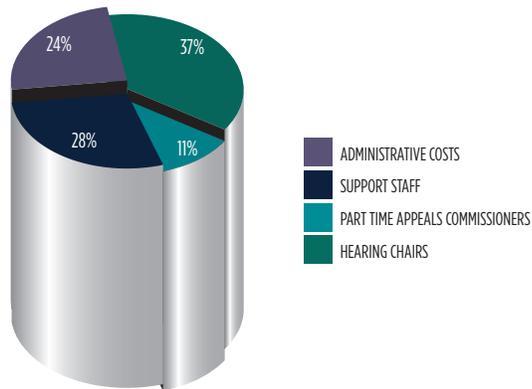
Representation before the Commission



Hearing Type



Budget Overview



Budget Details for 2013/2014

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Alberta