



W/CAT

Workers' Compensation  
Appeal Tribunal

# ANNUAL 2021 REPORT

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## CHAIR'S MESSAGE

On behalf of the Workers' Compensation Appeal Tribunal (WCAT), I am pleased to present our 2021 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 2,352 appeals and applications from workers and employers and issuing 2,652 summary and merit decisions. You can find more details about our operations in the first section of this report.

In 2021, WCAT continued to face challenges brought about by the global COVID-19 pandemic. These challenges included adjustments resulting from the necessity to hold oral hearings by way of videoconferences, limitations on travel, a continued need to use electronic means to communicate with the public, and the management of a largely remote workforce. We discuss these challenges and trends in more detail in this report. Despite these challenges, WCAT had another successful year and continued its operations with minimal disruption. We would not have achieved this without the cooperation of our stakeholders and the public. Thank you.

As WCAT looks forward to 2022, in my role as the new chair, I will lead the process of reflection and learning from the lessons of the pandemic, while drawing on the new skills we developed. In the year ahead, 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 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 cost of our operation.

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Finally, WCAT's greatest strength lies in its people. I extend my deep gratitude to my colleagues at WCAT for their perseverance, dedication, and support for each other in 2021. 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.

Luningning Alcuitas-Imperial  
Chair

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## WCAT'S ROLE WITHIN THE WORKERS' COMPENSATION SYSTEM

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

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

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.

## STATISTICS

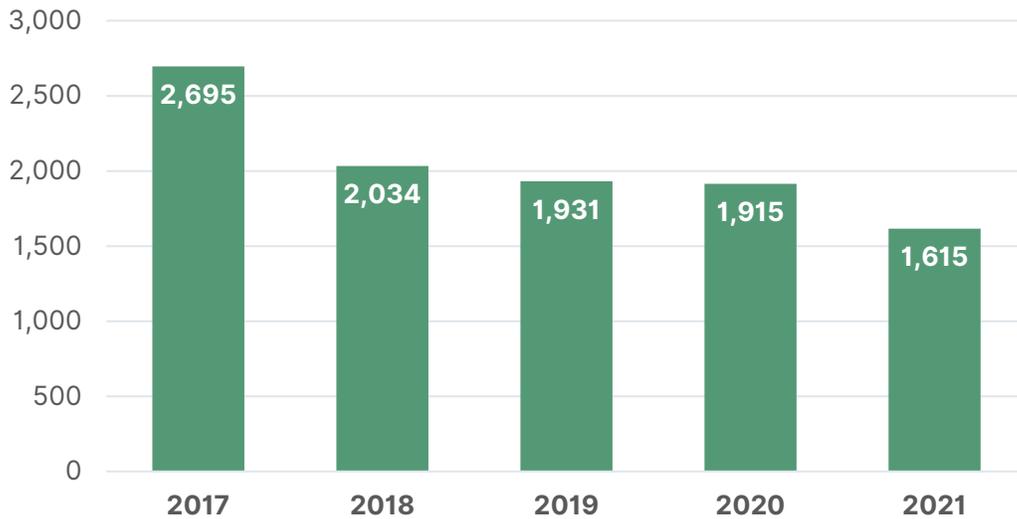
### Overview of Appeals Inventory

This section contains three charts providing a high-level overview of the status of our appeals inventory for 2021. WCAT records appeals by their date of initiation.

WCAT's total active inventory at December 31, 2021 was 1,612 appeals compared to 1,915 at the end of 2020. This represents a nearly 16% decrease and continues the five-year trend of declining inventory.

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## NUMBER OF ACTIVE APPEALS IN INVENTORY



WCAT received 2,352 new appeals in 2021 representing a nearly 17% decrease from 2,848 new appeals received in 2020.

## TOTAL ANNUAL INTAKE AND OUTPUT

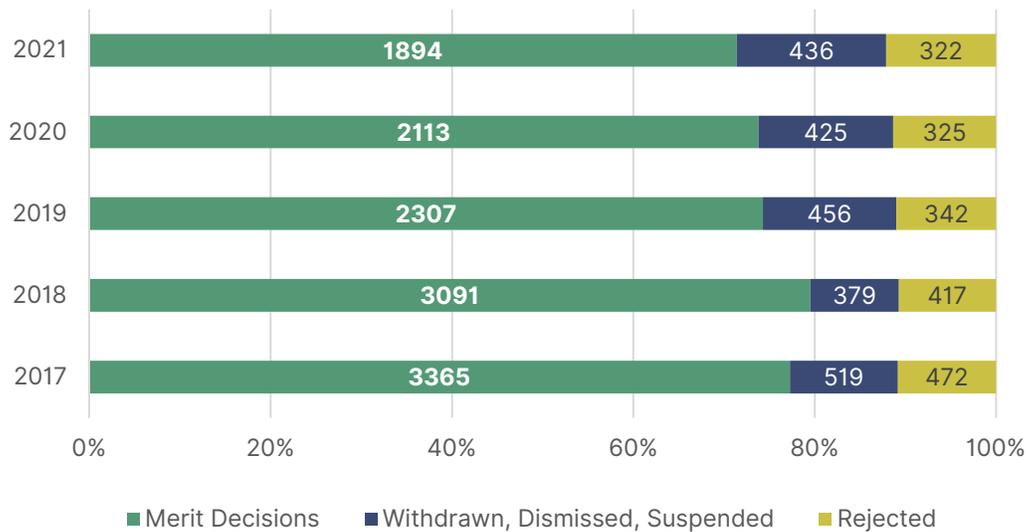


As the vast majority of WCAT appeals comes from decisions of the Review Division, WCAT's reduced intake of new appeals over the past five years corresponds with a decrease in the total number of reviews at the Review Division (from 14,482 in 2017 to 13,521 in 2021), and a decrease in the number of Board decisions confirmed by the Review Division (from 5,907 in 2017 to 4,277 in 2021). As well, the Review Division increased the number of decisions returned to the Board for a new decision (from 1,452 in 2017 to 2,227 in 2021).

Based on an analysis of historical intake and appeal rates, WCAT's forecast for 2022 intake is less than or equal to 2021. Between 2,200 and 2,600 new appeals and applications is expected.

The output of summary and merit decisions and determinations in 2021 was 2,652. The chart above shows the changes in WCAT's output over a five-year period. The vast majority of the output, as shown below, consisted of merit decisions.

### APPEAL OUTPUT BY TYPE



### Time to Decision

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

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

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

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

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

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

The illustration below reflects the average number of days for completing appeals in 2021, taking into account the various situations described above.

<u>Notice of Appeal</u>	<u>All Appeals</u>	<u>Appeals With No Additional Time</u>
Time from the date of receipt of the notice of appeal to the date the final decision is issued.	Time from the date of receipt of disclosure from the Board to the date the final decision is issued for all appeals (including those where additional time for submissions and additional time for decision was granted).	Time from the date of receipt of disclosure from the Board to the date the final decision is issued (excluding appeals where there was either additional time for submissions or additional time for decision).
276	204	112

## Appeals and Applications

Appeals and applications to WCAT are comprised of:

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

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

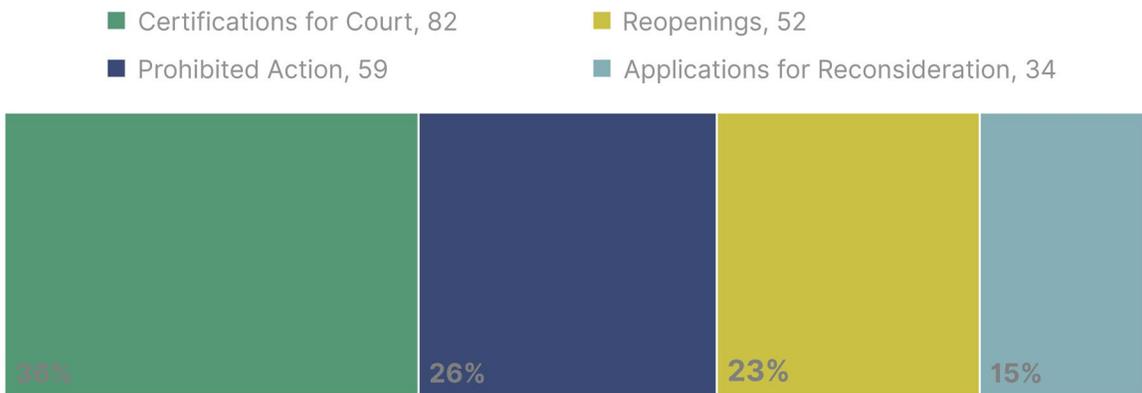
### a) Type of Appeal

Of the 2,352 appeals received by WCAT in 2021, 90% arose from decisions of Board review officers and 10% were direct. The vast majority of WCAT appeals relate to compensation matters. The following two charts show the breakdown of the types of appeals and applications received in 2021:

### APPEALS FROM REVIEW DIVISION BY TYPE



### DIRECT APPEALS AND APPLICATIONS BY TYPE



#### b) Merit Decisions

WCAT made 1,894 merit decisions on appeals and applications in 2021, 36 of which concerned applications for certificates for court actions. The remaining 1,858 merit decisions concerned appeals from decisions of the Review Division or Board officers.

#### c) Merit Decision Outcomes

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

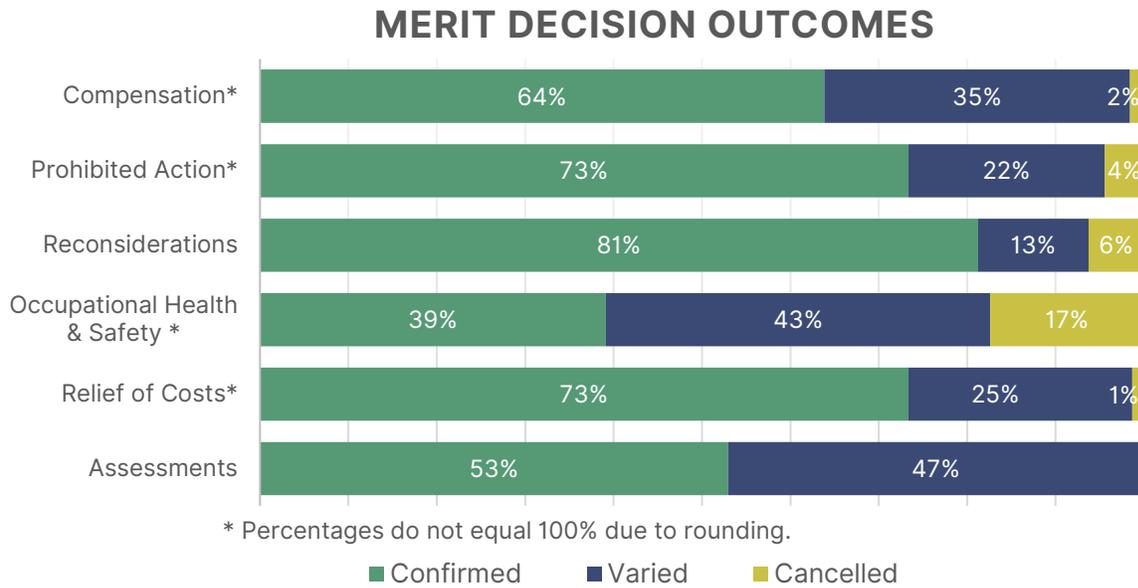
“Vary” means that WCAT varied the previous decision in whole or in part. As a result, whether WCAT has fully granted the remedies requested by the appellant on all issues arising under the appeal or merely changed a minor aspect of the previous decision, the decision is considered as “varied.”

“Confirm” means that WCAT agreed with all aspects of the previous decision.

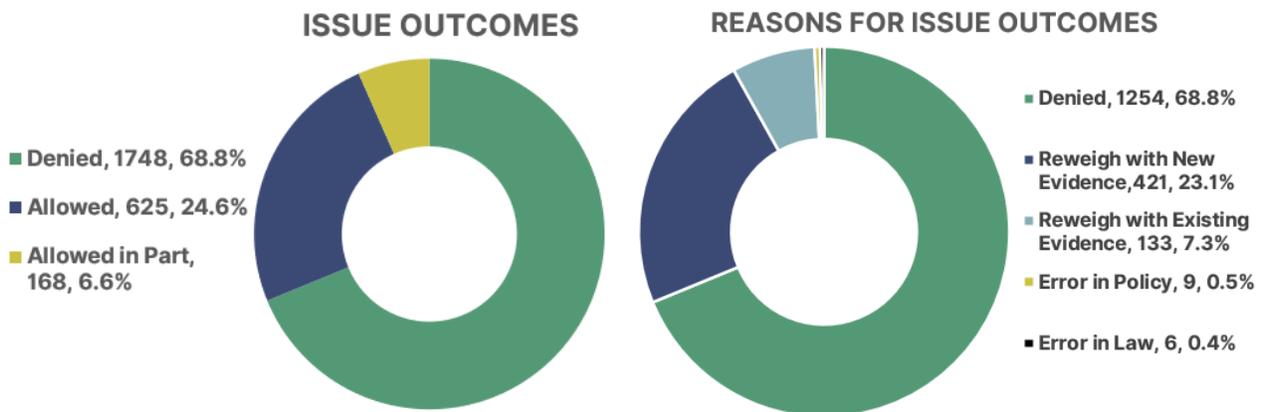
“Cancel” means that WCAT set aside the previous decision without a new or changed decision being provided in its place.

Overall, in 2021, 33% of WCAT appeals were varied, 64% were confirmed, 1% were cancelled, and 2% were certifications to court.

The graphic below shows the decision outcomes for different types of appeals in 2021:



An appeal may raise numerous issues and WCAT may allow or deny the appeal on each issue. In 2021, WCAT decided 2,541 issues that arose out of the 1,894 appeals that led to merit decisions.



**d) Top Five Issue Groups for WCAT Appeals**

Appeal Issue	Merit Decisions	Percentage of Total Decisions	Allowed / Allowed in Part	Denied
Compensation For Personal Injury	809	31.9%	26.2%	73.8%
Permanent Partial Disability	351	13.8%	52.7%	47.3%
Temporary Partial Disability	206	8.1%	26.2%	73.8%
Occupational Disease	183	7.2%	29.5%	70.5%
HealthCare	126	5%	32.5%	67.5%

**e) Requests for Extensions of Time**

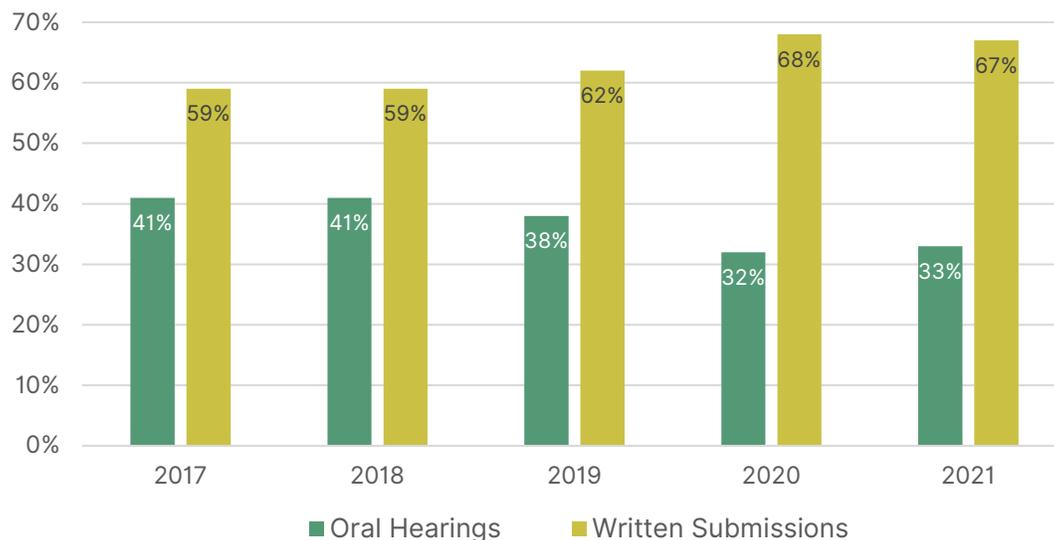
WCAT decided 140 requests for extensions of time to appeal; allowing 75 and denying 65.

**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 the majority of appeals and applications decided in 2021 were by way of written submissions. This remained relatively stable in 2021, when compared to appeal paths in 2020, the first year of the pandemic.

**ORAL HEARINGS VS. WRITTEN SUBMISSIONS**

## Method of Oral Hearing

In 2021, WCAT held 590 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. WCAT primarily conducted oral hearings by way of videoconference or teleconference. The following table shows the number of oral hearings by type of hearing for 2021:

### METHOD OF HEARING

- Videoconference, 504
- In-person (Richmond), 6
- Teleconference, 80



## Appellants and Applicants

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

Type of Appeal or Application	APPELLANT / APPLICANT		
	Worker	Employer	Dependant
Compensation	80.2%	19.3%	0.5%
Direct Reopening	94.2%	5.8%	0%
Prohibited Action	55.9%	44.1%	0%
Occupational Health and Safety	11.1%	88.9%	0%
Reconsideration	91.2%	5.9%	2.9%

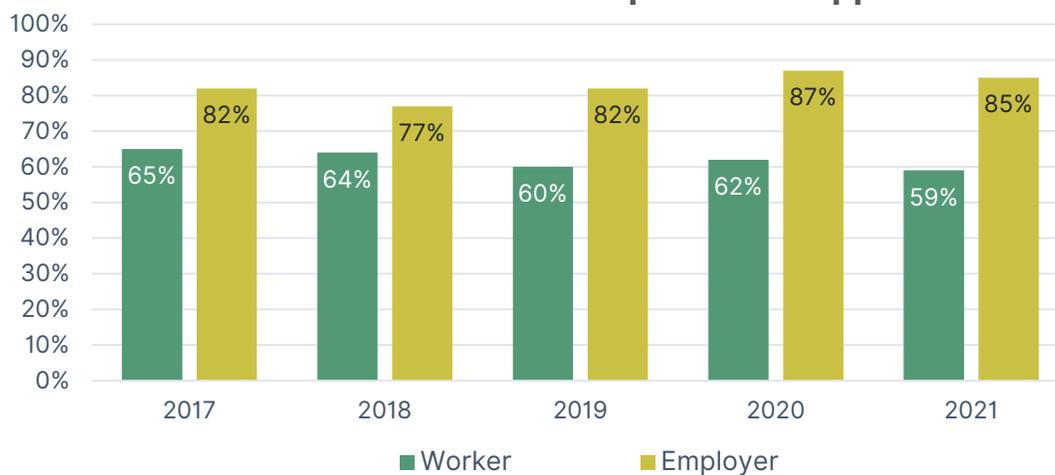
## Representation

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%	60.5%	0%
Compensation	59.4%	84.8%	66.7%
Occupational Health and Safety	0%	75%	0%
Prohibited Action	24.3%	69.6%	0%
Reconsiderations	37.5%	0%	0%
Relief of Costs	100%	91.6%	0%

In 2021, the representation rate amongst workers on compensation appeals dropped to its lowest level in five years. This implies that there was a higher rate of self-representation amongst workers. This underscores the need for WCAT to continue to work to ensure that the tribunal's processes are accessible to all.

### PERCENTAGE OF WORKERS/EMPLOYERS WITH A REPRESENTATIVE - Compensation Appeals



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## NOTEWORTHY WCAT DECISIONS

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

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

WCAT decisions, including noteworthy decisions and their summaries, are publicly accessible and searchable on the WCAT website at <http://www.wcat.bc.ca/home/search-past-decisions/>. The website also contains a document listing all noteworthy WCAT decisions organized by subject and date which is available at [noteworthy-wcat-decisions-subject-index.pdf](#).

### Summaries of New Noteworthy WCAT Decisions in 2021

(a) A1701687 - Decision Date: December 27, 2018

Panel: D. Sigurdson

**The date of injury for a claim for mental disorder is when the worker has a psychological reaction to a work incident or event.** Determination of the date of injury requires consideration of medical and non-medical evidence regarding the onset of symptoms of the mental disorder and when the worker associated those symptoms to work events. If the worker applies for compensation beyond the one year time period, the decision maker must consider any special circumstances that could have precluded the worker from making the application in time.

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(b) A1900053 - Decision Date: June 12, 2019

Panel: H. Thomson

**A subjective and objective analysis is required to determine whether a worker has a mental disorder compensable under section 135.** This decision is noteworthy because it provides a clear, concise, and organized example of the application of the subjective and objective analysis in cases involving mental disorders. In particular, it addresses the issue of whether there is a significant work-related stressor and Policy item #C3-12.00 in the Rehabilitation Services and Claims Manual, Vol. II.

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(c) A2001695 - Decision Date: July 21, 2021

Panel: A. Banerjee

**Administrative penalties should be proportional to the employer's blameworthiness in committing the underlying violation of occupational health and safety legislation.** On this appeal of an administrative penalty, several mitigating factors including the employer's robust safety program and whether the violation was truly high risk were considered. WCAT found that an administrative penalty would not have any greater effect on the employer's behaviour than would a warning letter and concluded that despite the deterrent effect a penalty may have on other employers, the prospective penalty was grossly disproportionate punishment of the employer's conduct. WCAT was satisfied that policy P2-95-1 of the *Prevention Manual* conferred a discretion on decision-makers to consider the proportionality of an administrative penalty.

(d) A2002725 – Decision Date: July 6, 2021

Panel: E. Murray

In determining whether a workplace incident was a traumatic event or a significant stressor under section 135 (mental disorder), **consideration must be given to the worker's general characteristics based on an objective and subjective analysis.** To apply the analysis, the decision maker must distinguish between when the worker's general characteristics affect the worker's perception of the reality of the workplace event or stressor versus the general characteristics that make the reality of the workplace event or stressor more impactful on the worker than it would be on someone without those general characteristics. When the worker's general characteristics affect the worker's perception of the reality of the event or stressor, less weight should be given to the general characteristics, and more weight should be given to the objective reality.

## WCAT RECONSIDERATIONS

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

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

Applications for reconsideration involve a two-stage process. The first stage results in a written decision, issued by a WCAT panel, about whether there are grounds for reconsideration of the original decision. If the panel concludes that there are no grounds for reconsideration, WCAT takes no further action on the matter. If the panel decides that there are grounds for reconsideration, the 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, and whether the evidence did not exist at the time of the hearing or did exist at that time, but was not discovered and could not have been discovered through the exercise of

reasonable diligence. If the panel determines that there is new evidence that meets those criteria, WCAT will reconsider the original decision on the basis of the new evidence.

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

During 2021, WCAT issued 32 stage one decisions involving one or both grounds. The outcomes of the stage one reconsideration decisions were as follows:

<b>Type of Reconsideration</b>	<b>Number of Reconsideration Decisions</b>	<b>Allowed/ Allowed in part</b>	<b>Denied</b>
Jurisdictional Error	13	2	11
New Evidence	10	1	9
Both Grounds Alleged	9	1	8
<b>TOTAL</b>	<b>32</b>	<b>4</b>	<b>28</b>

## JUDICIAL REVIEW OF WCAT DECISIONS

### Judicial Review Applications

In 2021, WCAT was served with 27 applications for judicial review of WCAT decisions and three appeals of judicial review decisions of the Supreme Court of British Columbia.

A party may apply to the Supreme Court of British Columbia for judicial review of a WCAT decision. On judicial review, the court examines the decision to determine whether the decision, or the process used in making the decision, was outside of WCAT's jurisdiction. The requested remedy will therefore be granted only in limited circumstances. A judicial review is not an appeal and does not involve an investigation into the merits of the decision. 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. Decisions of the Supreme Court of British Columbia may be appealed to the British Columbia Court of Appeal.

Under section 57(1) of the *Administrative Tribunals Act* (ATA), an application for judicial review of a final decision of WCAT must be commenced within 60 days of the date the decision is issued. Under certain circumstances, the court may extend the time for applying for judicial review. In 2021 the time limits for filing were suspended because of the COVID-19 pandemic. The suspension was lifted on March 25, 2021.

### Judicial Review Decisions

The following court decisions were made in relation to judicial review applications in 2021. 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, 2021 BCSC 53 (January 14, 2021) affirmed 2022 BCCA 20***  
**Decision under review: A1603743**

The flight crew of a U.S.-based airline were injured in a motor vehicle accident while being driven from their hotel to the airport in Vancouver. The crew were on a layover, taking required rest between flights. They were scheduled to fly from Vancouver to the United States. Each of the crew members was an American citizen. Each crew member commenced litigation in B.C. suing those they alleged to be responsible for the accident and seeking 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 127 of the Act. The plaintiffs applied to the WCAT under section 311 for a determination of whether their injuries arose out of and in the course of their employment. WCAT determined that, through application of policy item AP1-4-1 of the Board's *Assessment Manual*, the Act did not apply to the plaintiffs because they had no attachment to B.C. industry.

The Court dismissed the defendant's petition for judicial review. The Court found that WCAT had resolved the appeal by answering in the negative the question of whether the plaintiffs were workers to whom the Act applied. As this was a question of statutory interpretation, with reference to policy item AP1-4-1, the WCAT decision could only be disturbed if the tribunal made a patently unreasonable finding. The court concluded that WCAT's finding was not patently unreasonable. Policy AP1-4-1 notes that when the flight crew of an airline from outside B.C. are on a "turn-around" flight, they may be excluded from coverage under the Act. The Court held that it was not unreasonable for WCAT to find that the policy should have the same effect for flight crew on a "layover" rather than a "turn-around".

On January 20, 2022, the B.C. Court of Appeal denied the defendant's appeal of the judicial review decision (*Brown Bros. Motor Lease Canada Ltd. v. Workers' Compensation Appeal Tribunal, 2022 BCCA 20*). The Court found that the reviewing judge was correct that WCAT's analysis was founded on statutory interpretation and was not patently unreasonable. It was therefore unnecessary for the Court to separately address the constitutional applicability of the Act.

**b) *Halvarson v. Workers' Compensation Appeal Tribunal, 2021 BCSC 71 (January 18, 2021)***  
**Decision under review: A2000655**

WCAT determined that the petitioner's permanent disability award would end when he turned 65. The petitioner, who was 50 at the time of his injury, and 64 at the time of the Board's decision determining his retirement age, argued that his financial circumstances required him to work to age 75.

The Court found that WCAT's decision was not patently unreasonable and dismissed the petition for judicial review. WCAT was not bound to find in favour of the petitioner simply because his evidence was uncontradicted. It was also not patently unreasonable to conclude that the Act and policy creates a practical presumption on workers to lead

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evidence. WCAT had no obligation to further investigate simply because it concluded that there was insufficient positive evidence to support a later retirement date.

**c) *Richmond Elevator Maintenance Ltd. v. British Columbia (Workers Compensation Appeal Tribunal), 2021 BCSC 91 (January 21, 2021)***  
**Decision under review: A1606046**

In the decision appealed to WCAT, the Board had found that the employer had violated the same provision of the *Occupational Health and Safety Regulation* on three occasions. The issue before WCAT was whether the circumstances permitted the Board to impose a greater penalty based on a repeat violation. At the time, policy D12-196-6 (now policy P2-95-5) of the *Prevention Manual* required, among other things, that before a repeat penalty can be imposed, the employer must have been given notice of a potential penalty for the prior violation. After the first violation in this case, the Board warned the employer instead of imposing a penalty. After the second violation, the Board's investigation report indicated there were grounds for imposing a penalty. Before the Board imposed a penalty, the third violation occurred. The Board imposed a penalty for the second violation and another, increased penalty for the third violation on the basis that it was a repeat violation. The WCAT panel concluded that the Board's investigation report, when read in the context of the earlier warning letter was sufficient to provide the required notice of potential penalty.

On judicial review, the court found that the warning letter and investigation report were ambiguous and could not amount to the required notice. The court found that the WCAT panel had not explained how the two documents read together provided the required notice, and that fundamental flaw rendered the decision patently unreasonable.

**d) *Dhillon v. Workers' Compensation Appeal Tribunal, 2021 BCSC 174 (February 4, 2021)***  
**Decision under review: A1901124**

The plaintiff was a care aide who provided assistance to 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 311 of the Act, 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 did not simply adopt the reasoning of previous decisions but determined that those decisions were consistent with its own reasoning. Accordingly, the court found the WCAT decision was not patently unreasonable and dismissed the petition.

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**e) *Weiss v. Workers' Compensation Appeal Tribunal*, 2021 BCSC 231 (February 12, 2021)**

**Decision under review: A1602380**

Ms. Weissova was injured in a motor vehicle accident while being driven by her husband, Mr. Weiss. In a determination made pursuant to section 311 of the Act, WCAT assumed that both Ms. Weissova and Mr. Weiss were workers, but neither of them were in the course of their employment when the accident occurred. WCAT directed that the application proceed in writing, but allowed for interrogatory evidence.

The Court found that WCAT was procedurally unfair for not holding an oral hearing and allowed the petition for judicial review. Mr. Weiss had requested an oral hearing and there were clear credibility disputes that required an oral hearing. The panel's own stated ground for its determination not to hold an oral hearing was flawed. The fact that the accident had occurred six years prior was not a reasonable basis on its own to reject outright the concept of an oral hearing. It was not possible to say that a full oral hearing would not possibly have made a difference to the WCAT decision. Proceeding by way of interrogatories was not an adequate procedural safeguard.

**f) *Steadman v. Workers' Compensation Appeal Tribunal*, 2021 BCSC 477 (March 17, 2021)**

**Decision under review: A1700421**

The petitioner claimed that he suffered a brain injury (concussion) as a result of a trip and fall at work. WCAT confirmed the decision of the Board that the fall did not cause a brain injury. The petitioner argued that WCAT's preference for the evidence of one doctor was patently unreasonable because the facts upon which that doctor relied were incorrect. The petitioner also argued that WCAT misunderstood the principles of causation and improperly placed a burden of proof upon the petitioner. The Court dismissed the petition, finding that WCAT's understanding of the evidence was reasonable and that, contrary to the petitioner's argument, there is an onus on a worker to prove his or her entitlement to compensation on appeal.

**g) *Malagoli v. North Vancouver (City)*, 2021 BCSC 520 (March 24, 2021)**

**Decision under review: A2001109**

WCAT determined that the petitioner was not entitled to compensation under section 135 of the Act because, among other things, none of four incidents at work were the predominant cause of her mental disorder. The only issue on judicial review was whether WCAT acted unfairly. The petitioner argued that WCAT had decided the appeal on an issue not raised by either of the parties and an issue the petitioner was therefore not given an opportunity to make submissions (namely whether the incidents were work-related).

The Court found WCAT acted fairly. The issue was one that the petitioner had addressed in her written submissions to WCAT, was a key element to the statutory and policy test that applied to all section 135 cases, and, in any event, was not the central issue on which the appeal was decided.

**h) *T.B. v. British Columbia (Workers' Compensation Appeal Tribunal), 2021 BCSC 610 (April 6, 2021)***

**Decision under review: A1703707**

The petitioner experienced sexual dysfunction after suffering a workplace injury to her back. WCAT determined that her sexual dysfunction was not a consequence of her injury. WCAT's decision was based on its preference for one doctor's opinion that there was no clear association between the petitioner's spine problems and her sexual dysfunction over that of another doctor whose opinion was that her sexual dysfunction was significantly contributed to by her compensable condition.

On judicial review, the Court agreed with the petitioner that the reasons WCAT provided for preferring the first doctor's opinion were not supportable by the facts in the record. The Court found that WCAT made an incorrect finding of fact, ignored certain evidence, and unreasonably concluded that a doctor did not review relevant medical records. WCAT also made an improper assumption that a urologist was not qualified to give an opinion with respect to pelvic numbness, even though other doctors had recommended an opinion from a urologist. Lastly, WCAT rejected a doctor's findings without clear contradictory opinion evidence. The Court allowed the petition and set aside the WCAT decision.

**i) *Pickering v. Workers' Compensation Appeal Tribunal, 2021 BCSC 1497 (August 3, 2021)***

**Decision under review: A1901525**

WCAT found that the predominant cause of the petitioner's mental disorder was not his co-worker's bullying and harassment, which were significant stressors, but instead the employer's response to his bullying and harassment complaint, which he alleged was inadequate. WCAT further found that the employer's response was a decision of the employer relating to the petitioner's employment and on the basis found the claim failed by operation of section 135(1)(c) of the Act.

On judicial review, the court found that WCAT was not patently unreasonable when it concluded that the s. 135(1)(c) exclusion did not require a "clear" decision, nor a decision that was formally communicated to the worker. The Court found there was an evidentiary foundation for the finding that the manager made "decisions" relating to the petitioner's complaints of bullying and harassment, such as interviewing the co-worker in respect of the alleged harassment and reporting back to the petitioner, and recommending mediation. The Court also found that WCAT's finding that the decisions were captured by the exclusion was not patently unreasonable as there was an evidentiary basis for the finding and it was not an irrational application of legislation and policy. Whether an employer's response to a complaint is effective or ineffective cannot be based solely on the worker's perspective. Lastly, the Court found that the WCAT decision was not patently unreasonable for finding that the predominant cause of the petitioner's mental disorder was the manager's actions.

Given the result, the Court found that the petitioner's constitutional challenge to section 5.1 as violating section 15 of the *Canadian Charter of Rights and Freedoms* could proceed.

**j) *Erskine v. British Columbia (Workers' Compensation Appeal Tribunal), 2021 BCSC 2322 (November 29, 2021)***  
**Decision under review: A1700641**

In a 2018 decision, WCAT found that a forklift had run over the petitioner's foot in a workplace accident. However, WCAT denied the worker's claim for left foot, ankle, knee, hip, or lumbar back injuries. The BC Supreme Court and BC Court of Appeal upheld the WCAT decision on judicial review. Later, the petitioner applied for reconsideration of the 2018 WCAT decision on the basis of new evidence, in the form of three reports from an orthopaedic surgeon and related medical imaging. A WCAT panel concluded that the evidence offered was not substantial. That decision was quashed on judicial review and remitted to WCAT for a new decision.

In the new decision, WCAT found the evidence met the threshold requirements under section 256(3) of the Act. Based on the new evidence, WCAT concluded that the workplace accident was of causative significance with respect to left foot and ankle injuries. However, the WCAT panel found the new evidence did not support a change in the original decision with respect to the petitioner's claim for left knee, hip, or lumbar back injuries. In the course of the hearing, the panel had sought clarification from a doctor regarding causation of the foot injury but not the others.

The Court upheld the WCAT decision, finding that it was neither patently unreasonable, nor procedurally unfair. The Court found that the decision to seek clarification was a discretionary decision, subject to section 58(3) of the ATA. It rejected the petitioner's argument that the panel was patently unreasonable for not seeking clarification, or further opinion evidence, on the knee, hip and low back injuries. The doctor had provided his opinion on those injuries. There was no obligation on the panel to use its discretion to seek further evidence. It was open to WCAT to make its decision on the basis of the evidence that had been submitted.

The Court also rejected the petitioner's argument that he did not have notice that the panel would be considering the issue of causation of the knee, hip and lower back injuries. The chronology of events before WCAT, including counsel's instruction letters and the doctor's reports, indicated that causation of the knee, hip and low back conditions were contemplated as issues that were "in play". Counsel sought evidence from the doctor regarding causation of the knee, hip and low back injury during the reconsideration process. Thus, he could not argue that he did not have notice that the issue would be considered by the panel. In any event, even if the WCAT panel had not addressed causation of those other injuries, the original WCAT decision would remain in force as it had dismissed the claim for knee, hip and low back injuries.

**k) *Ezzo v. British Columbia (Workers' Compensation Appeal Tribunal), 2021 BCSC 2417 (December 10, 2021)***  
**Decision under review: A1802809**

The Board accepted the petitioner's claim for a mental disorder under section 135 of the Act as a result of bullying and harassment at work. The issue before WCAT was what mental disorder should be accepted. The Review Division had found that the claim should be accepted for Major Depressive Disorder (MDD) and for Post-Traumatic Stress

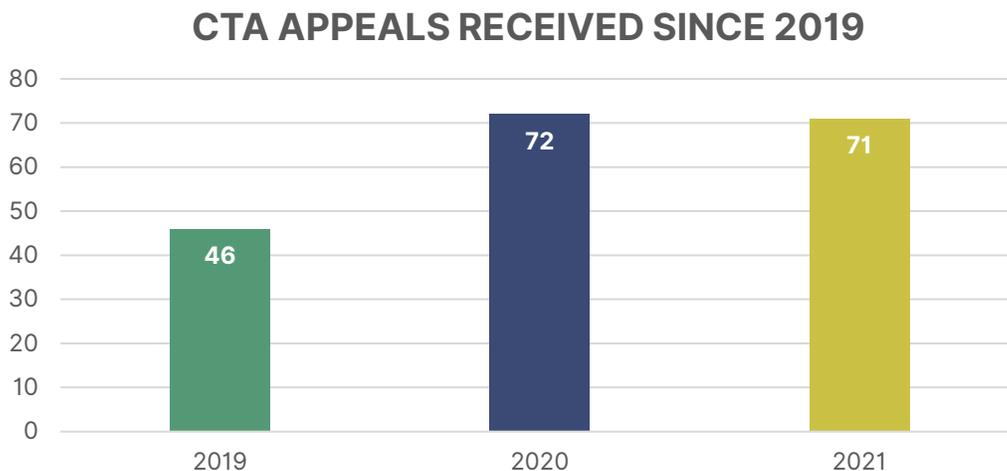
Disorder (PTSD). The employer appealed. WCAT found that the petitioner had developed MDD but did not satisfy the diagnostic criteria for PTSD, specifically as it related to the severity of the stressor required (criterion A). The panel preferred the opinion of one expert over another.

The Court dismissed the petition for judicial review. The Court found the panel's reasons to be adequate, clear, and cogent. The Court disagreed with the petitioner that the decision was inconsistent as it was open to the panel to accept one aspect of a report and not others. The Court rejected the petitioner's argument that it was patently unreasonable for the panel to apply an objective analysis to what constitutes trauma as it found that the focus of the panel on the nature of the events as opposed to the reaction was reasonable in the context of criterion A.

Lastly, the petitioner raised for the first time on judicial review that WCAT should have taken into account the racist context of the bullying and harassment he experienced. The Court found that the overall abuse the petitioner encountered contained within it an element of racism, which added to the abhorrence of the behaviour, but the failure of WCAT to consider explicitly and on its own the impact of racism was not patently unreasonable.

## 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. The inventory of appeals involving a party who has self-identified as Indigenous at year-end of 2021 was 73. In 2021, WCAT received 71 appeals. Below is a table which outlines the number of appeals received by WCAT since the response was initiated.



In 2021, WCAT decided 74 CTA appeals.

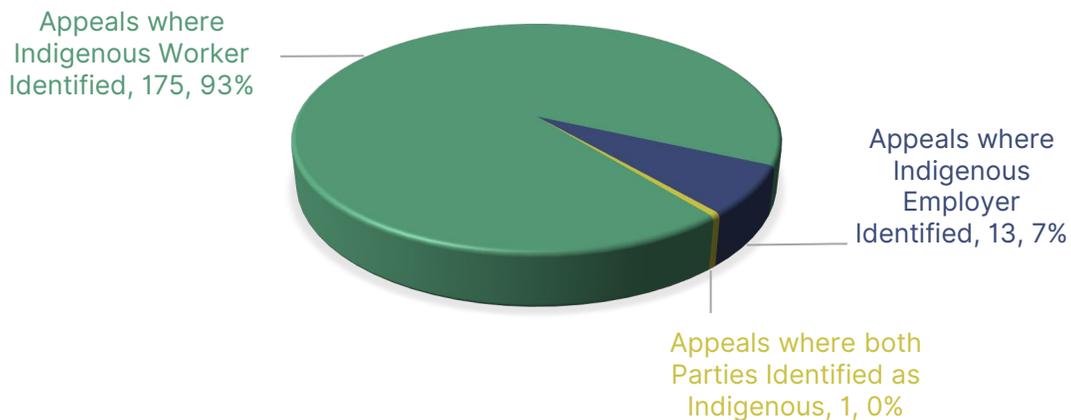
WCAT continued to act on its commitment to respond to the Calls to Action of the Truth and Reconciliation Commission.

In 2021, all vice chairs took training on issues concerning Indigenous Peoples. Vice chairs assigned to hear these appeals also took training on applying a trauma-informed approach during hearings. As well, the vice chairs assigned to these appeals took additional training sessions to assist them with the handling of these appeals. 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 three navigators work to build a relationship of trust that is culturally appropriate and offer assistance throughout the entire appeal; from explaining the appeal process, to detailing how to get access to file disclosure, to assisting with accessing oral hearings, including assisting in finding suitable hearing locations and noting cultural processes a party may wish to have included in the hearing. In 2021, we added a new navigator and all navigators took additional training to assist them in their duties.

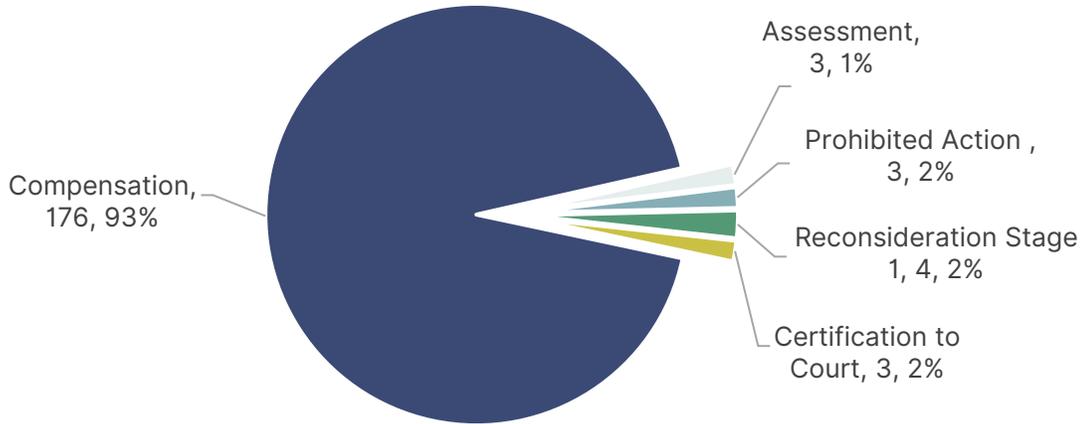
The following graph illustrates which party is self-identifying in the total volume of these appeals WCAT has received since 2019.

### INDIGENOUS PARTIES APPEALING TO WCAT



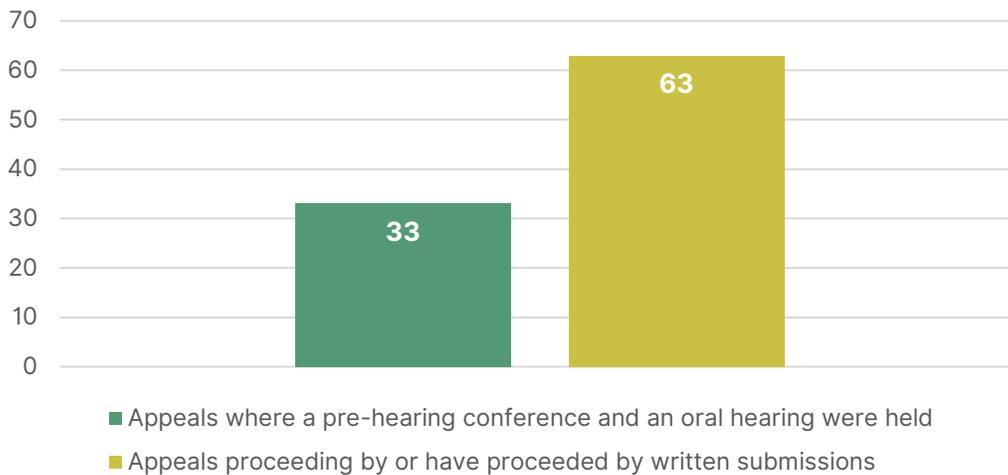
The range of matters involved in these appeals since 2019 is shown below:

### WCAT MATTERS ON CTA APPEALS



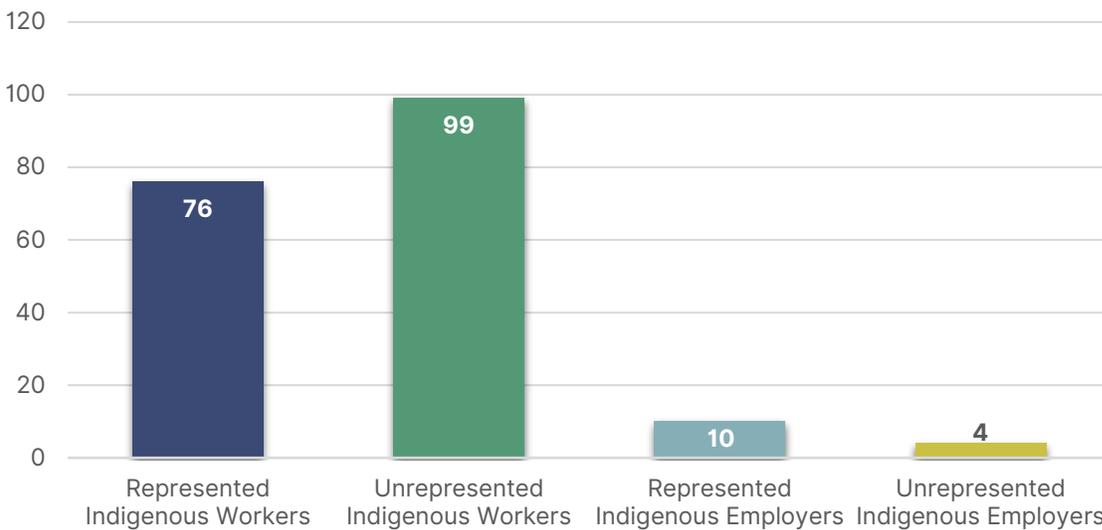
As noted earlier in this report, the majority of WCAT’s matters since 2019 proceeded by way of review of the written submissions. The chart below shows that, in contrast, a slight majority of appeals involving self-identified Indigenous parties since 2019 proceeded by way of oral hearing.

### METHOD OF CTA APPEALS



Also as noted earlier in this report, in general there is a good rate of representation of parties on appeals to WCAT on compensation matters since 2019. However, the majority (56%) of Indigenous workers since 2019, as shown below, do not have representation. This makes our navigator program even more important, and WCAT will be looking at ways to encourage more representation in the future.

### REPRESENTATION AT WCAT ON CTA APPEALS



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

## EDUCATION

WCAT is committed to excellence in decision-making. WCAT strives to provide decision-making that is predictable, consistent, efficient, independent, and impartial. We also strive to provide decisions that are succinct, understandable, and consistent with the Act, policy, and WCAT precedent decisions.

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

Restrictions due to the COVID-19 pandemic continued to challenge the delivery of education and training sessions in 2021. However, the WCAT education group, led by the vice-chair of quality assurance and training, were able to adapt to new platforms and organized a variety of virtual educational and training sessions. WCAT vice chairs attended these sessions both as participants and as educators or facilitators. WCAT is registered as a continuing professional development provider with the Law Society of British Columbia.

The following is a list of the sessions organized by WCAT for vice chairs in 2021:

February 4	<ul style="list-style-type: none"> <li>• <i>Gladue</i> Factors</li> </ul>
March 4	<ul style="list-style-type: none"> <li>• Refresher on Canadian Charter of Rights and Freedom</li> </ul>
April 1	<ul style="list-style-type: none"> <li>• Racism and Discrimination against Indigenous Peoples in Health Care</li> </ul>
May 6	<ul style="list-style-type: none"> <li>• Human Rights Code Adjudication</li> </ul>
June 3	<ul style="list-style-type: none"> <li>• The Intergenerational Workplace</li> </ul>
September 9	<ul style="list-style-type: none"> <li>• Obtaining Assistance from Independent Health Professionals and Non-Independent Health Professionals</li> </ul>
October 7	<ul style="list-style-type: none"> <li>• Judicial Reviews – A Review and The Need for Adequate Reasons</li> <li>• Registry Update</li> <li>• Team Leader Feedback</li> </ul>
November 4	<ul style="list-style-type: none"> <li>• Dealing with High Conflict Personalities</li> </ul>
December 2	<ul style="list-style-type: none"> <li>• Race Issues in the BC Legal System (recording of session offered by the Courthouse Libraries of BC)</li> </ul>

In addition, many WCAT vice chairs attended the BC Council of Administrative Tribunals (BCCAT) Annual Education Conference on October 28-29, 2021, or the Continuing Legal Education (CLE) Society's Administrative Law Conference on October 18, 2021, both of which were 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 January, WCAT participated as presenters in the Canadian Labour Congress winter school. In November, WCAT provided its biennial education session for representatives.

## UPDATE ON LEGISLATION AND PROCEDURES

### a) Statutory Changes in 2021

There were no significant changes to the Act in 2021. The *Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021* made minor changes to section 58 in Part 2 of the Act ("Medical certification requirements"), section 221 in Part 4 ("Average net earnings: long-term compensation"), and section 265 in Part 5 of the Act ("Priority as to amounts due to the Board"). Those changes came into effect on March 25, 2021.

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There were no amendments to the ATA or to the federal *Government Employees Compensation Act* in 2021.

### **b) Practice and Procedure**

There were no revisions to WCAT's *Manual of Rules of Practice and Procedure* (MRPP) in 2021.

### **c) Precedent Panel**

There were no precedent panels appointed under section 285(6) (matters of importance to the workers' compensation system as a whole) of the Act. There were no precedent panel decisions issued or precedent panel appeals in progress in 2021.

### **d) Section 304 Lawfulness of Policy Referrals**

A referral to the chair under section 304 of the Act that was made in 2020 was withdrawn in 2021 (A2001053). There was one referral to the chair in 2021 (A2002987). However, there were no decisions made by the chair under section 304(3) of the Act.

#### **1. WCAT Decision A2001053 (August 11, 2020)**

A WCAT panel referred the issue of the lawfulness of a part of policy item AP5-244-3 of the *Assessment Manual* to the chair. Policy item AP5-244-3, sub-item 2.2 concerns the effective date of a reclassification resulting from a change in a firm's business operations. The impugned portion of the policy provided that if the firm's business operations have changed, and the firm is now misclassified, the change will be effective on the later of the change in business operations or January 1st of the year in which the decision to change the firm's classification occurs.

The panel found that in the circumstances of this case, in which the employer brought its change of circumstances to the Board's attention in a timely way, and there was enough time for the Board to adjudicate the reclassification request before the end of the calendar year but did not do so (and chose January 1 of the next year as the effective date of the change), the impugned policy led to a result that was unjust, and therefore contrary to section 244(3) of the Act. Section 244(3) requires the Board to implement classification changes, including reclassification decisions, in a just and expedient manner. Consequently, the panel concluded that the policy was patently unreasonable.

Effective January 29, 2021, the Board of Directors of the Board amended the impugned portion of the policy. The amendment is set out in a Resolution of the Board of Directors numbered 2021/01/27-07 and applies to all decisions, including appeals. The new policy provides a discretion to choose a different effective date for the reclassification if an injustice would otherwise result from choosing the later of the two dates, but only if the employer informed the Board of the change in business operations without delay, and provided the Board with sufficient information of that change to make its decision.

On February 2, 2021 the WCAT panel withdrew the lawfulness of policy referral to the chair as a result of the change in policy (WCAT Decision A2001053).

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## 2. WCAT Decision A2002987 (December 9, 2021)

A WCAT panel referred the issue of the lawfulness of portions of policy C3-14.10 and policy 115.30(6) of the *Rehabilitation Services and Claims Manual, Volume II (RSCM II)* to the WCAT chair. The appeal concerned an employer's entitlement to relief of costs from its employer's experience rating assessment.

The worker died in a motor vehicle accident. The worker was engaged in a series of texts shortly before his vehicle left the roadway and the worker was not wearing his seatbelt properly, which likely contributed to his death. The Board found that the worker's death arose out of and in the course of his employment. The Board accepted the claim and awarded dependent benefits to the worker's widow and children. The Board also determined that the criteria for the exclusion of the claim from the employer's experience rating under section 247 of the Act were not met. The Board calculated the employer's experience rating in accordance with the five-year moving average of the cost of all fatal claims. The Board then reduced the average cost according to the established per claim limit rules.

The employer disagreed with this decision and argued that the worker's death was solely due to serious and wilful misconduct and therefore the employer was entitled to a relief of claim costs in accordance with Board policy. The employer sought a reconsideration of this decision and the Board advised that the worker had no pre-existing conditions, disease, or illnesses that contributed to his accident. Therefore, the claim did not meet any criteria in Board policy to provide the employer with an experience rating exclusion. The worker did not receive wage-loss benefits, and thus the employer's reference to relief of claim costs was not applicable. The employer sought a review of this decision. The Review Division denied the request as the review officer found that the Board had reconsidered the decision based on new evidence submitted by the employer and the issue of whether the worker's death was solely due to the serious and wilful misconduct was not before the Review Division to consider. The employer appealed the Review Division decision to WCAT. In the WCAT appeal, the employer challenged the validity of policy items C3-14.10 and 115.30(6) of the RSCM II with respect to relief of costs.

The panel found that the accident was solely due to the worker's serious and wilful misconduct. Given that the worker died at the time of the accident, the panel found that the ten-week qualification period in item D of policy C3-14.10 would prevent any relief of costs. Furthermore, item 6 in policy 115.30 serves to protect an employer from the full effect of a claim for serious injury resulting solely from a worker's serious and wilful misconduct. Item 6 provides that ten weeks of costs are still chargeable in such circumstances. Effectively, these policies treat employers differently for experience rating and relief of costs purposes based on a ten-week threshold for wage-loss benefits paid on section 134(2) claims. The panel found that such differential treatment does not further the best interests of the workers' compensation system and it appears to be arbitrary.

Furthermore, policy AP5-247-1 sets out that an employer is assessed on an average cost rather than the actual cost for a fatality, which includes survivor benefits, funeral benefits, and any medical treatment and wage loss prior to the worker's death. Therefore, the panel found it unclear why the serious and wilful misconduct policy references only

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“wage-loss benefits”. As section 134(2) of the Act only applies when the worker’s injury is attributable solely due to the worker’s serious and wilful misconduct, there does not appear to be any rational basis for these claims to impact an employer’s experience rating.

Section 239(2) requires the Board to manage the accident fund in the best interests of the workers compensation system. These interests include fairness and risk assessment, and to provide employers with an incentive to promote workplace safety and remove the disincentive to hire workers with pre-existing conditions. The panel found there to be no rational basis in the policy for the employer to be subjected to a ten-week hurdle prior to being relieved of costs for a claim involving immediate death that was outside of its control. Consequently, the panel concluded that the portions of policy C3-14.10 and policy 115.30(6) are patently unreasonable.

At the time of publication of this report, this referral to the chair was pending.

## TRENDS AND PLANS

### Trends

Based on the statistical and other information gathered in 2021, WCAT notes the following trends:

#### 1. Lower intake

WCAT’s intake of appeals in 2021 represented the lowest level of intake in the past five years. WCAT will strive to analyse the reasons behind this trend by reviewing data on Board claims and Review Division statistics (particularly Review Division outcomes), as well as looking at the impact of the pandemic and other factors. This analysis will be critical to ensuring that WCAT’s forecasting model remains robust and assists in verifying that WCAT has adequate numbers of vice chairs and administrative staff.

#### 2. Lower inventory due to lower intake and continued timely issuance of decisions

The twin factors of lower intake and continued timely issuance of decisions in 2021 meant that WCAT’s active appeal inventory continued to decline. WCAT will monitor the relationship between annual intake and year-end active inventory to determine any implications for the tribunal and its stakeholders.

#### 3. Hearings

As noted in this report, WCAT conducted a very small number of in-person hearings in 2021. As the approach to the pandemic shifts to one of “living with the virus,” WCAT will monitor whether the number of in-person hearing requests increases. WCAT will also continue to monitor and evaluate the use of videoconferencing. Moreover, WCAT will monitor the percentage of matters proceeding by way of oral hearing as compared to the percentage proceeding by way of review of the written materials. WCAT is mindful of its role in the workers’ compensation system in providing the opportunity for an oral hearing to the parties.

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#### 4. Representation

While the statistics show that there continues to be a high degree of representation on compensation appeals (whether for worker or employer appellants or applicants), WCAT will monitor the percentage of appeals and applications with unrepresented appellants or applicants. In particular, we note that the majority of self-identified Indigenous workers are not represented before WCAT. The monitoring and analysis of this data will assist us with uncovering any barriers to participation, help us improve accessibility to WCAT processes, and strengthen WCAT's ties to the advisory services, representative groups, and other support agencies in the community.

#### 5. Continued need for the Calls to Action program

In the spring of 2022, WCAT will mark three years of offering the Indigenous Peoples of the province an opportunity to self-identify as an Indigenous appellant/applicant or respondent. As the 2021 statistics show, there is a continued strong response to this opportunity. WCAT will monitor volumes of these appeals and applications, as well as analyse other data from our three years of experience, in order to improve our program. In particular, the navigators and panels assigned to these appeals and applications continually strive to reflect, learn and act in order to reduce barriers to participation for Indigenous Peoples.

#### 6. Complexity of matters

WCAT's vice chairs, administrative staff, and stakeholders report that the complexity of matters before WCAT appears to be increasing. As WCAT will celebrate its 20<sup>th</sup> anniversary in 2023, it is incumbent on WCAT to understand this phenomenon, the drivers behind it (such as the legislative changes in 2021 and new areas of jurisdiction over the Charter and matters under the *BC Human Rights Code*) and respond accordingly in terms of management of WCAT's operations.

### 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 presently working 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. The second phase of the portal will be available to appeal participants filing new appeals or applications with WCAT.

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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. In-person, videoconference, and hybrid oral hearings**

When it is safe to do so, WCAT plans to return to offering in-person hearings in Richmond and in other locations around the province. WCAT's Communicable Disease Prevention Plan will govern the conduct of these hearings. In times of elevated risk, WCAT remains prepared to activate its COVID-19 Safety Plan.

In terms of the method of the oral hearing, WCAT will continue to improve its use of videoconferencing technology and welcomes the public's feedback on this technology.

## **3. Modernizing our space, systems, and tools**

The WCAT office in Richmond is currently undergoing renovations. This will make the use of space more efficient, given that all vice chairs and administrative staff are now being offered the opportunity to work under a hybrid model.

As well, the space itself will be modernized to accommodate upgrades to technology in the hearing rooms to allow for hybrid hearings, where the vice chair and participants may be appearing in-person and by videoconferencing. WCAT is also exploring using the audio functionality within the MS Teams platform to provide a more seamless experience for WCAT and the hearing participants.

Moreover, WCAT will be undergoing an upgrade of its case management system closer to the end of 2022. This will ensure that WCAT's vice chairs and staff have access to an efficient and user-friendly system to support their important work.

## **4. New ways of being in the hybrid model of work**

WCAT's executive team, vice chairs and staff recognize that WCAT is a highly collegial and supportive environment. There is concern that the move to increased remote work in the hybrid model of work may negatively affect the cohesion of WCAT's vice chair and staff complement. To address this concern, WCAT plans to look for innovative ways to maintain cohesion and collegiality. This includes launching a new user-friendly intranet site, increasing the number of virtual meetings and opportunities to connect, and planning safe and regular opportunities to gather in-person.

As well, the pandemic has taught WCAT to pay close attention to work-life balance concerns and support the mental health and well-being of its people. In the coming year, WCAT hopes to revive its Wellness Committee, continue to support the strong work of its Social Committee, and demonstrate a strong commitment to mental health and wellness through good communication in work teams, between supervisors and their staff, and between vice chairs and the chair.

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## 5. Training, knowledge-transfer, and succession planning

WCAT, like many organizations, is affected by labour force demographics. WCAT is aware that some of its seasoned vice chairs plan to retire or convert to per diem status over the next five years. These demographic forces will also likely affect our administrative staff complement. Given the high level of competencies and skills required to be a WCAT vice chair or administrative staff member, we plan to look for ways to enhance our succession planning through rigorous forecasting and communication with vice chairs and staff, 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 to assist with the transfer of knowledge of vice chairs and staff.

## 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 plans to launch its EDI initiatives, including 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 looks forward to coordinating 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 intends to comply with the spirit and intent of the province's new accessibility legislation (*Accessible British Columbia Act*) by forming a committee to lead the work to ensure our processes are people-centred, accessible, and responsive. WCAT looks forward to learning from others in the tribunal sector who have embraced the concept of "justice as a service" and who recognize the need to respond to the public's needs with sensitivity to one's own biases, cultural humility, and a commitment to life-long learning.

## 8. Reconciliation

In 2022, WCAT plans 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 will be working with an Indigenous coop law student to research the law about the application of social context evidence in WCAT appeals, prepare a synopsis of WCAT decisions involving Indigenous persons, and learn about the practice of administrative law in the workers' compensation context.

As well, an ongoing survey about the navigator program and oral hearing adaptations will be collated and the results analysed. The navigators and vice chairs assigned to these appeals will continue to participate in dedicated training and evaluation initiatives to help improve service delivery, quality of decision-making, and relationship-building to engage the support of WCAT stakeholders. The overall aim is to reduce barriers to participation

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and to transform the understanding of WCAT about its role in the administrative justice system and its relationship with Indigenous Peoples.

### 9. Continuing WCAT's fundamental role to issue high-quality decisions in a timely manner

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 2022, we will refine our reporting mechanisms to take advantage of cloud-based technology and strengthen our communication lines and relationships within the workers' compensation system to be aware of and responsive to developments within the system, while maintaining our independence.

## COSTS OF OPERATION FOR THE 2021 CALENDAR YEAR

Category	Cost
Salaries	8,282,273.25
Employee Benefits and Supplementary Salary Costs	2,133,416.99
Per Diem – Boards and Commissions	311,285.65
Travel	183.51
Centralized Management Support Services*	1,374,840.27
Professional Services	430,422.55
Information Technology, Operations and Amortization	1,700,355.96
Office and Business Expenses	257,296.32
Building Service Requests and Amortization	14,739.67
<b>TOTAL EXPENDITURES</b>	<b>\$14,504,814.17</b>

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

## WCAT VICE CHAIRS

Section 234(2)(b) of the Act provides that the WCAT 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 will continue to be regularly evaluated on an ongoing basis.

### EXECUTIVE AND VICE CHAIRS WITH SPECIAL DUTIES AS OF DECEMBER 31, 2021

Name	Position	End of Term
Luningning Alcuítas-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 28, 2023
Terry Yue	Vice Chair and Team Leader	January 5, 2025

### VICE CHAIRS AS AT DECEMBER 31, 2021

Name	End of Term	Name	End of Term
W. J. (Bill) Baker .....	February 29, 2024	Cynthia J. Katramadakis.....	March 31, 2024
Anand Banerjee .....	October 15, 2025	Joanne Kembel.....	February 28, 2023
Hélène Beauchesne .....	March 31, 2027	Brian King .....	August 31, 2024
David Bird.....	January 5, 2025	Lori Leung .....	December 21, 2022
Sarwan Boal.....	February 28, 2023	Deborah Ling .....	June 21, 2023
Larry Campbell .....	October 15, 2023	Chad McRae .....	October 15, 2023
Grace Chen.....	January 5, 2023	Renee Miller .....	April 30, 2027
Melissa Clarke .....	September 30, 2025	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	Paul Pierzchalski .....	December 21, 2022

VICE CHAIRS AS AT DECEMBER 31, 2021			
Name	End of Term	Name	End of Term
Dale Reid .....	February 28, 2025	Tony Stevens.....	February 28, 2023
Deirdre Rice .....	February 28, 2027	Andrew Waldichuk .....	April 30, 2024
Guy Riecken .....	February 29, 2024	Teresa (Terri) White.....	December 31, 2022
Ellen Riley .....	January 5, 2023	Sherryl Yeager.....	February 29, 2024
Simi Saini.....	September 5, 2023	Lyall Zucko .....	January 5, 2025
Shelina Shivji.....	March 31, 2027		

NEW VICE CHAIRS EFFECTIVE SEPTEMBER 13, 2021			
Name	End of Term	Name	End of Term
Jyoti Dasanjh .....	September 12, 2024	Christopher Ramsay .....	September 12, 2024
Kristina Nelless.....	September 12, 2024	Dawn Shaw-Biswas .....	September 12, 2024

VICE CHAIR DEPARTURES IN 2021	
Name	Departure Date or End of Term
Dana G. Brinley	February 28, 2021
Tamara Henderson	September 16, 2021
Janice Hight	April 16, 2021
Nora Jackson	February 1, 2021
Andrew Pendray	September 10, 2021
Debe Simpson	May 5, 2021