

WCAT

Workers' Compensation
Appeal Tribunal

Annual Report

For the year January 1 to December 31, 2015

2015

150 – 4600 Jacombs Road, Richmond, British Columbia V6V 3B1
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March 2, 2016

The Honourable Shirley Bond
Minister of Jobs, Tourism and Skills Training and
Minister Responsible for Labour
Room 138 - Parliament Buildings
PO Box 9071 Stn Prov Govt
Victoria, BC V8W 9E9

Dear Minister Bond:

Re: 2015 Annual Report of the Workers' Compensation Appeal Tribunal (WCAT)

I am pleased to provide you with the 2015 WCAT Annual Report for the year ended December 31, 2015. This report has been prepared for your review pursuant to section 234(8) of the *Workers Compensation Act*.

Yours truly,

Caroline Berkey
Chair

CB/gn

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GLOSSARY

Act	<i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492
<i>Administrative Tribunals Act</i>	<i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45
Board	Workers' Compensation Board, operating as WorkSafeBC
BCCAT	BC Council of Administrative Tribunals
GECA	<i>Government Employees Compensation Act</i> , R.S.C., 1985, c. G-5
MRPP	<i>Manual of Rules of Practice and Procedure</i>
<i>Occupational Health and Safety Regulation</i>	<i>Occupational Health and Safety Regulation</i> , B.C. Reg 296/97
Review Board	former Workers' Compensation Review Board
Review Division	Review Division of the Workers' Compensation Board
RSCM I	<i>Rehabilitation Services and Claims Manual, Volume I</i>
RSCM II	<i>Rehabilitation Services and Claims Manual, Volume II</i>
WCAT	Workers' Compensation Appeal Tribunal
<i>Workers Compensation Amendment Act (No. 2), 2002</i>	<i>Workers Compensation Amendment Act (No. 2), 2002</i> , S.B.C. 2002, c. 66 (Bill 63, 2002)

1. CHAIR'S MESSAGE

I am pleased to present the 2015 Annual Report for the Workers' Compensation Appeal Tribunal (WCAT). This report provides an overview of WCAT's operations in 2015.

WCAT is an independent appellate tribunal and the final level of appeal for many issues in British Columbia's workers' compensation system. WCAT has jurisdiction over workers' compensation matters including compensation claims, employer assessments, some occupational health and safety matters¹ and certificates for the courts regarding the status under the *Workers Compensation Act* (Act) of parties to litigation. The majority of the appeals and applications we received in 2015 were appeals regarding benefits under compensation claims.

WCAT is a high volume appellate tribunal. In 2015 workers and employers filed 4,916 appeals and applications. Our vice chairs decided 3,914 appeals and applications on the merits, and we addressed 1,137 through various summary decisions for a total output of 5,051 decisions. Our intake of appeals and applications in 2015 was slightly higher than last year. Our decision output was higher than our output between 2009 and 2013, but slightly lower than our output last year. This reflects the fact that during 2015 WCAT had a number of our staff working on our transition to a new case management system which was introduced in January 2016. WCAT is committed to providing quality decision making consistent with the Act, policy and WCAT precedent decisions in a timely manner.

I would like to take this opportunity to thank all of WCAT's employees and appointees for a successful year. Their dedication and productivity has enabled the tribunal to carry out our mandate and at the same time launch a new case management system.

Caroline Berkey
Chair

¹ This Report also uses the term "prevention" when referring to occupational health and safety matters.

2. 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.

3. STATUTORY FRAMEWORK

The statutory framework governing the operation of WCAT is found in Part 4 of the *Workers Compensation Act*, sections 231 to 260. Part 4 resulted from the passage of the *Workers Compensation Amendment Act (No. 2), 2002* and came into force by regulation on March 3, 2003. WCAT is also subject to the *Administrative Tribunals Act*. Section 245.1 of the *Workers Compensation Act* provides that the following sections of the *Administrative Tribunals Act* apply to WCAT:

- Parts 1; 3; 8; 9 (except section 59); and,
- Sections 7.1; 11; 13; 14; 15; 28; 29; 30; 31; 32; 35(1) to (3); 37; 38; 42; 45; 46.3; 48; 49; 52; 60(1)(a), (b) and (g) to (i) and (2); and 61.

(a) Changes in 2015

There were several amendments to the *Workers Compensation Act* and the *Administrative Tribunals Act* in 2015.

The *Administrative Tribunals Statutes Amendment Act, 2015* (Bill 18), received royal assent on May 14, 2015. Sections 199 and 201 of Bill 18 came into force on the date of royal assent. Section 199 amended section 233 of the *Workers Compensation Act* by adding subsections addressing the termination of the appointment of the chair or a vice chair of WCAT for cause. Section 201 amended section 250(3) of the *Workers Compensation Act* to permit a precedent panel appointed under section 238(6) of the *Workers Compensation Act* to overrule a prior decision of a precedent panel appointed under that section.

Other sections of Bill 18 affecting WCAT were brought into force by regulation, effective December 18, 2015. Section 198 provides that the chair or a vice chair of WCAT may be reappointed after a merit based process. Section 200 revises the list of the sections of the *Administrative Tribunals Act* that apply to the tribunal. Section 44 of the

Administrative Tribunals Act no longer applies to WCAT whereas section 45 applies instead. As a result WCAT has jurisdiction over constitutional questions, other than questions relating to the *Canadian Charter of Rights and Freedoms*. There were also changes to the *Administrative Tribunals Act* that generally affect the administrative justice tribunal sector such as provisions enabling the clustering of administrative tribunals, addressing facilitated settlements, providing for surveys, and establishing new reporting requirements.

The *Workers Compensation Amendment Act, 2015* (Bill 9), received royal assent on May 14, 2015 and contains changes primarily to the occupational health and safety provisions of the *Workers Compensation Act*. The following sections of the *Workers Compensation Act* were changed or added: 46, 81, 96.2(3), 96.4(6), 106, 158 (2)(j), 173(1), 174(2), 175, 176, 186.1, 191, 196, 196.1, 198(1), and 225(2). Order in Council 490, dated July 31, 2015, brought into force a number of these provisions in Bill 9 at various dates. It also set out a time period for requesting review of a Board decision with respect to a payment under section 73(1) of the Act, and a Board decision or order referred to in section 96.2(1)(c) of the Act.

The *Workers Compensation Amendment Act (No. 2), 2015* (Bill 35), received royal assent on November 17, 2015. This contained changes to Part 3 of the *Workers Compensation Act*, which addresses occupational health and safety, and amended some administrative provisions relating to the Board. The following sections of the *Workers Compensation Act* were changed or added: 69(1) and (2), 82.1, 86(3), 130(g), 132, 172(1), 174, and 176. Most of the amendments took effect on January 1, 2016.

In 2015 the *Miscellaneous Statute Law Amendment Act, 2014* (S.C. 2015, c. 3) replaced subparagraph 4(1)(a)(i) of the French version of the federal *Government Employees Compensation Act* (GECA). The *Economic Action Plan 2015, No. 1* (S.C. 2015, c. 36) revised the definition of employee in section 2(e) of GECA.

(b) Timeliness

WCAT is required to decide new appeals within 180 days from the date that WCAT receives from the Board the records relating to the decision under appeal. This time frame may be extended by the chair or the chair's delegate to a maximum of 90 days if the appellant requests and receives additional time to make submissions or submits new evidence and WCAT grants to the other parties a similar opportunity. The chair or the chair's delegate may also extend time on the basis of complexity. For example, additional time may be required where a WCAT panel finds it necessary to pursue further investigations. Lastly, an appeal may be suspended and the appeal clock stopped if WCAT is waiting for either 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, there is a pending report from an independent health professional; or, a pending Board decision respecting a matter that is related to an appeal.

The time limit for appealing a Review Division decision to WCAT is 30 days. A 90-day time limit applies to the limited matters for which there is a right of appeal directly to WCAT from a Board officer's decision. The chair or the chair's delegate has the discretion to grant an extension of time to appeal where it is found that special circumstances precluded the timely filing of the appeal and an injustice would otherwise result.

In combination with the 90-day appeal period for filing a request for review by the Review Division and the 150-day time frame for decision-making by the Review Division, the overall time frame for most matters to go through the review and appeal bodies is 15 months (apart from the time required to obtain file disclosure and any extensions or suspensions on the grounds permitted by the Act).

(c) Consistency

WCAT must apply the policies of the board of directors of the Board that are applicable in an appeal unless the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations. Under section 251 of the Act there is a process by which issues concerning the lawfulness of policy may be referred to the chair and the board of directors of the Board for resolution. This means that all decision-makers within the workers' compensation system apply the same policy framework in making decisions.

As well, the chair has authority under section 238(6) of the Act to establish precedent panels consisting of three to seven members. Pursuant to sections 250(3) and (3.1) of the Act, a decision by a precedent panel must be followed by other WCAT panels unless:

- the circumstances of the matter under appeal are clearly distinguishable from the circumstances in the panel's decision;
- subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision is repealed, replaced or revised; or,
- the prior decision has been overruled by another panel appointed under section 238(6).

The authority of a precedent panel to overrule a prior precedent panel came into effect on May 14, 2015. The authority to establish precedent panels provides another means of promoting consistency in decision-making within the workers' compensation system.

(d) Finality

WCAT decisions are final and conclusive. There is no further avenue of appeal. There is a limited avenue for reconsideration on application by a party. WCAT may reconsider a decision on the basis of new evidence which is substantial and material and which did not previously exist, or which previously existed but could not have been discovered

through the exercise of reasonable diligence. WCAT may also set aside a decision involving a jurisdictional error and provide a new decision.

(e) Practice and Procedure

The rules, practices, and procedures to be followed by WCAT are established by the chair. They are found in WCAT's *Manual of Rules of Practice and Procedure* (MRPP). The MRPP is available on WCAT's website www.wcat.bc.ca by clicking on the link called "Manual of Rules of Practice and Procedure (MRPP)."

There were substantial revisions to the MRPP in 2015. WCAT requested and received comments from stakeholder groups in the workers' compensation system on the proposed revisions. The revised MRPP came into effect on May 8, 2015. The following are some of the changes made in the revised MRPP:

- Item #2.7.4: amends the procedure for proceeding with appeals where a panel is unable to complete their duties;
- Item #3.3.7: adds that a panel may, without notice, review documents from another claim file involving the same worker; and, sets out the procedure to be followed, if the panel determines there are relevant documents in another claim file;
- Item #4.6: updates the provisions regarding standing of an estate of a deceased worker, in particular with respect to the documentation required;
- Item #5.1.3.1: sets out that parties to a withdrawn appeal may request reimbursement of expenses associated with obtaining or producing evidence that was submitted to WCAT with respect to the appeal;
- Item #6.3.1: sets out circumstances when WCAT does not need a new authorization for a representative;
- Item #6.6.7: clarifies that the Board is not a party to WCAT proceedings;
- Items #11.2 and #11.5.1.1: review how evidence is weighed and the impact of leading questions;
- Item #11.6: changes item regarding expert evidence from a rule to a practice directive;
- Item #13.1.4: adds that a party unable to meet a WCAT deadline for submissions should request an extension of time before the deadline has passed;

- Items #14.1.1 and #14.1.2: explain that each party has one right to postpone an oral hearing; and, that a postponement request after the 14-day period must be in writing, include the reason for the request, and be copied to the other participating parties;
- Item #14.3: adds that WCAT may reasonably limit examination or cross-examination at an oral hearing of a witness if it is satisfied that the examination or cross-examination has been sufficient and that representatives and parties have a duty to avoid improper questioning including harassing, intimidating, oppressive, unduly repetitious, or offensive questions;
- Item #16.1.1: states that parties tendering an account for expenses that exceed a fee schedule must provide a detailed breakdown of the expense and explain why an amount greater than the fee schedule amount is requested;
- Item #18: makes a number of revisions to the terminology in the section on certifications to court; and,
- Item #20.2.5: deletes the sentence indicating that WCAT will consider a further application for reconsideration of a reconsideration decision.

4. COSTS OF OPERATION FOR THE 2015 CALENDAR YEAR

Category	Cost
Salaries	\$ 8,904,980
Employee Benefits and Supplementary Salary Costs	\$ 2,303,021
Per Diem – Boards and Commissions	\$ 876,202
Travel	\$ 71,169
Centralized Management Support Services*	\$ 1,327,470
Professional Services**	\$ 696,429
Information Technology, Operations and Amortization	\$ 1,124,080
Office and Business Expenses	\$ 406,058
Building Service Requests and Amortization	\$ 1,394
TOTAL EXPENDITURES	\$ 15,710,803

* These charges represent Building Occupancy and Workplace Technology Service charges which do not impact the WCAT operating budget but are charged directly to WorkSafeBC.

** This includes coroner’s inquest costs.

5. WCAT MEMBERS

Executive and Vice Chairs with Special Duties as of December 31, 2015		
Name	Position	End of Term
Caroline Berkey	Chair	June 30, 2018 (OIC# 741)
Jane MacFadgen	Senior Vice Chair & Registrar	February 29, 2020
David Newell	Senior Vice Chair & Tribunal Counsel	January 31, 2020
James Sheppard	Vice Chair, Quality Assurance & Training	February 28, 2019
Kevin Johnson	Vice Chair & Deputy Registrar	February 28, 2017
Luningning Alcuitas-Imperial	Vice Chair & Team Leader	February 28, 2021
Randy Lane	Vice Chair & Team Leader	February 29, 2020
Susan Marten	Vice Chair & Team Leader	February 28, 2018
Debbie Sigurdson	Vice Chair & Team Leader	February 28, 2019

Vice Chairs as of December 31, 2015	
Name	End of Term
Cathy Agnew	August 31, 2018
Beatrice K. Anderson	February 28, 2018
W. J. (Bill) Baker	February 28, 2018
Hélène Beauchesne*	March 31, 2019
David Bird	January 5, 2017
Sarwan Boal	February 28, 2017
Dana G. Brinley	February 28, 2018
Kate Campbell	September 5, 2017
Grace Chen	January 5, 2017
Lesley Christensen	February 28, 2018
Melissa Clarke	September 30, 2020
Daphne A. Dukelow	February 28, 2017

Vice Chairs as of December 31, 2015 (continued)	
Name	End of Term
William J. Duncan	February 28, 2019
Andrew J. M. Elliot	August 31, 2018
Lisa Hirose-Cameron	September 30, 2018
Sherelle Goodwin	January 5, 2017
Janice Hight	January 5, 2017
Warren Hoole	September 30, 2019
Nora Jackson	February 28, 2019
Cynthia J. Katramadakis	March 31, 2018
Joanne Kembel	February 28, 2018
Brian King	August 31, 2018
Robert Kyle	February 28, 2017
Darrell LeHouillier	October 31, 2017
Shelley Lopez	September 5, 2017
Julie C. Mantini*	February 28, 2019
Renee Miller	April 30, 2019
Herb Morton	February 29, 2020
Elaine Murray	August 31, 2019
Andrew Pendray	January 3, 2017
Dale Reid	February 29, 2019
Deirdre Rice	February 28, 2019
Guy Riecken	February 28, 2019
Ellen Riley	January 5, 2017
Simi Saini	September 5, 2017
Shelina Shivji	March 31, 2017

Vice Chairs as of December 31, 2015 (continued)	
Name	End of Term
Debe Simpson	January 5, 2017
Timothy B. Skagen	March 31, 2017
Anthony F. Stevens	February 28, 2017
Andrew J. Waldichuk	February 28, 2017
Terri White	December 31, 2019
Lois J. Williams	February 28, 2018
Kim Workun	January 5, 2017
Sherryl Yeager	February 28, 2018
Terry Yue	January 5, 2017
Lyall Zucko	January 5, 2017

* Part-time Deputy Registrar

Vice Chair Appointments in 2015		
Name	Original Appointment Date	End of Term
Jacqueline Barnes	June 22, 2015	June 21, 2018
Scott Ferguson	June 22, 2015	June 21, 2018
Lori Leung	June 22, 2015	June 21, 2018
Deborah Ling	June 22, 2015	June 21, 2018
Paul Pierzchalski	June 22, 2015	June 21, 2018

Vice Chair Departures in 2015		
Name	Original Appointment Date	Departure Date or End of Term
Diep Nguyen	September 6, 2011	January 19, 2015
Carla Qualtrough	September 6, 2011	October 27, 2015

WCAT was also deeply saddened by the passing of vice chair Janice Leroy in 2015. Janice contributed to the workers' compensation system as a WCAT vice chair since 2003.

6. EDUCATION

WCAT is committed to excellence in decision-making. WCAT's MRPP sets out our guiding principles in item #1.4. 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.

In 2015, the WCAT education group organized a wide variety of educational and training sessions. Members of WCAT 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.

WCAT is also represented on the Inter-Organizational Training Committee, which is composed of representatives from the Board (including the Review Division), WCAT, and the Workers' and Employers' Advisers' Offices. The Committee's goal is to provide a forum for the various divisions and agencies to cooperate with each other, to share training ideas and materials, and to organize periodic inter-organizational training sessions.

The following is a list of sessions organized by WCAT for vice chairs during 2015:

1. January 20
 - Round Table Discussion of Discriminatory Action Appeals
2. February 5
 - Noncompensable Medical Conditions
 - Restrictions and Limitations
 - Reasonable Availability of Alternative Occupations
 - *Fraser Health Authority v. WCAT et al*
3. March 12
 - Overview and Discussion of Policy on Activity Related Soft Tissue Disorders
4. April 2
 - Complex Chronic Pain and Fitness to Work
 - Reconsideration of WCAT Decisions after *Fraser Health*
 - Proposed Changes to the Manual of Rules of Practice and Procedure

5. June 4
 - Ethics for Decision-makers, a principled approach
 - Exclusionary Rule of Evidence – Privilege
 - WCAT-CMS Project Overview for Vice Chairs
6. June 16
 - Round table Discussion of New Policy #41.00 (termination of permanent disability pensions at age 65)
7. June 30
 - Evidence in WCAT Appeals
 - Types of evidence and what can be accepted
 - Principled approach to admission of evidence
 - Evaluating evidence
 - Credibility and reliability
8. August 19
 - Tactical Communications: Dealing with Challenging Behaviours
9. September 17
 - Discriminatory Action Appeals
 - Law and Policy
 - Difference from compensation claims
 - The prima facie case and reverse onus under section 152(3)
10. September 23
 - WorkSafeBC Fair Practices Office
11. October 15
 - Roundtable Discussion of WorkSafeBC Field Investigations
12. October 21
 - WCAT-CMS Overview and Demonstration
13. November 24
 - Roundtable on Reconsideration of WCAT Decisions

In addition, many WCAT vice chairs attended the BC Counsel of Administrative Tribunals Education Conference in October. Some vice chairs also attended the November 2015 Continuing Legal Education Society's Administrative Law Conference. On November 6, 2015 WCAT provided an information and training session to representatives.

7. PERFORMANCE EVALUATION

Section 234(2)(b) of the Act provides that the WCAT chair is responsible for establishing quality adjudication, performance and productivity standards for members of WCAT and regularly evaluating the members 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.

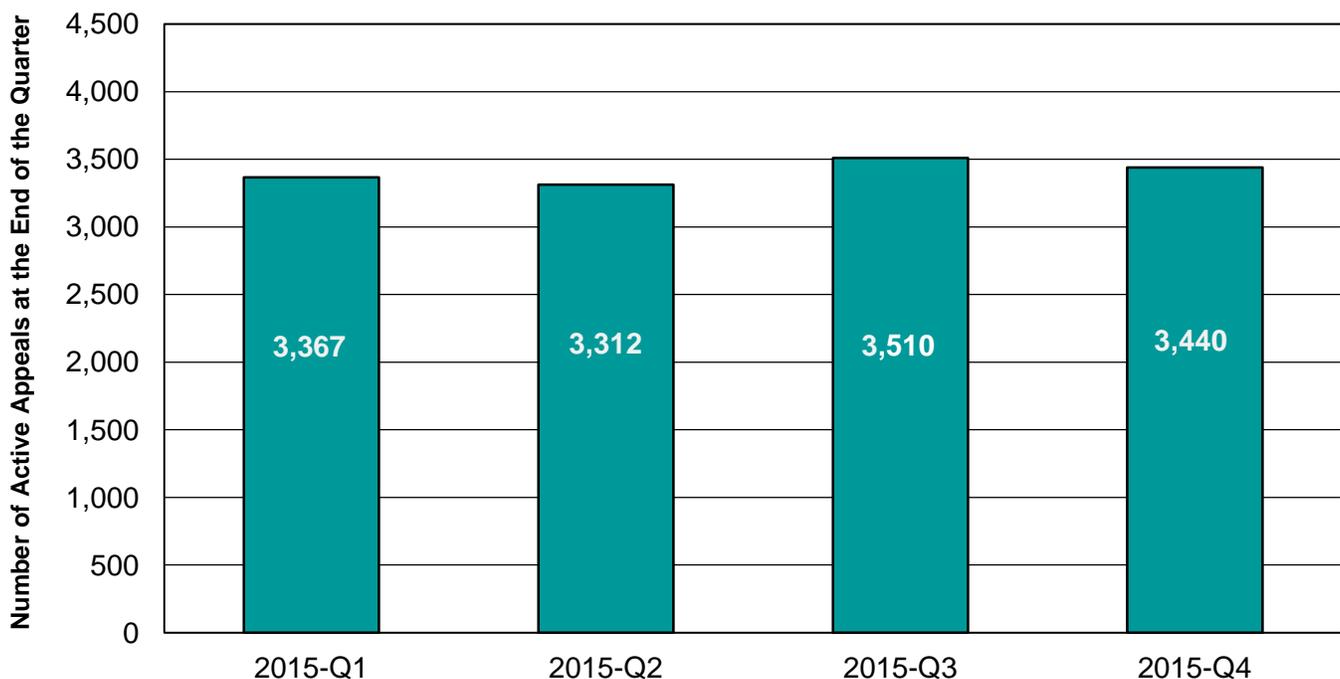
8. STATISTICS

8.1 Overview of Appeals Inventory

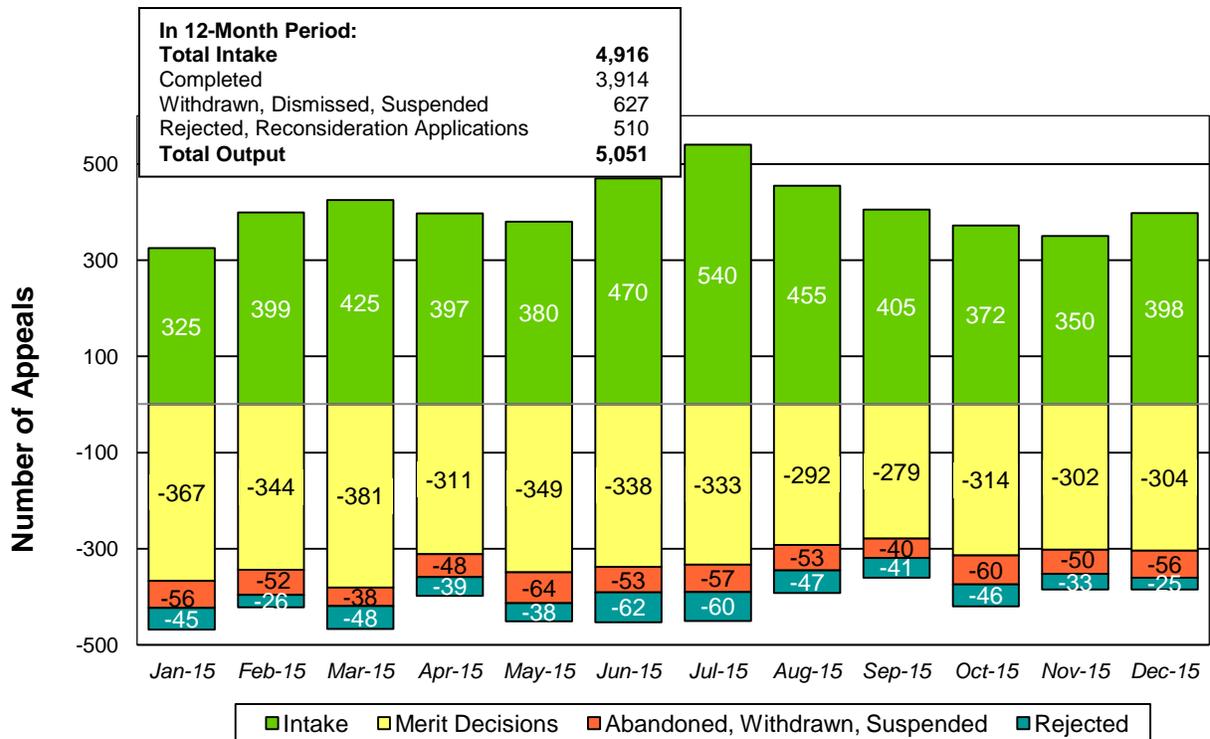
This section contains two charts providing a high level overview of the status of our appeals inventory for 2015. WCAT records appeals by their date of initiation.

The first chart (Number of Active Appeals) provides the number of appeals in our inventory at the end of each quarter of 2015. WCAT’s total active inventory at December 31, 2015 was 3,440 appeals compared to 3,572 at the end of 2014. The second chart (Total Intake and Output) provides monthly statistics regarding our intake of appeals (including reactivated appeals) and our output which includes completed appeals, rejected appeals, and appeals that were dismissed, withdrawn, or suspended. We received 4,916 new appeals in 2015, representing an increase of 2% from the number of appeals we received in 2014. Our output in 2015 was 5,051 summary and merit decisions and determinations. This is a slight decrease in output from 2014 due to the number of staff involved in the development and implementation of a new case management system at the tribunal.

**WORKERS’ COMPENSATION APPEAL TRIBUNAL
NUMBER OF ACTIVE APPEALS IN INVENTORY**



WORKERS' COMPENSATION APPEAL TRIBUNAL TOTAL INTAKE AND OUTPUT IN EACH MONTH



8.2 Appeals and Applications

Appeals and applications 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.

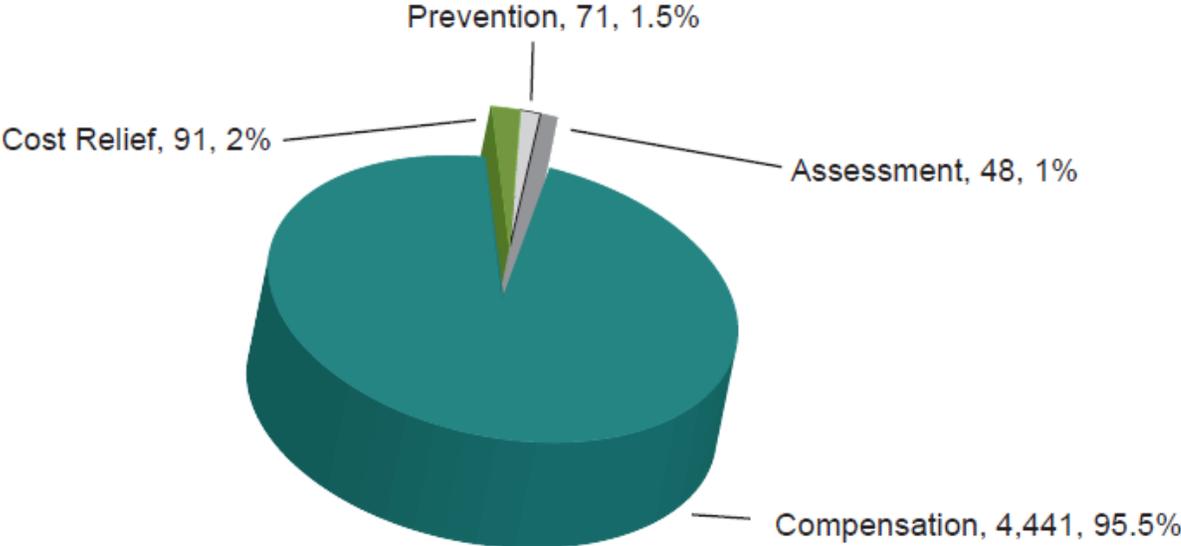
(a) Intake

WCAT received 4,916 appeals and applications in 2015. Of these, 4,651 appeals (95%) arose from decisions of Board review officers and 265 were direct.

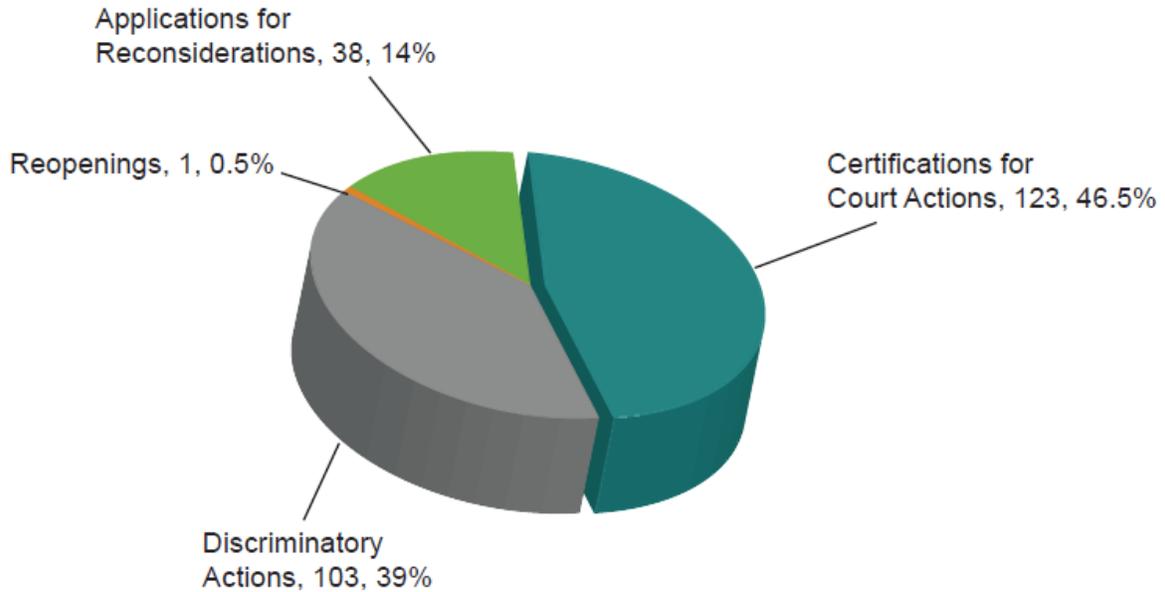
Source	Intake
Review Division	4,651
Direct	265
Total	4,916

The following two charts show the breakdown of the types of appeals and applications we received in 2015.

APPEALS FROM REVIEW DIVISION BY TYPE



DIRECT APPEALS AND APPLICATIONS BY TYPE



(b) Merit Decisions

WCAT made 3,914 merit decisions on appeals and applications in 2015, 45 of which concerned applications for certificates for court actions. The remaining 3,869 merit decisions concerned appeals from decisions of the Review Division or Board officers, which may be varied, confirmed, or cancelled by WCAT.

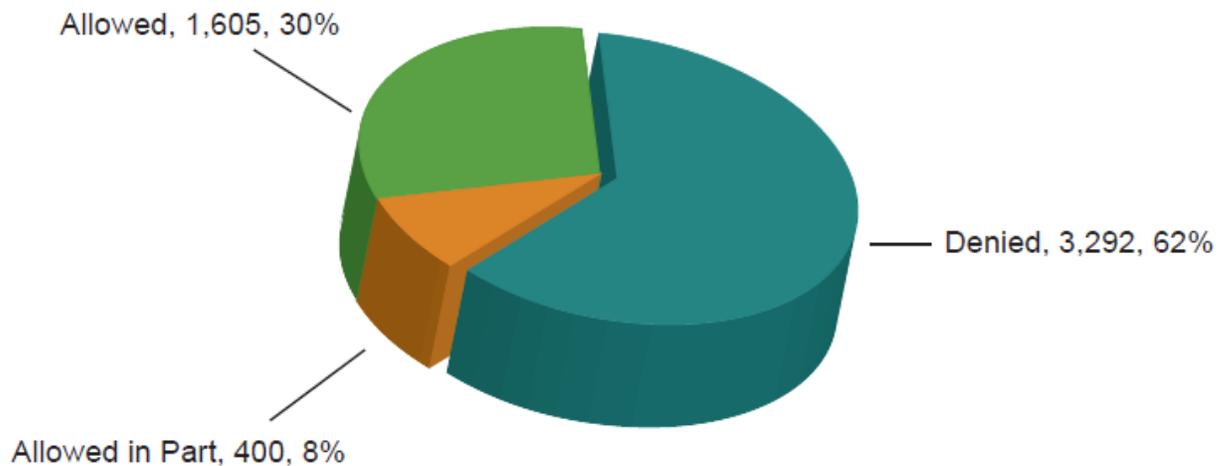
“Vary” means that WCAT varied the previous decision in whole or in part. Accordingly, whether WCAT has fully granted the remedies requested by the appellant on all issues arising under the appeal or merely changed a minor aspect of the previous decision, the decision is considered to have been “varied.”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

The table below shows the percentages of WCAT’s merit decisions that varied or confirmed the decision under appeal. The number of merit decisions cancelling the decision under appeal is too low to be reflected in the table below. Appeals from Review Division decisions regarding reopenings are included as compensation appeals.

Appeals		Outcome	
Appeal Type	Number of Decisions	Varied	Confirmed
Compensation	3,708	44%	56%
Relief of Costs	73	36%	64%
Discriminatory Actions	42	26%	74%
Assessments	28	50%	50%
Prevention	18	22%	78%

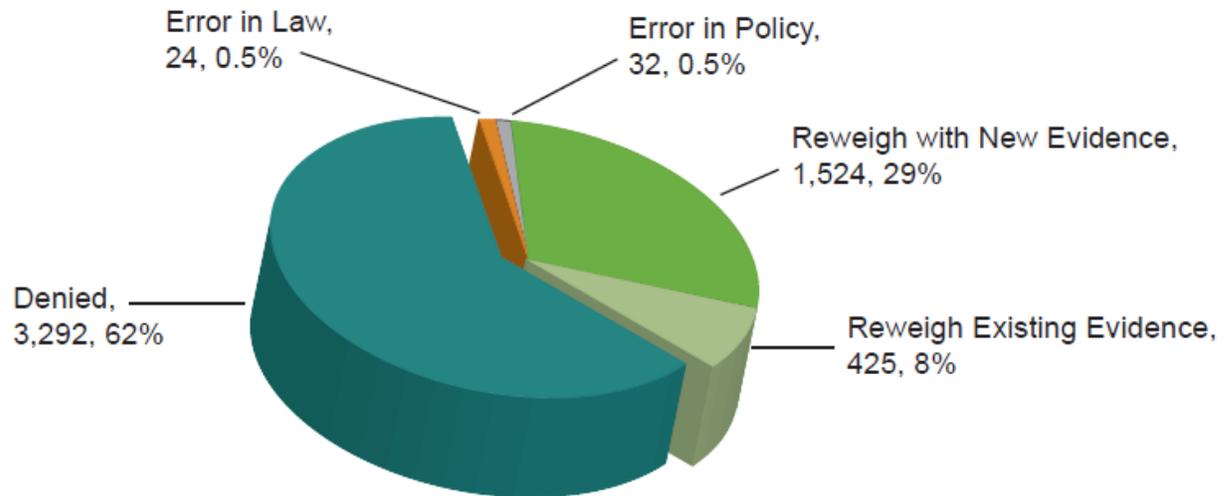
An appeal may raise numerous issues and WCAT may allow or deny the appeal on each issue. In 2015, WCAT decided 5,297 issues that arose out of the 3,914 appeals that led to merit decisions. The following chart shows the percentage of issues for which the appeals were allowed, allowed in part, or denied.

ISSUE OUTCOMES



The following chart shows the percentage of the issues where the appeals on those issues were denied and, if the appeals on those issues were allowed or allowed in part, the reasons for allowing the appeals on those issues.

REASONS FOR ISSUE OUTCOMES



(c) Summary Decisions

WCAT made 1,137 summary decisions on appeals and applications. In 607 of these decisions, WCAT dismissed the appeal or confirmed that the appellant had withdrawn it. WCAT rejected 339 appeals and applications because there was no appealable issue or the decision under appeal was not appealable to WCAT. Twenty summary decisions suspended appeals. Of the remaining summary decisions, 57 decided applications for reconsideration and 114 denied requests for extension of time to appeal.

(d) Requests for Extensions of Time

WCAT decided 293 requests for extensions of time to appeal; allowing 179 and denying 114.

(e) Top Five Issue Groups for WCAT Appeals

Appeal Issue	Merit Decisions	Percentage of Total Decisions	Allowed / Allowed in Part	Denied
Section 5 – Compensation For Personal Injury	1,513	29%	35%	65%
Section 23 – Permanent Partial Disability	1,203	23%	49%	51%
Section 30 – Temporary Partial Disability	434	8%	34%	66%
Section 6 – Occupational Disease	357	7%	35%	65%
Section 96 – Jurisdiction of Board	255	5%	36%	64%

8.3 General

(a) Appeal Paths

WCAT decides appeals and applications in one of two ways:

- 1) after an oral hearing; or,
- 2) if the appellant does not request an oral hearing or WCAT determines that an oral hearing is not necessary to fully and fairly consider the matter, after reading and reviewing the Board’s records, any new evidence, and the submissions of the parties.

In 2015, WCAT decided a total of 3,914 appeals and applications on the merits. WCAT decided 1,692 (43% of the total) after convening an oral hearing and decided 2,222 appeals and applications (57% of the total) by written submission.

(b) Locations of Oral Hearings

In 2015, WCAT held oral hearings in 12 locations around the province. The following table shows the number of oral hearings held in each location.

Location	Number of Hearings
Castlegar	19
Courtenay	66
Cranbrook	18
Fort St. John	9
Kamloops	53
Kelowna	94
Nanaimo	106
Prince George	50
Terrace	6
Victoria	120
Williams Lake	7
Total outside Richmond	548
Richmond	728
Grand Total	1,276

Note: Since 2013 this chart was changed in the Annual Report to show the number of hearings held in each location rather than the number of hearing weeks in each location. The number of hearings per week can vary so the actual number of hearings provides more precise information.

(c) 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 percentages refer to all appeals and applications that were active at some time during 2015. The table does not include assessment or relief of costs appeals as the appellant is always the employer.

Type of Appeal or Application	Appellant / Applicant		
	Worker	Employer	Dependant
Compensation	92.5%	7.4%	0.1%
Direct Reopening	100%	0%	0%
Discriminatory Action	63.5%	36.5%	0%
Prevention	5.5%	94.5%	0%
Reconsideration	91%	9%	0%

(d) 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. The percentages relate to all appeals and applications that were active at some time during 2015.

Type of Appeal	Percent Represented where Appellant / Applicant is:		
	Worker	Employer	Dependant
Assessment	NA	68%	NA
Compensation	75%	80%	67%
Discriminatory Actions	32%	83%	NA
Prevention	NA	74%	100%
Reconsiderations	68%	77%	NA
Relief of Costs	NA	86%	NA

9. PRECEDENT PANEL DECISIONS

Pursuant to section 238(6) of the Act, if the chair of WCAT determines that the matters in an appeal are of special interest or significance to the workers' compensation system as a whole, the chair may appoint a panel of up to seven members to hear the appeal (a precedent panel).

Pursuant to sections 250(3) and (3.1) of the Act, a decision by a precedent panel must be followed by other WCAT panels unless:

- the circumstances of the matter under appeal are clearly distinguishable from the circumstances in the panel's decision;
- subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision is repealed, replaced or revised; or,
- the prior decision has been overruled by another panel appointed under section 238(6).

WCAT did not issue any precedent panel decisions in 2015. No precedent panel decisions were pending at the end of 2015.

10. REFERRALS OF POLICY TO THE CHAIR (SECTION 251)

Pursuant to section 251(1) of the Act, WCAT may refuse to apply a policy of the board of directors of the Board only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations. If, in an appeal, a WCAT panel considers that a policy should not be applied, that issue must be referred to the chair, and the chair must determine whether the policy should be applied.

Pursuant to section 251(4) of the Act, if the chair determines that the policy should be applied, the chair must refer the matter back to the panel and the panel is bound by that determination. However, if the chair determines that the policy should not be applied, the chair must send a notice of this determination, including the chair's written reasons, to the board of directors of the Board and suspend any appeal proceedings that the chair considers to be affected by the same policy. The board of directors has 90 days to review the policy and determine whether WCAT may refuse to apply it. After making that determination the board of directors must refer the matter back to WCAT, and the tribunal is bound by that determination.

In *WCAT-2015-02919* a WCAT panel referred the issue of the lawfulness of policy item #66.00 of the RSCM II to the chair under section 251(2) of the Act in 2015. Policy item #66.00 concerns the application of the general rule for determining long-term average earnings; in particular, the review of average earnings after payment of ten cumulative weeks of benefits. The impugned portion of the policy provided that, in the

case of workers covered under the *Government Employees Compensation Act* who are maintained on full salary, no ten week review of average earnings is carried out.

The board of directors of the Board amended policy item #66.00 to remove the portion of the policy that was referred to the chair of WCAT under section 251 of the Act. The amended policy was stated to apply to decisions made on or after January 1, 2016, but was not stated to apply to appellate decisions (Resolution number 2015/07/21-02, dated July 21, 2015). The board of directors further amended the application statement to state that it applies to appellate decisions made on or after January 1, 2016 (Resolution number 2015/11/25-02, dated November 25, 2015). This referral remained active as of December 31, 2015. (In *WCAT-2016-00534*, dated February 22, 2016, the referral to the chair was withdrawn by the WCAT panel based on the changes to the impugned policy.)

11. NOTEWORTHY WCAT DECISIONS

Noteworthy WCAT decisions are decisions that have been 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/search/decision_search.aspx. The website contains documents listing all noteworthy WCAT decisions organized by subject and date.

11.1 Summaries of Noteworthy WCAT Decisions

This section provides summaries of the noteworthy decisions WCAT issued in 2015.

(a) *WCAT-2015-00465*

Decision Date: February 11, 2015

Panel: M. Clarke

A reasonably available occupation under policy item #40.12 of the RSCM II is one that takes into account the worker's functional capabilities and one that the worker is medically fit to undertake. This requires the Board to consider a worker's pre-existing non-compensable condition when determining whether the worker is competitively employable.

(b) WCAT-2015-00506**Decision Date: February 16, 2015****Panel: D. Sigurdson
C. Berkey
T. White**

Section 5.1 of the Act applies to federal employee claims for compensation for a mental disorder on the basis that there is no direct conflict between section 5.1 of the Act and the *Government Employees Compensation Act*.

(c) WCAT-2015-00701**Decision Date: February 27, 2015****Panel: S. Marten**

Prior to December 31, 2013 policy item #50.00 of the RSCM II provided for payment of interest under situations covered by sections 19(2)(c) and 258 of the Act, as well as where there was a blatant Board error that necessitated the retroactive payment. Section 19(2)(c) of the Act pertains to the circumstance of a surviving spouse of a deceased worker (fatal claims). Section 258 of the Act relates to retroactive benefits flowing from Review Division decisions that were deferred pending an appeal to WCAT.

As of January 1, 2014, policy item #50.00 of the RSCM II was amended to remove the authority to pay interest where there was a blatant Board error for decisions made on or after that date. The amended policy provides that interest is only payable as provided for in the Act under sections 19(2)(c) and 258 of the Act.

(d) WCAT-2015-01459**Decision Date: May 7, 2015****Panel: M. Clarke**

In the absence of special and exceptional circumstances, a worker is not entitled to compensation under the Act for psychological impairment resulting from his or her interactions with the Board.

(e) WCAT-2015-01946**Decision Date: June 19, 2015****Panel: H. Morton**

On application for reconsideration on the grounds of jurisdictional defect, a different panel than the panel that heard the original appeal may be appointed when the original panel is no longer available.

(f) WCAT-2015-03765**Decision Date: December 15, 2015****Panel: J. Kembel
W. Hoole
A. Pendray**

Making a “bare” claim for compensation that does not identify any occupational health or safety issues is not a protected activity under section 151 of the Act.

12. 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 256 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 original decision is reconsidered.

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 through the exercise of reasonable diligence have been discovered. 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 2015, WCAT received 38 applications for reconsideration and issued 57 stage one decisions. Of the stage one decisions issued, 7 determined that reconsideration grounds existed. The outcomes of the stage one reconsideration decisions were as follows:

Type of Reconsideration	Number of Reconsideration Decisions	Allowed	Denied
Jurisdictional Defect	24	4	20
New Evidence	22	3	19
Both Grounds Alleged	11	0	11
TOTAL	57	7	50

12.1 Reconsideration on the Basis of Jurisdictional Error

In deciding whether WCAT has made a jurisdictional error by breaching the rules of procedural fairness, WCAT considers whether, in all of the circumstances, WCAT acted fairly. WCAT applies the same test for unfairness as the courts do on judicial review (Administrative Tribunals Act, section 58(2)(b)).

In deciding whether WCAT has made an error in respect of its narrow jurisdiction, WCAT considers whether it decided a matter that it had no power to decide or failed to decide a matter that it was required to decide.

In 2015, WCAT allowed 4 applications for reconsideration on the ground of jurisdictional error. Of those 4 allowed applications, 3 were allowed on the basis of a breach of procedural fairness, and 1 was allowed on the basis of an error in respect of a narrow question of jurisdiction.

On December 18, 2014, the B.C. Court of Appeal issued its decision in Fraser Health Authority v. Workers' Compensation Appeal Tribunal, 2014 BCCA 499. The majority of the Court determined that WCAT's jurisdiction to reconsider a decision to cure a jurisdictional error is limited to review for procedural unfairness and for errors in respect of narrow questions of jurisdiction as noted above. The majority determined that WCAT does not have the jurisdiction to determine whether a decision contains a patently unreasonable error of fact, law, or exercise of discretion. (An appeal from the Court of Appeal's decision was heard by the Supreme Court of Canada on January 14, 2016.)

13. JUDICIAL REVIEW OF WCAT DECISIONS

A party may apply to the B.C. Supreme Court 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 remedy requested 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.

Pursuant to section 57(1) of the *Administrative Tribunals Act*, 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 circumstance, the Court may extend the time for applying for judicial review.

13.1 Judicial Review Applications

In 2015, WCAT was served with 28 applications for judicial review of WCAT decisions, 1 appeal of a B.C. Supreme Court judicial review decision, and 1 appeal of a B.C. Court of Appeal judicial review decision.

13.2 Judicial Review Decisions

The following court decisions were issued in relation to judicial review applications in respect of WCAT decisions and related appeals².

(a) *Von Rummelhoff v. Workers' Compensation Appeal Tribunal*, 2015 BCSC 246 (January 9, 2015)

Decisions under review: *WCAT-2012-02605* and *WCAT-2014-00502*

Mr. Von Rummelhoff applied for compensation from the Board more than one year after the date of his injury. WCAT denied Mr. Von Rummelhoff's appeal of the Board and Review Division decisions finding that his claim was time barred under section 55 of the Act. Mr. Von Rummelhoff brought a civil action against WCAT.

The B.C. Supreme Court treated the civil claim as challenging the decision under section 55 of the Act and seeking a monetary remedy for benefits. The Court struck out the notice of civil claim in its entirety concluding that:

- WCAT's exercise of statutory power under section 55 could only be challenged by petition for judicial review;

² The full text of these decisions can be found on the Courts of British Columbia website at: <http://www.courts.gov.bc.ca/>.

- the monetary claim had no reasonable prospect of success because WCAT had not made a decision regarding entitlement to benefits; and,
- in any event, WCAT cannot be sued for damages alleged or arising from the exercise of its statutory powers.

**(b) *Amos v. Workers' Compensation Appeal Tribunal, 2015 BCSC 425*
(March 19, 2015)**

Decisions under review: *WCAT-2009-02265* and *WCAT-2011-01467*

Mr. Amos, a logging truck driver, was injured by a falling log. The Board granted Mr. Amos a disability award based on functional impairment but denied an award based on loss of earnings. In denying the loss of earnings award, the Board relied on the opinion of a vocational rehabilitation consultant that Mr. Amos could work as a dispatcher as long as the position was modified through the use of a headset. WCAT denied Mr. Amos' appeal relying on the vocational rehabilitation consultant's opinion that the dispatcher position could be modified using a headset and that the occupation of dispatcher was reasonably available to Mr. Amos.

The B.C. Supreme Court allowed Mr. Amos' application for judicial review, finding it was patently unreasonable to rely exclusively on the statistics and general market research provided by the vocational rehabilitation consultant without considering whether the occupation of dispatcher was reasonably available to Mr. Amos, as required by policy item #40.12 of the RSCM I. The Court also found that it was patently unreasonable to rely on the vocational rehabilitation consultant's opinion that the dispatcher position could be modified through using a headset because there was no factual basis for that opinion.

(c) *Anderson v. British Columbia (Workers' Compensation Appeal Tribunal), 2015 BCSC 1443* (April 2, 2015)

Decision under review: *WCAT-2014-02287*

Mr. Anderson commenced a civil action against a co-worker and his employer alleging that the co-worker had assaulted him and the employer was negligent. The employer applied to WCAT under section 257 of the Act for a determination of the status of each of the parties to the action. WCAT found that Mr. Anderson and his co-worker were both workers within the meaning of the Act and any injuries Mr. Anderson sustained arose out of and in the course of his employment. WCAT also found the actions of the employer arose out of and in the course of employment.

The B.C. Court of Appeal dismissed Mr. Anderson's application to set aside the tribunal's decision noting that inadequacy of reasons does not constitute a separate ground of review and concluding, in any event, that WCAT's reasons for decision were adequate because they allowed the Court to understand why the panel made its

decision and to assess whether the decision fell within the range of acceptable outcomes.

(d) *Mayden v. British Columbia (Workers' Compensation Appeal Tribunal), 2015 BCSC 692 (April 29, 2015)*

Decisions under review: Registry Decision dated May 9, 2013, *WCAT-2013-02673*, and *WCAT-2013-03280*

The Court dismissed Mr. Mayden's application for judicial review of the WCAT decisions and the decision of the defunct Appeal Division of the Board. The Court found that the petition did not disclose a reasonable claim and that it was an abuse of the Court's process, chiefly because the petitioner had earlier sought judicial review in a substantially similar petition which the Court had struck. For these reasons, the Court held that the petition before it should be struck under Rule 9-5(1) of the *Rules of Court*.

The Court also found that the WCAT decisions were not patently unreasonable. WCAT had dismissed the petitioner's appeal on the basis that an earlier decision on his claim, by the since-defunct Workers' Compensation Review Board, was final and binding. In the other decision, WCAT dismissed Mr. Mayden's application to reconsider the decision of the Appeal Division because he did not satisfy the requirements in the Act for new evidence.

(e) *Goulding v. Workers' Compensation Appeal Tribunal, 2015 BCCA 223 (May 11, 2015)*

Decisions under review: *WCAT-2010-00007* and *WCAT-2011-00351*

WCAT had confirmed the findings of the Board that Mr. Goulding's permanent functional impairment award had been correctly assessed and that he was not entitled to a loss of earnings assessment under section 23(3) of the Act. The B.C. Supreme Court dismissed Mr. Goulding's application for judicial review of the WCAT decision. The B.C. Court of Appeal dismissed the worker's subsequent appeal of the original WCAT decision, having concluded there was evidence to support WCAT's findings and therefore the decision was not patently unreasonable. The Court of Appeal also dismissed Mr. Goulding's motion to introduce new evidence noting that judicial review is concerned with the record that was before the tribunal.

(f) *Machado v. British Columbia (Workers' Compensation Appeal Tribunal), 2015 BCSC 769 (May 12, 2015)*

Decision under review: *WCAT-2013-01425*

WCAT exercised its discretion to deny Ms. Machado's application for an extension of time to appeal a decision of the Review Division. WCAT concluded that there was insufficient reliable evidence to rebut the presumption in section 221(2) of the Act that a

document sent by mail is received on the eighth day after it was sent. WCAT also concluded that Ms. Machado did not take reasonable steps to ensure a timely appeal. The B.C. Supreme Court denied Ms. Machado's petition for judicial review finding that there was evidence to support WCAT's findings of fact and inferences drawn from those findings; consequently, the decision was not patently unreasonable.

**(g) *Puar v. Workers' Compensation Appeal Tribunal*, 2015 BCSC 827
(May 15, 2015)**

Decisions under review: *WCAT-2009-00294* and *WCAT-2012-02410*

WCAT determined that Mr. Puar was entitled to an increase in his partial loss of earnings award under the former section 23(3) of the Act. The petitioner maintained he was unemployable. The B.C. Supreme Court found that WCAT's decision was not patently unreasonable on the basis that:

- 1) WCAT has the authority to determine the appropriate level of projected earnings and was not required to return that question to the Board;
- 2) there was evidence to support WCAT's conclusion that certain occupations were reasonably available; and,
- 3) WCAT did not fail to properly interpret and apply item #40.12 of the RSCM I.

The petitioner has appealed this decision to the B.C. Court of Appeal.

**(h) *Rutter v. British Columbia (Workers' Compensation Appeal Tribunal)*,
2015 BCSC 862 (May 25, 2015)**

Decision under review: *WCAT-2013-03319*

WCAT denied Mr. Rutter's appeal of a Review Division decision denying his claim for a left shoulder injury as a compensable consequence of an accepted injury. Mr. Rutter asked the WCAT panel to exercise its discretion under section 249 of the Act to obtain an opinion from an independent health professional but the panel referred the matter back to the Board under section 246(3) of the Act for a determination of whether the left shoulder condition was an occupational disease compensable under section 6 of the Act. Based on an assessment of Mr. Rutter's work activities, and a Board medical advisor opinion, the Board concluded that the left shoulder condition was not a compensable occupational disease. The WCAT panel preferred the Board medical advisor's opinion over the opinion of another doctor, that was submitted by Mr. Rutter, and concluded that employment did not significantly contribute to the left shoulder condition.

The B.C. Supreme Court allowed the petition for judicial review finding WCAT erred in finding that Mr. Rutter's doctor did not address certain relevant facts in his opinion;

consequently, it was patently unreasonable to characterise the opinion as unresponsive to the question before WCAT. The Court also found that WCAT was patently unreasonable because it did not explain in its decision why it did not seek assistance from an independent health professional.

(i) *West Fraser Mills Ltd v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2015 BCSC 1098 (June 25, 2015)

Decision under review: *WCAT-2013-01952*

West Fraser Mills operates a forest products business and owned a forest license on which it had contracted with an individual to fall some trees. The contractor hired another faller to help him with the work. That faller was fatally injured while doing the work. The Board investigated and determined that West Fraser Mills was in violation of section 26.2 of the *Occupational Health and Safety Regulation*, which requires the owner of a forestry operation to ensure that all activities of the operation are both planned and conducted safely. The Board also levied an administrative penalty against West Fraser Mills.

The Court found that the Board had the jurisdiction to pass section 26.2 of the *Occupational Health and Safety Regulation*. The Court also found that it was not patently unreasonable for WCAT to conclude that when an owner is also an “employer” within the meaning of the Act and the worksite is a workplace for the owner/employer’s workers, the Board has the authority to impose an administrative penalty against the owner/employer even when the underlying violation is one related to the obligations of an owner. The petitioner has appealed this decision to the B.C. Court of Appeal.

(j) *Prest v. Workers' Compensation Appeal Tribunal*, 2015 BCCA 377 (September 9, 2015)

Decision under review: *WCAT-2012-03342*

Mr. Prest, a self-employed farmer who owned and operated farms through a number of limited companies, injured his shoulder while working. WCAT concluded that Mr. Prest was not entitled to a pension based on loss of earnings because the amount he was earning or was able to earn exceeded the statutory maximum established by the Board. The B.C. Supreme Court found that the WCAT decision was not patently unreasonable and dismissed the application for judicial review.

The B.C. Court of Appeal denied Mr. Prest’s appeal finding that the WCAT decision was not patently unreasonable. The Court of Appeal found that a previous Review Division decision, determining under section 23(3.1) of the Act that Mr. Prest was entitled to a loss of earnings assessment, did not bind WCAT and it was not patently unreasonable for the WCAT panel to conclude that the Review Division decision addressed different questions than the question before WCAT. The Court of Appeal

also found WCAT's conclusion that dividends were to be included in Mr. Preast's income for the purpose of assessing loss of earnings was not patently unreasonable.

**(k) *Skrepetz v. Workers' Compensation Appeal Tribunal*,
2015 BCSC 2458 (December 10, 2015)**

Decision under review: *WCAT-2013-03348*

Mr. Skrepetz sustained head injuries in three separate workplace incidents. Mr. Skrepetz claimed that as a result of his injuries he had permanent cognitive impairment. Three neuropsychological reports by two different neuropsychologists indicated that the results of testing were unreliable because Mr. Skrepetz failed several of the validity tests that formed part of the assessments. Both the neuropsychologists expressed doubt as to whether Mr. Skrepetz had cognitive impairment of the magnitude suggested by some of the unreliable test results but neither of them offered an opinion as to whether Mr. Skrepetz was or was not cognitively impaired. WCAT found there was sufficient evidence in the neuropsychological reports to conclude that Mr. Skrepetz did not have permanent cognitive impairment as a result of his injuries, despite the unreliability of the test results. The B.C. Supreme Court found that the neuropsychological reports did not provide any evidence to support the conclusion that Mr. Skrepetz did not have cognitive impairment and since there was no other evidence to support it the conclusion was patently unreasonable.

**(l) *Houston v. British Columbia (Workers' Compensation Appeal Tribunal)*,
2015 BCSC 2447 (December 29, 2015)**

Decision under review: *WCAT-2014-02909*

Ms. Houston developed complex regional pain syndrome (CRPS) in her shoulder following an injury at work. Symptoms of CRPS later developed in her chest wall following a medical intervention related to her shoulder injury, and in her foot after she broke her toe. The Board accepted Ms. Houston's claim for "systemic" CRPS in relation to the symptoms in her foot but not in her chest wall. WCAT denied Ms. Houston's appeal upholding the Board's decision.

The B.C. Supreme Court allowed Ms. Houston's petition for judicial review finding that WCAT had fundamentally misapprehended the medical evidence; firstly, by assuming that the medical experts whose opinions were considered were applying the same diagnostic criteria for systemic CRPS and secondly, by concluding without benefit of any medical evidence that Ms. Houston was not suffering from CRPS in her chest wall.

14. OTHER COURT DECISIONS

The following court decision is of significance to WCAT or the workers' compensation system generally.

(a) *Lockyer-Kash v. Workers' Compensation Board of British Columbia*, 2015 BCCA 70 (February 19, 2015)

The respondent received a retroactive award from the Board, but her claim for interest was denied based on a policy of the board of directors of the Board. She appealed to WCAT, which found the policy to be patently unreasonable and referred the matter to the board of directors. The board of directors affirmed the policy.

The respondent sought judicial review of the board of director's decision and applied to have the proceeding certified as a class proceeding. The chambers judge certified the petition as a class proceeding.

The Court of Appeal allowed the appeal from the chambers judge's decision, finding that the chambers judge erred in concluding that a class proceeding would be the preferable procedure for the fair and efficient resolution of the issue of whether the Board's policy (policy #50.00 of the RSCM) on interest was patently unreasonable. The Court noted that it could not declare that all of the members of the class are entitled to be paid interest even if it decided the policy was patently unreasonable, but rather the matter would be referred back to the board of directors to develop a new policy.

Members of the class would not be entitled to anything unless the new policy specifically made provision for them because the decisions denying them interest would still stand. The Court of Appeal set aside the certification order and dismissed the certification application.