



2018 Annual Report

For the year
January 1 to December 31, 2018

March 19, 2019

The Honourable Harry Bains
Minister of Labour
Room 138 - Parliament Buildings
PO Box 9071 Stn Prov Govt
Victoria, BC V8W 9E9

Dear Minister Bains:

Re: 2018 Annual Report of the Workers' Compensation Appeal Tribunal (WCAT)

I am pleased to provide you with the 2018 WCAT Annual Report for the year ended December 31, 2018. This report has been prepared for your review pursuant to section 234(8) of the *Workers Compensation Act*.

Sincerely,

Andrew Pendray
Chair

AP/ct

CHAIR'S MESSAGE

I am pleased to present the 2018 Annual Report for the Workers' Compensation Appeal Tribunal (WCAT). This report is an overview of WCAT's operations in 2018.

As 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 matters, and certificates for the courts regarding the status under the *Workers Compensation Act* (Act) of parties to litigation. As has been consistent throughout WCAT's 15 year history, the vast majority of the appeals and applications received in 2018 were appeals regarding entitlement to benefits under compensation claims.

2018 was the third consecutive year in which WCAT's intake of new appeals and applications declined. In 2018, workers and employers filed 3,229 appeals and applications, a decrease of nearly 12% compared to 2017. Output of decisions has outpaced input, as WCAT vice chairs decided 3,091 appeals and applications on the merits, and addressed 796 through various summary decisions. This resulted in a total output in 2018 of 3,887 decisions.

Given this positive output to input ratio, as well as a reduction of the initial time period that an appeal is administratively processed before being assigned to a decision maker, WCAT reduced the time from the receipt of a notice of appeal to the issuing of a final decision by nearly 7% in 2018. The tribunal will strive to further improve its efficiency and to reduce that timeframe in 2019, while remaining committed to providing quality decision making consistent with the Act, policy and WCAT precedent decisions.

A continued focus for WCAT's operations in 2019 will be on ensuring that WCAT is accessible to the parties appearing before it, and in particular self-represented parties. As an initial step in this regard, the tribunal began accepting notices of appeal and participation, as well as written submissions and other forms, via email for the first time in the third quarter of 2018.

With a view to further improving access and the efficiency of the appeals process, the tribunal will be working to update and restructure WCAT's now 10 year-old website. 2019 will also see WCAT move forward with an update to its various information guides and factsheets, again with a view to ensuring that all parties appearing before the tribunal are able to easily and clearly understand the processes required. We will also continue to consult with our Community Advisory Council in order to improve access for Indigenous parties to an appeal and to meet our responsibilities for reconciliation as set out by the Truth and Reconciliation Commission and the Province of British Columbia.

I would like to take this opportunity to thank all of WCAT's employees and appointees for another successful year. Their dedication and hard work enables the tribunal to fulfill its mandate to deliver predictable, consistent, and efficient decision making to the public. I look forward to continuing to improve our service to British Columbians in 2019.

Andrew Pendray
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.

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.

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.

STATISTICS

Overview of Appeals Inventory

This section contains two charts providing a high level overview of the status of our appeals inventory for 2018. WCAT records appeals by their date of initiation.

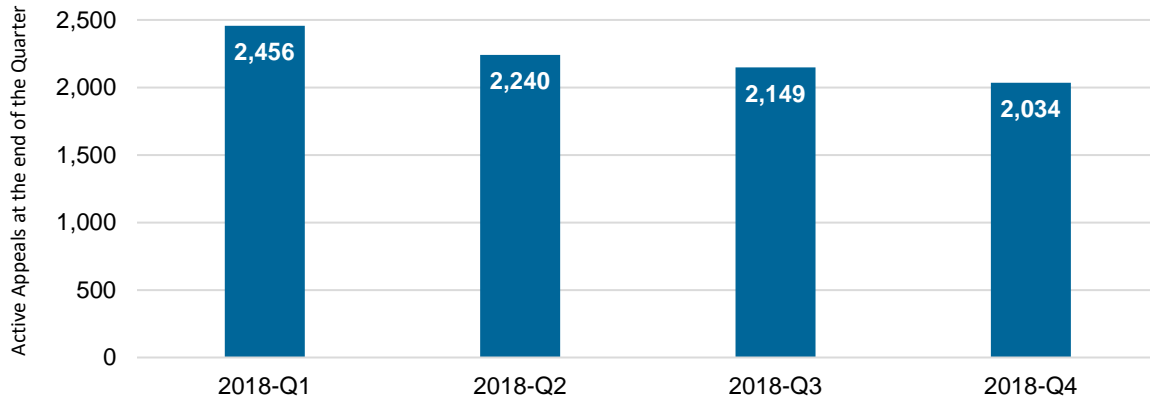
The first chart (Number of Active Appeals) provides the number of appeals in our inventory at the end of each quarter of 2018. WCAT's total active inventory at December 31, 2018 was 2,034 appeals compared to 2,695 at the end of 2017.

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 3,229 new appeals in 2018, representing a nearly 12% decrease from the 3,662 new appeals received in 2017.

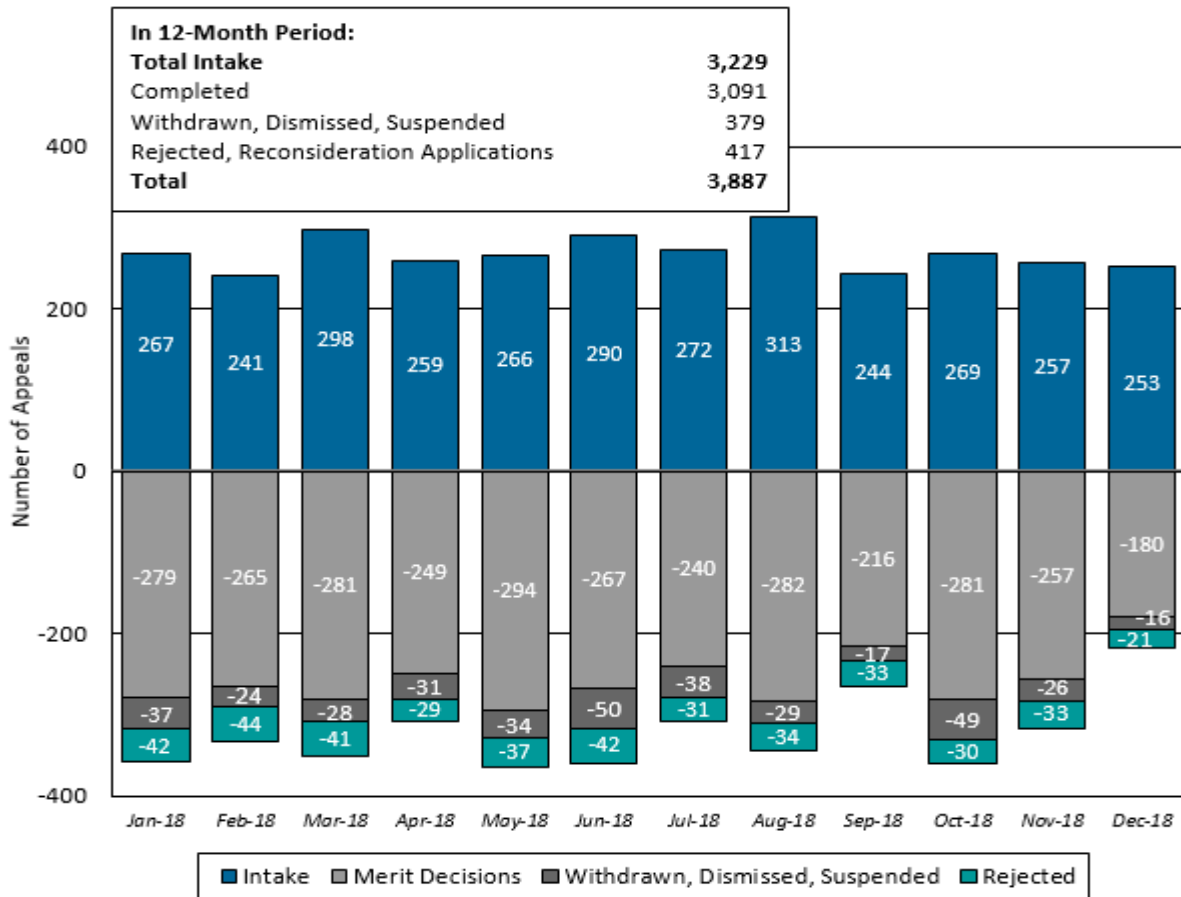
WCAT's intake of new appeals for 2018 was consistent with volume forecasted based on an analysis of historical intake and appeal rates. For 2019, WCAT is anticipating an intake of between 2,900 and 3,100 new appeals.

Our output of summary and merit decisions and determinations in 2018 was 3,887.

NUMBER OF ACTIVE APPEALS IN INVENTORY



TOTAL INTAKE AND OUTPUT IN EACH MONTH



Time to Decision

Section 253 of the Act requires WCAT to decide new appeals within 180 days from the date that WCAT receives from the Board the records (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 time frame up 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 (additional time for submissions).

The chair or the chair's delegate may also extend the statutory time frame 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.

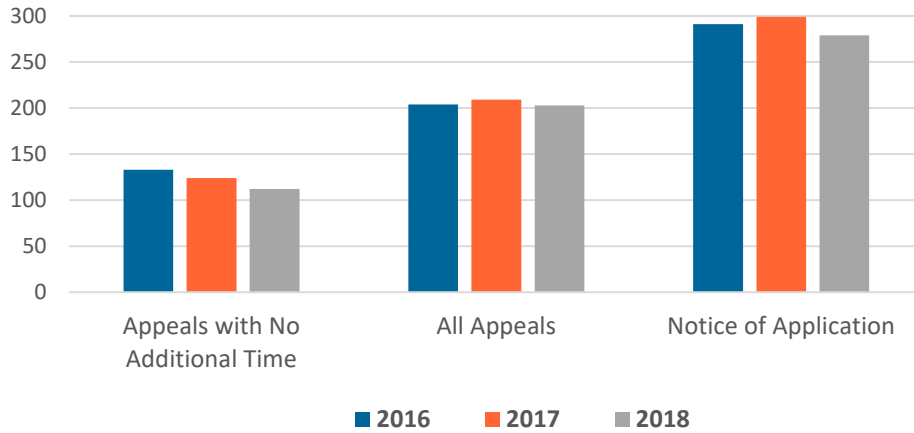
The 180 day statutory time frame clock is stopped in such situations.

The table below illustrates the average number of days for completing appeals in 2018, taking into account the various situations described above.

TIME TO DECISION IN 2018	
Description	Average Number of Days
Appeals With No Additional Time: 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).	112
All Appeals: 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).	203
Notice of Application: Time from the date of receipt of the notice of appeal to the date the final decision is issued.	279

As part of its strategic plan, one of WCAT's goals is to provide timely decision making. In 2018, WCAT took steps to reduce the time from the date the notice of appeal is received to the date that disclosure is received by increasing the number of resources assigned to the assessment phase of an appeal. Improved forecasting of upcoming appeal intake should further assist in ensuring optimum timeliness for file assignment and completion. As can be seen from the table below, the time to final decision has improved across all categories in 2018. WCAT will continue to seek further improvement in decision timelines in 2019.

TIMELINESS - NUMBER OF DAYS TO DECISION



Appeals and Applications

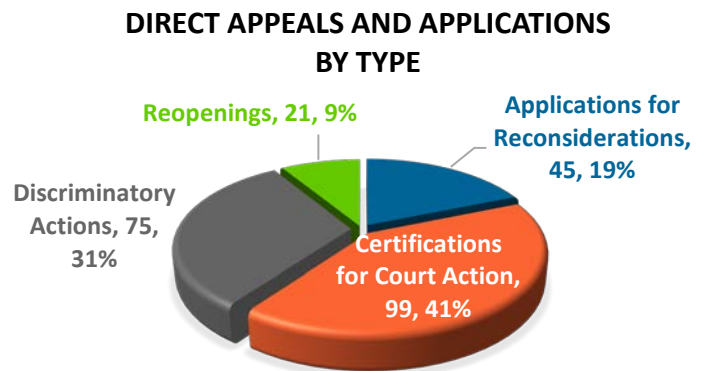
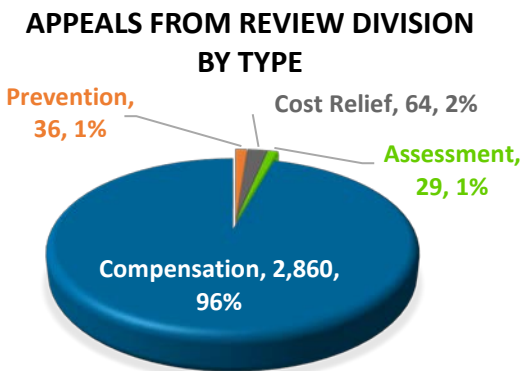
Appeals and applications comprise:

- 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 3,229 appeals received by WCAT in 2018, 92.5% arose from decisions of Board review officers and 7.5% were direct. The following two charts show the breakdown of the types of appeals and applications we received in 2018:



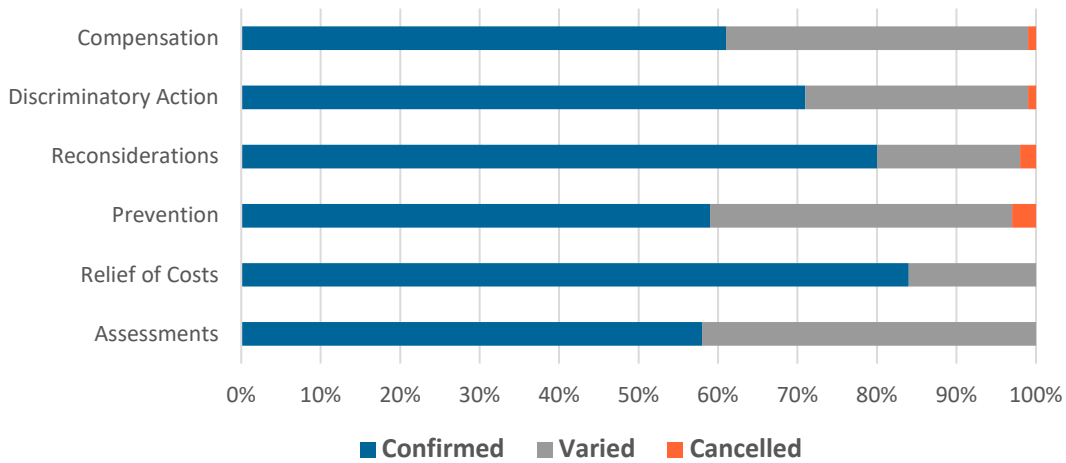
b) Merit Decisions

WCAT made 3,091 merit decisions on appeals and applications in 2018, 45 of which concerned applications for certificates for court actions. The remaining 3,046 merit decisions concerned appeals from decisions of the Review Division or Board officers, which may be varied, confirmed, or cancelled by WCAT.

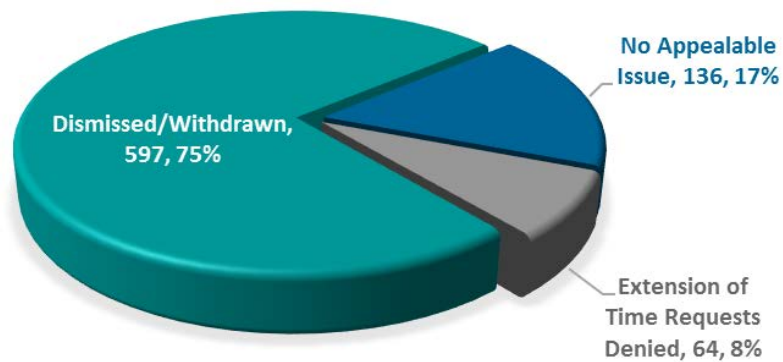
“Vary” means that WCAT varied the previous decision in whole or in part. Accordingly, whether WCAT has fully granted the remedies requested by the appellant on all issues arising under the appeal or merely changed a minor aspect of the previous decision, the decision is considered as “varied.” “Confirm” 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 2018, 38% of WCAT appeals were varied, 61% were confirmed, and 1% were cancelled. The graphics below demonstrate the decision outcomes in the different types of appeal in 2018:

DECISION OUTCOMES

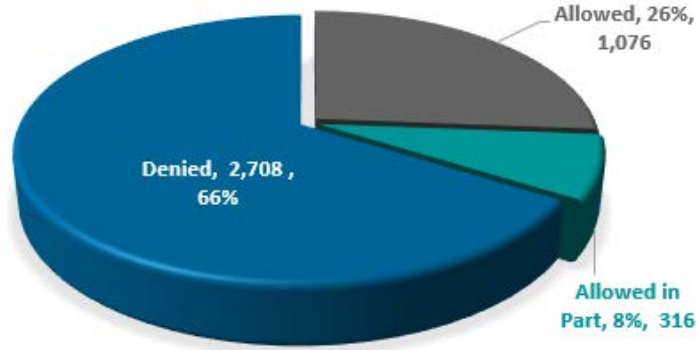


SUMMARY DECISIONS

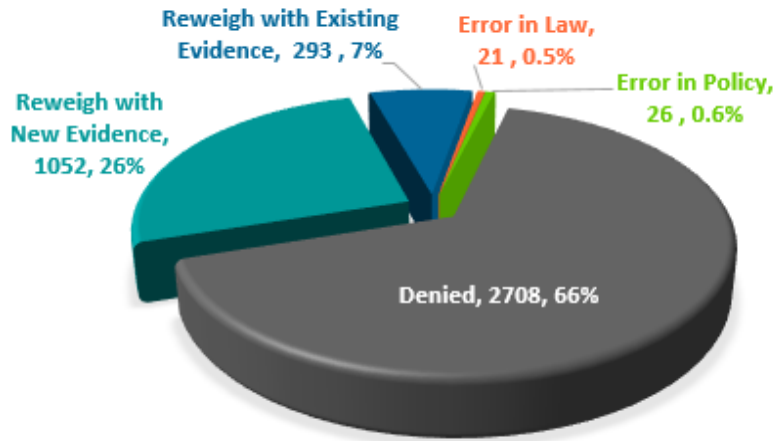


An appeal may raise numerous issues and WCAT may allow or deny the appeal on each issue. In 2018, WCAT decided 4,100 issues that arose out of the 3,091 appeals that led to merit decisions.

ISSUE OUTCOMES



REASONS FOR ISSUE OUTCOMES



c) 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	1,336	32.5%	30%	70%
Section 23 – Permanent Partial Disability	702	17%	42%	58%
Section 30 – Temporary Partial Disability	355	8.5%	35%	65%
Section 6 – Occupational Disease	328	8%	42%	58%
Section 21 – Healthcare	224	5.5%	38%	62%

d) Requests for Extensions of Time

WCAT decided 169 requests for extensions of time to appeal; allowing 105 and denying 64.

General

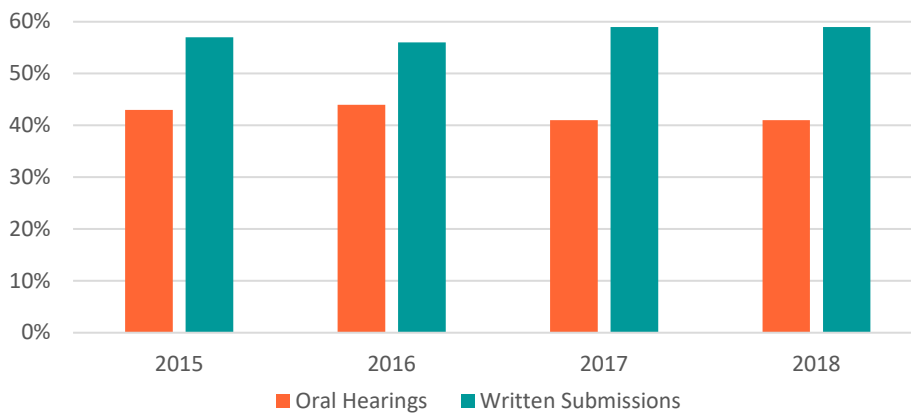
a) Appeal Paths

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.

In 2018, WCAT decided 1,263 appeals and applications (41%) after convening an oral hearing and 1,828 (59%) after consideration of written submissions.

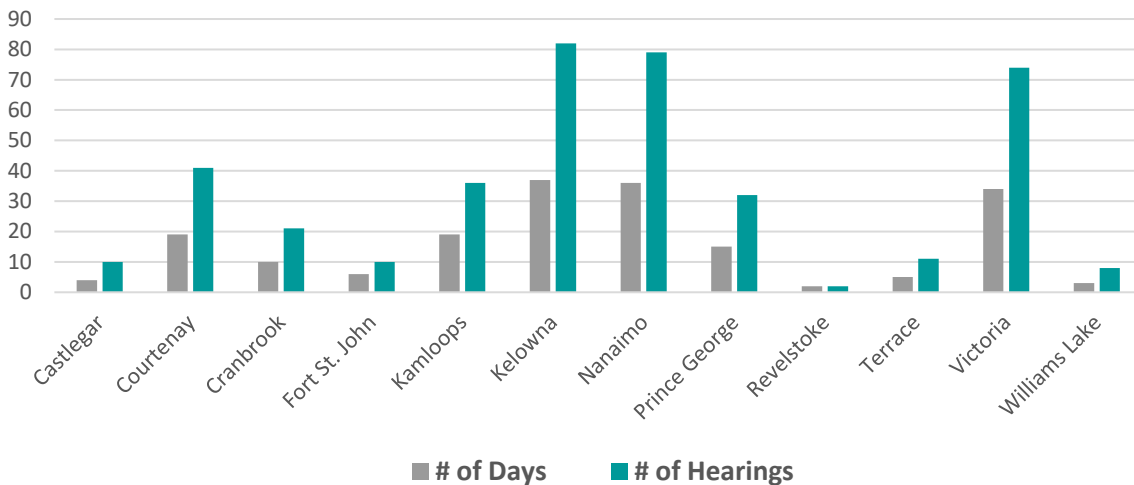
ORAL HEARINGS VS. WRITTEN SUBMISSIONS



Location of Oral Hearings

WCAT held oral hearings in 12 locations around the province in addition to the 611 held in Richmond. The following table shows the number of oral hearings held in each location:

ORAL HEARINGS: Locations & Number of Hearings



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 is always the employer.

Type of Appeal or Application	APPELLANT / APPLICANT		
	Worker	Employer	Dependant
Compensation	86.8%	12.9%	0.3%
Direct Reopening	95.9%	4.1%	0%
Discriminatory Action	57.3%	42.7%	0%
Prevention	5.6%	94.4%	0%
Reconsideration	93.3%	6.7%	0%

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	PERCENT REPRESENTED WHERE APPELLANT / APPLICANT IS:		
	Worker	Employer	Dependant
Assessment	0%	55.3%	0%
Compensation	64.4%	77.2%	61.5%
Direct Reopening	6%	0%	0%
Discriminatory Actions	42.3%	53.3%	0%
Prevention	0%	60.9%	0%
Reconsiderations	40%	70%	0%
Relief of Costs	0%	95.1%	0%

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.

Summaries of New Noteworthy WCAT Decisions in 2018

(a) **A1601379** - Decision Date: August 16, 2016 Panel: H Morton

This decision is noteworthy for its analysis of whether a worker's conduct in assisting an injured person was such a significant deviation from the reasonable expectations of employment as to take the worker out of the course of employment. The worker, a registered nurse, was in the course of returning to her office after dropping off a co-worker to visit a client when she saw and then assisted a person lying on the road who had been stabbed. The worker was exposed to the person's blood and claimed to have suffered a mental disorder as a reaction to the traumatic event. WCAT found that the worker's action and exposure to blood arose out of and in the course of her employment.

(b) **A1603250** - Decision Date: December 12, 2016 Panel: W. Hoole

WCAT may consider a constitutional question that does not involve the *Canadian Charter of Rights and Freedoms* (Charter). WCAT does not have authority to invalidate legislation or subordinate legislation generally, but may only determine that it is invalid and therefore inapplicable in the particular case. A Charter values analysis applies to discretionary decision-making and statutory interpretation but does not empower WCAT to do indirectly what it has no authority to do directly by applying the Charter.

(c) **A1603334** - Decision Date: February 7, 2017 Panel: G. Riecken

Changes made to item #41.00 of the *Rehabilitation Services and Claims Manual, Volume II*, effective June 1, 2014, did not establish a strict requirement for independently verifiable evidence that a worker would have retired later than age 65. Although item #41.00 creates a clear preference for independently verifiable evidence, where such evidence is not available, the Board must consider other relevant information.

(d) **A1603743** - Decision Date: December 12, 2018 Panel: H. Morton

Non-resident flight crew, employed by a foreign airline that does not fly between British Columbia destinations, who are injured while on a layover in British Columbia do not have sufficient connection to a British Columbia industry to be "workers" within the meaning of Part 1 of the Act, which does not apply to them as a matter of constitutional law.

(e) **A1606663** - Decision Date: April 16, 2018 Panel: R. Lane

The personal representative of a deceased worker may initiate a claim for workers' compensation benefits on behalf of the deceased worker's estate by application under section 55 of the Act.

(f) **A1700491** - Decision Date: October 31, 2018 Panel: A. Pendray

Section 32(3) of the Act does not give the Workers' Compensation Board jurisdiction to reconsider the duration of a permanent partial disability award when a worker's claim is reopened more than three years after the date of injury to consider a significant change in permanent disability.

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 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 2018, WCAT issued 55 stage one decisions. Of the stage one decisions issued, 11 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 Error	28	9	19
New Evidence	16	1	15
Both Grounds Alleged	11	1	10
TOTAL	55	11	44

JUDICIAL REVIEW OF WCAT DECISIONS

WCAT decisions are final and conclusive. There is no further avenue of appeal.

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.

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. The court may extend the time for applying for judicial review under certain circumstances.

Judicial Review Applications

In 2018, WCAT was served with 31 applications for judicial review of WCAT decisions and one appeal of a Supreme Court of British Columbia judicial review decision.

Judicial Review Decisions

a) *Shamji v. Workers' Compensation Appeal Tribunal*, (March 1, 2018) *BCCA 73 2018*

Decision under review: *WCAT-2015-02475*

The issue before WCAT concerned the amount to use for the worker's post-injury earnings for the purpose of assessing the worker's entitlement to a permanent disability award calculated on a loss of earnings (LOE) basis. The Workers' Compensation Board's Review Division had used an occupational class average earnings figure for the worker's post-injury earnings when it decided that the worker met the requirements of section 23(3.1) of the *Workers Compensation Act* and was entitled to assessment for an LOE award. WCAT found it was not bound to use the same figure when it was assessing the worker's award under section 23(3). WCAT found that the appropriate figure to use at that time was the worker's expected earnings five years after certification in his new occupation, discounted to date of injury dollars. The Court of Appeal found that the BC Supreme Court had correctly concluded that WCAT's decision was not patently unreasonable, and dismissed the appeal.

(b) *Rabbani v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 *BCSC 445* (March 20, 2018)

Decisions under review: *WCAT-2016-01015*

The Workers' Compensation Board accepted the worker's claim for a back strain in 2013. The issue before WCAT was whether the worker's back complaints in late 2014, including a herniated disc, were the result of the accepted injury. WCAT denied the worker's request for an oral hearing (ordering instead that the appeal proceed by way of written submissions) because the issues on appeal were principally medical and did not require an oral hearing to resolve. There were conflicting medical opinions. WCAT gave greater weight to the opinions that indicated it was unlikely that the

worker's back condition in 2014 was related to his 2013 injury, and denied the appeal. The court dismissed the worker's petition for judicial review, finding that there was some evidence upon which WCAT could reach its conclusion and that the tribunal's decision not to have an oral hearing was not unfair.

(c) *Bendera v. Workers' Compensation Appeal Tribunal*, 2018 *BCSC 552* (April 6, 2018)

Decision under review: *WCAT-2013-001593*

The issue before WCAT was acceptance of the worker's claim for a mental disorder under section 5.1 of the *Workers Compensation Act* (Act). WCAT found that the worker's mental disorder arose from a decision of the employer respecting the worker's employment, consequently it was excluded from compensation under section 5.1(1)(c). On judicial review, the court found that WCAT's interpretation of section 5.1(1)(c) excluded all actions, conduct, and language of an employer from giving rise to compensation in all cases involving employment-related decisions. The court concluded that interpretation was so incompatible with the language of the provision, the scheme of the Act, and its legislative intent as to be patently unreasonable. The court returned the matter to WCAT for a new decision.

(d) *Aujero v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 *BCSC 764* (May 11, 2018)

Decision under review: *A1603732*

The WCAT decision was a determination under section 257 of the *Workers Compensation Act* respecting the status of parties to a civil action arising from a motor vehicle accident. WCAT found that a home care worker on her way to her first client of the day was in the course of her

employment, despite the fact that she was not being paid until she reached her first client's home. WCAT also found that the other driver did not substantially deviate from his employment when he ran a red light. The court found that WCAT's decision was not patently unreasonable with respect to either of those findings, and dismissed the petition for judicial review.

(e) *Stein v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCSC 778 (May 14, 2018)

Decision under review: WCAT-2014-02287

The issue before WCAT was whether the worker's pre-existing mental disorder was aggravated by the stress of conflict with the employer and a co-worker, or by the employer's failure to accommodate her limitations. WCAT found that the employer's conduct fell within the exclusion in section 5.1(1)(c) of the *Workers Compensation Act* (Act), and the co-worker's conduct, although unpleasant, did not rise to the level of bullying and harassment. WCAT concluded that there was no accommodation agreement on the point the worker alleged. On judicial review, the worker argued for the first time that the provisions of the Act and the associated policy in the *Rehabilitation Services and Claims Manual*, Volume II were contrary to section 15 of the *Canadian Charter of Human Rights*. The worker also argued that WCAT's decision was patently unreasonable because it failed to consider whether the employer had breached a different accommodation agreement. The court found that the Charter argument ought to have been raised before the Review Division, and declined to consider the issue for the first time on judicial review. The court found additional evidence offered by the worker in support of her argument respecting the accommodation agreement was inadmissible, and concluded that the WCAT decision was not patently unreasonable.

(f) *West Fraser Mills v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 (May 18, 2018)

Decision under review: WCAT-2013-01952

The issues before WCAT were whether the Workers' Compensation Board (Board) had the authority to pass section 26.2(1) of the *Occupational Health and Safety Regulation* (Regulation), and whether the Board properly imposed a penalty under the Regulation against West Fraser Mills. West Fraser Mills argued that the Board could not, by regulation, impose duties on an owner independent of the duties prescribed in section 119 of the *Workers Compensation Act* (Act). Alternatively, West Fraser Mills argued that the administrative penalty provisions in section 196(1) of the Act did not apply in the circumstances because it was only the owner of the forest licence and not the employer of the worker who was injured. WCAT determined that the Board had the authority to make the Regulation, and found that the Board had the authority to impose an administrative penalty under section 196(1) where the owner was also an employer within the meaning of the Act. The BC Supreme Court found that the Regulation was valid, and that the WCAT decision was not patently unreasonable. That decision was upheld by the BC Court of Appeal. On appeal to the Supreme Court of Canada a majority of the court dismissed the appeal.

(g) *Atkins v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCSC 1178 (July 13, 2018)

Decision under review: A1605033

The worker, a licensed practical nurse, was diagnosed with post-traumatic stress disorder (PTSD) following an interaction with an angry family member of a patient. Based on the expert opinion of the worker's psychologist that the interaction served as a trigger for a delayed

response to a previous traumatic event in the worker's life, WCAT concluded that the interaction did not cause the worker's PTSD. WCAT also found that although the worker felt the interaction was traumatic, it was not objectively traumatic, and so did not entitle the worker to compensation under section 5.1 of the *Workers Compensation Act*.

On judicial review, the court found that WCAT was not patently unreasonable in finding that the worker's PTSD was not caused by a work-related event even if the event triggered the condition. The court also concluded that WCAT's finding that the interaction was not objectively traumatic was patently unreasonable, but that did not render the decision as a whole patently unreasonable. Accordingly, the petition for judicial review was dismissed.

(h) *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 (October 19, 2018)

Decision under review: A1603285

The worker, a flight attendant, lived in another province but worked out of Vancouver International Airport. The worker claimed compensation for a mental stress injury arising from events that began while she was working on a flight from Asia returning to Vancouver. The Workers' Compensation Board (Board) accepted the worker's claim. On appeal by the employer, WCAT concluded that if the worker was injured, the injury occurred outside British Columbia; consequently, section 8 of the *Workers Compensation Act* (Act) applied and because the worker did not reside in British Columbia, she was not entitled to compensation. On judicial review, the BC Supreme Court found that WCAT's decision was patently unreasonable because it did not consider policy which says that in some circumstance, where the worker was performing their main job functions, and those functions are normally performed within the province, an injury to the worker outside British Columbia may be compensable without consideration of section 8.

The Court of Appeal dismissed WCAT's appeal, finding that WCAT's interpretation of law and policy was patently unreasonable. The appropriate remedy was to remit the matter to WCAT for reconsideration; however, it was inappropriate for the court below to direct WCAT as to how it should interpret the Act. The Court of Appeal found that the affidavit evidence tendered by the petitioners and the Board was inadmissible on judicial review. The Court of Appeal also disagreed with the lower court respecting its finding that WCAT failed to consider evidence that the worker's injury may have happened inside the province, after the aircraft had landed.

(i) *Davenport v. Workers' Compensation Appeal Tribunal, BCSC E43135 Penticton Registry 1756* (October 17, 2018)

Decision under review: A1703175

WCAT denied the worker's appeal on the grounds that the Workers' Compensation Board had not made a reviewable decision with respect to the worker's permanent partial disability award, or with respect to acceptance of a new condition on his claim. The court dismissed the worker's petition for judicial review, finding that the WCAT decision was not patently unreasonable.

(j) *Browett v. Workers' Compensation Appeal Tribunal, BCSC S2691 Powell River Registry* (November 27, 2018)

Decision under review: A1700673

The Workers' Compensation Board denied the worker's claim for a mental disorder under section 5.1 of the *Workers Compensation Act*. WCAT denied the worker's appeal, finding that the diagnosis of the worker's condition did not meet the requirements of section 5.1, and in any event, the worker's condition was not caused by a traumatic event, or by a series of significant workplace stressors. On judicial review, the court dismissed the worker's petition, concluding that WCAT's decision was not patently unreasonable.

EDUCATION AND OUTREACH

Internal 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 pursues an extensive program of education, training, and development, both in-house and externally, where resources permit.

In 2018, the WCAT education group, led by the vice-chair quality assurance and training, 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 2018:

January 9	<ul style="list-style-type: none"> • Oral Hearings.
February 1	<ul style="list-style-type: none"> • Decision Writing.
March 1	<ul style="list-style-type: none"> • Ethics, Procedural Fairness and the Apprehension of Bias. • Expert Evidence in WCAT Appeals. • Administrative Tribunals Act Summary Dismissal.
April 11	<ul style="list-style-type: none"> • Round Table Discussion on Privileged Information and Redacting to Protect Privacy.
April 27	<ul style="list-style-type: none"> • Assisting Distressed Clients, and Navigating Difficult Conversations.
May 3	<ul style="list-style-type: none"> • Credibility and Reliability of Witnesses. • Work Ability and Work Restrictions: Risk, Capacity, and Tolerance.
June 7	<ul style="list-style-type: none"> • Topics in Procedural Fairness. • Somatic Symptom Disorder, Chronic Pain and Depression.
September 13	<ul style="list-style-type: none"> • Complex Regional Pain Syndrome (CRPS), the WCB Perspective.
November 1	<ul style="list-style-type: none"> • Activity-Related Soft Tissue Disorders (ASTDs), Recent Trends.
November 2	<ul style="list-style-type: none"> • Interacting with Distressed People.
November 23	<ul style="list-style-type: none"> • Round Table Discussion on Decision Writing Skills.
December 4	<ul style="list-style-type: none"> • Approaches to Decision-Making in Complex Regional Pain Syndrome (CRPS) Cases. • Treatment of Chronic Pain and CRPS.

In addition, many WCAT vice chairs attended the BC Council of Administrative Tribunals (BCCAT) annual education conference on October 15 & 16, 2018, the Continuing Legal Education (CLE) Society Administrative Law Conference on November 26, 2018, and CLE live webinars on Traumatic Brain Injury on June 19, 2018 and Cognitive Bias in Expert Reports on November 23, 2018.

External Education and Outreach Activities

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. Further, meetings with stakeholder groups provide WCAT with important feedback about areas of its operations which are of concern to its users.

In 2018, WCAT met with various stakeholder groups, including the Employers' Forum, the Canadian Labour Congress, the Workers' Advisers Office and the Employers' Advisers office, as well as the BC Federation of Labour.

The tribunal also began to take steps to fulfill its responsibility to be a part of the reconciliation process called for by the Truth and Reconciliation Commission. Specifically, WCAT formed a Community Advisory Council made up of members of the legal community who, through personal and professional experience, are knowledgeable about the circumstances and needs of Indigenous communities throughout BC. The Community Advisory Council held meetings to review WCAT's practices and procedures, and identified potential institutional impediments which may affect Indigenous parties to an appeal. In 2019, WCAT will be acting on a number of recommendations received from the council, with the intention of making our appeal process more accessible to Indigenous participants.

COSTS OF OPERATION FOR THE 2018 CALENDAR YEAR

Category	Cost
Salaries	9,214,520.75
Employee Benefits and Supplementary Salary Costs	2,375,147.14
Per Diem – Boards and Commissions	762,329.54
Travel	60,386.02
Centralized Management Support Services*	1,179,664.57
Professional Services	363,973.21
Information Technology, Operations and Amortization	1,180,567.72
Office and Business Expenses	411,030.71
Building Service Requests and Amortization	218.46
TOTAL EXPENDITURES	\$15,547,838.12

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

WCAT MEMBERS

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.

EXECUTIVE AND VICE CHAIRS WITH SPECIAL DUTIES AS OF DECEMBER 31, 2018		
Name	Position	End of Term
Andrew Pendray	Chair (OIC #780)	November 7, 2019
Luningning Alcuitas-Imperial	Senior Vice Chair and Registrar	February 28, 2021
David Newell	Senior Vice Chair and Tribunal Counsel	January 31, 2020
James Sheppard	Vice Chair, Quality Assurance and Training	February 28, 2019
David Bird	Vice Chair and Deputy Registrar	January 5, 2020
Lesley Christensen	Vice Chair and Deputy Registrar	February 28, 2021
Warren Hoole	Vice Chair and Team Leader	September 30, 2019
Randy Lane	Vice Chair and Team Leader	February 29, 2020
Susan Marten	Vice Chair and Team Leader	February 28, 2023
Debbie Sigurdson	Vice Chair and Team Leader	February 28, 2019

VICE CHAIRS AS AT DECEMBER 31, 2018			
Name	End of Term	Name	End of Term
Cathy Agnew	August 31, 2021	William J. Duncan.....	February 28, 2019
Beatrice K. Anderson	February 28, 2021	Andrew J. M. Elliot	August 31, 2021
W. J. (Bill) Baker	February 28, 2021	Scott Ferguson.....	June 21, 2021
Anand Banerjee	October 15, 2020	Sherelle Goodwin.....	January 5, 2020
Hélène Beauchesne	March 31, 2019	Tamara Henderson.....	October 15, 2020
Sarwan Boal.....	February 28, 2020	Janice Hight	January 5, 2020
Dana G. Brinley.....	February 28, 2021	Nora Jackson.....	February 28, 2019
Kate Campbell	September 5, 2022	Kevin Johnson	February 28, 2022
Larry Campbell	October 15, 2020	Cynthia J. Katramadakis.....	March 31, 2021
Grace Chen	January 5, 2020	Joanne Kembel.....	February 28, 2023
Melissa Clarke.....	September 30, 2020	Brian King	August 31, 2021
Adam Doherty	October 15, 2020	Rob Kyle.....	February 29, 2020

VICE CHAIRS AS AT DECEMBER 31, 2018 - continued			
Name	End of Term	Name	End of Term
Darrell LeHouillier.....	October 31, 2020	Ellen Riley	January 5, 2020
Lori Leung	December 21, 2019	Simi Saini	September 5, 2020
Deborah Ling.....	June 21, 2023	Shelina Shivji.....	March 31, 2022
Julie Mantini	February 28, 2019	Debe Simpson.....	January 5, 2020
Chad McRae	October 15, 2020	Tim Skagen	March 31, 2020
Renee Miller.....	April 30, 2019	Tony Stevens	February 29, 2020
Herb Morton.....	February 29, 2020	Hilary Thomson.....	October 15, 2020
Barbara Murray.....	October 15, 2020	Andrew Waldichuk	February 29, 2020
Elaine Murray	August 31, 2019	Teresa (Terri) White	December 31, 2019
Paul Pierzchalski.....	December 21, 2019	Kim Workun	January 5, 2020
Dale Reid	February 28, 2019	Sherryl Yeager	February 28, 2021
Deirdre Rice.....	February 28, 2019	Terry Yue	January 5, 2020
Guy Riecken.....	February 28, 2019	Lyll Zucko.....	January 5, 2020

VICE CHAIR DEPARTURES IN 2018		
Name	Original Appointment Date	Departure Date or End of Term
Jacqueline Barnes	June 22, 2015	June 21, 2018
Jane MacFadgen	March 3, 2003	January 29, 2018