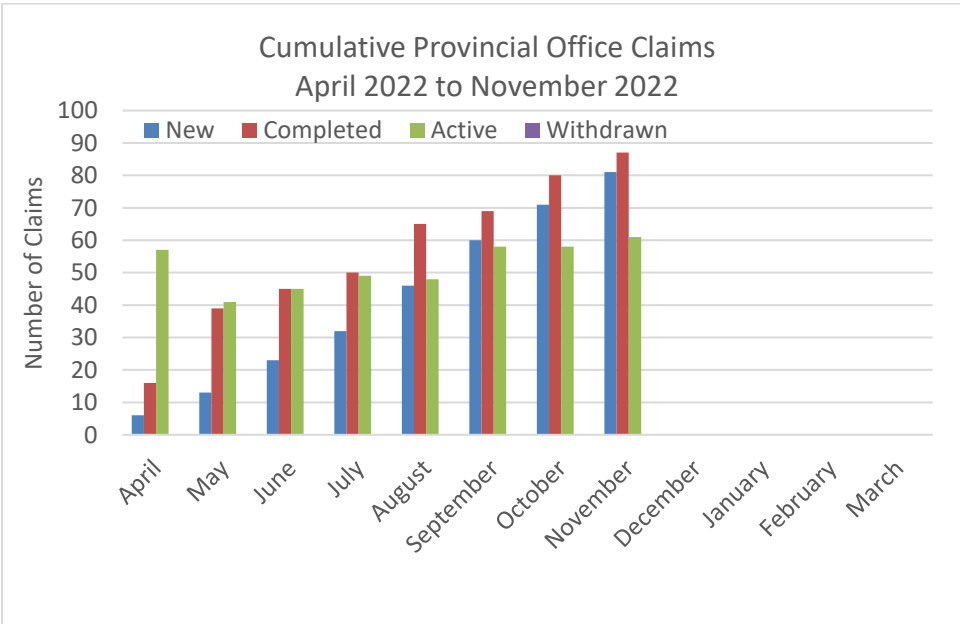
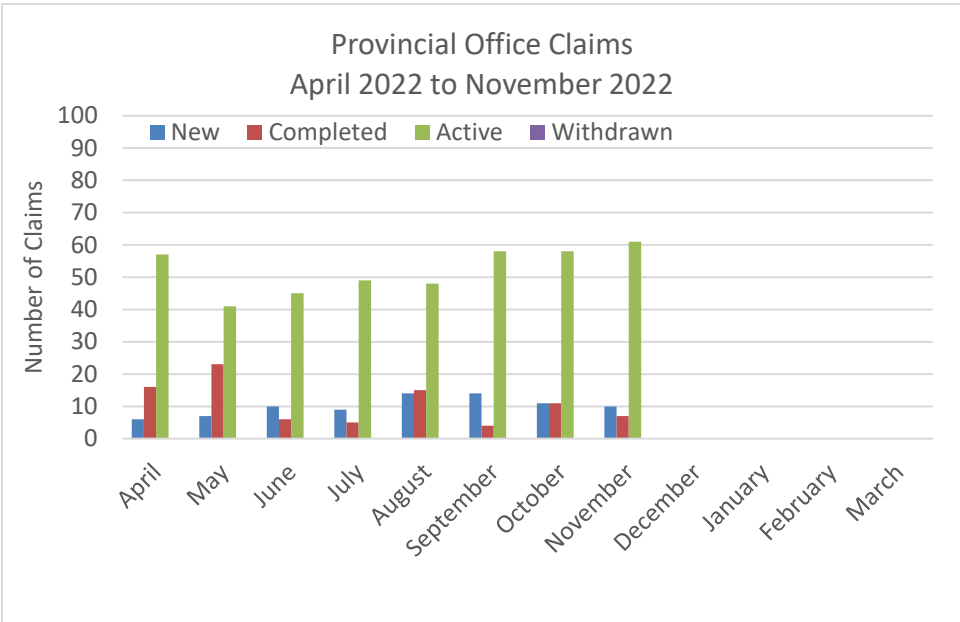


Claims, Referee and Adjudication Update April 1, 2022, to November 23, 2022

Provincial Office Level Claims - Overall

- Claims continue to be assigned as submitted.
- Received 81 new claims (76 Construction and 3 Contract Administration and 2 Maintenance) compared to 81 by November 2021
- 87 claim reviews have been completed compared to 74 by November 2021.
- 61 claims are currently active (i.e., under review) compared to 62 in November 2021.



Claims, Referee and Adjudication Update

April 1, 2022, to November 23, 2022

Provincial Office Level Claims – Breakdown by Contract Type

- **Construction Claims Information (including COVID-19 Claims)**
 - 76 Construction Claims have been received so far in F2022-23
 - 2 claims are from a contract with the April 2010 General Conditions
 - 20 claims are from contracts with the 2016 GCs
 - 54 claims are from contracts with SP 100S55 (GC 3.15 clause)
 - This compares to 126 claims received in F2021-22:
 - 0 claims were from a contract with the April 2010 General Conditions
 - 48 claims were from contracts with the 2016 GCs
 - 78 claims were from contracts with the GC 3.15 clause
 - There are currently 57 active construction claims.

COVID-19 Claims

- 5 COVID-19 claims have been received by PO in F2022-23. This compares to 31 COVID-19 claims in F2021-22 and 5 COVID-19 claims in F2020-21.

- **Maintenance Claims**

- 2 maintenance claims were received by PO in F2022-23. This compares to 3 maintenance claims in F2021-22 and 8 maintenance claims in F2020-21.
- There are currently 2 active maintenance claims.

- **Consultant Contract Administration (CA) Claims**

- 3 consultant CA claims were received by PO in F2022-23. This compares to zero consultant CA claims in fiscal 2021-22 and 2 CA claims received in F2020-21.
- There are currently 2 active CA claims.

Claims, Referee and Adjudication Update

April 1, 2022, to November 23, 2022

Referees, Adjudications and Mediations

- **Referee**
 - We have had 15 requests this fiscal year compared to 17 requests in the entire F2021/22 and 28 requests in F2020/21. Note that the referee process came into the General Conditions from 2016 to 2019, before being replaced by the adjudication process.
 - There have been 13 referee decisions received this fiscal year compared to 21 referee decisions in F2021-22 and 22 decisions in F2020-21
 - There are currently 10 active referee proceedings.

- **Adjudication**
 - We have had 6 requests this fiscal year compared to 8 requests in the entire F2021-22 and 3 in F2020-21.
 - There have been 6 adjudication determinations received this fiscal year compared to 9 determinations in F2021-22 and 2 in F2020-21.
 - There are currently no active adjudication proceedings

- **Mediation**
 - We have had one mediation request this fiscal year compared with 14 requests in F2021-22 and 12 in F2020-21.
 - Mediation has been removed from the current dispute resolution process, replaced by the referee process in 2016 and adjudication in fall 2019. Mediation requests continue to drop though they will not be completely eliminated for some time due to existing longer term Maintenance Contracts that have mediation as an alternative dispute resolution option.

Claims, Referee and Adjudication Update **April 1, 2022, to November 23, 2022**

- **General Comments**
 - Contract Claims Office continues to adjust to the claims process that no longer includes a field or regional level claim review. The process on contracts awarded after October 1, 2019, involves claims coming directly to the provincial office from the field. This has resulted in a quicker inflow of claims that would have previously been slowed by field and regional level reviews and would also have resulted in some of the claims being settled at the field or regional levels and not progressing to the provincial level. Historically, approximately 30% of claims were resolved at the field level and then a further 30% of the claims elevated to regional level were resolved.
 - Covid-19 is a unique situation which has introduced additional claims (43 claims have come to the provincial level).
 - A review of the outcome of referee and adjudication decisions indicates that MTO's position on claims is reasonable as referee and adjudicator decisions are typically supportive of MTO's positions. Furthermore, the vast majority of decisions indicate that contractor's positions are presumptuous and/or overstated.
 - As of November 23, 2022, there have been:
 - 81 Referee decisions, and
 - 17 Adjudication determinations.
 - Included in the above decisions/determinations are 10 COVID-19 decisions/determinations.
 - Approximately half (55%) of the referee and adjudication decisions/determinations were denials of the contractor claims in their entirety.
 - Referee and Adjudication decisions have awarded on average 19.4% of the claim value submitted. For F2022-23, the average is 19.7% and for F2021-22 that average is 11.4%.
 - COVID-19 specific referee and adjudication decisions average 2.4% of the claim value submitted.
 - MTO considers that, in general, referee and adjudication decisions support MTO's position and indicate that MTO is reasonable in its assessment of claim principle and quantum. Typical decisions do not support the contractor's claim amounts but rather are closer to the MTO position (which may include an acknowledgement of some MTO responsibility for a portion of the claim amount).
 - Contractors are submitting claims with little or no merit and/or unsupported/overstated costs. These claims are slowing down the claim review process by delaying MTO from reviewing valid claims in a timely manner.

Claims, Referee and Adjudication Update April 1, 2022, to November 23, 2022

Referee and Adjudication Decisions

- The following bar chart is based on 81 referee decisions and 17 adjudication determinations. One referee decision was removed from the data as the decision included only a time component.

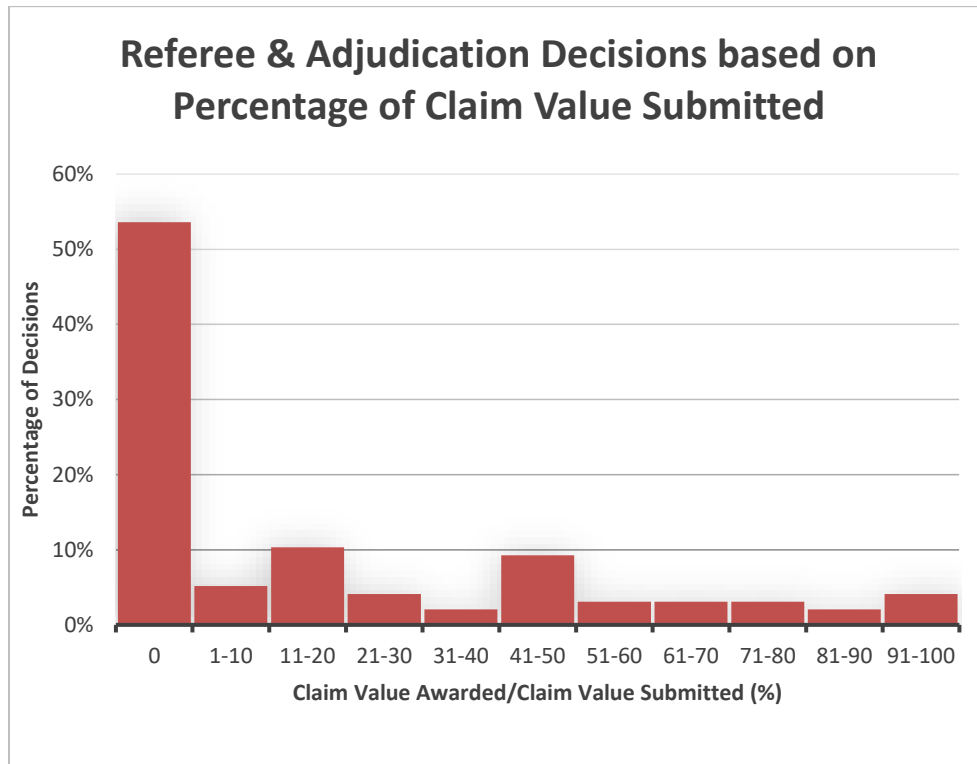


Figure 1 – Distribution of Referee and Adjudication Decisions based on Percentage of Claim Value Submitted

Claims, Referee and Adjudication Update April 1, 2022, to November 23, 2022

Fiscal Breakdown for 2022-23

- The bar chart below represents the referee and adjudication decisions that occurred within F2022-23. This represents 13 referee decisions and 6 adjudication determinations.
- Of the 19 third party decisions:
 - 13 decisions supported MTO position by dismissing the claims,
 - One decision awarded less than 1% of the claimed value,
 - 3 decisions awarded amounts between 10 and 50% (12%, 21% and 46%),
 - Two decisions awarded 50% of the claimed value, and
 - Two decisions awarded 98% of the claimed value.
- The average third party decision was 19.7% of the claimed value, which is consistent with the overall average of all referee/ adjudications of 19.4%.

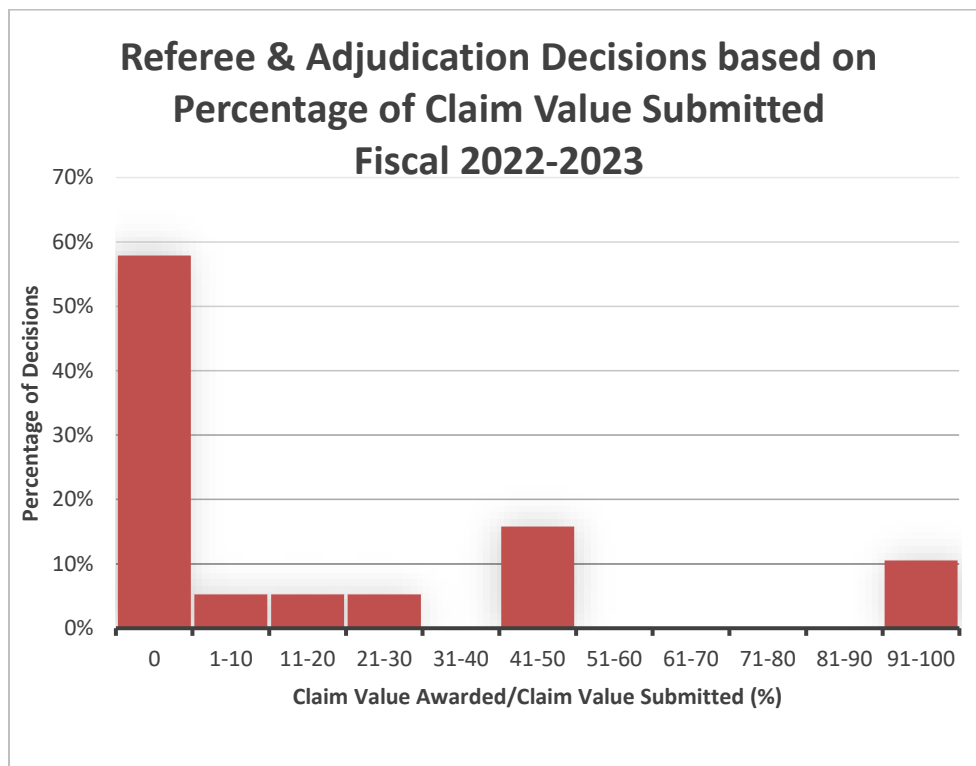


Figure 2 – Distribution of Referee and Adjudication Decisions based on Percentage of Claim Value Submitted for F2022-23