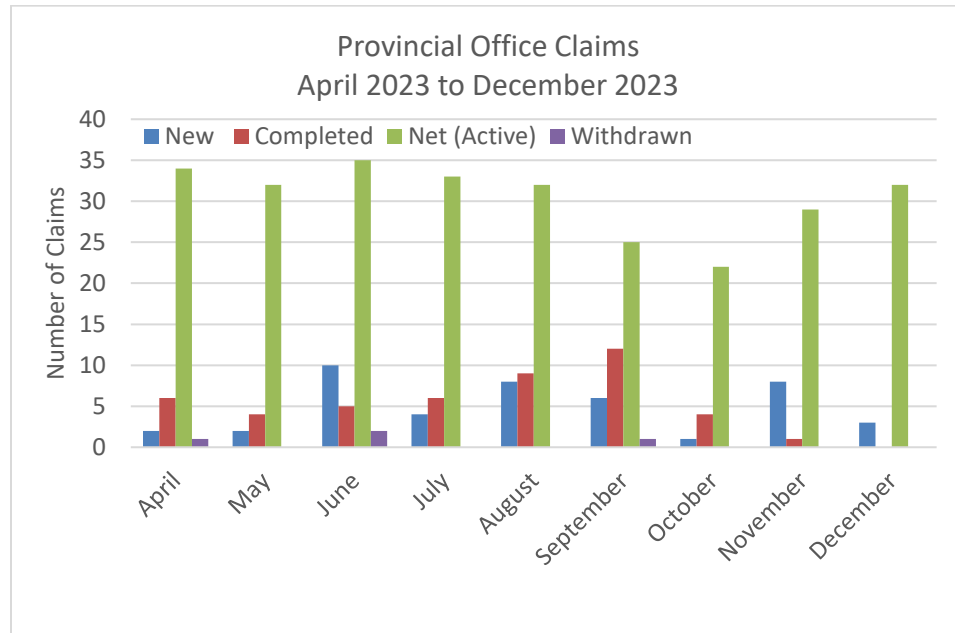


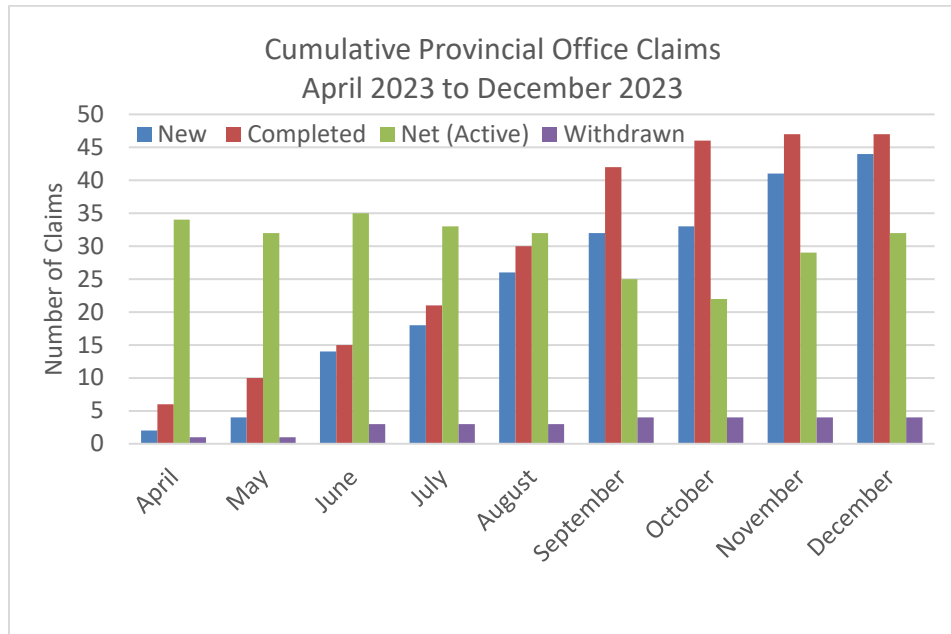
# Claims, Referee and Adjudication Update April 1, 2023, to December 31, 2023

## Provincial Office Level Claims – So Far, this Fiscal (April to December)

- Claims continue to be assigned as submitted.
- Received 44 new claims (35 Construction, 1 Contract Administration and 8 Maintenance).
- 47 claim reviews have been completed.
- 4 claims were withdrawn.
- 32 claims are currently active (i.e., under review) compared to 47 at the end of F2022/23.



## Claims, Referee and Adjudication Update April 1, 2023, to December 31, 2023



### Provincial Office Level Claims – Breakdown by Contract Type

- **Construction Claims Information (including COVID-19 Claims)**
  - 35 Construction Claims were received in F2023-24 (April to October)
    - 1 claim is from a contract with the April 2010 General Conditions
    - 2 claims are from contracts with the 2016 GCs
    - 32 claims are from contracts with SP 100S55 (GC 3.15 clause)
  - There are currently 32 active construction claims

#### COVID-19 Claims

- 5 COVID-19 claims have been received by the Contract Claims Office in F2023-24.

- **Maintenance Claims**

- 8 maintenance claims have been received by the Contract Claims Office in F2023-24.
- 5 maintenance claims received were related to COVID-19.
- There is currently 1 active maintenance claim. 1 Maintenance claim was withdrawn.

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

## Claims, Referee and Adjudication Update April 1, 2023, to December 31, 2023

- 1 consultant CA claim has been received by the Contract Claims Office in F2023-24.
- There are currently 1 active CA claims.

### **Referees, Adjudications, Mediations and Litigations**

- **Referees**

- We had 7 request this fiscal.
  - Note that the referee process came into the General Conditions from 2016 to 2019, before being replaced by the adjudication process.
- There have been 5 referee decision received this fiscal.
- There have been 3 referee proceedings that have been terminated.
- There are currently 5 active referee proceedings.

- **Adjudications**

- We had 7 requests this fiscal year.
- There were 10 adjudication determinations received this fiscal year.
- There are currently 2 active adjudication proceedings.

- **Mediations**

- We had 1 new mediation requests this fiscal year compared with one request in F2022-23.
- Mediation has been removed from the current dispute resolution process, replaced by the referee process in 2016 and adjudication in fall 2019.
  - While Mediation requests continue to drop, 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.

- **Litigations**

- We had 4 new litigations in Fiscal 2023-24 and two litigations have been resolved in F2023-24.
- We currently have 27 litigations underway.

- **General Comments**

- Contract Claims Office continues to adjust to the new claims process that no longer includes a field and regional level claim review. The process on contracts awarded after October 1, 2019, involves claims

## **Claims, Referee and Adjudication Update** **April 1, 2023, to December 31, 2023**

coming directly to the Contract Claims Office from the field. This has resulted in a quicker inflow of claims that would have previously been reviewed at the field and regional levels and would also have resulted in some of the claims being settled at the field or regional levels.

- Historically, approximately 30% of claims were resolved at the field level and a further 30% of the claims elevated to regional level were resolved.
- COVID-19 was a unique situation, which 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.
- As of December 31, 2023, there have been:
  - Total 92 Referee decisions (43 denials, 6 awards, 43 partial awards), and
  - Total 33 Adjudication determinations (22 denials, 2 awards, 9 partial awards).
  - Included in the above decisions/determinations are 15 COVID-19 decisions/determinations.
- 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).
- Just over half (52%) of the referee and adjudication decisions/determinations were denials of the contractor claims in their entirety.
- Referee and Adjudication decisions have awarded on average 9.4% of the claim value submitted.
  - For F2023-24 the average is 9.6%,
  - For F2022-23 the average is 13%; and
  - For F2021-22 that average is 18%.
- COVID-19 specific referee and adjudication decisions average 2.5% of the claim value submitted.

# Claims, Referee and Adjudication Update April 1, 2023, to December 31, 2023

## Referee and Adjudication Decisions

- The following bar chart is based on 92 referee decisions and 28 adjudication determinations. One referee decision was removed from the data as the decision included only a time component.

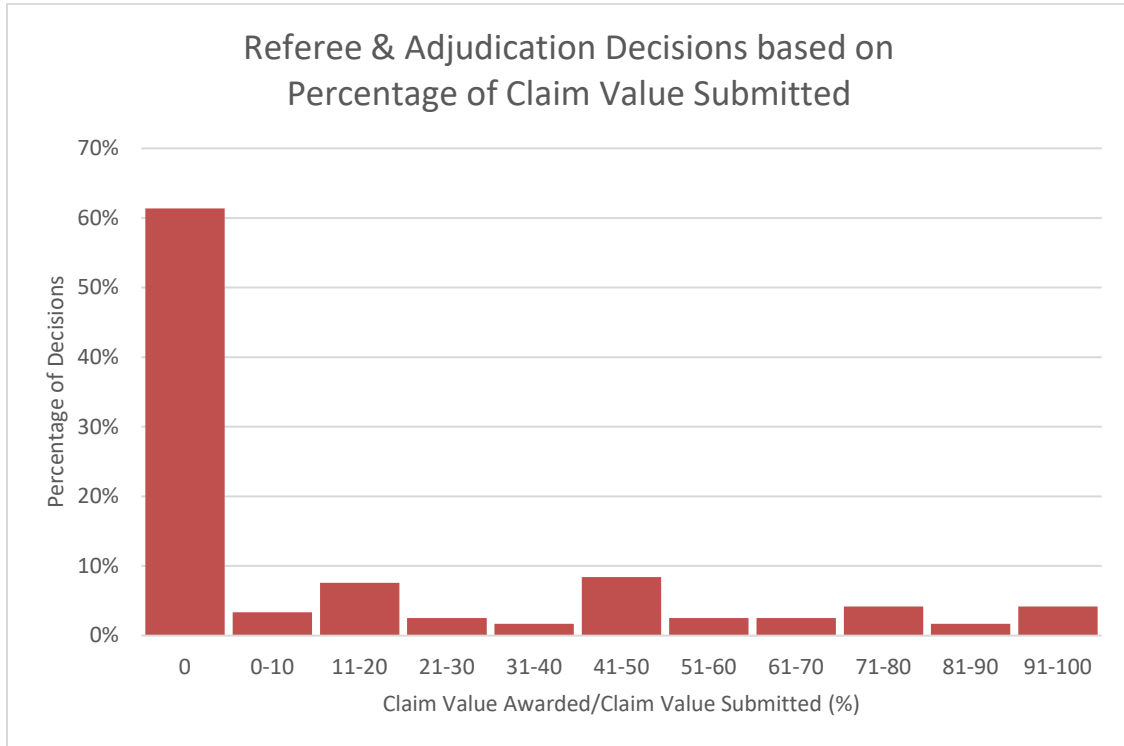


Figure 1 – Distribution of Referee and Adjudication Decisions based on Percentage of Claim Value Submitted

# Claims, Referee and Adjudication Update April 1, 2023, to December 31, 2023

## Fiscal Breakdown for 2023-24 (April to December)

- The bar chart below represents the referee and adjudication decisions that occurred within F2023-24. This represents 5 referee decision and 8 adjudication determinations.
- Of the 13 third party decisions:
  - 10 decisions supported MTO position by dismissing the claims,
  - 1 decision awarded an amount between 40 and 50%, and
  - 1 decision awarded an amount between 50 and 60%, and
  - 1 decision awarded an amount between 70 and 80 % of the claimed value.
- The average third party decision was 11% of the claimed value, which is consistent with the overall average of all referee/ adjudications of 9.6%.

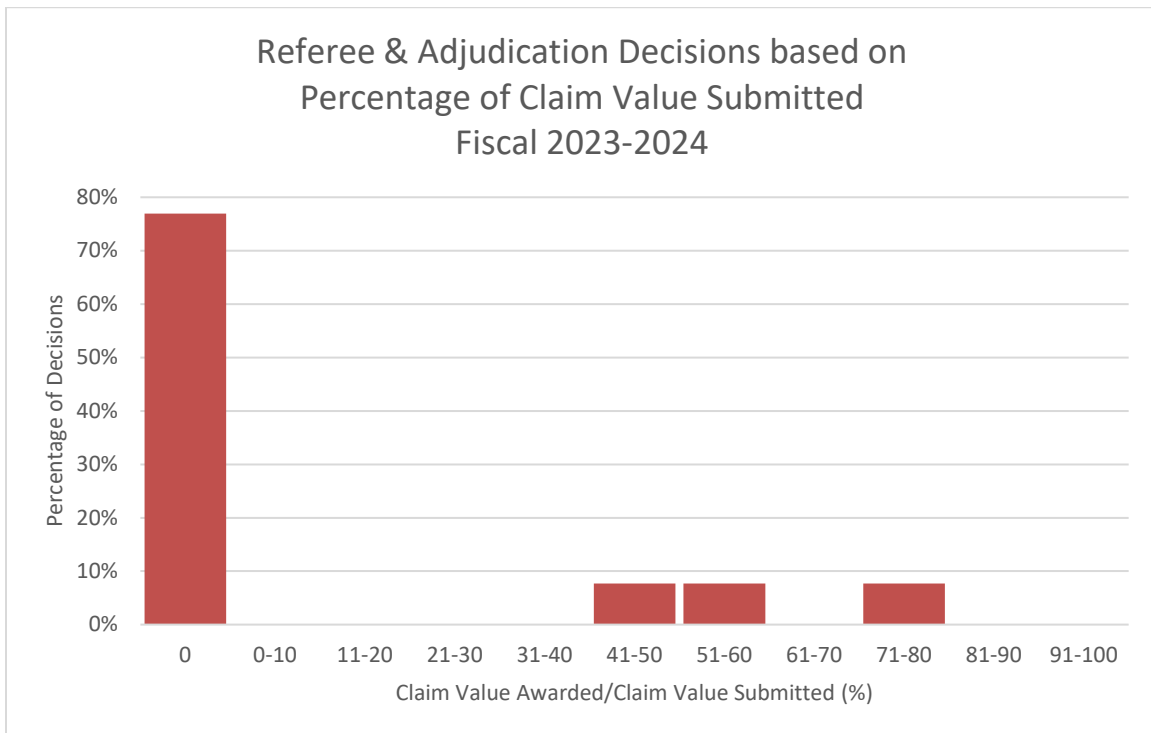


Figure 2 – Distribution of Referee and Adjudication Decisions based on Percentage of Claim Value Submitted for F2023-24