INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: ALBERTA

1. STRUCTURE OF APPEAL PROCESS

Please review and confirm the information in the attached summary of information on
the appeal structure and process in your jurisdiction. In addition, if not already
covered in the excerpt, can you please provide the following information:

• Composition and Size of Appeal Body(ies) (including do members have to meet any
  special qualifications?)

The name of the independent workers' compensation appeal body in Alberta is: the
Appeals Commission - Workers' Compensation Act - Alberta1.

At the year end there were 56.5 persons employed by the Appeals Commission:

• 23 members of the Commission, appointed by order of the Lieutenant Governor
  in Council, consisting of
    ➢ a Chief Appeals Commissioner (CAC),
    ➢ seven full-time Hearing Chairs, and
    ➢ 15 Commissioners (considered part-time and used as needed on hearing
      panels); and

• 33.5 employees selected and appointed pursuant to the workers' compensation
  legislation.

• Selection and Appointment Process (is there a formal selection process, who
  appoints members to the appeal body, on what basis can members be removed, does
  the WCB play a role in the selection process?)

There is a formal, detailed selection and appointment process for Order in Council
appointments to the Commission. Vacancies are advertised and applications
invited. Applicants are screened by the CAC. The CAC organizes a selection panel
consisting of the CAC, a Human Resource Advisor and a representative of labour
and employer organizations, to make recommendations to the Minister on
appointments to the Commission. The Minister uses this information to make
recommendations to Cabinet on the appointment of Commission members.

1 Consideration is being given to changing this name.
2. INDEPENDENCE

Is there some type or form of reporting relationship, either formal or informal, between the Chief or Head of the appeal body and the WCB? Is Chief of appeal body a member (voting or non-voting) of the board of directors of the WCB? Does the Chief or Head of the appeal body sit on any WCB board committees?

The CAC will attend meetings of the WCB board of directors, normally on a quarterly basis. The CAC reports to the WCB board of directors on statistics and trends of the Commission.

Who is responsible for developing and setting policies, practices and procedures of the appeal body? Does the WCB have any oversight role in creating or approving the rules governing the operations of the appeal body or the way it conducts its business?

The Appeal Commission has total authority for the development and establishment of its policies, procedures and practices. There is no oversight role played by the WCB.

If appeal process is independent of the WCB, how is independence maintained:

- Does the appeal body report to government through the same government ministry or department as the workers' compensation agency? Is the appeal body the responsibility of a different Minister than the Minister responsible for workers' compensation?

  The Appeals Commission and the WCB report to the same Minister, the Minister of Labour.

- Is the appeal body located in separate premises from the workers' compensation agency?

  The Appeals Commission and the WCB are located in separate premises.

- Does the appeal body share staff or resources with the WCB?

  The Appeals Commission and the WCB do not share staff. The Appeals Commission uses the WCB to provide administrative support services to the Commission (e.g., payroll services, human resources, systems and other administrative support)².

² This is purely for convenience and administrative ease; it is within the Commission's authority to provide these functions directly or to contract them out if considered necessary or desirable.
• **Does the appeal body have authority to set its own budget?**
  
  Yes. The Appeals Commission's budget is paid out of the Accident Fund, but the development and setting of the budget is the responsibility of the Commission. The Commission submits their budget to the WCB board of directors for information (if the budget amount is considered too high there is room for negotiation).

• **What means are used to avoid the perception of bias (for example, representational membership)?**
  
  The Appeals Commission is very sensitive to the issue of its independence from the WCB. The fact that the Commission is a separate, independent entity is stressed in all communications (there is separate letterhead, separate phone numbers with a distinct prefix, a separate security system making Commission offices not accessible by WCB staff).

  **If there is a final appeal to the court, is this a matter of judicial review or is it a similar process specifically authorized under the workers' compensation statute (e.g. appeal to the court on a question of law)?**
  
  There is a privative clause in the workers' compensation statute. However, there is access to judicial review.

3. **POLICY MAKING**

  **Does the WCB have exclusive authority to create policy? Is a board policy binding on the appeal body? OR is the WCB (and lower level appeal authority, if any) bound to apply decisions of the appeal body either as policy of general application or to implement case specific decisions?**
  
  The Appeals Commission is bound by WCB board of director's policy (section 8(7)).

  **Are there any mechanisms to ensure consistency in board policy and decisions of appeal body?**
  
  A quality assurance program was introduced in 1998. The Commission is developing a new data base that will provide for monitoring of trends and important statistics.
4. SCOPE OF APPEAL AND TIME LIMITS

If not covered in the summary of your jurisdiction's appeal process:

- **Do employers have the same options as workers for appeal? If not, what differences are there in access to appeal and the appeal process for employers and workers?**

  Workers and employers have the same option to appeal final decisions of the WCB to the Appeals Commission (workers and employers may appeal decisions following review by the Claims Services Review Committee and employers may appeal decisions of the Assessment Review Committee).

- **Is there a time limit for bringing an appeal? Is there a time limit imposed on the appeal body for the hearing of an appeal? If there are time limits, to what extent are these time limits achieved at the present time?**

  There is a one-year time limit for bringing an appeal to the Commission (section 8(9)). The CAC has the discretion to extend this time limit (section 8(10)).

- **What is the nature of decisions allowed for appeal - for example any decision of the WCB or just final decisions?**

  Final decisions of the WCB may be appealed to the Appeals Commission (workers and employers may appeal decisions following review by the Claims Services Review Committee and employers may appeal decisions of the Assessment Review Committee).

- **Does a person aggrieved by decision of WCB need "leave to appeal" or are there any specific prerequisites for appeal (for example, a person may only appeal if there is substantial new evidence)?**

  No requirement for leave to appeal or other prerequisites for appeal.

5. PRACTICE AND PROCEDURES

*How would you describe the basic approach to appeals in your jurisdiction (for example, is it based on an inquiry or an adversarial approach)?*

The Appeals Commission uses an inquiry based approach.

*Are appeal hearings de novo or on the record?*

Appeal hearings are de novo.
Are appeal hearings open to the public (what mechanisms to ensure privacy rights are protected)?

Appeal hearings are not public; Commission rules require that they be "in camera".

How frequently are oral hearings granted by appeal bodies?

An appellant has the right to request that a hearing be held in person, but the Commission retains the power to deny an oral hearing for cause. However, in practice "documentary" reviews are the exception (in 1997, 92% of Commission reviews took the form of oral hearings, in 1996, 93% were oral hearings, and in 1995, 90% were oral hearings).

Is there provision for frivolous or vexatious complaints to be summarily dismissed?

Only on application for reconsideration may a request for an appeal be dismissed. The rules of the Commission provide for three grounds for summary dismissal: the appellant disagrees with the decision, but there is no substantial reason to reconsider the matter; evidence put forward in the reconsideration request could reasonably have been presented at initial review or hearing; or evidence is not new or there is insufficient evidence to justify a reconsideration.

Do adjudicators have standing at appeal body hearings?

It is the position of the Commission that the WCB does not automatically have standing at Commission hearings. The rules of the Commission define a party as a worker or employer or other interested party. If the WCB wants standing it must apply as an interested party and each request is considered on a case by case basis.

Are successful appellants awarded costs to help defray expenses (any provisions to provide financial support to appellants)?

No, not in usual practice. However, the Appeals Commission has the power to pay costs and may do so in very rare circumstances such as where there is a determination that the conduct of the WCB may be negligent and there is a potential liability issue.

[Travel expenses are covered.]

Are appeal polices, practices, procedures and findings of the appeal body made available to the public? Is the appeal body required (by statute or otherwise) to prepare an annual report on its operations and activities which is publicly available?

Rules of the Appeals Commission are published and available to the public. A redraft of the Commission's policies and procedures is currently underway; a decision is pending on the degree to which these will be made public.
Decisions or findings of the Commission are not published, but the Commission does publish a "digest" of important cases and to indicate its approach to a particular area, or its thinking on a particular topic.

Do appellants have complete access to claim files and information (is access right in WCB legislation or a result of Freedom of Information and Protection of Privacy Act). Is further information found in sub-files which do not form part of the claim file? And if so, are sub-files disclosed?

Appellants will generally already have received a copy of their file before reaching the Appeals Commission. The legislation requires the Commission to consider specific information in hearing an appeal (section 8(2) to (4) and general regulation 9).

Workers and employers have complete access to their own file and an employer has complete access to the file of an injured worker. As noted in the "internal review" summary for Alberta, the issue of whether an employer should have complete access to the files of their injured workers is under consideration.

"Is relevancy of material in a board file a prerequisite to its disclosure to the affected worker or employer? If so, who determines whether the information is relevant and on what basis? Does the worker or employer have the right to object to the relevancy of the information after it has been disclosed?

Access to files is handled by the WCB.

6. ALTERNATIVE DISPUTE RESOLUTION

If mediation or some other form of alternative dispute resolution is used in your jurisdiction, either formally or informally, has there been any performance evaluation undertaken? Are there any studies of the effectiveness of mediation or conciliation process? Any information on the "success rate"?

There are no ADR mechanisms in place at the Appeal Commission level in Alberta.

7. STUDIES AND STATISTICS

Are there any studies respecting client satisfaction with the appeals process in your jurisdiction. Are the results of any client satisfaction surveys publicly available?

The Appeals Commission has not undertaken any "client satisfaction" surveys.
### Appeal Statistics - 1997:

<table>
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<th>Category</th>
<th>Number</th>
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<tr>
<td>Total # of Appeals Received</td>
<td>1324</td>
</tr>
<tr>
<td>(31 or 2% assessment)</td>
<td></td>
</tr>
<tr>
<td>1293 or 98% claims)</td>
<td></td>
</tr>
<tr>
<td>Total # of Hearings</td>
<td>1029</td>
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<tr>
<td>(80 or 8% documentary)</td>
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<tr>
<td>949 or 92% in-person)</td>
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<tr>
<td>Upheld</td>
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