INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: NEW BRUNSWICK

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 Appeals Tribunal is composed of Chair and three Vice Chairs appointed by order of the Lieutenant Governor in Council. Panel members, representative of worker and employer groups and located throughout the province, are appointed by the board of directors of the WHSCC. Members of the board of directors of the WHSCC may also sit as panel members1.

Generally, the Appeals Tribunal sits as a three-person panel consisting of the Chair or a Vice Chair and a panel member representative of workers and one representative of employers. The Chair or a Vice Chair may sit as a panel of one.

• 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?)

Employer and worker groups are canvassed regarding nominations for panel members. In making panel member appointments, the board of directors ensures that members are equally represented from different regions of the province and both official languages are considered.

1 There is a policy that if a board member sits as a panel member, that person may only sit with panel members who are also board members, because of the perceived or potential conflict in panel members who are also members of the board sitting with members that they have appointed.
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 Chair of the Appeals Tribunal is a non-voting member of the board of directors of the WHSCC and reports to the board of directors of the WHSCC on the operations of the Tribunal.

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 Appeals Tribunal has its own provisions under the legislation, as well as bylaws which are approved by government. Appeals Tribunal guidelines are approved by the board of directors of the WHSCC.

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 Chair of the Appeals Tribunal reports to the board of directors of the WHSCC and the Chair of the WHSCC report through the Department of Labour and to the Minister.

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

The Appeals Tribunal and WHSCC head offices are located in the same building.

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

The Appeals Tribunal and the WHSCC do not share staff, but do share resources. The Appeals Tribunal uses administrative services of the WHSCC (accounting and human resources).

- Does the appeal body have authority to set its own budget?

The Appeals Tribunal has a separate budget from the WHSCC budget, but both budgets are submitted to and approved by the board of directors of the WHSCC.
• What means are used to avoid the perception of bias (for example, representational membership)?

To the extent possible the operations of the Tribunal are kept separate from the WHSCC.

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)?

The New Brunswick legislation provides for an appeal to the Court of Appeal involving any question as to jurisdiction or law.

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 Tribunal is bound by WHSCC board of directors' policy. However, the Tribunal has developed a process for addressing issues where the Tribunal feels that board policy is unlawful or too restrictive. Under this process, the Tribunal will prepare and send to the board of directors a paper on the issue and outlining the Tribunal's position. The Tribunal will not make a decision on the issue under appeal until the board has considered the Tribunal's petition.

Are there any mechanisms to ensure consistency in board policy and decisions of appeal body?

Training sessions with the Chair, the Vice Chairs and all panel members are held. There is also a quality control mechanism internal to the Tribunal. Decisions of appeal panels can not be overturned by the quality control process, but inconsistencies in decisions are identified and highlighted and discussed in training sessions.
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?**
  
  Employers have the same options for appeal as workers.

- **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?**
  
  No time limits.

- **What is the nature of decisions allowed for appeal - for example any decision of the WCB or just final decisions?**
  
  Any final decision of the WHSCC including decisions on entitlement and compensation, assessments and classifications and occupational health and safety.
  
  [The Tribunal also hears decisions made by the chief compliance officer under the occupational health and safety legislation.]

- **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.

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)?*

  Both an inquiry based approach and an adversarial approach are used in New Brunswick. An appeal panel will adopt an inquiry mode when the appeal is not questioned. If the matter under appeal is disputed then the two parties are permitted to cross examine one another.

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

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

Appeal hearings are not open to the public.

How frequently are oral hearings granted by appeal bodies?

Oral hearings are the normal procedure (account for about 97% of appeals). There is the option to proceed by documentary review or oral hearing.

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

No.

Do adjudicators have standing at appeal body hearings?

No.

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

No.

Are appeal policies, 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?

Decisions of the Appeals Tribunal are published. The Tribunal prepares annual documents which are included as part of the WHSCC's annual report on its operations and activities.

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?

"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?"

Where an issue is under appeal, the Tribunal will prepare an appeal record which essentially includes the worker's or employer's entire file. This appeal record will be provided to all parties to the appeal. The other party must sign an undertaking
that the information in the file will be kept confidential and not used for any other purpose than for purpose of the appeal².

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"?

No ADR system is in place in New Brunswick³.

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?

No formal client satisfaction surveys have been undertaken about the appeal process.

**Appeals Tribunal Statistics 1997**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>Total appeals received</td>
<td>556</td>
</tr>
<tr>
<td># of Appeals from past years</td>
<td>127</td>
</tr>
<tr>
<td>Appeals Resolved</td>
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<tr>
<td>Accepted</td>
<td>54%</td>
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<tr>
<td>Partial</td>
<td>19%</td>
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<tr>
<td>Denied</td>
<td>35%</td>
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<tr>
<td>Withdrawn</td>
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</tbody>
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96% of appeals initiated by Injured Workers
4% by employers

For further information on Appeals Tribunal activities refer to: 1997, Annual Report Statistical Supplement.

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² This policy was adopted in response to issues and problems encountered by the WHSCC in determining relevancy and in excising information under its former approach.

³ An ADR process was in place for a short period of time, but was discontinued. Essentially, with the ADR process there was a three step appeal process at the WHSCC which is not the goal of ADR.