INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APEALS POLICY AND PROCESS

JURISDICTION: NOVA SCOTIA

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 Workers' Compensation Appeals Tribunal - Nova Scotia is composed of ten full-time appeals commissioners, including one Chief Appeals Commissioner and several part-time members\(^1\).

• 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?)

All full-time members are appointed by order of the Governor in Council, but are selected on the basis of a full civil service recruitment and competition process\(^2\).

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?

There is no formal statutory or organizational relationship between the WCAT and the WCB. However, the WCAT and the WCB enjoy a good relationship in terms of sharing information and working together as required.

\(^1\) Due to the complexity of the law and the legal issues relating to workers' compensation appeals, the use of part-time members is being reconsidered.

\(^2\) This was at the request of the CAC to the minister.
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?

Operational policies and procedures for the Appeals Tribunal are developed and approved by the WCAT.

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 WCAT and WCB report to government through the same minister, the Minister of Labour.

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

- Does the appeal body share staff or resources with the WCB?
  
  No.

- Does the appeal body have authority to set its own budget?
  
The budget for the WCAT is set by the WCAT, but is paid from the Accident Fund administered by the WCB. The WCAT will consult with the WCB in the development of its budget.

- What means are used to avoid the perception of bias (for example, representational membership)?
  
  All information and public communications emphasize the independence of the WCAT from the WCB.

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 statutory right of appeal on questions as to jurisdiction, but on no other question as to law or to fact.
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 WCAT is bound by WCB policy established under the workers' compensation statute and must apply it in decisions of the Tribunal (section 183(7)). The WCAT can not refuse to apply policy in cases where the WCAT believes the policy of the WCB to be in contravention of the law.

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

The WCAT has in place an "issues" committee to which Appeal Commissioners can voluntarily bring issues or cases for discussion and consideration.

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 options for appeal.

- 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?
  
  A person aggrieved by a decision of the WCB must bring an application for leave to appeal within 30 days of receiving the final decision of the WCB. There are no time limits imposed on the WCAT for the hearing of the appeal.

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3 Some suggest that this provision affects the independence of the Tribunal; to counter this it is pointed out the board of directors of the WCB is a tri-partite body.
• **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 WCB (must have proceeded through the internal review process) may be appealed to the WCAT.

• **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)?**

A person must apply to the CAC for leave to appeal (the WCAT has a policy outlining the criteria and conditions for granting leave to appeal) (section 243).

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**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 policy of the WCAT is to maintain a non-adversarial approach. The WCAT approach is designed to ensure that the proceedings are strictly in the nature of an appeal of the original decision. The WCAT may consider new evidence in considering the appeal, but if there is significant new evidence, the WCAT will send the matter back to the WCB for reconsideration.

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

Oral hearings are recorded, but most appeals by way of documentary or file review.

_**Are appeal hearings open to the public (what mechanisms to ensure privacy rights are protected)?**_

An appellant's representative or support person or advocates may attend an appeal hearing. [The Tribunal has never had to determine whether a hearing should be open to the public as this has never been an issue.]

_**How frequently are oral hearings granted by appeal bodies?**_

Oral hearings are the exception rather than the rule and the majority of appeals proceed by way of documentary review rather than oral hearing. The WCAT has the discretion to decide whether to proceed by oral hearing.

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

No.
Do adjudicators have standing at appeal body hearings?

The WCB has standing at appeal hearings and there is a process in place that is followed when the board plans to attend the hearing. The WCB may appear and make representations on specific cases or will make a general submission to the WCAT on a particular issue.

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

No.

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?

The policies and procedures of the WCAT are currently being formulated. At present formal written policy and procedure is relatively sparse, but policy will be available to the public.

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?

Normally by the time a person reaches the WCAT and is involved in an appeal process, they have obtained a copy of their file or files and information relevant to the appeal from the WCB.

[Refer to interview notes for the "Compensation Services and Adjudication" area.]

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"?

In May of 1997, the WCAT initiated an alternative dispute resolution process. The ADR process was started from the ground up and is still in development. The
"trial" ADR system has been guided by a committee composed of representatives of WCAT, WCB and the workers' advisors office. The goal is to formalize the process in 1999 following the establishment of standard policies and procedures and some form of evaluation process.

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.

Appeal Statistics:
Leave to appeal is allowed about 68% of the time. As a transitional provision, anyone aggrieved by a decision of the WCB under the former legislation was granted "automatic leave" to appeal. This accounts for a great deal of the present a back-log of approximately 2,400 appeals. Though the ADR process is voluntary, the focus of the ADR process is to address this back-log of appeals.

ADR statistics as of the end of April 1997:

- Appeal Decisions 411
- Appeals Pending 127
- Decisions to Render 300
  (no settlement achieved)

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4 Each month the WCAT sends out about 100 letters offering the ADR process as an alternative to the standard appeal process.