INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: NORTHWEST TERRITORIES

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 five members all appointed by the Minister. The Chair is a member of the board of directors of the WCB, appointed by the Minister on the recommendation of the WCB board of directors. Of the remaining members, two are representative of workers and two are representative of employers.

- 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?)

  The Chair is appointed by the Minister on the recommendation of the board of directors of the WCB. The employer and labour representatives are appointed based on nominations put forward by employer and labour organizations respectively.

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 Tribunal reports on a quarterly basis to the board of directors of the WCB.
  
  As a member of the board of directors of the WCB, the Chair will sit on committees of the WCB board.
  
  If the board of directors of the WCB is considering a decision of the Tribunal, the board member, who is Chair of the Tribunal will not sit in on those deliberations.
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?

Under the legislation the Tribunal is responsible for establishing its own process and developing its own rules (section 7.5).

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?**

  Both the WCB and the Appeals Tribunal are responsible and accountable to the same Minister, the Minister Responsible for Workers' Compensation.

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

  No, the WCB and the Appeals Tribunal are located in the same premises.

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

  The WCB and the Tribunal share staff and resources.

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

  The Appeals Tribunal is a cost centre of the WCB; the board of directors of the WCB approves the budget of the Appeals Tribunal.

- **What means are used to avoid the perception of bias (for example, representational membership)?**

  The Tribunal has employer and labour representation. All members must comply with conflict of interest rules.

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 Act (section 7.9). Decisions of the Tribunal may be subject 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 Tribunal is bound by board policy (section 7.7).

The board of directors of the WCB has the power to stay a decision of the Appeals Tribunal and order the Tribunal to rehear the matter.

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

No mechanisms in place at the Appeals Tribunal level, though there are systems in place in the WCB to promote consistency of decision making at adjudication level.

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 same access and options to 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?
  
  There are no time limits for bringing or hearing an appeals.

- What is the nature of decisions allowed for appeal - for example any decision of the WCB or just final decisions?
  
  The Tribunal hears decisions of the board relating to compensation matters and assessment (cases that have been through the internal review process).
• 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)?

There are no prerequisites for appeal (except that issues must have first been heard by the Review Committee).

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)?

A relatively informal, inquiry based approach. Any questions are directed through the Chair or Vice Chair.

Are appeal hearings de novo or on the record?

Appeal hearings are de novo. Notes of appeal hearings are taken, but these records are not verbatim; the proceedings are summarized into the form of a decision paper.

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

Appeal hearings are not generally open to the public, but the appellant may waive their right to an "incamera" process.

How frequently are oral hearings granted by appeal bodies?

The majority of appeals are considered through oral hearings (sometimes by telephone or video-conferencing).

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

No, not at present, but a proposal is under consideration.

Do adjudicators have standing at appeal body hearings?

The WCB is not considered an interested party and does not automatically have standing at Tribunal proceedings. At times however, the WCB adjudicator will attend hearings in case additional information is needed, but this does not happen often.
Are successful appellants awarded costs to help defray expenses (any provisions to provide financial support to appellants)?

No.

[The Tribunal will cover costs associated with the hearing, including travel costs or the costs of video-conferencing.]

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?

New rules for the Appeals Tribunal are currently being drafted. New rules will be gazetted after approval by the Tribunal. Though not required under the legislation, the Appeals Tribunal prepares an annual report on its aggregate 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?"

The worker has complete access to their claim file. And an employer has complete access to their corporate file. However, an employer has the right to make a submission on a matter referred by a worker for review and in this case has the right to information from the worker's claim file that is relevant to the issue under review.

However, because decisions of the Tribunal are subject to judicial review, the Tribunal must ensure that any information used by it in making its determination is also available to all parties to the appeal.
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 program.

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 WCB is in the process of undertaking a client satisfaction survey of all board operations. This survey contains only limited questions on the appeals and internal review process and there are plans to send out additional survey questions on these areas.

Claim Statistics:
Total Number of Appeals Received - 31
Percentage Accepted to Percentage Denied - 26%/36%
Percentage Assessment Issues - 3%
Percentage claims Issues - 97%
Representatives were involved in 52% of all appeals

[Refer to attachment, "March 24, 1998 letter to Saskatchewan Workers' Compensation Board", for additional data on the appeals process.]
March 24, 1998

Mr. Don Seidlitz
Appeals Committee Member
Saskatchewan Workers' Compensation Board
200 – 1881 Scarth Street
REGINA SK S4P 4L1

Dear Mr. Seidlitz:

**Appeals Processes and Data**

There are two levels of appeal: the Internal Review Committee (first level), and the Appeals Tribunal (final level). This is a combined response from the Review Committee and the Appeals Tribunal.

The Review Committee can only provide information back to 1994 as the Committee became internal in June 1993, and our method of keeping statistics changed. Therefore, the statistics for 1993, would be very questionable.

Similarly, the Appeals Tribunal is only able to give you statistics back to 1994.

1. The number of reviews and appeals received each year are:

<table>
<thead>
<tr>
<th>Review Committee</th>
<th>Appeals Tribunal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994 – 135</td>
<td>1994 – 30</td>
</tr>
<tr>
<td>1995 – 100</td>
<td>1995 – 28</td>
</tr>
</tbody>
</table>

2. We use three categories for the outcome of an appeal: upheld (denied); reversed (accepted), varied (partially accepted). For your exercise, we have combined the reversed and varied into one statistic for accepted. The percentages for 1994 to 1997 are shown below:
3. The performance standard established for the Review Committee is a 50 day (working days) turnaround between the date of receipt of the submission and the date the decision is mailed. Deferred files are not included in the calculation.

The Appeals Tribunal tracks its statistics between the date of receipt of an appeal or the date an appeal was reactivated, and the date the decision was reached. Usually once the decision is reached, the decision is drafted, finalized, signed and communicated to the parties within 30 days. The statistics are currently in calendar days, but are changing in our new appeals tracking system to working days. We do calculations on the average turnaround time for the last 30 appeals heard:

<table>
<thead>
<tr>
<th>Review Committee</th>
<th>Appeals Tribunal</th>
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</thead>
<tbody>
<tr>
<td>1994 - 13% accepted</td>
<td>1994 - 41% accepted</td>
</tr>
<tr>
<td>1994 - 87% denied</td>
<td>1994 - 52% denied</td>
</tr>
<tr>
<td>1995 - 23% accepted</td>
<td>1995 - 38% accepted</td>
</tr>
<tr>
<td>1995 - 77% denied</td>
<td>1995 - 44% denied</td>
</tr>
<tr>
<td>1996 - 27% accepted</td>
<td>1996 - 56% accepted</td>
</tr>
<tr>
<td>1996 - 73% denied</td>
<td>1996 - 36% denied</td>
</tr>
<tr>
<td>1997 - 23% accepted</td>
<td>1997 - 26% accepted</td>
</tr>
<tr>
<td>1997 - 74% denied</td>
<td>1997 - 36% denied</td>
</tr>
</tbody>
</table>

4. The Review Committee is an internal Committee and has been since mid-1993. We sit as a two-person panel for both Claims and Assessment reviews. The Chairperson and Vice-Chairperson of the Review Committee are full time positions. Should either member declare a conflict or should either be absent, other divisional directors will sit on the panel as alternate members.

The Appeals Tribunal is chaired by a member of the Board of Directors and has four members, two each representing workers and employers. All are appointed by the Minister Responsible for the Workers’ Compensation Board on the recommendation of the Board, representatives of workers, and representatives of employers. Hearings are conducted by a hearing panel of three, consisting of the Chairperson or Acting Chairperson, one member representing workers and one member representing employers. The Chairperson of the Tribunal may designate a member of the Tribunal as Acting Chairperson during the temporary absence of the Chairperson.
5. Review Committee:

1994: 10% assessment issues
       90% claims issues (2 filed by employers)
       (representation was not tracked)
1995:  6% assessment issues
       94% claims issues (2 filed by employers)
       (representatives involved in 24 submissions)
1996: 14% assessment issues
       86% claims issues (2 filed by employers)
       representatives involved in 19 (18.8%) of the reviews
       15 lawyers
       one union
       three other
1997:  9% assessment issues
       91% claims issues
       representatives involved in 24 (20.6%) of the reviews
       13 lawyers
       three union
       eight other

The Appeals Tribunal logs the appeals received by whether it is filed by a worker or an employer, regardless of whether or not they have a representative, however, we can advise the number of appeals which had representatives involved.

1994: 100% filed by workers (no representatives involved)
1995:  96% filed by workers
       4% filed by employers
       representatives involved in 2 (7%) of the appeals (both lawyer reps)
1996:  94% filed by workers
       6% filed by employers
       representatives involved in 16 (46%) of the appeals
       3 union
       2 consultants
       9 lawyers
       2 other
1997: 97% filed by workers
       3% filed by employers
       representatives involved in 16 (52%) of the appeals
       3 union
       3 consultants
       9 lawyers
       1 other
Full disclosure of a claim file is provided to workers upon request at any time prior to or during the appeal process. Following the first full disclosure, updated disclosures only are provided. Employers are provided with disclosure of non-medical information limited to the issue being appealed prior to the appeal process. In this case, the worker would be advised that the employer is requesting disclosure of his claim file and given 30 days to advise whether or not they object to the employer receiving medical information from their file. If they do object, then the Medical Advisor and the Director of Client Services will make the ultimate decision on whether or not medical information will be disclosed.

As the Review Committee only conducts documentary reviews of the files, disclosure of the file is completed by the operating divisions. Should a request be made to the Review Committee, the matter is referred back to operations.

The Appeals Tribunal has been advised that it has to provide the interested parties with a copy of all information that goes before it. Therefore, when the hearing is scheduled we will provide a copy of the case summary and exhibits to the appellant, whether that is the employer or the worker. A copy will also be provided to the other party provided that they have indicated that they wish to be involved in the appeal and hearing.

7. Annual Budget for the Review Committee:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>$153,000</td>
</tr>
<tr>
<td>1995</td>
<td>$238,000</td>
</tr>
<tr>
<td>1996</td>
<td>$224,000</td>
</tr>
<tr>
<td>1997</td>
<td>$241,000</td>
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<tr>
<td>1998</td>
<td>$266,000</td>
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The 1997 annual budget for the Appeals Tribunal was $244,000. It is the same for 1998.

I hope that this information is helpful to you. If you have any questions, please call Lynne Green at (867) 920-3897 or Margaret Halifax at (867) 920-3831.

Sincerely

Margaret Halifax
Chairperson, Review Committee

Lynne Green
Appeals Registrar