INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: PRINCE EDWARD ISLAND

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 a Chair, plus a employer representative and a worker representative, all appointed by the Lieutenant Governor in Council. Appeals are heard by this panel of three members.

Members of the Appeals Tribunal must not be a member of the board of directors or staff of the WCB.

• 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?)

No formal selection and appointment process.

Members normally appointed for a three year term.

1 As a result of transition to the new Act there is currently in place a three different kinds of appeal processes: 1) if the appeal is a new appeal, but under the former legislation, the appeal is to the Director (internal review) and then to the board of directors of the WCB; 2) if the appeal is an appeal under the former legislation and was in the process before the new Act was proclaimed, the appeal is to the Director (internal review) and then to the Chief Executive Officer of the WCB; 3) if the appeal is an appeal under the new Act, it proceeds through the Director and then to the Appeals Tribunal.
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 statutory or reporting relationship between the Tribunal and the WCB.

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 practices and procedures of the Tribunal are set out in regulations passed by the Lieutenant Governor in Council.

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 accountable to the Minister of Provincial Affairs and the Attorney General.

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

- Does the appeal body share staff or resources with the WCB?
  
  The Secretary to the board of directors of the WCB is also the Secretary to the Appeals Tribunal.

- Does the appeal body have authority to set its own budget?
  
  No; set in consultation with WCB.

- What means are used to avoid the perception of bias (for example, representational membership)?
  
  Employer and worker interests are each represented by individual panel members.
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 PEI Act contains a provision allowing the board of the WCB to bring a question of law to the Appeal Division of the Supreme Court for an opinion, but only on a question of law. There is also general access to judicial review.

[Under the former Act, there was final appeal to the court and 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 Tribunal is bound by WCB board of directors policy.

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

None specified.

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 option to appeal decisions of the WCB and follow the same process.

- 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 must apply for appeal within 30 days and then within 30 days of the notice of appeal, the appellant must submit their argument for appealing the
decision. Following this, the employer has 30 days to respond to the argument presented by the worker. The Tribunal must set down the matter for a hearing within 90 days of this initial 90 day period.

- **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 may be appealed to the Tribunal.

- **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 and an appeal can be made even where there is no new evidence.

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)?*

  Inquiry based approach.

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

  All proceedings of the Appeal Tribunal are recorded.

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

  Not open to the public.

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

  All appeals require filed documents. An oral hearing may then be undertaken to hear verbal arguments.

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

  No.

*Do adjudicators have standing at appeal body hearings?*

  The WCB does not have standing at proceedings of the Appeal Tribunal.
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Are successful appellants awarded costs to help defray expenses (any provisions to provide financial support to appellants)?

No costs have been awarded to date.

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?

Regulations are a matter of public record, but internal practices and procedures of the Tribunal are not made public. There is no statutory requirement for an Annual Report of the Appeals Tribunal, and the Tribunal does not prepare and release a report on its aggregate 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?"

When an appellant reaches the Appeals Tribunal they have generally received access to their file information.

Workers have access to their complete claim file; employers have access to their own file and have access to information in the file of their workers where there is a matter under dispute (see "Compensation Service and Adjudication" interview summary for PEI for additional detail).

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 process in PEI.
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 client satisfaction surveys or studies have been undertaken.

Statistics:

1997 - Workers' Appeals:
- 8 in total
- 3 - allowed to claimant
- 1 - allowed to WCB
- 4 - decision not rendered

1997 - Employer Assessment Appeals:
- 4 in total
- 0 - allowed to employer
- 3 - allowed to WCB
- 1 - decision not rendered

1 Employer appeal of compensation decision - decision not rendered