INTERVIEW QUESTIONS - WORKERS’ COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: QUÉBEC

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 entire staff of the Commission des lésions professionnelles (CLP) is approximately 446 persons. This includes 130 commissioners, 31 medical or technical advisers (assesseurs) and 41 conciliation officers. There are also 217 full-time advisers appointed to "stand along" the commissioners to advise them about the file on adjudication. These members are appointed by government from a list put forward by the CSST from employers' associations and workers' associations. These members are not considered part of the CLP staff.

The commissioners must meet two specific qualifications to be appointed: they must be a lawyer or a notary and have at least ten years experience in a field relevant to the exercise of the functions of the CLP.

• 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 appointment process for commissioners outlined in regulation under the Act. In summary, a selection committee makes recommendations to government on the appointment of commissioners. The CSST has no role to play in the appointment of commissioners.
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 reporting relationship at all between the CLP and the CSST.

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 President of the CLP is responsible for the administration of the CLP. The commissioners participate in the development of administrative policies and procedures to ensure that there is a high level of quality and consistency.

The President is also responsible for establishing a code of ethics for conciliation officers and for medical advisors.

The Assembly of Commissioners is responsible for determining "Rules of Practice".

The government has the power to enact a Code of Ethics for the commissioners and members.

The CSST has no role whatsoever in this process.

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 CLP and the CSST are under the responsibility of the same Minister, the Minister of Labour. (The former appeal board had been under the responsibility of the Minister of Justice.)

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

  The CLP and CSST are located in separate premises (required by statute, section 360).

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

  No shared resources or staff; completely separate organizations.
• **Does the appeal body have authority to set its own budget?**

  The government sets the budget for the CLP and it is paid out of the accident fund by the CSST.

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

  The members appointed through nominations from employer and workers' organizations have no adjudicative power, they simply advise the commissioners. There is a strong Code of Ethics binding the commissioners and members. The Act itself sets out some ethical considerations, including an oath of office. Complaints are possible to a new body called the Conseil de la justice administrative.

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 no appeal to court from decisions of the CLP or CSST. However, judicial review is open to all parties who challenge the jurisdiction of the CLP or CSST or the legality of their decisions. The judicial review process is not specific to the Act.

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 CSST is responsible for establishing policy under the workers' compensation legislation, but the CLP is in no way bound by the policies of the CSST. To the contrary, the CSST must comply with the decision of the CLP in any particular case.

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

  Not as of yet. The CLP began operations in April 1998 and is in the process of developing mechanisms to ensure consistency. There is a committee currently in place that is responsible for making recommendations on this matter. The former appeal body had developed some mechanisms for consistency of decision making, like the Assembly of Commissioners for discussions on general issues and a Committee on quality assurance to identify and discuss consistency in decision making issues.
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 exactly the same option 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 is a 45 day general limit to appeal a decision that has been through administrative review process of the CSST. For certain OHS matters there is a ten day time limit.

  By policy, the CLP has nine months to render a decision and within this time limit, not more than three months is to be expended on deliberation. For certain matters (urgent or priority issues) there is a 90 day limit with no more than 60 days from the hearing for the issue of the decision.

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

  Almost all final decisions of the CSST are appealable (must proceed through administrative review before being appealed to the CLP). There two kinds of decisions that are not appealable:

  A decision exclusively based on a report from the worker's own physician; and

  A decision of the CSST which has been reviewed and which the CSST refuses to reconsider¹.

- **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 requirements for leave to apply or other restrictions on the right to appeal.

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¹ Decisions of the CSST are subject to internal reconsideration or administrative review by the CSST. A final decision of the CSST - a decision that the CSST has reviewed and for which it stands by - is appealable. Where there is no new evidence or where the CSST maintains its original decision, the CSST will refuse to reconsider a decision that has already been subject to administrative review.
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 basic approach is sui generis - a mixed approach with a combination of a commission of inquiry approach and adversarial approach in which the parties must ensure that there is enough evidence to fulfil their specific onus of proof.

Are appeal hearings de novo or on the record?

De novo.

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

Since the whole process before the CLP is a judicial or quasi-judicial process, records and hearings have public status within the meaning of the law relating to privacy rights in Québec.

How frequently are oral hearings granted by appeal bodies?

Oral hearing are the normal procedure for the CLP as required by legislation (section 429.13 and section 429.14). The appellant can request a file review, but this is on their own motion. As well, if the party does not appear for their hearing, the Commissioners can consider the appeal on the basis of the file information.

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

Yes, the statute provides for the summary dismissal of frivolous or vexatious complaints (section 429.27).

Do adjudicators have standing at appeal body hearings?

There is no standing for individual adjudicators from the CSST at hearings of the CLP, but the CSST itself has standing at proceedings of the CLP (section 429.16).

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 rules of practice of the former appeal body are published in the Gazette officielle du Québec. These rules apply to the CLP until the CLP establishes its own
rules. All findings and decisions of the CLP are public and published, some in case books, and all in a public database.

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?

See interview notes for "Internal Appeal Process".

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"?

The CLP offers conciliation services. Under the former appeal body, approximately 28% of all cases before the appeal body were settled by conciliation. The success rate for cases referred to conciliation was approximately 60% settled. Cased not settled were returned to adjudicators.

The CLP goal is settle 30% of all cases by conciliation.
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?

There are not studies for the new appeal process under the CLP.

Appeal Statistics:

There are no appeal statistics for the new CLP.

Under the former appeal body in 1997/98:

- Appeals received: 7,139
- Appeals closed: 7,692
- Appeal Decisions Pending: 8,500
- Decisions: 3,620