INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION: YUKON

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 second level of "internal" appeal is to a panel made up of members of the board
  of directors of the WCHSB.

  The members must include the chair of the board of directors or the alternate chair,
  and one member representing labour and one representing employers. Appeals are
  heard by a panel of three members (the Chair or alternate Chair and the labour and
  employer representative).

• 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 of the WCHSB has the authority to appoint members to the appeal panel.

  In practice a system of rotating membership has been developed to provide all
  members with the opportunity to sit on the Appeal Panel.

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?

   Not applicable.
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 board of directors of the WCHSB establishes policy and rules respecting the operations and conduct of the Appeal Panel.

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?**

  Not applicable  
  Appeal Panel not independent of board.

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

  Not applicable  
  Appeal Panel not independent of board.

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

  Not applicable  
  Appeal Panel not independent of board.

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

  Not applicable  
  Appeal Panel not independent of board.

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

  Not applicable  
  Appeal Panel not independent of board.

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 right of appeal of a decision of the board, or Appeal Panel, to the courts within the board's jurisdiction. A decision of the board may be subject to judicial review if the board has erred in law or jurisdiction.
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 board of the WCHSB has exclusive authority by law to create policy; this policy is binding on the Appeal Panel.

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

There are no formal mechanisms to promote consistency.

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 to appeals as workers. [Note: an employer may only appeal claims decisions at the IRC level.]

- 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 the appeal of claim decisions.
  Assessment decisions of the board must be appealed within 180 days.
  Occupational health and safety matters must be appealed within 21 days and a matter dealing with a refusal to work due to unsafe conditions must be appealed within 7 days.

- 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 WCHSB may be appealed to the Appeal Panel. Appeals of claims decisions must have first been considered by the Internal 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)?

Inquiry based approach. With involvement of worker’s advocate in appeal process there is a greater involvement of board’s legal counsel.

Are appeal hearings de novo or on the record?

Generally the proceedings of the Panel are not transcribed, but depending on the issue and the parties involved the proceedings may be transcribed. Increasingly, hearings are transcribed.

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

Appeal Panel hearings are not open to the public.

How frequently are oral hearings granted by appeal bodies?

Formerly most appeals were considered by documentary review. In the past few years, and since the advent of the worker’s advocate, oral hearings are increasingly being requested and now account for the majority of the proceedings.

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

No.

Do adjudicators have standing at appeal body hearings?

The WCHSB does not have standing at Appeal Panel hearings, with the exception of the Director of OHS in appeals of OHS matters. The Appeal Panel can request or summon WCHSB staff as witnesses.
Are successful appellants awarded costs to help defray expenses (any provisions to provide financial support to appellants)?

Costs are not awarded. [Travel expenses are covered if the Appeal Panel orders a witness to attend a hearing.]

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?

Policies of the Appeal Panel are public. Decisions are also made public and available through the law library. The Annual Report of the WCHSB reports on aggregate operation and activities of the board, including the Appeal Panel.

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 guaranteed access to their claim file under the workers compensation legislation. The employer may be granted access to the employer s own file, but has only "conditional" access to information in their workers files.

Where the employer requests access to the worker s information, the worker has the opportunity to object to the release of information. If the worker objects, the matter is referred to the President and the President determines whether the information is relevant to the issue at hand and that it should be released (with the advice of Claimant Services staff). A decision of the President respecting the relevancy and release of information is a final decision and may not be referred to the Internal Review Committee. The matter maybe addressed at the Appeal Panel of the board during the main hearing, and the Panel has the authority to alter the decision.
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 the Yukon. The board is currently investigating the merits of ADR.

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 of the Appeal Panel process have been undertaken.

1996 Statistics:

19 requests for appeal received
7 requests outstanding from past years
23 appeals considered by the Appeal Panel (out of 26 received or outstanding)
3 postponed/withdrawn
7 reversed and appeal upheld
3 varied or multiple decisions
13 appeals denied
allow / disallow rate - 39% to 61%