APPENDIX 1

INTERVIEW TEMPLATES
INTERVIEW QUESTIONS - WORKERS' COMPENSATION
COMPENSATION SERVICES ISSUES

JURISDICTION:

I. COMPENSATION SERVICES ISSUES

1. Is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of temporary wage loss benefit paid to an injured worker?

If yes, what is the basis for adjusting the temporary wage loss benefit (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?

2. Are permanent disability awards, both partial and total, subject to review and readjustment? For example, is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of permanent disability award?

If yes, what is the basis for adjusting the award (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?
3. Is there any prohibition in the workers' compensation legislation in your jurisdiction against "topping up" (i.e. purchasing private disability insurance which provides income in addition to workers' compensation payment?)

4. What factors, if any, other than earnings, are used to determine workers' compensation benefits (for example what impact does age, marital status, number of dependents, retirement, education and training have on the calculation of benefits)?

5. Is deeming used in either
   1) setting the duration of temporary benefits or
   2) as the basis for calculating permanent disability awards
   (where "deeming" means deeming a worker ready to return to work, and/or as capable of earning income at a particular income level, though the worker may not have actually returned to work or may be earning income at a lower level)?

   And if yes, what are the prerequisites for applying deeming? And, are there any statistics or data regarding the frequency with which deeming is used?

6. Does the jurisdiction have an electronic claim files system in place? When was it introduced? What are the perceived advantages and disadvantages of electronic claims files?
7. Have any research or studies been undertaken on the adequacy of benefits provided by the jurisdiction? Any research or studies on the issue of equity of benefits? Are these studies available to the Royal Commission?

8. Claims Statistics:
How many claims are first paid in a year? Broken down by
  - short term disability (STD)
  - long term disability (LTD)
How many claims are for occupational diseases?
Is there any data available on the distribution of pensions - e.g., average size, range, etc.

II. ADJUDICATION

1. How would you describe the basic approach to adjudication in your jurisdiction (for example, inquiry based approach or adversarial)?

2. In your jurisdiction is the function of adjudicators, at the first stage, similar to an insurance adjuster?

3. If new evidence is presented on a particular claim, is the claim sent back to the adjudicator for reconsideration?
Interview Questions - Workers' Compensation System
Compensation Services Issues - JURISDICTION

4. Are board policies binding on adjudicators? To what extent are adjudicators entitled to exercise discretion? Is discretion applied by an initial claims adjudicator reviewable?

What, if any, mechanisms are in place to promote consistency in decision making?

5. Do workers and employers have access to their information in board files? If yes, is this because of a provision in the workers' compensation legislation or a result of the 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 the 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?

6. Is there any informal review process for workers and employers regarding claims adjudication or assessment decisions (i.e. review by supervisor or manager prior to the formal internal reconsideration or review process and external appeal process, if any)?
If yes, are there any statistics available on the total number of issues reviewed and the allow/disallow rate for this informal review process (are there any statistics kept on the number of issues reviewed, and the allow/disallow rate broken down by type of issue—such as assessment decisions, compensability, level of benefits)?

7. Is there a formal "complaints" review process in your jurisdiction, distinct from any internal review or external appeals process, to deal with complaints from clients of the board regarding the conduct of board officers and staff or service issues? If yes, is this process independent of the board?
INTERVIEW QUESTIONS - WORKERS' COMPENSATION
INTERNAL APPEALS POLICY AND PROCESS

JURISDICTION:

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:

• Who sits on the Appeal Body?

• Is the internal appeal process required by legislation?

2. 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 to an internal appeal? If not, what differences are there in access to appeal and the appeal process for employers and 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?

• What is the nature of decisions allowed for internal appeal?
3. **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)?

- Is the internal review a review and reconsideration of information in the files or are oral hearings held? Is the original adjudicator interviewed as part of the internal review process?

- Are the results of the decisions of the internal appeal body public? Is the internal appeal body required to report publicly on its activities?

- Do appellants have complete access to claim files and information in the internal review process (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?
4. STUDIES AND STATISTICS

- Are there any studies respecting client satisfaction with the internal appeals process in your jurisdiction. Are the results of any surveys or reports publicly available?

Are the following statistics available

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INTERVIEW QUESTIONS - WORKERS' COMPENSATION
APPEALS POLICY AND PROCESS

JURISDICTION:

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?)

• 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?)

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?

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?
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?

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

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

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

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

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)?
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?

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

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?

• 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?

• What is the nature of decisions allowed for appeal - for example any decision of the WCB or just final decisions?
Interview Questions - Workers' Compensation System
Appeals Process - JURISDICTION

• 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)?

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)?

Are appeal hearings de novo or on the record?

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

How frequently are oral hearings granted by appeal bodies?

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

Do adjudicators have standing at appeal body hearings?

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

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?

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"?
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?

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APPENDIX 2
BACKGROUND INFORMATION
Issues Research
Compensation Services, Adjudication and Appeals


Workers’ Compensation Board of Manitoba, 1997 Annual Report.

