INTERVIEW QUESTIONS - WORKERS' COMPENSATION
COMPENSATION SERVICES ISSUES

JURISDICTION: QUÉBEC

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?

Wage loss benefits cease at age 65 and are replaced by an income replacement indemnity which is reduced by 25% at age 65, 50% at age 66, by 75% at age 67 and cease at age 68 (section 56 and 57)\(^1\).

A injured worker's loss of earnings rate is subject to review and adjustment based on actual earnings: the rate is reviewed at the first, second and third anniversary and thereafter in each following five year period (section 54).

Benefits are reviewed and adjusted annually at January 1, based on changes in CPI.

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?

See above.

The lump-sum award for permanent impairment varies according to age and level of disability but is not subject to regular review and readjustment, unless the CSST is informed of an aggravation or worsening of the condition.

\(^1\) The Québec Act is very specific about setting out compensation rates and rules. Not a lot is left to policy.
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??)**

   There is no prohibition in Québec against topping up.

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)?**

   Age is a factor in determining the level of permanent impairment award. Age is also a factor in terms of calculating survivor benefits.

   If a worker has only been on the job a short time, their wage loss benefit may be calculated on the basis of the probable wage that they could have earned in that job, given their education and training, over a longer period of time (section 67 and 68).

   Marital status and the number of dependents is not directly a factor in determining benefits, but is indirectly taken into account in calculating the wage loss rate based on weighted net income which is determined on taxable income through Income Tax Canada.

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?

   Once a person has completed all rehabilitation, a suitable job will be determined for them based on their age, experience, education and training, and their level of income replacement benefit will be calculated based on the salary for that suitable job.

   As well, under the Act, if it is impossible to establish the level of injury within two years, the CSST will calculate the earnings capacity of the injured worker and base the income replacement indemnity on this earnings capacity (section 88).
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?

The CSST has had an imaging system since 1985. The CSST will be moving to a new updated system over the next few months.

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?

The CSST is currently considering changes to its legislation in terms of overall compensation rates and levels. [An external review committee recently studied the Québec workers' compensation system and made some recommendations on the level of benefit, including areas where it felt there was overpayment and areas where it felt there was underpayment.]

8. Claims Statistics:

No detailed statistics were available for 1997 on the incidence, duration and average benefit broken down by short and long term disability.

Each year the CSST handles about 120,000 time loss claims. It is estimated that approximately 65% of claims are very short term, less than 14 days.

II. ADJUDICATION

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

An inquiry based approach.

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

The CSST is "conciliation minded" and solution oriented; if the legislation does not specifically deal with the issue, the adjudicator is expected to use his or her best judgement within the context and parameters of the legislation to make the decision.
3. **If new evidence is presented on a particular claim, is the claim sent back to the adjudicator for reconsideration?**

   Where new evidence is presented, before a case has been referred to administrative review or reconsideration, the case is sent back to the decision maker.

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?**

   There is not a great deal of policy, most substantive provisions are set out in the legislation. Policies must be consistent with the legislation. Decisions of adjudicators are subject to review and appeal.

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

   The CSST has an comprehensive information management system designed to promote communication between head and regional offices. In each office there is a working group to which issues can be brought for discussion and resolution.

   [The CSST eliminated its quality assurance function because it was considered out of date, ineffective and out of step with the rest of the organization. It was felt that the quality assurance function took away the use of good judgement by decision makers.]

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?**

   Under both the workers’ compensation legislation and the freedom of information legislation a worker has full access to their personal information in their file with the CSST and an employer has access to their employer file.

   An employer has a right of access, free of charge, to their worker’s file except for medical information. Medical information may not be released directly to an employer and may only be released to the employer through a designated health professional under the Act.
Information not considered relevant to the matter at hand will not be released - if the information is not used for the purpose of making a decision it is not subject to release. However, if the issue is under dispute, any information used in rendering the original decision is considered relevant and subject to disclosure.

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 - for example, assessment decisions, compensability, level of benefits)?

There is no informal or management/supervisory level of review of adjudication and compensation decisions.

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?*

There is no independent, formal complaints review policy in Québec.

There is an internal ombudsman located in the CSST. Any person dissatisfied with the way they have been treated by a CSST official can make a complaint to the internal ombudsman. The ombudsman has no power to change a decision of the CSST, but may make recommendations.