6.0 INTRODUCTION

This theme captures the concerns and recommendations surrounding the WCB appeal system. The discussion was divided into sub-issues topics that are listed below in order of the number of responses that addressed each.

- backlogs and delays
- grounds for appeal
- alternate dispute resolution
- independence and relationship to governance
- implementation of decisions

6.1 BACKLOGS AND DELAYS

6.1.1. Overall Response

The subject of backlogs and delays received the most attention by those who had concerns about the appeal system. The responses to this sub-issue of *backlogs and delays* were combined with those falling under the original topic entitled, *'number of levels (layers) and jurisdictions'* because the majority of presenters saw them as being inseparable. Any discussion pertaining to the jurisdiction of the various levels was raised in different areas throughout the entire theme.

Amalgamated, these two topics account for over half of the total number of responses under the entire theme, meaning that this topic generated more discussion that all the other topics combined. It should be noted that even without adding the two topics together the subject of *backlogs and delays* was still the most frequent with the *number of levels* being a strong second in order of frequency.

Injured workers dominated the discussion accounting for just over half of the responses. Employers and their associations made up another third of the numbers, with consultants, members of the public, medical professionals, municipal governments, non government organizations making up the remaining 20 percent.

Overall, the intensity of this topic was moderate. However, the responses of injured workers as a group were high in intensity. Injured workers had strong words and feelings about what delays in the appeal system were costing them. These were offset in the total calculations by large numbers of employers and employer groups who stated their views in a more dispassionate manner.

6.1.2. Discussion

Although the perspectives and relative emphasis differed, all stakeholder groups conclude that the current appeal system is too slow, is causing emotional and financial hardship to claimants and is costing too much money. They all agree that the adversarial nature of the WCB, the lack
of information provided to employees and employers, the complexity of the process, administrative inefficiency, and inconsistency and delay in decision-making contribute to backlogs and delays in the process.

Injured workers repeatedly insist that their appeals dragged out for months, and even years causing them to become financially and emotionally bankrupt. Some say they lost everything, including their homes and families, and had seriously considered suicide. In the eyes of workers, the problem begins with the built-in bias of the system, which favours the employers who fund it. Consequently, the injured worker who makes a claim is seen as a cost to the system. This results in an adversarial approach where most claims are treated with suspicion and the claimant is forced to prove their right to benefits. Workers accuse WCB staff of deliberately denying claims in order to force them into appeal, wear them down and get them to give up. Workers also assert that WCB staff deliberately manipulate information to show the claimant in a bad light in order to get claims dropped.

The complexities of the appeal process and of health and safety regulations are also identified by workers as factors contributing to a slow appeal process and an increase in the number of appeals. A lack of information exacerbates the problem. Workers report that they were not well informed about time deadlines, and how to proceed in the process. This lack of knowledge results in deadlines being missed and further appeals being launched. Many say that it is not possible to make it through the system without professional assistance. Some workers say that it is common for claim files to reach them after it is too late for them, or their legal counsel, to review them and prepare for the appeal. The result is more appeals and a lengthier process. In some cases the delay in getting files to claimants is attributed to inefficiency, and in other cases it is seen as deliberate malice.

Employers and their associations also identify a lack of information at the claims level as a major cause of delays in the appeal process. They say that they are not made aware of the status of claims and are not told when a claim has been settled, or the basis for the settlement. Initiating an appeal is almost their only recourse if they have a disagreement with a claim, or if they want to find out the basis for the adjudicator’s decision.

Employers see the system as being deliberately stacked in favour of the employee, although they agree that in the end it often operates against the worker. Employees can appeal repeatedly until they get a decision they like and they have no limits to the grounds from which they can appeal unlike employers who are restricted in their ground. This freedom prolongs the process and makes it drag out indefinitely.

Union members and their associations agree that the appeal process is slowed because it is too complex and bewildering for workers, and agree that workers are frequently uninformed about how the process works. It is noted that immigrants and brain-injured workers are particularly confused by the process due to their lack of language skills or impaired brain function. However, some union members say that employer interference is partly responsible for making the process so slow and complex. They say that employers launch appeals and interfere in Review Board proceedings for an endless number of trivial reasons. Many would
like employers kept out of the Review Board process as much as possible and only be allowed to appeal at the Appeal Division for well founded reasons.

All stakeholder groups say that decisions made by appeal boards are too slow in coming. They also report that decisions made by different appeal levels are often contradictory. Further, appeal decisions often get referred back to adjudication for implementation and result in a new decision that is itself open to appeal.

6.1.3. Recommendations
In response to these problems, all stakeholders would like to see changes in time deadlines and greater efficiency in the decision-making process. Employers called for much tighter and stricter timelines for launching appeals and for boards to make decisions. On average, these timelines ranged from 30 days to 60 days for launching an appeal, and from 60 days to 90 days for a decision to be reached. Some also said that no extensions should be given.

Injured workers, unions and members of the public agreed with employers that 60 to 90 day time limits should be imposed on the decision-making process of appeal boards. However, they did not agree with imposing strict timelines on injured workers filing an appeal. They argue that injured workers are not always emotionally and mentally capable of meeting timelines because they are preoccupied with their injuries and the adjustments demanded by them. Some asked for longer timelines, others suggested that it would be more appropriate if timelines were set in agreement with the Board and the injured worker taking into account the nature of the injury.

Some unions indicated that the current deadline extensions offered by the Review Board are inconsistent and confusing to appellants. They ask that the criteria for extensions be reviewed and made known to all parties. They also said that extensions need to be more compassionate to injured workers.

Unions insist that workers need to be given more information and more assistance in the process. They would like more worker advisors to assist claimants. They would also like more staff hired to handle the workload and some would like more appeal boards in the system, although they are not asking for more levels. Most union groups expressed opposition to reducing the number of levels of appeal to one level. Some want the number to remain as it is, others would not oppose dropping one level but insist that a minimum of two levels are needed to protect the rights of workers and ensure that everyone receives fair treatment.

On the other hand, most professional associations, employers and their associations would like the appeal system simplified by reducing the number of avenues for appeal because they say the present system encourages repeated appeals and offers no closure. The multiple levels offered to employees are the primary cause of backlogs and delays in their view. The majority would like the system reduced to one level of appeal while others say that two would be acceptable. The Medical Review Panel is seen as the most expendable level. Many would also like the number of panel members reduced to one member as well. They insist that this would increase efficiency and reduce delays. They do acknowledge that the person selected to
serve in this capacity should be very knowledgeable and should be able to call in expertise if it is needed.

Employers also insist that improving communication and cooperation in the claims process would go a long way to reducing the number of appeals and therefore the backlogs and delays. In their mind, many appeals would be dropped, or not even launched at all if the WCB fostered open communication between all parties involved in a claim: adjudicators, employers, employees and doctors. One member of the public recommended that claim managers receive demerits for every claim that goes to appeal. They said this would improve decision making at the claims level and help reduce the number of appeals.

Unions, injured workers and some members of the public also expressed the need for something to be done to reduce the hardship imposed on workers by the delays. They ask that claimants receive financial assistance during the period when their appeal is being heard. Some indicated that appellants should receive funding throughout the appeal period and they could repay the money later if the appeal goes against them. Other said that social assistance should be forthcoming during this period so that workers do not lose their savings and homes while the decision is pending.

**Example Recommendations**

- The association suggests the creation of only one appeal body and the creation of a one person panel. There should be a 30 day appeal period to submit all evidence and a 90 day period for rendering of the decision. Additionally, all appeal decisions should be reported and accessible to the stakeholders by request.
- Given the three formal appeal procedures, there is a need to develop a more streamlined and cost-effective model that also ensures greater finality. The three current appeal mechanisms should be combined into a single Appeal Tribunal so that there is one unified system, with one entry and one exit.
- The current appeal process with the review board, the appeal division and the Medical Review Panel is in my opinion a colossal waste of time along with taxpayers' and employer dollars. In the interests of the taxpayers of BC, the workers, their families, and employers the appeal process must be streamlined.
- The current three levels of appeal should remain.
- Entire structure for WCB appeals should be consolidated and made more efficient. Only need one effective tribunal instead of three appeal bodies.
- Speed up the appeal system. Set timelines and adhere to them.
- The worker should have some avenue to secure temporary assistance while awaiting an appeal decision, i.e. social assistance.
- An appeal should be answered within the first 90 days. Appeals should also be completed within a reasonable time frame agreed upon by the worker and the WCB.
- We find the appeal system far too cumbersome and would recommend that the system be streamlined or perhaps the staff levels be increased to enable the affected workers to have the results of their appeal as early as humanly possible.
- Review Board decisions must be rendered within 90 days of an appeal being filed.
6.1.4. Quotes

- “I have lost everything that I have ever worked for - my marriage has broken up, and I’ve lost respect from my family.” (INJ-551)
- “The Board has kept the rules of the game secret from the workers’ team for too long.” (INJ-195)
- “Allowing months and sometimes years to pass before a worker is granted a hearing is obviously counterproductive to both the medical rehabilitation and the potential return to productivity of that employee. Why must it take so long to investigate and make a decision on a claim with life and death implications? My dismay and disgust at the ignorance and insensitivity to their mandate by the Workers’ Compensation Board of B.C. is extremely hard to convey, but for the sake of my family I have tried to temper my personal rage at what I consider heartless treatment, to make what I hope is a rational appeal for sweeping changes within the present system.” (INJ-151)
- “We find the appeal system far too cumbersome and would recommend that the system be streamlined or perhaps the staff levels be increased to enable the affected workers to have the results of their appeal as early as humanly possible.” (UNA-017)
- “The punitive basis on which the WCB has operated in the past is not effective and needs to be abandoned in favour of a more proactive cooperative model. Our current WCB system is overwhelming, bureaucratic, ineffective and inefficient. It pits employees and employers against each other. The current multi-level appeals process is long and confrontational and stressful. If the claims process is cooperative at the outset, there would be less need for appeals.” (IEM-135)

6.2. GROUNDS FOR APPEAL

6.2.1. Overall Response
This topic generated the second most frequent number of comments in this theme. Individual employers and injured workers accounted for almost three-quarters of the discussion. Union members, their associations, and employer associations accounted for an additional 20 percent. The remainder came from members of the public, consultants, medical professionals and municipal governments. The intensity of responses was rated as moderate.

6.2.2. Discussion
This topic considered viewpoints on the grounds allowed for employers and employees to launch an appeal. The discussion revealed some confusion about what the grounds for appeal are, and what bodies are open for employers to appeal to. At times, injured workers also were not sure which body was hearing their appeal. Although most employers are aware that the grounds for appeal place greater restrictions on them than employees, it is not always clear what those restrictions are, or when they apply. Nevertheless, most employers insist that any difference in allowable grounds is inequitable.

A number of submissions did not take issue so much with the allowable grounds as they did with expanding the jurisdiction of appeal bodies, and therefore indirectly expanding the grounds. Most of those employers that had specific concerns in this regard would like the jurisdiction of the Appeal Division to be expanded to include inspection matters. It was pointed
out that the only way for an employer to have their complaint about these matters heard is to fail to comply, and then when the penalty order comes in they can appeal that. They said that they do not like being forced to disobey the law in order to get due process. Some employers also take issue with not being allowed to appeal cause of death decisions at the Medical Review Board.

Some injured workers and medical professionals also spoke out against limitations placed on worker appeals in the Medical Review Board. They say that current appeal policy restricts them from reopening an appeal when new medical knowledge that would change the outcome in favour of the injured worker becomes available. They do not see this as being fair.

Although employers are restricted in their ability to launch appeals, they are accused of too much interference in appeals initiated by employees. Unions and employees argue that this ability on the part of employers causes a great deal of unnecessary delays in settling appeals and increased hardship for injured workers. In their view, employers use any ‘frivolous ground’ to interfere in a worker’s appeal. They say that employer participation is not an attempt to get justice; rather, it is motivated by the desire to get claims denied and keep costs down.

There was some discussion about whether or not a WCB officer’s decision not to write an order, or recommend penalties for employer infractions is a matter that should be open to appeal by employees. Those employers who spoke to the matter insist that employees have no say in the matter. They are opposed by union representatives who take the view that since employee safety is at risk employee’s do have a say and should be allowed to appeal these kinds of decisions. However, some union representatives point out that an employee’s right to appeal in these matters ought to be limited to serious situations.

6.2.3. Recommendations

Employer groups stand alone in their demands that the grounds for appeal and access to the appeal process should be made equitable for both employers and workers. The majority of employers would like the grounds for employers to be unrestricted as they are for employees. Others insist that the grounds for employees should be made exactly the same as those employers now have. That is, employees should only be allowed to appeal error of fact, error of law, or contravention of published policy.

A few employers asked that they be allowed to appeal inspection orders. A few employers also insist that if the Medical Review Panel stays in place then employers should be given the right to appeal cause of death decisions in the same way that dependents of the deceased can. Some employers also expressed opposition to unions being allowed to appeal a WCB officer’s decision not to write an order or recommend penalties.

All other stakeholder groups that spoke to this issue insist that employers currently have too much opportunity to interfere in appeals and are asking that employer participation in worker appeals, particularly at the Review Board level, be reduced or eliminated.
Union representatives were divided in their views about workers being allowed to appeal a decision of WCB officers not to issue an order or penalty. Some recommend that workers should have the right, others say that workers should not be allowed to do so unless there is a serious and obvious breach of safety that represents an immediate danger.

Injured workers and some medical professionals also ask that appeal policy be changed to allow new medical evidence, that was not known at the time of an appeal being denied, to be used as grounds to reopen an appeal.

Example Recommendations
- Grounds for appeal and access to the appeal process should be made equitable for both employers and workers.
- Should be a way of stopping employer from objecting or appealing every claim on frivolous grounds.
- Limit employer activity in the appeal process.
- Establish the right of workers to participate in health and safety penalty appeals.
- The union recommends the legislation be changed so that the workers or their representatives can appeal a decision to not recommend a penalty and that the ability for workers or their representatives become legally a part of the appeal process.

6.2.4. Quotes
- “We want to see a graph of your general financial performance together with a graph of your serious accidents. I think that you will see that in the time that the you see a large number of appeals being refused you would also find that to be a time when the board is experiencing financial difficulties.” (CON-112)
- “Employers should not have the right to continue to respond at hearings again and again after refusing to respond a first time. Employers should be treated in the same way as employees.” (INJ-320)
- “Unless there is a serious and obvious breach of safety that represents an immediate danger, and that a WCB inspector is either unwilling or unable to address, a worker should not be given the power to appeal a non-order.” (UNA-020)
- “When we talk to employers this was an overwhelming view that the Review board, Medical Review panel and appeal division is extremely confusing as to which one applies, the process for going through those is different, the timeframes are very long and drawn out, in many cases you can’t find the results anyways.” (IEM-060)

6.3. DISPUTE RESOLUTION MECHANISMS

6.3.1. Overall Response
Although this topic was the third highest in order of frequency, it only accounted for about ten percent of the total discussion in this theme. Injured workers and their associations made up almost 70 percent of the discussion and employers and their associations almost another 20 percent. The remaining 10 percent came from advocacy groups, consultants, members of the public and union associations. The intensity of the responses was rated as high on this topic, particularly those from injured workers.
6.3.2. Discussion
This topic was originally intended to focus on alternate dispute resolution mechanisms such as internal ombudsman, mediation, conciliation, advisors and advocates. Although mention of these specific alternatives was made, the discussion did not emphasize them or explore them in any complete way. Most submissions and presentations were intent on identifying and describing the problems experienced with the system. Therefore any solutions that were proffered were not elaborately described and did not come out of a thorough analysis of available alternatives, or an exploration of innovations. The solutions offered are best understood as extensions of how the submitter perceived the problem rather than as offering well thought-out conclusions.

With the exception of a couple of submissions expressing approval of the function of the Appeal Division, all stakeholder groups express a lack of confidence in the present appeal process. Many express mistrust and anger. The process is most frequently described as being adversarial pitting employee against employer, or either of them against the WCB. In this process, someone has to lose. Those who lose often come away angry, suspicious and hurt. Workers are particularly vocal and emotional in describing the unjust treatment they said they had experienced in going through the appeal process. Many say that the system does not allow them to be heard. Several speak about being devastated by spending years in the process and finally upon reaching the Medical Review Panel seeing a final decision made in only one hour. To them, the process is agonizingly slow and the decision-making is superficial, biased and incomplete.

6.3.3. Recommendations
All stakeholder groups offered suggestions for how the system could be improved. All groups see the system as being overly complex and of having an imbalance of power. The suggestions that are made to solve these problems fall into several different categories. The first group places priority on giving claimants more help to get fair treatment in the existing process. The second group asks for changes in the power structure. The third group recommends methods for preventing, or reducing, the need for appeals; and the fourth is asking for an entirely new structure and approach.

Theme: Getting Claimants More Help.
A number of submissions centred on ways claimants could get more help in getting through the existing appeal process and to ensure they receive fair treatment. Some injured workers insist that if the system stays the same then the WCB should be obligated to provide them with free legal counsel, or should provide funding for workers to access expert opinions. They also want an up to date list of expert opinion made available to appellants. Some employers vigorously opposed this idea.

Alternatively, other workers ask that advocacy groups should be allowed to become a part of the process and be able to assist claimants. Still others would like to see more worker advisors made available to workers. Several emphasize that these advisors need to be better trained.
Conversely, some workers say that the workers advisors are in a position of conflict of interest because they are paid by the WCB.

**Theme: Changes in the Power Structure.**

Another group of submissions expressed the view that the appeal process would be improved if existing bodies, offices or groups were given more, or less, power. Some submitters contend that if the ombudsman would be given more authority to compel compliance many problems and disputes would get resolved without the need for an appeal. Others say that the ombudsman was part of the problem. They insist that the ombudsman is part of the WCB and is therefore biased. They recommend that the ombudsman office be eliminated.

Some submissions favour giving existing appeal boards more options for examinations and greater authority to refer to outside specialists in appeals to ensure that all the evidence is gathered and entered into the decision process. Injured workers are particularly strident about their powerlessness in the Medical Review process. Many complain that their case had not received a proper or thorough hearing, and that the decision finally reached did not take into account all the information, or receive adequate contemplation by panel members.

These workers demand that they be given the right to choose their own medical specialist and want more control of the process through having greater access to information. They would like to be given the right to tape record the appeal process so that they have an accurate record of what was said and greater access to their files as well as a method for correcting inaccurate information. Some ask for an unbiased, independent panel to hear complaints and receive written submission regarding evidence of wrongdoing on the part of WCB employees. Others ask that when new medical information comes to light it should be allowed to be used to re-appeal earlier decisions of the Medical Review Panel. Some Medical Professionals support them in this request.

Many stakeholder groups also insist that employer interference in worker appeals is a source of adversity and ask that employer influence and participation in the Review Board process be reduced. Some want employers to be excluded from employee claim appeals altogether. On the other hand, many employers would like to receive the same access to all levels of appeal in the same way as employees do, including the Medical Review Board. Refer to Topic 3: Grounds for Appeal for a more complete discussion.

**Theme: Preventing, or Reducing, the Need for Appeals.**

The third group of recommendations would like to see the system place more emphasis on preventing appeals from being initiated in the first place. These presenters and submitters argue that if the claims process is more open and cooperative with all parties being well informed at all times it would prevent the need for a significant number of appeals. Some suggest that a system of manager reviews be instituted to help settle disputes before they are caught up in the appeal process. Others said that there already is a manager review system in place but it is ineffective because managers are internal and biased.
One consultant outlines the need for the entire WCB administrative structure to be completely changed from its present ponderous hierarchical authoritarian model to one where managers are given greater opportunity to make decisions, and the time and resources they need to make good ones. They claim that if good decisions are made in the first place the need for appeals would be dramatically reduced. This can only be done under an entirely new structure with a whole different focus and approach. Others would like a special complaint panel, or prime adjudicator, put in place to investigate complaints, mediate disputes and review claims before they reach the stage of appeal. A few say that a facilitated meeting of all parties should be arranged prior to an appeal with the aim of reaching a fair settlement and resolving the disagreement.

**Theme: New Structure and Approach.**
The last group of recommendations involves establishing a complete structural and attitudinal change of the appeal process. This group is divided into two subgroups. The first of these is a small group who insist that the appeal system must become more user friendly. They say that it should be less formal and appellants should not need a lawyer to protect them or have someone to advocate on their behalf, except perhaps those with brain injuries or who lack language skills.

Others reason that disputes ought to be settled with the use of trained facilitators or conciliators. Some see this occurring at a meeting of all concerned parties where the problems in discussed openly and fairly and resolved by mutual agreement. One advocacy group offers detailed explanations for a mandatory conciliation process with tight time constraints that they insist would create a “best practice system” that is consistent and fair. They differentiate between facilitation, mediation, arbitration and conciliation saying that conciliation is the best method for the WCB to follow. One consultant recommends an alternate dispute resolution process that would take over after an appeal decision has been reached and it has not been resolved to everyone’s satisfaction.

Although the discussion about the number of levels of appeal was included in the first topic in this theme, the part devoted to jurisdiction is included here because it represents the wishes of a large group, and a significant change in the current structure. As was noted in the previous topics, most in this group are convinced that the delays, confusion and unfairness in the present system arise out of the existence of too many levels. Therefore, the assumption is that eliminating the levels eliminates the problem. Only a few took the time to suggest how a one level appeal system would function. Even then, they do not elaborate.

Of all the levels, employers assert that the Medical Review Board, or Panel, is the most redundant. They indicated that the Appeal Division could easily replace its function with medical issues being referred to an independent group of medical specialists when needed.

One employer association recommends that the Review Board be replaced by a senior adjudicator who could mediate between the employer and the employee before an appeal became necessary.
Unions strongly oppose dropping down to one level arguing that a minimum of two levels is needed to ensure fairness. They insist that employers do not have to be involved in Review Board appeals at all. This would reduce delays and confrontation. They argue that employers would still be allowed to appeal a decision in the Appeal Division, which they say is working well.

**Example Recommendations**

- The lay person should be able to appeal an issue without the need for legal counsel.
- Let the Review board appeal process be made less formal and much more open to findings and reasons be better explained weighing all the evidence.
- Consider recommending alternate dispute resolution system after initial decision.
- The adversarial attitude on the part of WCB personnel must be removed when dealing with disputed claims.
- Conciliation (versus mediation or arbitration) places parties in a non-threatening environment to talk through issues and arrive at: (1) an acceptance of the adjudicator’s decision, (2) an acceptance of the worker’s position and reversal of the decision, or (3) an acceptable compromise.
- The WCB appeal process must be expedited. All concerned parties should sit down together at a facilitated meeting. Present would be the injured worker, WCB representative, employer representatives and physician/specialists who are involved in the case.
- Suggest that the manager’s review process does not need to be so restrictive it could be broadened so that workers have a chance to have decisions rectified within a reasonable amount of time, a month or two without going through the appeals process.

6.3.4. Quotes

- “Under the present system, the disabled become Victims, with inadequate recourse to Justice!” (INJ-323)
- “Instead of ‘Us’ and ‘Them,’ it should be ‘We.’” (IEM-020)
- “What I find very difficult to deal with is the fact that they quite often say that you don’t need legal representation or counsel of any kind, not only do you need counsel you need a mathematician and an accountant when you’re dealing with them. It’s very complicated. I don’t say that to be glib; I just genuinely found it to be very complicated.” (INJ-307)
- “As it is now structured, the system serves to promote mistrust among injured workers, the rampant nature of which must have become clear during the course of public hearings…The conciliation process is the corner stone of the dispute resolution process we propose.” (ADV-014)
- “The system is appeals heavy… disproportionate resources are being used to rectify poorly rendered decisions at the adjudication level while injured workers risk losing their homes, families and self-esteem.” (ADV-014)

6.4. INDEPENDENCE AND RELATIONSHIP TO GOVERNANCE

6.4.1 Overall Response

Almost half of the responses on this topic were from injured workers. Independent employers accounted for another 20 percent with the remainder being spread fairly evenly amongst
advocacy groups, consultants, Members of the Legislative Assembly, municipal governments, non-government organizations, union members and their associations. Overall, intensity was rated as moderately high except for amongst injured workers where it was rated as high.

6.4.2. Discussion
The discussion in this topic explores the mistrust of the WCB and the appeal system that all stakeholder groups identify as being a common experience. Workers were particularly strong in their view that the present appeal boards are biased in favour of employers and are filled with members having political and personal ambitions. They say that existing boards are made up of members aspiring to get on the Board of Governors or who had arrived from the Board of Governors.

Most employers, their associations, and some municipal governments also see the present appeal system as having too strong an influence on governance. They argue that appeal decisions, particularly from the Appeal Division, are shaping policy and extending benefit coverage rather than following established policy that limits coverage.

6.4.3. Recommendations
There is strong support across most stakeholder groups for an independent appeal body to hear and adjudicate appeals. The majority of those who favour having only one appeal level would like all appeals handled independently. The majority of those who want more than one appeal level would like the final appeal body to be completely separate from the WCB. The independence of this body is seen as necessary to ensure that decisions are impartial and immune from political pressure. Those who want this body internal to the WCB insist that an internal body is more accountable and it would be easier to ensure that decisions are consistent with WCB policy. They say that accountability and consistency could be built in by having a review mechanism in place, or by having the appeal board report to the Board of Governors on a regular and formal basis.

Some workers say it would be fairer if the appeal division is made more like a court of law with actual judges and juries presiding. One injured worker states that appeal board members should be drawn randomly on a yearly basis from unions and workers who have an understanding and empathy for their problems.

Most employer groups and some municipal governments are adamantly opposed to any member of the appeal body being allowed membership or authority in WCB governance. They would like a strict separation between governance and appeals and strongly insist that appeal boards should not influence or shape policy, only apply it. Their main concern is that the decisions of the Appeal Division have had as much of an influence on expanding worker entitlement, as has the policy of the Board of Governors.

In spite of this stance, the majority of employers and their associations repeatedly ask that all final appeal decisions be published. Most do not elaborate on why they wished publication. Those few who do indicate that there is a need for decisions to be widely known so that they could be applied throughout the system thereby forming a coherent body of jurisprudence. This
would provide appellants with a better understanding of how their case will be weighed, how to present it, and will enable them to anticipate its possible outcome. Also, decisions not seen as adhering to policy could be appealed and possibly overruled.

Some union representatives take a similar position. They insist that the decisions of the Appeal Division and the jurisdiction of the Appeal Division are often ignored by the Review Board. They would like the authority and jurisdiction of the Appeal Division enshrined in legislation rather than being only set in Board of Governor’s policy. They say that the Appeal Division has the task of interpreting Board policy and WCB law. In their mind, it is important that these interpretations and rulings be applied and incorporated into future policy unless expressly stated by the panel of administrators. They point out that frontline WCB workers simply follow their manuals and do not receive Appeal Division decisions. Therefore, the careful and sound reasoning of the Appeal Division is only applied to the particular case in front of the Division and is ignored in future cases.

Example Recommendations
- Decisions of the Chief Appeal Commissioner should be reviewed on an annual basis to ensure that they are clear, understandable, and reflect an awareness of Board policies.
- When cases are reviewed, they should be done so by a truly independent body, not an office within the WCB.
- All decisions should be published. The appeal body shouldn't make policy.
- No member of appeal body should be allowed membership or authority in WCB governance.
- There should be a more independent appeal system, consisting of people who do not aspire to jobs on the board or have not recently arrived from the board.
- It is urged that greater access be available for judicial review, related to the need for an independent right of final appeal.
- Create a separate and independent appeal system, similar to the Appeal Tribunal in Ontario.
- We also recommend that all of the decisions of this tribunal be published to provide all stakeholders, employers, workers, and the Board with the information to assist in improving consistency.
- Combine the three appeal systems into one fair and timely appeal body. The new appeal body should be within the WCB system and should report to the Board of Governors. It should not have responsibility for making or challenging policy decisions of the Governors.
- The Review Board should be completely independent of the WCB. If part of a claim is outside the jurisdiction of the WCB bodies, a panel should be empowered to hear such information. Establish an unbiased, independent panel to hear complaints and receive written submission regarding evidence of wrongdoing on the part of WCB employees.

6.4.4. Quotes
- “We believe that the appeal division has played the major role in broadening the parameters of entitlement to workers’ compensation benefits.” (MGS-006)
- “You know when you go to the appeal board here and you go to the Worker's Advisory it's like going to the Nazis to complain about the SS. They have to be totally independent. You just get shut down. You get no information.” (INJ-522)
• “The present system of redress is wholly within the control and discretion of the WCB. All rules of time constraints and process of appeal are formulated by the WCB, and ignorance of these rules works only for the WCB, not the people it is supposed to protect.” (INJ-141)

• “While the Appeals Division has committed to a timely resolution of issues brought before it and has made good on its commitment to reduce the backlog of claims issues, the employer community has no confidence that the division is unbiased and that it has not only liberalized the interpretation of the policy, but created or directed the creation of policy. This is well beyond the intent and mandate of the division.” (IEM-120)

6.5. IMPLEMENTATION OF DECISIONS

6.5.1. Overall Response
Discussion under this topic received attention from only six percent of presentations and submissions addressing this theme. Once again, injured workers accounted for almost half of the comment and independent employers another 20 percent. Advocacy groups, employer associations, members of the public, municipal governments, non-government organizations, professional associations and union members made up the remainder. Again, intensity was rated as moderately high overall with injured workers expressing the strongest views.

6.5.2. Discussion
This topic identifies problems encountered once appeal decisions are made and focuses on how they are carried out. Although it is expressed in different ways, there is strong agreement from all stakeholder groups that implementation of appeal decisions is poor.

Employer groups see the problem as originating with the open-ended nature of the system. They say that the system is so focused on giving employees every opportunity to get a fair judgement that it gives them too many avenues of appeal and ends up offering no resolution. They say the system is set up to encourage employees to keep appealing until they get a decision they want. There is no end to it. A decision from one panel gets appealed at another and a decision from that gets referred back to the adjudicator who then makes another decision which can then get appealed again.

Similarly, injured workers describe going through years of appealing and re-appealing before they received resolution to their claim. They complain that even when a decision is finally made adjudicators are left to decide how much they would receive. They report that the adjudicators also take months or even years to reach a decision and when they do, it does not always reflect the intent of the appeal board. They are then faced with having to appeal again. In the meantime, they have no income and many said they ended up losing everything they had. Some workers also report being caught between the decisions of appeal boards from different provinces.

Union groups and professional associations support the reports of workers. In their estimation, the decisions of the Review Board are the most problematic. They say the decisions of this
body are unreliable, unclear and inconsistent. If workers have problems with the implementation of a Review Board decision, the only recourse they have is another appeal.

6.5.3. Recommendations
Unions and employer groups ask for a review mechanism of all Review Board decisions to ensure that they are sound and consistent. Union groups also ask that the Appeal Commissioner be given the authority to ensure that the decisions made by the Review Board and the Medical Review Board are carried out as they were intended. They also recommend that more staff be hired to speed up the implementation of decisions.

For their part, employer groups insist that all appeal decisions be published to provide clarity and encourage greater consistency in decision-making and implementation. Professional associations ask that when an appeal decision is found to be unsatisfactory the appellant should be able to go back to the same appeal body to receive greater clarification, or further adjudication, rather than having to start all over again with a new appeal.

In order to relieve the financial hardship experienced by claimants while they waited for appeal decisions, union representatives also ask that claimants who receive a ruling in their favour at the first level of appeal be given benefits immediately. They acknowledge that the decision could be reversed later on but insist that claimants should not be made to suffer financially while the process is carried out. They did not have any concrete plan as to how the money could be recovered in this kind of situation. Some workers also insist that when their claim is finally settled they should be entitled to interest on the money from the time of their first appeal.

Example Recommendations
• Give the Medical Review Panel the authority to have its decisions implemented.
• Claimants who go through the appeal process and eventually have their claim accepted, should be paid interest on money owing, and should be allowed to sue for punitive damages.
• Successful appeals should be given priority for implementation. It would be desirable for the appellant body to retain jurisdiction to deal with the implementation of their appeal decisions, meaning that if the implementation decision is unacceptable, the worker should be able to return directly to the same panel to address implementation problems.

6.5.4. Quotes
• “From the time an appeal is launched to the time it is finally resolved can literally take years in this open-ended system.” (IEM-137)
• “Instead of doing their (WCB) job properly and making me, the injured worker feel as if the WCB is doing something for me they: turn down my request for help and make me appeal (usually up to a year); turn down my appeal and make me appeal again (usually another year); turn me down and make me appeal to the MRP (about 6-8 months); completely screw up the MRP findings and start the slooooooooow process of doing something (usually a year and a half); give me some money and cut me off; start at appeal over again (about a year); turn down my appeal etc. etc. etc.” (INJ-030)
• “It will be close to 3 years before a final decision is reached by a medical panel...It is my understanding that the file is now with a WCB medical examiner who could not review it during the Christmas Holidays. Was this due to his/her brain shutting down at the end of December or due to a vacation? Are there no other medical examiners present?” (INJ-572)

• “My arm is caught in between two different provinces. So I went to re-appeal the Alberta claim and Alberta says it’s a BC injury. BC says it’s an Alberta. So I appealed; I have been appealing this back and forth between Alta and BC.” (INJ-492)

• “I feel as if I am stuck in limbo, will never be able to work again, and sometimes I’m in so much pain that even looking for work is not an option. At this point I am so sick of this whole process, so demoralized, that I do not care how my case is resolved, just that it finally is.” (INJ-577)

OVERALL SUMMARY

Injured workers and their associations dominated the discussion on this theme accounting for about half of the comments addressed to it. They also accounted for most of the intensity this topic evoked. Workers are angry about the length of time it takes for them to have their appeals resolved saying that it costs them months and years of uncertainty, as well as extreme financial and emotional hardship. Although the entire appeal process takes so long, in their view the final decision-making process does not take into account all the facts, and it is too fast and arbitrary. Workers are also convinced that the power structure of the appeal system is against them and favours the employer.

Individual employers and their employees generally accounted for 30 percent of the discussion on this theme. Their primary concern was also the delays in the system that they say is driving up costs and hurting injured workers. In their view the problem is that the system is set up to give workers every possible chance to have their case heard. This gives workers so many avenues to appeal that it ends up being an endless treadmill of appeals and re-appeals. It also makes the system complicated, leaves workers confused and the bureaucracy overloaded. Therefore, in their view the best solution is to reduce the number of levels of appeal.

Unions and some consultants disagree. They say that there must be a minimum of two levels of appeal to ensure fairness and balance in the system. They insist that the answer is to improve the efficiency of the system and provide more resources if they are needed.

Discussion about alternatives to dispute resolution was not well formed. Generally, submissions and presentations were so focused on describing what was wrong with the current system that solutions shed more light on how the problem was viewed rather than providing an exploration of workable alternatives. These could be grouped into four categories. Those who are thinking in terms of the basic appeal structure remaining the same make up the first two categories and their recommendations most frequently come from unions and workers. They primarily seek ways to remedy the perceived imbalance in the current power structure, or methods to provide more assistance to employees.
The other two categories reflect the views of those who see the need for significant changes at the administrative level in order to reduce the need for appeals, and those who would like a complete philosophical and structural change at all levels of the WCB, including appeals. These submissions generally came from employers groups, and professionals. They ask for greater openness and cooperation on the part of the WCB with all parties and a spirit of problem solving rather than the authoritarian and adversarial attitude and structure that exists today. The most developed arguments came from consultants who offered detailed examples of possible structural changes the WCB could pursue.

There was some debate about whether or not appeal bodies ought to be independent of the WCB or internal to it. The majority of all stakeholders would like independence. Workers want this because they see the present system as being biased and unfair and existing appeal boards made up of members with personal and political aspirations. The majority of employers groups also want independence because they see the potential for conflict of interest with an internal body and they have concerns about political interference. Employers are particularly opposed to the decisions of the Appeal Division shaping WCB policy. They insist that appeal boards ought to be applying policy not making it. Therefore, they ask for a strict separation between governance and appeals with appeal boards being held accountable for their decisions and adherence to Board policy.

At the same time, employers and unions also recognized that the current lack of a body of jurisprudence is causing inconsistency in decision-making and is responsible for some of the confusion and overlap in the appeal system. For this reason, employers are calling for appeal decisions to be published, and unions are calling for the authority and jurisdiction of the Appeal Division to be enshrined in legislation so that decisions made by this body would be binding and applicable to all cases, not just to individual cases.

Because most employers want only one level of appeal, they would also like the grounds for appeal for employers and employees to be made equal. In contrast most other stakeholders that spoke to this issue insist that under the current system employer interference in employee appeals is causing unnecessary delays and they would like employer involvement at the Review Panel eliminated completely. However, it should be noted that because these groups are not necessarily talking about the same structure their perspectives cannot be compared equivalently.