

CHAPTER II. ACCESSIBILITY OF THE APPEAL PROCESS

A. OPENING APPEAL HEARINGS TO THE PUBLIC

Summary of Issue

Oral hearings before the WCRB and the Appeal Division (and MRP examinations) are closed to the public. It has been submitted by the WCRB that the public should be allowed to attend appeal hearings in the interest of openness and accountability. As well, a counter-argument has been made that this would increase costs and would detrimentally affect confidentiality interests. The following discussion examines this debate.

Law and Policy

WCRB

WCRB policy in this area is as follows:

Oral hearings are not open to the public. The following persons may, by right attend; the appellant (and a representative), the respondent (and a representative). Witnesses are permitted to give evidence which is relevant to the issues under appeal, but will usually be excluded until the panel is ready to hear the evidence.

Observers such as family members, friends, trainee advocates and Board staff are generally allowed to attend, subject to the worker's consent.¹

Section 95 of the Act concerns secondary disclosure of information about injured or disabled workers.

The Review Board has interpreted [s.95] to mean that Review Board hearings should be private. Findings of the Review Board are unavailable to the public as a result of the secrecy provisions. This makes it difficult for appellants, respondents or advocates to prepare arguments at the Review Board where they have limited access to previous findings.²

Appeal Division:

There do not appear to be any policies relating to the openness of Appeal Division hearings.

Researchers for the Royal Commission were permitted to attend both WCRB and Appeal Division hearings with the consent of the parties.³

MRP:

MRP examinations are not open to the public. Clearly privacy concerns are much greater in the context of a medical examination.⁴

Submissions**WCRB Report**

The WCRB has submitted that appeal hearings should be open to the public:

*Appeal Tribunal hearings) [should] be open to the public, subject only to requests for in camera sessions being held at the request of a party for significant privacy reasons, or on the initiative of the panel chair for procedural fairness reasons.*⁵

The following explanation was offered:

The value of openness and accountability by government officials and institutions which serve the public has also been upheld the courts. For example, in R. v. Sussex the following comment was made:

*It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”*⁶

It is clear that the trend in workers' compensation is toward more openness. This can only lead to a better understanding of the system and its goals. The same reasoning should apply to the appeal process, not only with respect to oral hearings, but also to decisions. Certainly the process involves matters related to individuals. but that also is true in the courts and with appeal bodies, many of whose hearings and decisions are public. Openness of hearings will allow the public to assess, sometimes critically, the process and make it less mysterious. Openness of hearings will allow the user groups to understand better the thinking of the appeal panel and, while the decision would have no precedent value, openness can lead toward greater consistency in decision making and provide a further level of accountability. In our opinion, these far outweigh the general need for privacy.

*That is not to say privacy needs should now be ignored. There should always be a process by which any party to an appeal may make an application for an in camera hearing. Also individual privacy can be protected in published decisions by removing any identifying information. In an open process, however, that also should be the exception.*⁷

Stakeholder Counsel - Steeves

Steeves took the opposite view:

We believe that opening appeals to the public will increase the length and cost of appeals as well as introduce new issues of confidentiality.⁸

[Jurisdictional Comparison in progress]

Discussion

In general, it is not uncommon for administrative tribunals to hold hearings which are open as a matter of public accountability. "Public accountability" refers to the refers to the responsibility of government officials to be accountable to the electorate. The B.C. Civil Liberties Association has elaborated on the concept as follows:

...central to the notion of accountability ...is the concept of democracy in which citizenry are sovereign rulers. In a democracy, elected officials and public bodies are practical instruments by which the "people" make rules for government themselves. The legitimacy of a government in a democracy derives solely from the people's consent. It follows that public bodies must always remain open and accountable to the public.⁹

In *Attorney General of Nova Scotia v. MacIntyre*,¹⁰ Dickson J. for the Supreme Court of Canada, held that there is a strong presumption at law that judicial hearings are to be open to public scrutiny. Dickson J. quoted the arguments of British philosopher Bentham to support this presumption:

In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.¹¹

It was further held that ". . . curtailment of public accessibility can only be justified where there is present the need to protect values of superordinate importance." For example, public accessibility may exceptionally be denied where the administration of justice would be rendered impracticable, or where the need to protect the innocent overrides the public access interest.⁵¹⁷

There is no judicial authority requiring administrative tribunals to adhere to these principles¹² and, where a statute is silent as to the matter, the decision regarding whether to hold hearings in public or private will be left to the tribunal. However, it has been asserted by noted administrative law expert Robert W. McCaulay, Q.C. that:

*...public participation at publicly conducted hearings is the hallmark of natural justice or procedural fairness... it behooves a non-judicial body exercising judicial functions to conform to the practice prevailing in courts of law.*¹³

It would seem therefore, that an administrative body exercising a quasi-judicial function should be susceptible to the presumption put forward in *Attorney General of Nova Scotia v, Macintyre, supra*.

As well, the WCRB submission offers sound arguments in support of its recommendation. That is, that openness would promote:

- critical assessment of the appeal process;
- demystify the appeal process;
- promote greater consistency in decision making; and
- promote public accountability.

Steeves concern about confidentiality may be addressed by ensuring parties to an appeal may ask for in camera hearings. Also individual privacy can be protected in published decisions by removing any identifying information.

The policing context for public complaints offers some examples of statutory provision which ensure that privacy needs are protected during public hearings:

- In Quebec, Section 124 of the *Police Organization Act of Quebec* states that every hearing is open to the public. However, either on its own initiative or upon request, the Ethics Committee may either hold a hearing in private or ban the release of any information or document if the Committee believes a private hearing is in the interest of public morality or order or necessary in order to protect a person's privacy or reputation.¹⁴
- In Manitoba, every hearing is public unless the "maintenance of order or the proper administration of justice" requires that all or part of the hearing be held *in camera*.¹⁵
- In Nova Scotia, hearings respecting citizen complaints are open to the public unless the Review Board is of the opinion that it is "in the interest of public morals, the maintenance of order or the proper administration of justice" to exclude members of the public for all or part of the proceedings.

It appears that there is sufficient justification for a recommendation that appeal hearings should be open to the public.

[Note: Steeves concern about increased costs has not been addressed since he did not specify from where these additional cost would stem].

Options/Recommendations

It could be recommended that that appeal hearings should be open to the public and that there be a process by which any party to an appeal may make an application for an in camera hearing. It could be provided that a hearing may be closed exceptionally where secrecy is required in order to protect "values of superordinate importance." Specific "values of superordinate importance" could be explicitly defined in legislation.

B. PUBLIC ACCESS TO POLICIES AND DECISIONS

Summary of Issue

The WCRB, Appeal Division and MRP Department currently publish annual reports, which contain summaries of selected, notable decisions. It has been submitted that more or all of these decisions should be published and made more accessible. As well, it has been submitted that WCB and appeal policies, practices, procedures and findings should be made more available to the public. The following discussion examines the merit of these submissions.

Law and Policy

WCRB:

A number of WCRB policies and procedures are found in the *Act*.¹⁶ The Regulation¹⁷ also contains WCRB policies and procedures.¹⁸ In 1992 the WCRB published its "*Policies and Procedure Manual*".¹⁹

There is no requirement under the *Act* for the WCRB to publish an annual report. However, the "*Chair's Annual Report*" has been published since 1994 and includes statistical data as well as descriptions of WCRB activities for the year.

Since 1995, the "*Chair's Annual Report*" has included selected findings of the WCRB in summary form. A 1994 document entitled "*Hallmarks of Oral Hearings*" sets out procedural protections available to respondents and appellants at oral hearings. The WCRB "*Code of Conduct*" was published in 1996.²⁰

Appeal Division:

A number of Appeal Division policies and procedures are found in the *Act*.²¹ Other Appeal Division policies and procedures are found in decisions of the Governors and Panel of Administrators which have been declared to be "published policy".²²

The Appeal Division has also published directives relating to practice and procedure, as authorized under s.85.1 of the *Act*. Although these are not considered "published policy", they have been included in the *Worker's Compensation Reporter*²³, which is available to the public.²⁴

Many of the above mentioned procedures and policies are also described in the "*Rehabilitation Services & Claims Manual*" ("*RSCM*")²⁵, which is considered "published policy".²⁶ As well, a variety of low-level practices associated with these procedures are set out in the RSCM. It may be arguable that some of these practices actually constitute new procedures.

A number of procedures are found in a non-published, inaccessible policy manual entitled the "*Appeals Officers - Procedures Manual (Draft)*"²⁷ The Appeal Division publishes selected decisions under the direction of the Chair and the Chief Appeal commissioner,

in accordance with Decision #75 of the Governors (published policy).²⁸ Decision 75 states that *"the publication of a Appeal Division decision can usefully assist in communicating and understanding of the meaning of the Act, the Regulations, and Board practices, policies and procedures. Publication can also aid in the goal of having like cases treated alike and explaining the meaning and effect of changes under which the workers' compensation system operates."*²⁹

The Appeal Division has "taken steps to make published decisions more accessible by developing three indices - a key word guide, subject index and law and policy cited. This will be published in the Workers' Compensation Reporter in 1998. We will also be publishing a group of decisions that reconsider Appeal Division decisions which we hope will provide insight into that process beyond the summaries contained in our annual reports."³⁰

There is no requirement under the *Act* for the Appeal Division to publish an annual report. However, the Appeal Division publishes an annual report, which appears in the Workers' Compensation Reporter and in booklet form. A one page message from the Appeal Division also appears in the WCB Annual Report, with a note indicating that the full report is available in the Workers' Compensation Reporter.

The 1997 Appeal Division Annual Report offers the following statistical information on the topic:

Of the 1768 decisions issued by the Appeal Division in 1997, 17 forwarded for publication in the Workers' Compensation Reporter addition, 18 decisions from 1996 and one from 1995 were forwarded publication during 1997. In total, 36 decisions were sent for publication.

Over the past seven years, 269 Appeal Division decisions have been published in the Reporter (to volume 13, no.3). During 1997, the Board began the process of placing published Appeal Division decisions on the Internet at the Board's website address [www.wcb.bc.ca]. In addition, detailed indices of Appeal Division published decisions were created in 1997, covering decisions in volumes 7 to 13(1) of the Reporter series. The indices are a keyword/subject index, an index of law and policy cited, and an index of authorities cited. These indices will be published soon in the Reporter and will be periodically up-dated. Similar indices for volumes 1 to 6 of the Reporter are also being prepared for publication later in 1998.³¹

Submissions and Reports

WCRB

The WCRB submission concerning opening hearings to the public presented several arguments in support of increased access to information and increased publication.³² That submission also offered the following commentary on the topic:

In recent years, there has been a greater appetite to publish at least leading or policy-making decisions. The Board Appeal Division, for example, publishes

*several decisions each year while the Review Board is just beginning to publish. In all instances, the published decisions are edited to protect the privacy of individuals. The reasons for publication are two fold: first, to attempt to overcome the perceived secrecy of the process; second, to provide the user group with some idea of the appeal body's thinking with regard to policy interpretation. This can improve consistency in the decision making process.*³³

The WCRB has offered the following recommendations on this topic:

- *The Appeal Tribunal [should] be required to publish its policies and procedures and make them generally available to the public.*
- *The Appeal Tribunal) [should] be required to make its findings available to the public.*
- *The Appeal Tribunal) [should] be required to provide an Annual Report of its activities to the responsible minister for tabling in the Legislature.*³⁴

Acting Chief Appeal Commissioner Appeal Division

Acting Chief Appeal Commissioner, Cassandra Kobayashi, has recently acknowledged that there is no rule book of practice or procedure for parties to an appeal. In her view, it is preferable that appeal officers notify the parties at each stage regarding upcoming procedures and requirements.³⁵

According to the 1997 Appeal Division Annual Report, an action plan is currently underway "to improve public access to Appeal Division decisions and accountability of the Appeal Division."³⁶

Stakeholder Counsel - Winter

Winter submitted that it "is important to provide access to as many decisions from the WCB as possible" for the following reasons:

- "accountability and openness of the tribunal";
- consistency;
- predictability in advising clients and preparing submissions;
- accessibility; and
- fairness.³⁷

Stakeholder Counsel - Steeves

Steeves submitted that the following steps should be taken to increase public access to policy manuals:

*The province has good system of libraries throughout the province so there is no reason why the board can't provide policy manuals to every library. That is a relatively cheap way to distribute information. Some small towns have a court house and they may have a law library. Workers' advisors have a website and they have their information bulletin on there. The manual itself could be on a website.*³⁸

Presumably this recommendation extends to appeal policy and procedure manuals.

[Note: The Rehabilitation Services and Claims Manual is available on-line at <http://www.wcb.bc.ca/resmat/rscm/rscm.htm>]

Discussion

As discussed, the WCRB, Appeal Division and MRP Department currently publish annual reports, which contain summaries of selected, notable decisions. It has been submitted that more or all of these decisions should be published and made more accessible.

If precedent were binding in the WCB context, increased access to appeal decisions would mean increased knowledge of applicable rules.³⁹ Since precedent is not binding, the notion of increasing access to previous decisions has slightly less significance.

However, this is not to say that there would be no benefit to increased access to appeal decisions and other information about appeal processes contained in annual reports and publications.

There is ample justification for increasing access to WCB and appeal policies. Submissions and reports indicate that there is heavy reliance on published policy by the WCB -- including policies relating to the Appeal Division and MRP processes (despite the fact that these policies are lengthy, poorly organized, difficult to access, in need of consolidation).⁴⁰

As well, as evidenced in the second set of charts (found in Appendix I of this Report), a large number of non-published policies and practices are used in the appeal process, which are not described in public documents.

For example, most of the "hidden" non-published procedures illustrated in chart #3 of the second set of charts come from the "Appeal Officer's Manual."⁴¹ According to the Appeal Division, that manual is considered to be a draft in progress only:

*[This manual] is a draft document which has not proceeded to finalization and which has not recently been addressed. The document may therefore not accurately or fully reflect the procedures that appeal officers follow on a day to day basis.*⁴²

Similarly, most of the "hidden" non-published procedures illustrated in chart #4 of the second set of charts are found in the "Medical Appeals Officer Procedure Manual." According to the MRP Department that manual is out of date and not in use:

*The process for developing [the manual] was begun in 1993. The work was never completed or developed to the stage where formal printing took place. Material created during development is no longer current or in use.*⁴³

Despite these qualifying statements by the Appeal Division and the MRP Department, Royal Commission researchers have determined that most of the procedures contained in the manuals actually are currently in use. Neither of these draft manuals are available to the public.

The WCB's inaccessible published and non-published policies may form the basis for decisions, which may be the subject of appeal. As well, hidden or inaccessible appeal policies may affect the outcome of appeals. It is questionable whether adequate notice can be given respecting such policies. It is impossible to provide a fair hearing without first providing adequate notice of the action which an administrative authority intends to take.⁴⁴ "Adequate notice requires that the decision-maker supply persons who are entitled to notice with sufficient information on the nature of the proceedings."⁴⁵ It has also been held that "the notice [must] present an accurate description of the true nature and scope of the review", although "people may in some circumstances have an obligation to take reasonable steps to inform themselves about proceedings."⁴⁶

It would therefore be reasonable to recommend that findings, published policies and non-published relating to the appeal process be made more accessible to the public. As discussed in Chapter I of this report, it could be recommended that published policies could be reviewed, updated, consolidated and organized and ambiguities, inconsistencies and gaps removed wherever possible. If this were done, it would be a logical next step to increase their accessibility.

Recommendations/ Options

It could be recommended that:

- **Appeal Tribunals should be required to publish their policies and procedures and make them generally available to the public.**
- **Appeal Tribunals should be required to make their findings available to the public.**
- **The Appeal Tribunals should be required to provide an Annual Report of its activities to the responsible minister for tabling in the Legislature.**
- **Individual privacy could be protected in published decisions by removing any identifying information.**

1 WCRB Policy and Procedure Manual, p.k-5, K-6.

2 *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998 at p.9.

3 See notes of Karen Ryan re conversation with Gene Jamieson, August 19, 1997. [Karen's comment: There was no past policy on this issue. Public attendance had not been raised as an issue in the past. It was agreed that the consent of the parties would be required for the attendance of Royal Commission researchers].

4 [SJS: More research required. Find authority.]

5 *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998.

6 [1934 1 K.B. 256].

7 *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998 at p.25.

Note that open hearings are normally subject to privacy exceptions. (i.e., a hearing may be held in private to protect the public interest or the safety of an individual).

8 J. Steeves, "Argument on behalf of the BC Federation of Labour", Volume 1, April 6-9, 1998 (Disk version) at p.170.

9 Murray Mollard for the BCCLA, *Submission of the Intervenor in the Matter of a Request for a Review between Western Canada Wilderness Committee and the Ministry of Environment Lands and Parks*, Nov.24, 1995, at p.2-3.

10 [1982]1 S.C.R. 175.

11 Dickson J. for the majority, *Ibid*, p.183 quoting Bentham.

12 McCaulay, R., Q.C., *Practice and Procedure before Administrative Tribunals*, vol. 1, Carswell, updated to Jan 1993., at p.16-1.

13 *Ibid* at pp.16-1 & 16-2.

14 *An Act Respecting Police Organization and Amending the Police Act and Various Legislation*, 5.Q. 1988, c.75, as amended.

15 *The Law Enforcement Review Act* R.S.M. 1987. c.L75, s.17(1).

16 For example, rules relating to enactment of WCRB regulations, composition of the WCRB, appointments, entitlement to appeal, commencement, recording and notification of findings are found in ss.89 and 90 of the *Act*.

17 Under s.89(5) of the *Act*, the Lieutenant Governor in Council is empowered to make regulations respecting practice, procedure, administration and the efficient operation of the Workers Compensation Review Board ("WCRB"). The resulting regulation is the *Workers Compensation Act (Review Board) Regulation*, BC Reg. 32/86 ("the Regulation").

18 These relate, for example, to powers and duties of the Chair; appointment of the Registrar; establishment of panels; responsibilities of the Registrar; filing of an appeal; notice of appearance; submissions; evidence; expenses and time limits.

19 It describes: the structure of the WCRB; applicability of administrative law concepts to WCRB procedures; WCRB jurisdiction over appeals; and rules relating to initiation of an appeal, summary decisions, methods of appeal, evidence; disclosure, written and oral appeals, costs, findings, post-findings and the conduct of adjudicative staff.

20 The WCRB submission recommended that: "*The Appeal Tribunal [should] be required to provide an annual report of its activities to the responsible minister for tabling in the Legislature.*"

- *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998 at p.26

21 For example, ss.85 to 88 of the *Act* provide rules for: the composition of the Appeal Division, appointments, removal, termination, accountability of the Chief Appeal Commissioner to the Governors; determination of Appeal Division practice and procedure by the Chief Appeal Commissioner (subject to the policies of the Governors); composition of panels; effect of Appeal

Division; staff of the Appeal Division; inquiry powers; and powers to compel attendance and take depositions of witnesses.

22 Section 82(a)(vii)(B) of the *Act* requires the Governors to determine the manner in which their policies are to be published. On April 8, 1991, the Governors first stated explicitly which policies would constitute "published policies". This statement (revised Nov.16, 1994) is found in bylaw #4 (which itself is considered to be a published policy). "Bylaw No.4 - Published Policy of the Governors, Decision #86, replacing Decision of the Governors #3. Some Decisions of the Governors are found in Volumes 7 through 11 (approximately 200 pages). These constitute published policies where they are "declared" by the Governors to be policy decisions. In order to determine which of them contain such declarations, it appears that one must go through each decision individually.

Decision #75 of the Governors addresses the scope of proceedings before the Appeal Division; representation before the Appeal Division; composition of panels; factors to consider in determining whether to grant an oral hearing; Application of WCB policy by the Appeal Division; discretionary authority; delegation by the Chief Appeal Commissioner; and format and publication of Appeal Division decisions.

23 These lengthy published policies are located in a variety of sources and are organized in a manner which is often difficult to follow. Their historical evolution has contributed to this confusion. For example, *Workers' Compensation Reporter* Decisions 1 to 423 are found in six volumes, dating from 1973 to 1991. These volumes contain approximately 1400 pages, consisting mostly of numbered decisions and some numbered "items". Some decisions consider practice directives and policy statements. Many others address issues arising from specific claims, and include lengthy discussion of the facts of particular cases. Issues for determination arising from such cases may form the basis of policy rulings.

24 Decision # 1 of the Appeal Division, for example, concerns the jurisdiction of the Appeal Division; composition of the Appeal Division; role of the Chief Appeal Commissioner; duties of the Registrar; tripartite character of appeal commissioners; composition of panels; commencement of appeals; disclosure, extensions of time; conduct of appeals; submissions by parties; representation; factors to consider in granting an oral hearing; reconsideration by the Appeal Division; application of WCB policy; and referrals of WCRB findings; backlog appeals. Other relevant decisions of the Appeal Division are Decisions 3, 4, 5, 6 & 12 of the Appeal Division and Decision #93-0740 of the Appeal Division.

25 For example, some decisions provide that "this constitutes a policy decision of the Governors" [e.g.#90,#91], while others merely state that "This policy is effective as of..."[#8].

26 To some degree, the more recently created *Rehabilitation Services & Claims Manual*, ("RSCM") captures portions of these earlier decisions. Some portions have been transplanted into the RSCM verbatim. However, it is sometimes difficult to determine whether earlier policies not explicitly incorporated have been discontinued.

27 The "*Appeals Officers - Procedures Manual (Draft)* " is a very large manual (at least 200 pages) which arrived on May 9th, 1997. The cover letter to Angie Weltz from Eugene Jamieson (Assistant to the Chief Appeal Commissioner) reads as follows: "*This is a draft document which has not proceeded to finalization and which has not recently been addressed. The document may therefore not accurately or fully reflect the procedures that appeal officers follow on a day to day basis...*" It has since been confirmed that a number of these procedures are currently in use -- See flowchart #3, second set.

28 According to a resolution of the Panel of Administrators, dated July 15, 1997, Decision #75 is amended so that the Chief Appeal Commissioner is authorized to direct publication of selected Appeal Division decisions under the direction of the Chair of the Panel of Administrators. The Chair is also authorized to delegate this authority to direct publication of these decisions. Such delegation took place on July 30th, 1997.

Kobayashi has commented that, while the Appeal Division has no objection to publishing all decisions, the cost of editing them to protect privacy under s.95 of the *Act* would be substantial. [Presentation notes of Appeal Division Chief Appeal Commissioner Cassandra Kobayashi, from March 6, 1998 presentation by WCB on appeal processes, p.28.

29 "Royal Commission on Workers' Compensation in BC," 2nd Phase Hearings, March 6, 1998 at p.15.

30 Presentation notes of Appeal Division Chief Appeal Commissioner Cassandra Kobayashi, from March 6, 1998 presentation by WCB on appeal processes, p.28.

31 "1997 Annual Report of the Appeal Division" p.61.

32 At section #15.

33 *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998 at p.25.

34 *Submission by the Worker's Compensation Review Board to the Royal Commission on Workers' Compensation*, Jan 31, 1998.

35 From March 6, 1998 presentation by WCB on appeal processes. My notes, p.20.

36 "1997 Annual Report of the Appeal Division" p.4.

37 "Royal Commission on Workers' Compensation in BC Submission Summary," 2nd Phase Hearings, Stakeholder Counsel, Notetaker: Steven Noble, April 15 PM, 1998, at p.4.

38 "Royal Commission on Workers' Compensation in BC Submission Summary," 2nd Phase Hearings, Stakeholder Counsel, Notetaker: Steven Noble, April 15 PM, 1998, at p.43.

39 Section 99 of the *Act* provides that: "*The board is not bound to follow legal precedent. Its decision shall be given according to the merits and justice of the case...*"

Section 99 is applicable to WCB claims adjudication, Review Board appeals, Appeal Division appeals and MRP examinations. This freedom from precedent has tended to promote inconsistent decisions. As a result, it may be difficult, if not impossible, to predict how decisions will be made in the future and to use prior decisions as a basis for asserting that subsequent decisions are unfair. The aim of fostering coherence in decision-making tends to conflict with a well established principle of administrative law. That is, in order to foster the independence of panel members, administrative tribunals are not to be rigidly bound by precedent.

40 See Samuels, S., *Interim Report*, dated April 22, 1997.

41 The Appeal Division has made the following comments about this manual: "*Further to the request we received March 19, 1997 for a copy of the record identified as "Appeal Officers Procedures Manual (Draft)", we enclose a copy of the document the appeal division has titled "Appeal Officers Procedures". This is a draft document which has not proceeded to finalization and which has not recently been addressed. The document may therefore not accurately or fully reflect the procedures that appeal officers follow on a day to day basis.*"

--Letter from Eugene Jamieson, Assistant to the Chief Appeal Commissioner to Angela Weltz, Royal Commission Policy Analyst, dated May 9,1997, re: Appeal Officer's Manual.

42 *Ibid.*

43 The MRP Dept. has made the following comments about this manual: "*Unfortunately, we are unable to supply you with final copies of the Medical Appeals Officer Procedure Manual or the Operating Procedure Manual for Medical Review Panel Staff. The process for developing manuals was begun in 1993. The work was never completed or developed to the stage where formal printing took place. Material created during development is no longer current or in use. I have attached a draft version for your information.*"

-- Letter dated April 4, 1997 from David Martin, Former MRP Registrar to Angela Weltz, Royal Commission Policy Analyst.

44 Jones & de Villars at p.247.

45 C.E.D. at p.240.

46 Jones & de Villars at p.250.