NOTES:

1. [Act, s.5, s.6, RSCM, p.12-11. See also Note 9]

2. Section 53(1) of the Act requires that the worker or dependent notify the employer of the injury or disabling occupational disease "as soon as practicable after the occurrence." The notice must include the name of the worker, the time & place of the occurrence and the nature and cause of the disease or injury. Failure to provide the information required by this section may be a bar to a claim for compensation (Form 6A) [see Act, s.53(4), RSCM, p.12-1, p.12-2].

3. The claims registration process is triggered by receipt by WCB of any of the forms discussed or any other WCB forms. [AI, p.39-40]. Note that claims of a sensitive nature (e.g. sexual assault) may be assigned to the Sensitive Claims Area [RSCM, p.12-58].

Forms are delivered to "Claims Registration", and classified as a new or existing claim. Forms are then sent on to the appropriate Service Delivery Location ("SDL") for substantive processing. New claims are assigned to an SDL based on the employer’s location. (form 7 may be routed through the Assessment Department to verify accuracy of information about the employer). [AI, p.40].

4. Section 55(1) of the Act provides that "an application shall be made on the form prescribed by the board or the regulations and shall be signed by the worker or dependent." Where the Board is satisfied that compensation is payable, it may be paid without an application. [RSCM, p.12-7, s.55(1)]. Worker or dependent files "Application for Compensation Benefits" Form 6 or 6/7. [Act, s.55(1), RSCM p.12-3, PLTC, p.24]. Where the WCB receives a report that a worker has suffered an injury or disease which will likely cause a loss of wages, it will automatically forward a form 6 [RSCM, p.12-3].

5. An employer must report to the WCB on Form 7 ("Employer’s Report of Injury") within 3 days of the occurrence of an injury to a worker or of a disabling occupational disease, and "immediately" where the worker has died. Failure by an employer to report does not prevent adjudication of the claim. Form 7A, "First Aid Report" supplementary to Form 7. [Act, s.54, RSCM, p.12-2, 12-10. 12-12, 12-13. See Reports of Injuries Regulations, BC Reg 713/73 re "minor injuries" not required to be reported and "reportable injuries"].

6. Attending physicians and other qualified medical practitioners who attend or consult on a case involving (alleged) injury to a worker in an industry within the scope of Part 1 of the Act must, within three days of first attendance upon the worker, file a Form 8: "Physicians First Report" [Act, s.56]. "Physicians Progress Reports" (Form 11) or comparable forms for other practitioners, must be sent regularly thereafter (Forms 11c - 11n). Form 11A is the Physicians Report Account". [RSCM, p.12-15, 12-16]. Wage loss benefits may be paid without medical reports in exceptional cases. [RSCM, p.12-17]
7. Section 96(1) of the Act lists matters which the WCB has exclusive jurisdiction to "inquire into, hear and determine." Some of these determinations may be made immediately, while others require more extensive investigation. E.g., s.55 decisions are not considered to be decisions on the merits" of the claim and can be made immediately.

The determination, includes (but is not limited to) the following questions:

<table>
<thead>
<tr>
<th>Question</th>
<th>Accept</th>
<th>Deny</th>
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| - Did the personal injury, industrial disease or death to a worker arise in an industry within the scope of Part I of the Act, out of and in the course of employment (e.g. Is the claimant a "worker"?)
  Is it an "industrial disease" as per s.6 of the Act?
  Was the claimant injured in the course of "employment"? | Yes    | No   |
| [Act, s.1, s.5(1), s.5(4), s.6(1), s.6(3)]                                  |        |      |
| - Is the injury attributable solely to the willful misconduct of the worker? | No     | Yes  |
| [Act, s.5(3)]                                                            |        |      |
| (Unless injury results in death or serious disablement).                 |        |      |
| - Was the application made on the prescribed form? | Yes    | No   |
| [Act, s.55(1)]                                                           |        |      |
| (Unless the WCB is satisfied that compensation is payable despite the fact that no application has been made). |        |      |
| - Was the application filed, or an adjudication made within one year after the date of injury, death or disablement from industrial disease? | Yes    | No   |
| [Act, s.55(2), RSCM, p.12-3 to 12-7]                                      |        |      |
| (Unless the WCB is satisfied that special circumstances existed which precluded filing the application within one year) |        |      |

Note that the RSCM states that a decision under s.55 of the Act that bars or does not bar a claimant's application from being considered is not a decision on the merits and therefore is not appealable to the MRP. Presumably such a "decision" is appealable to the WCRB (Karen confirms this).

8. An interim decision to allow a claim may be made where:

- the worker appears to be currently disabled from work;
- on the evidence available, it appears probable (or evenly balanced) that the worker is suffering from a compensable injury or occupational disease;
- there is significant, unavoidable delay in obtaining the best evidence;
- the delay appears to be causing income interruption; and
- it is not a third party claim. [RSCM, p.12-21 to 12-23, also see s.54(6) of the Act].

9. Under s.58(5) of the Act, "the board may decide that the worker shall be examined by a medical review panel, in which case he shall be so examined in
the manner prescribed by this section”. [Query: Would such a decision of the WCB or the Appeal Division be appealable, given that a MRP decision is final and the appellant has been made to by pass other potential appeals?] Note: precise time frame uncertain.

10. Where there is an indication of permanent (total or partial) disability the file will be referred to the Disability Awards Department for permanent disability pension evaluation (e.g. in a medical report or where the worker asserts that an injury prevents return to work). RSCM, p.12-21. Disability Awards Officers and Adjudicators determine whether a worker’s injury or occupational disease has caused permanent disability, the extent of that disability and the pension entitlement. [RSCM, p.12-24]. The normal practice is for a medical examination to be conducted [RSCM, p.12-30]. The Disability Awards Medical Advisor's recommendations are considered to be expert evidence and can only be displaced by evidence of another expert in the field. [RSCM, p.12-31].

In cases where the worker is examined by a Disability Awards Medical Advisor, The Disability Awards Officer or Adjudicator is required to notify the worker of the examination results and pension entitlement conclusions.” [RSCM, p.12-25].

Note: "Code R" payments may be authorized by vocational rehabilitation consultants in anticipation of permanent disability benefits where temporary wage loss benefits have been terminated before the DA department has completed its evaluation. [AI,p.43, DMCD].

11. The following are some highlights of the investigation/inquiry:

- In most cases the issues are decided based on information in the worker’s application and the employer’s and medical reports [RSCM, p.12-32].
- In a minority of cases more formal investigative procedures may be used [RSCM, p.12-32].
- Under s. 87 of the Act, the WCB "has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things." It may also cause depositions of witnesses. The WCB is also given extensive inquiry & investigation powers under s.71 &s. 88 [see also s.96, RSCM, p.12-32 to 12-34].
- "Where the disputed possibilities are evenly balanced, the issues shall be resolved in accordance with the possibility which is more favourable to the worker." [Section 99, Act].
- "Some basic evidence must be submitted by the worker to show that there is a proper claim. The extent of the basic evidence necessary and the weight to be attached to it is entirely in the hands of the adjudicator." [RSCM, p.12-26].
- "It is for the claims adjudicator or claims officer to decide when medical evidence is needed and on what questions." [RSCM, p.12-28].
- The adjudicator must "weigh evidence and decide the matter in accordance with that possibility which is more likely”. [RSCM, p.12-26].
- A claimant has the right to an interpreter and to bring a representative to any inquiry. [RSCM, p.12-35].
- Oral hearings or interviews are not always conducted in reaching a decision. When hearings are conducted, they are not subject to formal rules of evidence and procedure. [RSCM, p.12-34]
- Disclosure of information to a worker is (in accordance with FOIPPAA) granted upon request [RSCM, p.12-55-12-59]. An employer may obtain disclosure after an appeal has been initiated. [RSCM, p.12-58]. See p.12-61 to 12-64 re disclosure to a public or private agency.
- Procedures respecting the treatment of anonymous & unsolicited communications are found at RSCM, p.12-52 to 12-58, Act, s.96(1)(c), s.21(6), s.87(1), RSCM s.78.10 (see note 12). Also see "Field Investigation Procedure Manual" of the Compensation Services Division for more detailed procedures (not published policy).

12. This determination may include assessment of: existence & degree of disability [Act, s.96(1)] initial weekly wage loss, medical aid [Act, s.21(6), RSCM, s.78.10], rehabilitative treatment, capacity of worker to return to work (projected duration of incapacity?), health care, transportation, subsistence costs & other necessities. [DMCD, AI, p.40-41, AI, p.45]. Note that under s.87(1) of the Act, the WCB has investigative powers, which may be used in this assessment. Temporary Total Disability (TTD) benefits and Temporary Partial Disability (TPD) benefits are assessed as per s. 29 and s.30 of the Act. The initial level of benefits is a point of frequent dispute. [AI?]

13. "Where a claim is allowed and there is no protest from the employer, no reasons are given [RSCM, p.12-48]. The Board simply sends the cheque... Where a decision is made to allow a claim which has been protested by an employer, the employer will be notified of the decision and reasons... Where a decision is made adverse to a claimant the reasons are stated in a letter to the claimant." "In any case where an adverse and appealable decision is made with regard to a worker, the worker will be informed of rights of appeal. The employer will be informed of rights of appeal where a claim that he or she protested is accepted, where a request for relief of costs is denied or where a request to limit compensation entitlement is denied..." [RSCM, p.12-48 to 50].
[SJS note: The Ombudsman Report, p.96-006, #2.7 states that all decision letters pertaining to commencement or ceasing of benefits are copied to the employer and that a copy of the decision letter is also sent to the employer once a claim is accepted or rejected. Is this in the RSCM?]

14. An employer may protest a claim which has been allowed. The adjudicator must investigate the matter and give the employee opportunity to respond [RSCM, p.12-48]. "An employer can appeal up to 90 days from the decision allowing a claim." [RSCM, p.13-40].

15. DMCD. Note: A claim may be suspended for a variety of reasons (e.g. where the worker does not provide requested information that only the worker can provide). The suspension will be lifted where the grounds which gave rise to the suspension have been removed. [RSCM, p.12-23. See also #98.22, p.12-35]
16. Frequent point of dispute. [AI, p.41.] Attending physicians, and sometimes WCB medical advisors, make ongoing determinations about readiness of injured workers to return to work. The WCB adjudicator makes the final decision [AI, p.45, RSCM, p.12-23, 12-24].

17. Under s.35(1) of the Act, "payments of compensation must be made periodically at the times and in the manner and form the board considers advisable". [See also RSCM, p.12-2 to 12-24]

18. [12-48, 12-49, DMCD].

19. Form 9, "Employers Subsequent Statement" is completed at the employer's option or at the WCB's request, as soon as the has returned to work or is able to return to work [RSCM, p.12-11]. Wage loss payments terminated. Medical benefits may continue. Entitlement to medical treatment "never ends". [RSCM, p.12-11, AI, p.43].

20. "Where a Claims Adjudicator, Disability Awards or Medical Appeals Officer receives a letter from a worker, employer or representative expressing dissatisfaction with the substance of a decision he or she made and does not feel that the decision should be changed, the letter will be treated as an appeal from the decision and forward it with the claim file to the Review Board." [RSCM, p.12-51].

21. Section 96(2) of the Act provides that:

"...the board may at any time at its discretion, reopen, rehear and redetermine any matter, except a decision of the appeal division which has been dealt with by it or by an officer of the board."

The reopening is a request for additional compensation because the claimant's circumstances have changed since the time of the original decision. A reopening does not dispute the validity of a previous decision. It is "treated as a new matter for adjudication" and is subject to like appeal procedures. RSCM, p.14-1 & 14-2. Where the reopening occurs 3 years or more after the original injury, the WCB may calculate the wage rate based on current circumstances. [Act, s.32(1)].

Note that the Appeal Division has argued that s.96(2) empowers the Appeal Division to hear appeals concerning extensions (i.e. refusals by the WCRB to exercise its discretion to grant extensions of the 90 period in which to file a Notice of Appeal - see Chart #2, note 3]. The Appeal Division argues that "board" in s.96(2) includes the Appeal Division.

22. Section 24 of the Act applies to claims in which "the worker is still suffering from a compensable disability sustained more than 10 years previously, and where "a permanent disability award was made by the board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the board uses a projected loss of earnings method in calculating compensation." If the WCB decides that "the worker is not receiving adequate compensation,
having regard to the projected loss of income resulting from disability, periodic payments shall be established or raised accordingly."

See Regulations re Review of Old Disability Pensions, BC Reg 530/82.

23. "A successful appeal to a Review Board, particularly where the size of a pension is in issue, will usually result in the matter being referred back to the WCB for re-adjudication in line with the Review Board’s findings. This can result in yet further appeals." PLTC, P.24.

24. [See RSCM, p.12-48, 12-49 for decision letter requirements].

25. [See s.30, s.31, s.32, s.33, s.34, s.35 of the Act] For the first eight weeks, wage loss is calculated based on 75% of the worker's salary on the day before the injury. After the eight week review, the wage loss calculation is based on 75% of the average of the previous years' salary [to be verified].

26. [RSCM, s.34.54]

27. Chapter 10, s.73.20 of the RSCM indirectly addresses the issue of the claims adjudicator's right to terminate or reduce health benefits. It provides that:

"Coverage for necessary health care continues as long as the worker continues to experience the effects of a compensable injury or occupational disease, notwithstanding that he or she may not be disabled from working or retired from the work force."

See also p.13-8 and s.21(1) of the Act, which provides wide discretion to the board in this respect.

28. Re-adjudication: See s.96(2) of the Act. The WCB has empowered directors and managers within the Compensation Services Division to "modify a decision or substitute their decision for any decision". An application for reconsideration must "cite new evidence not available at the time of original adjudication, or a mistake of evidence or law." [RSCM, p.14-4 & 14-5, AI, p.46] Note that re-adjudication may also occur where an MRP refers the matter back. See Chart #4, Note 14.

Managers considers whether there may have been an error of law, or policy, possible fraud or misrepresentation. Board officers other than managers may correct errors on claims "which do not involve in excess of 3 months retroactive reduction or cancellation of benefits, with consultation of their manager. [RSCM, p.14-6 to 14-8, AI, p.46, PLTC, p.24]

29. "Where the application questions the validity of the original decision, there is no doubt that a decision denying the application on its merits may be appealed to the Review Board, the Appeal division, or a Medical review panel, as the case may be. However, no appeal lies from a decision on the preliminary question any grounds for a reconsideration have been submitted in support of the application. That decision is essentially preliminary and discretionary [RSCM, p.14-8].