NOTES

1. The WCRB is an independent appeal tribunal (see s. 89 of the Act). The WCRB consists of a chair, one or more vice chairs and members selected in equal numbers from persons having backgrounds associated with employer and worker interests. As well, there is a registrar, two deputy registrars and support staff.

2. An appeal to the WCRB is commenced by filing Part I of the "Notice of Appeal" at the WCB or the WCRB, in writing and signed by the appellant (or agent). It must specify the decision being appealed, state why the appellant believes it to be incorrect and specify the remedy sought. Where the grounds of appeal relate to evidence not considered by or disclosed to the WCB, additional material must be filed with the appeal. [Reg. s. 5(1)-(3). See WCRBPPM, ch. E for a more complete list of formal requirements of Part I].

3. Suspensions, abandonments, withdrawals, time extension requests, reactivation requests & jurisdictional decision are described in the WCRBPPM as summary decisions and not a "finding" under s. 91(1) of the Act -- and therefore not appealable to the Appeal Division. [WCRBPPM, ch. F]. Summary decisions may be reconsidered by the registrar or chair where there is significant new or previously unavailable evidence [WCRBPPM, F-6].

4. Section 90(1) of the Act defines the WCRB's jurisdiction to consider an appeal. It states as follows:

"Where an officer of the Workers' Compensation Board makes a decision under this Act with respect to a worker, the worker, or if deceased, his dependents, or his employer, or a person acting on behalf of the worker, dependents or employer, may, not more than 90 days from the day the decision is communicated to the worker, dependents or employer, or within another time the review board allows, appeal the decision to the review board in the manner prescribed by the regulations."

[Chapter D of the WCRBPPM provides a detailed explanation regarding this section]

This means that the decision must be with respect to a worker. There is no right of appeal to the WCRB by an employer concerning employer assessments, occupational health and safety penalties or cost allocations respecting claims. An employer who is dissatisfied with a WCB decision concerning a worker's claim could appeal to the WCRB -- although in fact, very few such appeals are brought. [AI p. 60, 63, PLTC p. 26].
Extensions are granted at the discretion of the WCRB. An application for an extension is considered by the WCRB to be a "summary decision," not a "finding," under s.91.1 of the Act and therefore not considered appealable to the Appeal Division. The Appeal Division has taken a different view with respect to requests for extensions of the 90 day limitation period. [See notes 3 & 5. Also, WCRBPPM, F-1 & E4, Reg.s.5(4), s.4(1)(c)]. Summary decisions may be reconsidered by the registrar or chair where there is significant new or previously unavailable evidence [WCRBPPM,F-6]

An "officer of the WCB" does not include the MRP or the Appeal Division. It does include claims officers, claims adjudicators and vocational rehabilitation consultants and their managers. [AI p.60].

The appeal must be from a specific decision contained in the original WCB decision letter. The WCRB does not have authority to review the WCB’s treatment of a claim generally. It also has no "binding authority to criticize the actions of the WCB or its officers." [PLTC, p.25]. There may be multiple appeals for a single claim [AI, p.62]. Separate appeals must be filed respecting separate decisions. However, multiple appeals are sometimes heard by the WCRB together. [PLTC, p.25]

See WCRBPPM for a detailed description of formal requirements of an appeal.

5. [Section 91.1 of the Act. See Chart 3, Note 4].

6. Reg. s.5(5). The WCRB provides Part I of the Notice of Appeal along with the Notice of Appearance. [WCRBPPM, E-5].

7. Reg.5(6). If the appellant is a worker or dependent, the employer may participate as respondent. In an employer’s appeal, the worker participates as respondent. [PLTC, p.26].

8. "Parties to a WCRB appeal are entitled to disclosure of the worker’s claim file & all new evidence submitted by parties or obtained by the panel and to notice of any new issues identified by the panel in the course of an appeal. The WCB, on request, will supply a copy of the claim file to a worker or employer “where an appealable decision has been issued and either a valid appeal has been commenced or the 90 day period has not expired.” The Notice of Appeal and the Notice of Appearance describe procedures for requesting disclosure. [WCRBPPM, I-1&2]

9. The WCRB has some powers of investigation - i.e. to require and receive medical or other evidence or information on oath or affidavit or otherwise as in its discretion that it considers proper to make a fair decision, and to "require a worker to attend for examination by a physician chosen by the review board". [Reg. s.6] Under s. 88(2) (and s.87) of the Act, the WCRB is empowered to compel attendance of witnesses, examine them under oath, compel production of documentary and physical evidence and take dispositions of witnesses. Note
that the onus is on each party to present evidence in support of his or her case [PLTC, p.27, WCRBPPM, H-4]

10. Extensions are routinely granted [PLTC, p.26] Part II indicates to the WCRB that the appellant is ready to have their appeal considered. It must include the remedy sought, a description of new information submitted in support of the appeal along with actual documents, a witness list, an indication of preference re oral hearing versus "read & review", an indication as to whether an interpreter will be required. [Reg, s.5, s.8]. If the appeal is not filed on time the WCRB will treat the appeal as abandoned. [WCRBPPM, E-3, E-4, F-5] A decision by the WCRB to deem an appeal abandoned is a "summary decision". See note 7.1.

11. Subject to the Regulation, the WCRB may conduct an appeal in the manner it considers necessary and is not required to hold an oral hearing. [Act, s.89(6). See also s.3(2) of the Reg. & WCRBPPM, G-1, G-2, & AI, p.60]

12. Oral hearings may be conducted by a one or three person panel. They are usually conducted by 3 person panels, normally including one person with a labour background, one person having a management background and one "neutral" person (often a lawyer). Occasionally 3 neutrals are named. [AI, p.60]

13. A hearing date is granted only after a completed Part II of the Notice of Appeal has been filed (usually between 2-3 months from the date of receipt by the WCRB - less time where a one person panel is used). [PLTC, p.27]. The appellant and respondent will be notified immediately after the appeal is checked in by the Registrar [WCRBPPM, K-1]

14. Subsequent postponements will be made only in exceptional circumstances. [See WCRBPPM,k-2 for criteria and options]. Postponement decisions are communicated to all parties [K-3].

15. Notable rules and procedures at oral hearings
Hearings:
- are not open to the public,
- may be attended by the appellant, respondent & their representatives - observers such as family, friends, trainee advocates & WCB staff, subject to the worker’s consent,
- are tape recorded & form part of the claim file,
- are will generally not proceed in the absence of the appellant unless sufficient reasons are provided (if not may be are deemed abandoned),
- are decided on a balance of probabilities except where the issue is evenly balanced, the issue must be resolved in favour of the worker,
- usually exclude witnesses except when they are giving evidence.

[WCRBPPM, ch. See p.K-9 for procedures used at hearings. See also ch. H re admissibility of evidence.]
16. Post-hearing submissions may be made respecting evidence not available at the
time of the hearing. [WCRBPPM, K-11]

17. Read & review hearings may be conducted by a one or three person panel. A
one person "neutral" panel (the chair or vice chair) is sometimes used for "read &
reviews". [AI, p.60].

18. After the Registrar has determined that an appeal will be a "read & review", the
appellant is sent a letter acknowledging the appeal, confirming the appeal
method and stating the time period for submissions and new evidence after the
claim file has been disclosed by the WCRB - usually 60 days. [SJS: source?]

19. If submissions from the appellant are not received and the respondent has filed
a Notice of Appearance, the respondent is informed and given a set time period
to reply - usually 21 days for single panel reviews. [WCRBPPM, p.J-1.]

20. If submissions from the appellant are received and the respondent has filed a
Notice of Appearance, a copy of the appellant's submission is sent to the
respondent with a set time period to reply. If the appellant's submission was
originally filed along with the Notice of Appeal, then the respondent is allowed
time (generally 21 days) for filing a Notice of Appearance and a written
submission. [WCRBPPM, p.J-1 &2.]

21. The respondent's submission is sent to the appellant, who then has time to reply
to matters which the appellant did not address in his or her original submission.

22. [WCRBPPM, J-3, J-4]

23. The President may refer matters for appeal to the Appeal Division under s.96(4)
of the Act on the grounds of error of law or contravention of a public policy of
the Governors. The worker, employer & any other party will be notified by
letter and the file will be sent to the Appeal Division. [RSCM, p. 13-15].

24. The WCRB must issue written findings "to the appellant and his employer or
worker, or the dependents, as the case may be, and to the WCB." Act, s.90(3).
See WCRBPPM, ch.M for a description of the findings format.

Notable rules re WCRB Findings:
- Panels have jurisdiction to make decisions concerning the subject matter
  of the appeal. "Gratuitous comments” to WCB by WCRB not directly
  related have no legal status.
- A panel member may dissent from the majority decision.
- The finding of a majority of a panel is the finding of the WCRB, but if
  there is no majority, the finding of the person presiding over the panel is
  a finding of the WCRB. [s.89(7), Act.
The WCRB may order the WCB to reimburse a person for costs incurred in attending an oral hearing, obtaining a medical report or attending a medical examination under s.6(4). [Reg. s.7]

In most cases it takes less than one year from receipt of appeal to disposition. [PLTC, p.27].

25. "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. "The WCRB may recommend that the WCB give further consideration to some aspect of a claim. Although panels are not precluded from making such recommendations they should clearly distinguish between findings, which flow from the issues under appeal, and recommendations, which are gratuitous comments that have no legal status.” [WCRBPPM, M-2]

26. [deleted]

27. The WCRB "generally has no power to reconsider its own previous decisions." The WCRB may reconsider its own previous decisions under limited, exceptional circumstances, for example:

- where panel findings are declared void,
- where a panel has failed to decide an issue which was properly before it.
- where the Appeal Division directs the WCRB to reconsider a matter, either generally or on a particular issue [Act, s.91(2)].

[Exceptions are discussed in ch.N of the WCRBPPM]
A panel may reaffirm or vary its original findings after reconsideration. [WCRB, ch.N].

28. Under s.91(2) of the Act, "...the Appeal Division may direct the Review Board to reconsider the matter either generally or on a particular issue and the Appeal Division may withhold its decision pending there finding of the Review Board.”

29. Under s.96.1 of the Act, "a decision of the Appeal Division is final and conclusive". However, "a worker, the worker's dependents, the worker's employer or the representative of any of them may apply to the Chief Appeal Commissioner for reconsideration of a decision on the grounds that new evidence has arisen or has been discovered subsequent to the hearing of the matter decided by the Appeal Division." The Chief Appeal Commissioner may decide to grant the "reconsideration" based on criteria listed in s. 96.1(3). See also Chart 3, Notes 2(b) & 2(c).