

## 1. INTRODUCTION

This is one of several briefing papers that the Policy and Regulation Development Bureau is preparing on topics that may fall within the Royal Commission's terms of reference.<sup>1</sup>

One of the important functions of the Workers' Compensation Board is to make decisions that affect the rights and responsibilities of workers and employers. It is not surprising, given the volume of decisions, that a significant number of disputes arise. In response to the need to resolve such disputes, the *Workers Compensation Act* provides an appeal system.

## 2. THE CURRENT APPEAL SYSTEM

By "appeal system" is meant primarily the system specifically created by the *Act*. This paper does not discuss in detail the administrative systems for reviewing decisions that also exist within the Board. These systems are all in exercise of the Board's discretion under Section 96(2) of the *Act* to "reopen, rehear and redetermine" its decisions. A worker or employer will usually go through these systems before participating in the statutory "appeal system".

This paper also does not discuss judicial review by the courts.

### 2.1 Appeals from decisions on compensation entitlement

Section 90 provides a right to appeal decisions made by Board officers with respect to a worker. The appeal is to the Workers Compensation Review Board (Review Board) established under Section 89. The Review Board is an administrative tribunal that is external to the WCB. Its roots extend to legislation that came into force in 1974. Both

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1 The purpose of the papers is to give background information that will orientate the Commission or others to some major issues. The Board does not expect the Commission to make decisions on the basis of these documents. Rather, the Commission will make its own inquiries.

The papers do not pretend to cover all the issues that the Commission or others might raise. The general nature of the papers also means that they cannot include detailed discussion of all the issues. There may be relevant factors that are omitted with regard to some issues. The explanations of some matters may be less than would be desired if the issues were being considered for decision.

The papers refer to sources of additional information where known. There has been no attempt to exhaustively research all the issues. The papers do not include recommendations for resolving issues, or take a position with respect to them. They may discuss known alternatives, particularly when other jurisdictions have adopted them.

workers and employers can appeal to the Review Board, although almost all of the appeals are made by workers.<sup>2</sup>

Section 91 provides a right to appeal decisions of the Review Board to the Appeal Division established under Section 85. The Appeal Division is internal to the WCB, although it is intended to operate at arm's length from the WCB's policy making and administrative functions.

## 2.2 Medical Review Panels

Although not termed an "appeal" in the *Act*, the Medical Review Panel (MRP) created by Section 58 is part of the statutory dispute resolution system. A worker or employer may request review of a medical finding by a Board officer, the Review Board, or the Appeal Division. A physician must certify a bona fide medical dispute to be resolved and provide sufficient particulars to define it.<sup>3</sup>

The MRP process requires a panel of 3 doctors<sup>4</sup> who are independent of the Board to examine the worker. They certify their findings on the medical issue in dispute. The certificate is conclusive. If the MRP does not uphold the medical findings on which the WCB decision was based, the WCB must readjudicate in light of the certified medical findings.<sup>5</sup>

## 2.3 Appeals by employers on assessments, classification, and penalties

The Appeal Division is also responsible under Sections 96(6) and 96(6.1) to hear appeals by employers from notices of assessment, classification decisions, and penalties imposed for violations of health and safety regulations or orders. Such appeals go directly to the Appeal Division. They do not go to the Review Board.<sup>6</sup>

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2 Between 1991 and 1994 only 420 of 17,719 appeals dealt with were by employers, The Workers' Compensation System of British Columbia: Still in Transition, H. Allan Hunt, Peter S. Barth, Michael J. Leahy (1996), (1996 Administrative Inventory) p. 87.

3 Sections 58(3) and (4).

4 A chair and two specialists in private practice, one nominated by the worker and one by the employer; Section 59.

5 Section 65; #103.86, *Rehabilitation Services and Claims Manual*.

6 In 1996 49% of the 3056 new matters brought to the Appeal Division were Section 90 appeals from Review Board findings. 38.5% were Section 96(6) and 96(6.1) employer appeals. The other 12.5% of Appeal Division activity was related to other matters such as Criminal Injury appeals, extension of time applications, and Section 11 determinations.

### 3. HISTORY OF APPEAL SYSTEM

#### 3.1 The original B.C. Workmen's Compensation Act (1917)

The Pineo Report discussed the possibility of an appeal to the courts before the enactment of first *Workmen's Compensation Act* in 1917.<sup>7</sup> The report noted that workers generally opposed such an appeal but employers favoured a limited right. The conclusion was that an appeal was not necessary for the proper administration of the *Act*.

The first *Act* set up an inquiry system of decision making that vested the powers of the Board in a Commission, initially consisting of 3 members. The Commissioners had authority to delegate their powers but were ultimately responsible for:

- exercising the Board's quasi-judicial function of making decisions in individual cases;
- administering the system for preventing occupational injury and disease, collecting assessments and disbursing benefits;
- exercising the quasi-legislative function of interpreting the *Act* and providing direction through policy.

The general provision empowering the original Board was similar to the current Section 96(1). The Board had exclusive jurisdiction to make final decisions on all matters of fact and law under the *Act*. The decisions were not open to review in any court. However, the Board had wide discretion to reconsider its decisions.

#### 3.2 Prior Royal Commissions

The decision making structure remained basically the same until 1942 when the first Royal Commission to inquire into the workers' compensation system reported. The report considered a request to create a right of appeal, but recommended against it because:

... appeal to the Courts, or to a Board exercising appellate functions, is contrary to the theory of administrative decision basic to the system of our Act...<sup>8</sup>

The Commission believed that permitting appeals of WCB decisions would interfere with the ability of the system to provide "quick, summary, and final decisions".

The second Commission of Inquiry, which reported in 1952, revisited the issue of rights to appeal. As in 1942, the issue was precipitated primarily by medical controversies. The report observed that, even though there was no statutory compulsion, WCB practice was to refer controversial medical issues to independent specialists. The WCB proposed to appoint a permanent committee of medical review (composed of three

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<sup>7</sup> Report of the Committee of Investigation on Workmen's Compensation Laws, March 1, 1916, 17.

<sup>8</sup> The Report of the Commissioner, Relating to the Workmen's Compensation Board, Gordon McG. Sloan, (1942) p. 190.

“outside” doctors). This would be consulted on the initiative of the WCB, with the WCB having discretion to accept or reject the committee’s decision. The report commented:

[Such a proposal] would seem an advance over the present procedures, but to the injured workman his rights thereunder might appear more illusory than real ....

Legislation which sets up Committees or Boards of Reference and then leaves the Compensation Boards free to accept or reject their findings does not create Appeal Boards in the proper sense of that term. This type of committee does not exercise appellate jurisdiction but acts solely in an advisory capacity.<sup>9</sup>

The reasons in 1942 for not recommending an appeal board were still recognized to be applicable. However, the report concluded on balance it was in the public interest that a true appeal process be set up to resolve medical disputes. This recommendation led to what is now the Medical Review Panel. By 1959, it had essentially taken its current form.

Prior to the report of the third Commission of Inquiry in 1966 by Mr. Justice Tysoe, the Commissioners of the Board created an “appeal” process by policy. Disputed claims decisions were considered by a Board of Review consisting of 3 senior Board officers. If a party disagreed with the Board of Review decision, he or she could request a review by the Commissioners.

Tysoe rejected proposals for setting up an external, independent appeal body. He identified two main problems with the “appeal” system then existing. The first arose from the Board’s policy of non-disclosure. Tysoe denied labour’s request for disclosure of Board files, but felt there was some validity to the criticisms of Board practices. He considered the criticism would be weakened if the Board gave adequate written reasons for decisions and if someone, not a Board employee, could access the files to assist workers. He therefore proposed appointing Compensation Consultants.<sup>10</sup> This was implemented by legislation in 1968 creating what is now the Workers’ Advisers Office.<sup>11</sup>

The second problem was that the Board of Review consisted of employees of the WCB. In some cases they had been involved in making the original decisions that were under review. Tysoe recommended the members devote their full time to the position, and the decisions include written reasons.<sup>12</sup>

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9 Report of the Commissioner, The Honourable Gordon McG. Sloan, Chief Justice of British Columbia relating to the Workmen's Compensation Act and Board, 1952, 141.

10 Commission of Inquiry Workmen's Compensation Act, Report of the Commissioners, the Honourable Mr. Charles W. Tysoe, (Tysoe Report)1966, 349, 362-363

11 The Employers’ Advisers Office was created by amendments in 1974.

12 Tysoe Report, 366

Consistent with these recommendations, the legislation was not immediately changed to provide for an appeal system for non-medical disputes. Minor changes to the Board of Review process were subsequently enacted.<sup>13</sup>

Tysoe also discussed the Medical Review Panel system. He recommended that dependants of deceased workers have the right to a Medical Review Panel to determine the cause of death. He noted the problem of defining what was or was not a medical decision, and therefore what was a proper subject for a Medical Review Panel. He recommended that the sections of the *Act* setting out the matters to which a Medical Review panel should certify be amended.<sup>14</sup> These recommendations were implemented by legislation in 1968.

### 3.3 Creation of an Appeal System (1974 to 1986)

A statutory right to appeal decisions of Board officers “with respect to a worker” was created effective in 1974. The appeal was to independent “boards of review”. They were appointed by the Lieutenant Governor in Council. Each consisted of a Chair and two others. One was selected after consultation with one or more organized groups of employers, and one was selected after consultation with one or more organized groups of workers. The board of review was given full access to WCB files.

Decisions of the board of review were required to be in writing and provide reasons. They were not binding on the WCB. The *Act* provided “where the board of review does not confirm the original decision, that decision will be reconsidered by the Board.” This retained the basic principle behind the inquiry system. The WCB remained the only tribunal having ultimate authority to exercise the power to determine all matters under the *Act*.

As a matter of policy, the Commissioners decided that decisions of the boards of review were to be implemented, as a matter of course, by WCB officers if they fell within a range of “legally permissible conclusions”.<sup>15</sup> A process was set up whereby board of review decisions that were not considered legally permissible were referred to the Commissioners.

The *Act* was amended in 1974 to provide a right for workers or employers to appeal board of review decisions to the Commissioners of the Board. The right was initially restricted<sup>16</sup> but the limits were removed in 1980.

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13 In 1968, provision was made for a Chairman of the Board of Review appointed by the Lieutenant Governor in Council.

14 Tysoe Report, 367-394

15 Decision No. 31, 1 WCR 125. In 1978, by Decision No. 280 (4 WCR 43), the Commissioners listed 6 situations where a board of review decision would be considered not legally permissible. In Decision No. 403, (6 WCR 69), the Commissioners reaffirmed the 6 situations following the statutory reorganization of the Review Board in 1986.

16 There was no restriction if the board of review decision was not unanimous. In the case of a unanimous decision, worker and employer appellants had to persuade “an organized group of workers” or “an organized group of employers” to make the appeal on their behalf. Where a

In February 1986, the name of the board of review was changed to the Workers' Compensation Review Board. The *Act* was amended to delete the provision that, where the board of review did not confirm the WCB's decision, that decision would be reconsidered by the WCB. Instead, the WCB was given power under Section 96(2) to "reopen, rehear and redetermine" Review Board findings.

These amendments did not alter the principle that the WCB had the final authority to determine how, and to what extent, a Review Board decision would be implemented. The change was nevertheless significant. Previously, a board of review decision was, in theory, of no effect unless and until the WCB chose to implement it. Now a Review Board decision was effective the date it was announced. The Board could reverse it, but not retroactively.<sup>17</sup>

### 3.4 Restructuring the appeal system (1988 to 1991)

In 1987, the Ombudsman issued a report that reviewed the claims adjudication and appeals systems.<sup>18</sup> The recommendations included setting up a final level of appeal independent of the WCB that would also administer the Medical Review Panel.

In 1988 the Minister of Labour appointed Donald R. Munroe, QC, to chair an advisory committee to examine the structure of the WCB.

The committee recommended a different form of governance. It proposed that the policy-making, administrative, and appellate functions previously held by the Commissioners be assigned to different persons. The policy making functions would be assigned to a body of Governors, the administrative functions to a President and Chief Executive Officer, and the appellate functions to an Appeal Division headed by a Chief Appeal Commissioner.<sup>19</sup> These recommendations were implemented effective June 3, 1991, and continue today. In 1995, a Panel of Administrators took over the role of the Governors.

The WCB's power in Section 96(2) to reconsider Review Board findings was removed. Instead, a new Section 96(4) allowed the President to refer Review Board decisions to the Appeal Division for redetermination on the basis of error of law or contravention of published policy of the Governors. Section 96(2) was amended to preclude the WCB from reconsidering Appeal Division decisions.<sup>20</sup>

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Chairman of a board of review was of the opinion that the decision involved a "principle of importance", the Chairman could grant leave to appeal.

17 *Guadagni vs WCB* (1989), 35 BCLR (2d) 363.

18 Workers' Compensation System Study, Public Report No. 7, July 1987, the Ombudsman of British Columbia (1987 Ombudsman Report)

19 8 WCR 231.

20 Section 96.1 allows the Chief Appeal Commissioner to reconsider Appeal Division decisions in certain circumstances.

As well as hearing appeals from the Review Board, the Appeal Division was authorized to hear appeals by employers from assessment notices, classification decisions, and penalties for health and safety violations.<sup>21</sup> Employers previously had no such statutory right. There was, however, a practice by which the Commissioners reviewed these decisions under Section 96(2).

### 3.5 Recent developments relating to Medical Review Panels

The administration of the Medical Review Panel was initially assigned to the Appeal Division by the Governors. In October, 1991, the Governors began to administer it directly. A registrar, Dr. Jenkins, was appointed, and asked to review the whole system. His report was presented to the Governors in August, 1992. It recommended changes in the legislation, the practice in appointing MRP members, and the Board's policy and administrative practice with respect to MRPs. Public consultation was carried out from 1993 to 1995 that led to a revision of the MRP section in the *Rehabilitation Services and Claims Manual*.<sup>22</sup>

Bud Gallagher was appointed by the Panel of Administrators in 1996 to investigate the delays in the MRP process. The following table adapted from his report<sup>23</sup> shows the problem:

Year	New cases	Certificates	Outstanding at year end <sup>24</sup>	Average process time in days
1991	500	203	442	400
1992	574	212	649	486
1993	526	236	715	637
1994	452	289	608	742
1995	519	482	500	707

The proposals in the report include:

- a review of the provisions of the *Act* and an updating of the changes recommended by Dr. Jenkins;
- redefining and updating of the role of the registrar;
- changes in the terms of appointment of the MRP chairs; and
- staffing increases, a computerized case management system and other administrative changes.

21 Sections 96(6) and 96(6.1).

22 #103.00 to 103.93.

23 Medical Review Panel System, Time Delays in the Processing of MRP Applications: A 1996 Perspective, Bud Gallagher, August 1996.

24 The number outstanding is less than might appear from the prior 2 columns because of the roughly 1/3 of appeals rejected as not disclosing a bona fide medical disputes. (1995 Annual Report of the Medical Review Panel Department, 12 WCR 131)

#### 4. ISSUES

Issues on the structure of the B.C. system may be derived from a comparison with other jurisdictions. There are, for example, significant differences as to

- whether appeal bodies are external or internal,
- number of levels of appeal,
- the role of the appeal bodies with respect to policy.

The Administrative Inventories, that reviewed the B.C. system from 1991 to 1996, summarize many of the issues on appeals.<sup>25</sup> These include:

- *Difficulties in the relationships the appeal bodies have with each other and the Board.* This includes the impact appeal decisions have or should have on Board policy and practice, and the extent to which the Review Board is bound to follow prior rulings of the Appeal Division.
- *The performance of appeal bodies.* This includes the need to evaluate performance, consistency, costs, delays and backlogs.
- *The effectiveness of the appeal system in satisfying the parties concerns.* This includes the need for advocates and the availability of information to pursue or oppose an appeal.
- *Lack of appeal rights in some situations.*

#### 5. DISCUSSION

##### 5.1 Should the appeal body be internal or external?

Many people who advocate an appeal mechanism to review WCB decisions consider this inevitably means an external system. An internal system is commonly seen as ineffective, being subject to WCB control.<sup>26</sup> On the other hand, the idea of an external appeal may be disputed on the basis that the real problem is one of WCB accountability. The Board may appear to be remote, intimidating and indifferent to the needs of workers and employers. The solution may be to increase WCB accountability rather than to create an appeal body.<sup>27</sup>

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25 Workers' Compensation in British Columbia, An Administrative Inventory At A Time of Transition, H. Allan Hunt, Peter S. Barth, Michael J. Leahy, 1991; Occupational Safety and Health in British Columbia: An Administrative Inventory, Kathleen M. Rest and Nicholas A. Ashford, October, 1992; Workers Compensation Board of British Columbia, Assessment Department Administrative Inventory, H. Allan Hunt, 1992; The Workers' Compensation System of British Columbia: Still in Transition, H. Allan Hunt, Peter S. Barth, Michael J. Leahy, 1996.

26 Reshaping Workers' Compensation for Ontario, Paul Weiler, 1980, (Weiler) 110.

27 Review of the New Brunswick Workers' Compensation Board, February, 1987, Woods Gordon, Management Consultants, page 16. However, the New Brunswick system now has an external appeal tribunal.

To the extent that an external tribunal binds the WCB, the system diverges from the basic model still found in all Canadian systems, under which the WCB has exclusive jurisdiction to decide all issues. This was one of the reasons that lead the prior Royal Commissions in B.C. to recommend against an external appeal body.<sup>28</sup> The conflict may be resolved, in a legal sense, by express statutory provisions. A typical example is the provision in the Prince Edward Island Act that, on an appeal, "a decision of [an Appeal Tribunal] panel is deemed to be a decision of the Board."<sup>29</sup> However, such provisions may not remove the underlying concern.

An external appeal body must inevitably be created by specific statutory provisions that define its jurisdiction. This may prevent the appeal body from dealing with consequential or related matters to the issue strictly before it. The worker or employer may have to repeat the appeal process in order to get those issues resolved, thus prolonging the resolution of the claim.<sup>30</sup> The same also would apply to an internal appeal body created by statute.<sup>31</sup> However, a review body created by Board policy may be able to take a broader view. It may be able to decide issues not specifically on appeal.<sup>32</sup> On the other hand, some external appeal tribunals have taken a broader view of their mandate.<sup>33</sup>

The Munroe Committee discussed this issue. The Committee noted that in British Columbia there was a mixed system - the Review Board was external but the final level of appeal to the Commissioners was part of the WCB. It recommended continuing this system, with the Appeal Division taking over the appeal functions of the Commissioners. It stated:

We see the new Board of Governors as being key to the future direction and credibility of the system. The process for the final disposition of claims appeals should not be completely hived off from it. The present "external" Review Board was established as a useful niche .... we do not think it should be disturbed .... However we think there are sound reasons for a modified "internal" body as the last resort.

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28 The Report of the Saskatchewan Workers Compensation Act Committee of Review, 1996, at page 42, rejected the idea of an external appeal body as violating this principle. See also the Report of the Workers Compensation Review Committee of Manitoba, May, 1987, (1987 Manitoba Report) which was concerned (page 185) that an external appeal system would promote an adversarial system as opposed to the basic inquiry system set up by the *Act*. As an alternative, it recommended a governing Board more independent of the administration that would have special non-voting members to hear appeals.

29 Workers Compensation Act, (PEI), S. 56(15); See also S. 85.2(6) of the B.C. Act.

30 See discussion of the appeal "treadmill" below under 5.4.1.

31 For internal, statutory appeal bodies see the Alberta, North West Territories and Yukon Acts.

32 Ison, 229.

33 For example, the Workers' Compensation Appeal Tribunal (See A Guide to Workers' Compensation in Ontario, Douglas G. Gilbert, John Mastoras, L.A. Liversidge, 2nd Edition 1995, (Mastoras) 140); For a discussion of the "remedial jurisdiction" exercised by the B.C. Appeal Division, see Decision No. 92-0634, March 19, 1992, 8 WCR 151 and Decision No. 92-1968, December 10, 1992, 9 WCR 59.

Our reasoning to this point is concentrated on the *advantages* of a modified “internal” appeal structure. To complete this comment we point to the significant *disadvantages* of a free-floating “external” tribunal. The first has to do with the division of responsibility for policy making, on the one hand, and adjudication, on the other. Whether one chooses an “internal” or “external” system, it is irrefutable that only one body should be making policy; further, that that body should be the Board of Governors with the advice and assistance of the executive side of the system. From the experience of at least one Canadian jurisdiction, and this strikes as predictable, the establishment of a purely “external” tribunal as a last resort sets up a competition as to where the general policy making for claims really resides. That is counterproductive both to the work of the system and to its overall credibility.

Our second concern with what we have termed a free-floating purely “external” tribunal of last resort is that over time, it would become too legalistic ....<sup>34</sup>

While the Committee found the final level of appeal should be within the WCB, it also considered it should be at arm’s length from the WCB’s administrative and policy-making functions.<sup>35</sup>

In 10 of the 11 other Canadian jurisdictions, there is at least one level of external appeal. There appears to be a consensus that an external appeal is needed to provide a safeguard against possible abuse of power by WCBs, and to preserve openness and procedural fairness.

## 5.2 Levels of Appeal

### 5.2.1 Appeals on Compensation Entitlement

The 1991 Administrative Inventory commented that it was “difficult to conceive of a system that permits more levels of appeal than [the B.C. system].”<sup>36</sup> Its review was primarily directed at the pre-1991 system. However, the system in effect since 1991 is no less complex. This resulted from the specific recommendation of the Munroe Committee that the existing Review Board be retained and that the Appeal Division be created. Others have suggested the contrary approach of making the Review Board the final level of appeal and incorporating the Medical Review Panel in the Review Board.<sup>37</sup>

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34 8 WCR 231, 240-241.

35 8 WCR 231, 237-238.

36 Page 151.

37 1987 Ombudsman Report, 81; See also the public consultation process relating to Medical Review Panels carried out from 1993 to 1995 (Report on the Medical Review Panel Public Hearing, June 15, 1994, B-49 to B-55).

No other multi-level appeal system in Canada provides access to a medical review panel as a separate level of appeal.<sup>38</sup> Five jurisdictions<sup>39</sup> provide access to independent medical advisors to resolve bona fide medical disputes, but their findings do not bind the appeal tribunals.

Aside from medical appeal bodies, most of the Canadian acts provide 2 or 3 levels of appeal. They can be roughly grouped as follows:

<b>System</b>	<b>Provinces</b>
Internal review and external appeal body	Nova Scotia and Quebec
Internal review body, external appeal body, and potential review by governing body on policy issues	Alberta, North West Territories and the Yukon
External appeal body, with potential review by governing body on policy issues	Manitoba, Ontario and Prince Edward Island
External appeal, with an appeal to the court	New Brunswick (Also allows review by governing body) and Newfoundland

None of the other provinces is similar to B.C. in having an external body with a further internal appeal outside the Board's governing body. Where 3 levels exist, the first is generally an internal review system, roughly equivalent to the administrative review procedures in B.C. Otherwise, the systems largely comprise an external appeal body, with an additional mechanism for review on policy or legal grounds. These features appear to reflect two major interests:

- the need for openness to prevent abuse of power by the Board; and
- the need for the WCB to be able to ensure that its policies are applied in the adjudication of individual matters.

The former need is generally met through an external tribunal, the latter by an internal tribunal.

There are obvious disadvantages in creating multiple levels of appeal. The appeal bodies use resources that might be employed in other areas of the system, add complexity and tend to delay the final resolution of issues. One way of reducing this may be to have different criteria of access to the various levels.

In B. C., both the Review Board and the Appeal Division now exercise a "substitutional" rather than a "supervisory" role.<sup>40</sup> When exercising a substitutional role the appeal tribunal substitutes its judgment for that of the person making the previous decision. An

38 Saskatchewan has only one level of appeal, which is to a Medical Review Panel.

39 Alberta, Manitoba, Nova Scotia, Ontario and Yukon.

40 Re: Appeals to Board of Review, Decision No. 60, 1 WCR 247, at p. 252.

appeal tribunal that exercises only a supervisory role does not substitute its judgment for that of the preceding adjudicator, but simply ensures that a decision had been made in accordance with proper law and policy. Perhaps the Appeal Division, as the second level of appeal, could be restricted to a supervisory role.

Such a restriction would presumably reduce both the number of matters that could be appealed and the length of time required for deciding each appeal. However, it would mean that the WCB's final decision-making authority on factual matters would be assigned to an external agency, the Review Board. This would be a significant departure from the intent of section 96(1) of the *Act*, which bestows exclusive jurisdiction on the WCB to determine all matters of fact and law under the *Act*. In addition, restricting the Appeal Division jurisdiction to "legal" issues, and precluding it from considering new facts, could exacerbating the revolving door aspect of the appeal system.<sup>41</sup> It might also increase the need for legal representation, as arguments would be directed to whether grounds had been established for an appeal.

### *5.2.2 Employer Appeals on Assessments and Penalties*

There was no statutory right for employers to appeal assessment and penalty decisions prior to June 1991. Rather, the practice was for the Commissioners to review these decisions under Section 96(2). When the 1973 legislation granted a right to appeal decisions to the board of review, it was limited to decisions made "with respect to a worker".<sup>42</sup>

Most Canadian jurisdictions have two levels of statutory appeal for employer issues relating to assessments. While the B.C. system provides only one such level, there are on most issues administrative review mechanisms.

Some employers have argued that it is unfair that a multi-level appeal system is available for issues of compensation entitlement, but not for other issues that concern them. However, employers have the same access as workers to the appeal process for determining compensation entitlement. They also have exclusive access to the appeals system for assessments and penalty issues.

## **5.3 Relationship among Appeal Bodies and the WCB**

Three issues may arise. The first two are the impact appeal decisions have on WCB administration and policy. The third is the impact the decisions of one appeal body may have on another appeal body.

### *5.3.1 Impact on WCB administration*

The impact of appeal decisions on WCB administration will generally depend on the extent to which the appeal body changes the initial decision of the Board.

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41 See discussion of the appeal "treadmill" below under 5.4.1.

42 For a discussion of the reasons for this, see Decision No. 70, Re Boards of Review, 1 WCR 287, at p. 288.

Usually, a low change rate will be seen as a good reflection on the Board's decision making. However, differing views have been expressed on this. In one report, concern was expressed that an allow rate of under 20% showed insufficient independence in the appeal body. An allow rate of about 40% was considered typical.<sup>43</sup> In another report, concern was expressed at allow rates of 36% and 39%. This gave rise to

- worker perceptions that the initial decision makers were unfair or not following policy,
- employer perceptions that the appeal bodies were biased in favour of workers and the Board was inconsistent, and
- perceptions by initial decision makers that the appeal bodies did not follow policies. Initial decision makers were left uncertain how to decide, which lead to low staff morale.<sup>44</sup>

Both the 1991 and 1996 Administrative Inventories found remarkable the high appeal allow rate at the Medical Review Panel, particularly when many cases had previously been to every other adjudication and appeal level. They suggested this might be due to the MRP using different criteria and insufficient investigation at the initial level.<sup>45</sup> It was suggested the need for MRPs might be lowered if Board medical advisers examined workers or discussed the cases with attending physicians before advising the adjudicator.<sup>46</sup>

### 5.3.2 *Impact on WCB policy*

It has been suggested that the Board could reduce the need for appeals by using appeal decisions as precedents.<sup>47</sup> This raises the question of the impact of appeal decisions on policy.<sup>48</sup> The Munroe Committee stated that it was "irrefutable" that only the Governors should be making policy.<sup>49</sup> This was one reason for making the Appeal Division an internal body.

The Governors have issued decisions defining the relationship between the *Act*, the policy and the Appeal Division. These include the following statements:

In the event of a conflict between the *Act* or Regulations and the published policies of the governors, the *Act* and Regulations are paramount.<sup>50</sup>

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43 1987 Manitoba Report, 182.

44 Report of the Task Force on the Workers' Compensation Board, Alberta, November 7, 1988, page 42.

45 1996 Administrative Inventory, 80.

46 1995 Administrative Inventory, 153.

47 Report of the B.C. Federation of Labour's Public Inquiry into the B.C. Workers' Compensation System, 1985, (1985 B.C. Federation of Labour Report) page 53;

48 For a general discussion of the use of appeal decisions as precedents, whether by lower appeal bodies or by the Board, and of the role of appeal bodies with regard to law and policy see Ison, 235 to 237.

49 8 WCR 240

50 Decision No. 86, November 16, 1994, 10 WCR 781.

The Appeal Division shall apply and interpret the Act, Regulations and existing Board published policy. The Appeal Division does not have the authority to create new policy. The Appeal Division shall make its decisions according to the merits and justice of each case as directed in Section 99.<sup>51</sup>

The Chief Appeal Commissioner exercises independent judgment in the adjudication of individual claims. At the same time, it is expected these decisions will be made consistent with the policies of the Governors.<sup>52</sup>

Because the Appeal Division must interpret the law as well as the policy in reaching its decisions, it must also consider whether the policy conflicts with the *Act* and, if so, find it unlawful and inoperable.<sup>53</sup> Section 85.2(6) of the B.C. *Act* states that a “decision of the appeal division is a decision of the board”. The impact of this provision is limited to the particular case under consideration so that Appeal Division decisions do not become generally binding on the Board. However, they create a dilemma for the Board. Either it changes the policy to conform to the Appeal Division decision or it continues to adjudicate using the existing policy, knowing that the decision may be overturned on appeal. This situation has led to complaints that the Appeal Division has encroached upon the Governors’ authority to make policy.<sup>54</sup>

The history of the WCB’s relations with the Review Board also reveals tension over whether the Review Board is bound to follow WCB policy.<sup>55</sup> An obligation to do this might be implied in section 96(4) of the *Act*. That section authorizes the President of the WCB to refer Review Board findings that contravene published policies of the Governors of the WCB to the Appeal Division for redetermination.<sup>56</sup>

Other jurisdictions have enacted specific statutory provisions defining the role of appeal bodies respecting policy. A typical example is:

In the hearing of appeals ... the Appeals Commission is bound by policy determined by the board of directors [of the WCB] that relates to the matter under appeal.<sup>57</sup>

A difficulty with provisions of this type is that policy is not intended to be followed rigidly. The courts have recognized the need for policies to promote consistency but have said

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51 Decision No. 75, December 1, 1994, 10 WCR 753, 756.

52 Decision No. 7, June 21, 1991, 7 WCR 27, 28.

53 1993 Appeal Division Annual Report, 36; In *Canada Safeway Ltd v. WCB*, June 24, 1997, the B.C. Supreme Court stated that “the Appeal Division does have a responsibility to ensure that any decision of the Board of Governors does not conflict with the Act, whether it is a policy decision or not.”

54 1996 Administrative Inventory, 66, 75.

55 See part 3.3 above; Munroe Report, 8 WCR 231, 241; the 1991 Administrative Inventory, pages 49 to 51.

56 The Review Board itself does not agree with this implication. See 1996 Administrative Inventory, 64.

57 Workers Compensation Act, (Alberta), S. 8(7); See also the Workers Compensation Act, (Nova Scotia), S. 183, which states “it is not within the jurisdiction [of the Appeal Tribunal] to refuse to apply a policy on the ground that it is inconsistent with the Act or the regulations...”

that policies must “allow flexibility and consideration on the merits”.<sup>58</sup> This kind of provision will create a dilemma for an appeal tribunal if it considers a policy patently contrary to the legislation or the particular circumstances of a case warrant a departure. It may be desirable to allow exceptions to cover these situations.

Some statutes create a specific procedure for dealing with complaints that an appeal body has exceeded its authority. For example, the North West Territories Act states that the WCB may direct the Appeals Tribunal to rehear an appeal and “give fair and reasonable consideration” to WCB policy.<sup>59</sup> An alternative is found in the Manitoba Act. If the WCB Board of Directors consider the Appeal Commission has not properly applied the policy, it may stay the decision of the Appeal Commission and direct the matter to be reheard by the Board of Directors itself. Where this occurs, the Board of Directors has the same authority as the Appeal Commission.<sup>60</sup>

### 5.3.3 *Impact of one appeal body on another*

Within the B.C system, conflicts have occurred between decisions of the Review Board and the Appeal Division in two types of situations.

The Review Board sometimes rejects an appeal without considering the merits of the case because procedural requirements in the *Act* are not met. For example, an appeal may be received outside the 90 day period allowed for appealing, and the Review Board may decide there are insufficient grounds to grant an extension. The Appeal Division has found it has jurisdiction to consider an appeal against such a decision.<sup>61</sup> The Appeal Division would originally refer a case back to the Review Board to consider the merits when it allowed an appeal in this situation. However, the Review Board did not accept the Appeal Division's authority.<sup>62</sup> Therefore, the current practice is for the Appeal Division to deal with the appeal on the merits if it reverses the Review Board on a procedural issue.

Another situation occurs where the Appeal Division makes legal or policy interpretations that the Review Board declines to follow. An example, is the Appeal Division decisions that the age criteria in Section 17 of the *Act* are contrary to the *Canadian Charter of Rights and Freedoms*.<sup>63</sup> As the 1996 Administrative Inventory has pointed out:<sup>64</sup>

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58 *Western Forest Products v Workers' Compensation Board* (1983), 8 Admin. L.R. 43, 48.

59 Section 7.7(2); For a discussion of the Ontario experience with a similar provision, see Mastoras, 148.

60 Section 60.9; Such a provision formerly existed in Newfoundland but was removed on the basis this would make the appeals process “credible and fair” if the decisions of the appeal tribunal should be final and only vacated by the courts. (1991 Workers' Compensation Statutory Review, pages 53-54).

61 Appeal Division No. 1, May 29, 1991, 7 WCR 33, 37; Appeal Division No. 93-0399, March 22, 1993, 9 WCR 385 and Appeal Division No. 93-1186, August 20, 1993, 10 WCR 43 on refusals of an extension of time; Appeal Division No. 94-0313, March 9, 1994, on whether a deceased worker's estate had standing to appeal regard the worker's claim. (10 WCR 661).

62 1996 Administrative Inventory, 64.

63 10 WCR 53; The decision was confirmed in 2 other decisions published at 10 WCR 617 and 11 WCR 533.

64 Page 65.

...There is little to be done to ensure that the Review Board does not continue to follow the practice in question. In such cases, the standoff is unlikely to end without judicial or legislative intervention.

It may not be surprising that there are conflicts between the Review Board and the Appeal Division when the appeal provisions in the *Act* do not clearly define their roles relative to each other. These conflicts occur in few situations but, when they occur, can result in a multiplicity of appeals.

#### **5.4 Performance of Appeal Bodies**

Commenting on the Review Board, the 1991 Administrative Inventory stated:<sup>65</sup>

For a tribunal of such significance, we were surprised to find that no outside, independent performance evaluation had been made or was contemplated. In addition, an appeal body should have its decisions reviewed for consistency and timeliness....However, we also believe that any public program of this magnitude warrants an independent evaluation of its performance to assure that it is operating with fairness, and with efficiency in compliance with its charge.

The Panel of Administrators have set up a process for reviewing the performance of the Chief Appeal Commissioner.<sup>66</sup>

##### *5.4.1 Timeliness*

Since it began in 1974, the Review Board has experienced significant periods of backlog and delayed decisions, notwithstanding growing in size. The Ombudsman reported in 1987 that the average time for disposing of an appeal was 18 to 20 months, and pointed out the potentially devastating consequences of these delays.<sup>67</sup> In 1994, the average time taken to dispose of an appeal was 14 months where a hearing was held, and 13 months in other cases. Only in 4 years from 1981 to 1994 did the Review Board dispose of more appeals than it received.<sup>68</sup>

Prior to 1991, the Commissioners also had a significant backlog of cases. In 1987, they were taking 12 to 18 months to complete an appeal.<sup>69</sup> The Appeal Division inherited

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65 Page 151.

66 13 WCR 169

67 1987 Ombudsman Report, 16; See also the 1985 B.C. Federation of Labour Report, page 50, for concerns expressed over Review Board backlogs and the measures taken to deal with them, e.g. restricting oral hearings, one person panels, requiring reasons for appeal in a written notice and using WCB staff.

68 For detailed analysis of the statistics of the Review Board performance, see the 1991 Administrative Inventory, 41 to 48, and the 1996 Administrative Inventory, 62 to 64.

69 1987 Ombudsman Report, 6.

1,742 outstanding appeals from them. This was cleared by the middle of 1992.<sup>70</sup> The backlogs in the Medical Review Panel system are discussed above.<sup>71</sup>

Delays in appeal systems are a common problem in other jurisdictions.<sup>72</sup>

Many solutions have been proposed over the years for attacking backlogs. Some of these aim to reduce the need for appeals by improving initial decision making. In 1987, the Ombudsman made a number of recommendations of this type. These included a more thorough investigation, the development of a quality enhancement program, better communications with the person affected during decision making, and the automatic review of decisions by managers prior to an appeal.<sup>73</sup>

Other suggestions have been to short circuit the appeal process after the initial decision. For example, new evidence might be automatically referred back to the initial decision maker to determine whether the decision should be changed.<sup>74</sup> The Ombudsman proposed in 1987 that the Review Board be authorized to do this.<sup>75</sup>

In February, 1986, new legislation and regulations were enacted that, in part, aimed to deal with backlogs by streamlining the Review Board process. Previously, there was a general right to an oral hearing before a three person panel. Since then, the decision may be made by one person and a request for an oral hearing may be declined.<sup>76</sup>

When the Appeal Division was created in 1991, there was a desire to include a provision that would avoid delays on appeals.<sup>77</sup> Section 91(3) therefore provides that an Appeal Division decision must be made as soon as practicable, and in any case within 90 days. The Chief Appeal Commissioner may designate a longer period in certain limited circumstances. In 1993, the Chief Appeal Commissioner called for community input on interpreting this time limit. This led to rejection of a literal interpretation that would mean the 90 day period beginning when the appellant first telephones or writes indicating intent to appeal.<sup>78</sup> It was recognized that it may take time to decide whether an application meets the legal requirements for an appeal and

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70 1996 Administrative Inventory, 71.

71 Part 3.5 of this paper.

72 1987 Manitoba Report, 184; Report of the Task Force on the Workers' Compensation Board (Alberta), November 7, 1988, page 41; Ison, 234; Mastoras, 141; Workers' Compensation in Nova Scotia, *The Turning Point*, 1988, (1988 Nova Scotia Report) page 8.

73 1987 Ombudsman Report, 35 to 45; See 5.3.1 for comments in the Administrative Inventories as to how improved adjudication practices might reduce the allow rate on Medical Review Panel appeals; In Weiler, page 108, it is pointed out that there are limits to the extent that initial adjudication can remove the need for appeals.

74 1988 Nova Scotia Report, 10; See also Ison, 227; In Prince Edward Island, section 56(23) requires that the Appeal Tribunal "shall not allow the presentation of new or additional evidence". Where new evidence is presented, the matter must be referred back to the WCB for adjudication.

75 1987 Ombudsman Report, 64; See 5.2.1 for potential problems of restricting an appeal bodies jurisdiction so that it cannot consider new evidence.

76 Sections 89(2) and (6) of the *Act*, Item No. 399, 6 WCR 55, replacing Item No. 393, 6 WCR 21 and Item No. 334, 5 WCR 98.

77 Munroe Report, 8 WCR, 243

78 Appeal Division Decision No. 12, April 11, 1994, 10 WCR 365.

to obtain from the parties the information needed to make the decision. Therefore, an appeal is considered “commenced” for this purpose when reasons for the appeal have been provided, the appealable decision has been identified, disclosure is provided, and the respondent has been notified.

Criticism may be made not just of the delays at each appeal level but the cumulative effect of the delays at all the levels. Appeals on one issue go through multiple levels, and more than one issue may be appealed in this way on the same claim. Appeals may occur on whether a previous appeal decision was implemented correctly. This was called the appeal “treadmill” by the Ombudsman in 1987.<sup>79</sup> To deal with this, the Ombudsman proposed that appeals to the Review Board on decisions implementing prior Review Board findings should be given special status.<sup>80</sup>

#### 5.4.2 Consistency

Issues of consistency can arise within one appeal body or as between two.<sup>81</sup>

The 1996 Administrative Inventory commented on the Review Board:<sup>82</sup>

...It sees as its goal to balance the principles of consistency in adjudication and the independence of panels. The law does not require that the Review Board operate on the basis of precedent. Yet, it is decidedly awkward if different panels constantly adhere to inconsistent practices. The Review Board panels cherish their independence. Any efforts to impose consistency can be expected to meet with resistance. However, the Review Board can be damaged, externally, if it does not achieve consistency in its adjudication...

The Governors have defined the role of the Chief Appeal Commissioner of the Appeal Division as including:<sup>83</sup>

Reviews and analyzes appeal decisions for: quality, adherence to policies, procedures and practices, consistency and timeliness; and takes corrective action as necessary.

On the other hand, total consistency is not possible, since the Appeal Division also has a mandate to must make its “decisions according to the merits and justice of each case as directed in Section 99”.<sup>84</sup>

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79 1987 Ombudsman Report, 15; A Crisis in Leadership, The Workers’ Compensation System in British Columbia, Final Report of the B.C. Liberal Official Opposition WCB Review panel, November 1, 1994, page 3.

80 1987 Ombudsman Report, 62.

81 See 5.3.3 for examples of inconsistency between the Review Board and Appeal Division.

82 1996 Administrative Inventory, 65.

83 Governors Decision No. 7, June 21, 1991, 7 WCR 27, 29.

84 Governors’ Decision No. 75, December 1 1994, 10 WCR 753, 756; The difficulties of achieving consistency are illustrated by two opposite Appeal Division decisions on whether rehabilitation costs

Some Appeal Division decisions are published in the *Workers' Compensation Reporter*. One reason for this is to "aid in the goal of having like cases treated alike".<sup>85</sup>

## 5.5 Impact of appeal systems on workers and employers

If an appeal system is to meet its objective, workers and employers must be able to effectively participate in a process that is fair, and seen to be fair. This is partly a legal requirement under the administrative law rules of natural justice. These require disclosure of information needed by a party to make their case, an opportunity to state that case and an unbiased decision maker.

Workers' compensation systems also contain features that go beyond the minimum administrative law rules. A balance will often have to be struck between such features and other objectives of the system, for example, the need for timely decision making.<sup>86</sup>

Some of the major questions that arise are discussed below:

### 5.5.1 Disclosure

In order to effectively participate, the parties must have sufficient information. This information may be communications that lead up to the decision, reasons provided with the decision and the Board file containing the information on which the decision is based. The Board has policies that allow the parties to receive information from all these sources.<sup>87</sup> They are generally beyond the scope of this paper.<sup>88</sup>

### 5.5.2 Representation

Usually, there is no question that a party has a right to be represented. The 1991 Administrative Inventory commented that, with the availability of the Workers' and Employers' Advisers, the Ombudsman, and worker and employer association representatives, the B.C. system was relatively free of lawyer involvement. It stated:<sup>89</sup>

It is no great challenge for a system like British Columbia's to minimize the use of lawyers. Rather, the significant challenge is to provide a fair and equitable system where lawyers are not needed to represent the interests of the parties involved. In general, this province has managed to meet that challenge successfully...

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are included for experience rating, Appeal Division Decision No. 95-0668, June 7, 1995, 12 WCR 221 and Appeal Division No. 96-244, February 21, 1996, 12 WCR 265; See also two contrasting decisions on the retail store classification, Decision No. 93-1634, November 24, 1993, 10 WCR 199 and Decision No. 96-0333, March 2, 1996, 12 WCR 29

85 Governors Decision No. 75, December 1 1994, 10 WCR 753, 757.

86 Weiler, 108.

87 See generally Chapter 12 of the *Rehabilitation Services and Claims Manual*, particularly #99.00 to 99.90.

88 A separate briefing paper has been prepared by the Policy and Regulation Development Bureau on this topic.

89 Page 153.

The Ombudsman's 1987 report discussed the need for representation on appeals and suggested more funding for this.<sup>90</sup>

Representation by lawyers was said by one author in 1989 to be becoming more common in some jurisdictions, particularly as a response to the development of external appeal tribunals and the expansion of experience rating.<sup>91</sup>

### 5.5.3 *Oral hearings*

The right to an oral hearing is a common demand by the parties to workers' compensation appeal systems.<sup>92</sup> This may be particularly important if no oral hearing is granted at the prior level of adjudication.

One author pointed out in 1989, that, except in B.C., generally there is a right to an oral hearing by the worker, and often the employer, at one level in the adjudicative structure.<sup>93</sup> This situation has not changed in B.C.. As indicated above,<sup>94</sup> the Review Board changed its practice of automatically granting hearings because of the size of its caseload.<sup>95</sup> The Appeal Division has a discretion whether to grant an oral hearing.<sup>96</sup>

### 5.5.4 *Worker/employer representatives on appeal panels*

A common feature of appeal systems is to have panels of three that include a worker and employer representative. The intention is to promote independent decision making and ensure that at least one member has an underlying sympathy with, and understanding of, the position of each party.

Under section 89(3) of the *Act*, Review Board members must include an equal number of representatives from worker and employer backgrounds. There is, however, discretion whether a panel on a particular appeal includes such members or only the neutral vice-chairs.<sup>97</sup> The *Act* does not require the Appeal Division to appoint Appeal Commissioners with specifically worker and employer backgrounds but this is the policy.<sup>98</sup> There is still a discretion whether such members sit on a particular panel.<sup>99</sup>

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90 1987 Ombudsman Report, 84 to 89.

91 Ison, 241.

92 Labour-Business Task Force, *A Review of WCB Policies*, Myer Horowitz, Rick Vermette and Bob Saarl, Alberta, November 16, 1992; See also 1985 B.C. Federation of Labour Report, page 50, for concerns expressed over Review Board backlogs and the measures taken to deal with them that included restricting oral hearings.

93 Ison, 242-243, which includes a discussion of the rationale for oral hearings.

94 See section 5.4.1 of this paper.

95 From 1991 to 1994, the Review Board held oral hearings in 70 to 80% of cases (1996 Administrative Inventory, 87)

96 Governors Decision No. 75, December 1, 1974, 10 WCR 753, 755; The Appeal Division holds hearings in 7 to 10% of appeals (1996 Appeal Division Annual Report).

97 Item No. 399, 6 WCR 55, 56.

98 Governors' Decision No. 2, 7 WCR 13.

99 Governors' Decision No. 75, 10 WCR 753, 754.

The Ombudsman noted in 1987 that three person panels at the Review Board were expensive, and that often justice could be done with a panel of less. However, one or two person panels should only be employed with the agreement of all parties.<sup>100</sup>

### 5.5.5 *Independent investigation and decision making.*

The issue of independence is often linked with the question whether the appeal body should be external to the Board, and the process of appointing members. However, other issues arise. For example, the right of the appeal body to consult with independent experts is often said to be necessary.<sup>101</sup> This right exists for both the Review Board<sup>102</sup> and the Appeal Division.<sup>103</sup> A related feature is the right of the appeal body to reimburse expenses for additional evidence incurred by the parties.<sup>104</sup>

Independence must be balanced with the need for an effective process and decision making. The 1987 Manitoba report comments on the practice of the Board of Commissioners of not reviewing the files before appeal hearings. The object was not to appear prejudiced, or to have formed any prior conclusions. The Committee recommended against this as following the adversarial rather than the inquiry model of decision making. The Board had to be aware of the facts to ensure that all the necessary information was brought out at the hearing.<sup>105</sup>

## 5.6 **Absence of rights of appeal**

There are some areas where formal rights of appeal do not exist. In each of these situations, there are alternative means of reviewing the decision in question. The following table sets out the main examples and the alternative review mechanism.

<b>Situation</b>	<b>Alternative mechanism</b>
Employers cannot appeal to a Medical Review Panel on a claim arising from a worker's death <sup>106</sup>	Appeal to the Review Board and Appeal Division
Employers cannot appeal to a Medical Review Panel against a denial of relief of costs under Section 39(1)(e) <sup>107</sup>	Appeal to the Appeal Division
Employers cannot "appeal" against orders issued by Board officers for them to correct violations of health and safety regulations	Request a review of the order from a manager, director or the Vice-President under Policy No. 1.4.5 of the Prevention

<sup>100</sup> 1987 Ombudsman Report, 68. The report notes some exceptions where a one person panel could always make the decision.

<sup>101</sup> 1987 Ombudsman Report, 65; Workers Compensation in the N.W.T., Reports of the Review Committee, 1986, 34-35.

<sup>102</sup> Item No. 399, 6 WCR 55, 59.

<sup>103</sup> Appeal Division Decision No. 1, 7 WCR 33, 44.

<sup>104</sup> For a discussion, see the 1987 Ombudsman Report, 25 to 28; #100.50 of the *Rehabilitation Services and Claims Manual*; Item No. 399, 6 WCR 55, 60 (Review Board).

<sup>105</sup> Page 186.

<sup>106</sup> Section. 63; See Report on Medical Review Panel Public Hearing, June 15, 1994, B-26 to B-27.

<sup>107</sup> Appeal Division decision No. 93-0389, March 19, 1993, 9 WCR 361; See Report on Medical Review Panel Public Hearing, June 15, 1994, B-30 to B37.

<p>unless the orders are followed by an additional assessment under section 73 of the <i>Act</i></p>	<p>Division, <i>Policy and Procedure Manual</i>.</p>
<p>Workers cannot “appeal” the non-issue of orders or the failure to levy an additional assessment for a violation.<sup>108</sup></p>	<p>Workers can in practice challenge any decision by writing a letter of complaint to the Prevention Division</p>

All the above situations have given rise to demands for appeal rights from the groups affected.

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108 Occupational Safety and Health in British Columbia: An Administrative Inventory, Kathleen M. Rest and Nicholas A. Ashford, October, 1992, 134 and 205; A right of appeal is proposed under the proposed Occupational Safety and Health Regulations.

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