



Workplace Safety and Insurance Board (WSIB)

Value for Money Audit (VFMA) - Dispute Resolution and Appeals Process

Final Report

CONFIDENTIAL

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November 30, 2022

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Executive Summary

Executive Summary: Background and Overview

Background

KPMG conducted a Value for Money Audit (VFMA) of the Dispute Resolution and Appeals Process for the Workplace Safety and Insurance Board (WSIB).

The objective of the VFMA was to ensure that the WSIB is providing efficient and effective administration of the dispute resolution, appeals and implementation process, and reaching fair outcomes for injured/ill persons or businesses while enabling process compliance and adhering to the principles of administrative law and natural justice. The VFMA identified related risks, issues, gaps and challenges, and provides recommendations on opportunities to strengthen the process, while aligning with WSIB's strategic goals.

The scope of the audit covered the following three areas:

1. Dispute Resolution Process
2. Appeals Process
3. Appeals Implementation Process

As part of this VFMA, we undertook a jurisdictional scan across workers' compensation boards in Canada and globally in order to identify any leading practices around dispute resolution and appeals processes.

Program Overview

The WSIB's dispute resolution and appeals process is organized into three segments:

1. Dispute Resolution

Under the Workplace Safety and Insurance Act (WSIA), both the injured/ill person and the business have a right to appeal decisions that affect them. The dispute resolution process begins when either an injured/ill person, business, or both, disagree with a written decision by a WSIB front-line decision-maker.

During the dispute resolution phase, either the injured/ill person and/or the business may contact the decision maker to discuss the decision and seek clarification and/or provide additional information, subject to the appeal time limits set out in the decision. Where the front-line decision maker undertakes a further review of the decision based on new information, this is called a reconsideration. A reconsideration may confirm, amend or revoke a decision.

2. Appeals

The WSIA creates a two-level appeal process in Ontario. WSIB's Appeals Services Division (ASD) is the first level of appeal and is responsible for rendering the final decision of the WSIB. The second and final (system-level) of appeal is the Workplace Safety and Insurance Appeals Tribunal (WSIAT), which is independent of, and external to, the WSIB.

Appeals are resolved by Appeals Resolution Officers (AROs) who may conduct reviews through either a hearing in writing or through an oral hearing, subject to the criteria outlined in the ASD Practices and Procedures document.

3. Appeals Implementation

ARO decisions are issued in writing to the workplace parties and are also referred to the front line decision making area for implementation. The Appeals Implementation Team (AIT) is responsible for implementing the ARO decision within set timeframes.

Executive Summary: Background and Overview

Value for Money Conclusions

Through our review of the WSIB’s Dispute Resolution and Appeals Process, we have concluded that the process currently demonstrates “low” value for money¹. Currently, decision making timelines are too long and impede effective rehabilitation and return to work leading practices. Our rating is a reflection of research and leading rehabilitation and return to work practices we noted during our jurisdictional scan which were notably more timely. There is an opportunity for the WSIB to reassess its current appeals operational design including practices and policies to ensure the doctrine of fairness is upheld and dispute resolution and appeals are carried out in an efficient and effective manner with due consideration of defined timelines.

Our rating is also based on the fact that there are weaknesses which may have a significant impact preventing achievement of strategic objectives. While performance metrics have shown improvement over the past years, there remain a number of significant challenges that continue to impede the efficiency and effectiveness of the process. These include:

- Fragmentation of appeals so that workplace party issues are not dealt with holistically, which leads to multiple appeals with slow resolution and added cost and decision making delays for the workplace party.
- Unnecessary administrative delays in terms of assigning the appeal to the Appeals Resolution Officer which prolongs the appeals process.
- Lack of timelines in place to register an appeal and lack of enforcement of appeal implementation timelines, which do not support effective rehabilitation and return to work practices. This is further evidenced by the fact that the average appeal timeline for 2021 was in excess of 200 days.
- Lack of an effective and accountable quality assurance processes across dispute resolution and appeals decision making. Current quality assurance processes do not set rigorous standards for determining whether cases should move into the formal appeals process, proceed straight to the WSIAT, or return to the front line for further reconsideration.
- The litigious nature and the decision-making delays associated with the process are contrary to the WSIB’s strategic objective of “Meeting Our Customers Needs and Expectations”, and do not support leading practice rehabilitation and return-to-work principles. Processes can be improved to support WSIB objectives focused on accessible and personalized customer service, and timely, quality and fair decision making.

¹The significant impact on injured workers lives as a result of decision delays was chronicled in “Red Flags, Green Lights, A Guide to Identifying and Solving Return-to-Work Problems” by Ellen MacEachen, PhD, Lori Chambers, MSW, Agnieszka Kosny, PhD and Kiera Keown, MSc. The guide was published by the Institute for Work & Health, 2009.

(continued overleaf)

Executive Summary: Background and Overview

Value for Money Conclusions

Our rating scales can be found on slide 48 (Value for Money Methodology, Approach and Rating Scales) of this report.

Our audit has identified a number of key opportunities and recommendations to improve the economy, efficiency and effectiveness of the dispute resolution and appeals process going forward. There is an opportunity for the WSIB to utilize and establish expertise in Alternative Dispute Resolution (ADR) with the Appeal Services Division (ASD) and front line decision makers in order to resolve cases upfront and reduce the volume of cases going to appeals. This aligns with findings from our jurisdictional scan, and leading rehabilitation and return to work practices. ADR training and continuous education should be extended to staff to ensure that the concept and principles around ADR are understood by all parties.

We recognize that the WSIB implemented an approach to improve the intake and triage function focusing on initial entitlement for physical injury claims to ensure appeal readiness was undertaken. The WSIB should look to expand on this and undertake quality assurance checks across the reconsideration and appeals processes. A quality assurance (QA) function* (**defined on slide 7**) should be set up within the Appeals Services Division where these checks would reside. The QA process should be both pre-emptive and reflective. From a pre-emptive perspective it should occur prior to claims moving into the appeal process to ensure that files are ready to proceed from policy and information completeness requirements. From a reflective perspective, the outcomes of the QA reviews should be used to inform policy and training requirements going forward. Furthermore, the QA function* should act as the gatekeeper for assessing whether cases should move into the formal appeals process, proceed straight to the WSIAT, or return to the front line for further reconsideration.

Our audit noted discrepancies in the completion of Appeals Readiness Forms (ARF) including lack of clear reasoning for dispute or the proposed resolutions sought. In addition, our jurisdictional scan identified that the majority of organizations had a timeframe in place by which an ARF (or equivalent form) had to be submitted following the initial decision. The WSIB should implement a timeline of one year following the initial decision for ARF's to be submitted, and move to an electronic form submission method with mandated fields in order to improve data quality.

The timeframes for any actions performed prior to the submission of the ARF (i.e. submitting an ITO within 30 days of the decision, submitting any supplemental information within 30 days of the ITO and completing the ADR and reconsideration process within 30 days from receipt of any supplemental information) should be included within the overall one year timeframe from the initial decision to the ARF being submitted, therefore allowing a maximum of nine months for the ARF to be submitted following the ADR, reconsideration process and communicating the decision back to the worker. We have included further context around the recommended 30 day timeframes noted above as part of the “observations and recommendations” section of this report.

(continued overleaf)

Executive Summary: Background and Overview (Cont.)

Value for Money Conclusions

Furthermore, there is an opportunity to transform the Appeals Service Division and move away from litigious terminology to terminology such as “Resolution Officer” or “Resolution Specialist”, in line with leading practices observed in our jurisdictional scan. Currently, there is a relatively siloed approach to decision making across all levels. The WSIB should encourage early communication and collaboration between front line decision makers and disputing parties, including communication with parties about possible early resolution, tying this back to the Appeals Readiness Form and the sought outcome proposed by the disputing party. Opportunities to take a more holistic approach to decision making across the case file should also be explored, in order to prevent multiple issues from being addressed through individual appeals across a case file. This should help reduce the number of cases going to appeals and ensure efficient and timely decisions.

Other opportunities identified include the use of a worker/representative portal for tracking appeal status and documentation sharing, and improving the communication around implementation plans to workplace parties. A complete list of the opportunities for improvement have been categorized under the three audit areas, and are shown on slide 8.

Our report and recommendations have been aligned with leading practices from our jurisdictional scan and leading return-to-work and rehabilitation practices. These practices focus on timely and prompt communication with injured workers, development of timely and appropriate return-to-work plans and principals and ensuring the safety and well being of workers under the relevant provisions of the Workplace Safety and Insurance Act.

****Our executive summary and main body of this report refers to the need to implement a Quality Assurance (QA) Function within ASD. We acknowledge that there are current QA processes in place within ASD through the intake and triage function as referenced on slide 8. The QA process already in its infancy in ASD should be further expanded and/or scaled-up and integrated within ASD’s existing processes, procedures and capabilities and front-line ADR. The function should be an extension of existing ASD and front-line dispute resolution processes and not an independent function. The QA function in this regard should be restricted to activities related to front-line dispute resolution and appeals services.***

Executive Summary: Process Strengths

Process Strengths

The WSIB's Dispute Resolution and Appeals Process has a number of core strengths including:

- The Dispute Resolution and Appeals process largely adheres to administrative law and procedural fairness principles.
- As a result of the impact of the COVID-19 pandemic, the Appeals Services Division (ASD) was able to efficiently transition to offering teleconferencing or videoconferencing for oral hearings in Q2 of 2020. From September 2021, the WSIB resumed in-person hearing for exceptional cases. Technology enabled hearings are very well received by the workplace parties and the representative community.
- The ASD monitors, tracks and assesses performance against key performance metrics including number of incoming appeals by year, number of resolutions completed within 6 months, average days from receipt of ARF to ASD resolution etc. Performance against these metrics are published and reported internally on a quarterly basis.
- From Jan – May 2022, 87% of ASD decisions were issued within the 30 days of assignment to the ARO or from the date of the hearing.
- From Jan – May 2022, 92% cases assigned to the ASD were resolved within six months of appeal registration, exceeding the target of 80%.
- ARO's are seasoned WSIB Case Managers, and offer a wealth of experience in case management, rehabilitation and return to work principles.
- In January 2022, the first phase of an approach to improve the intake and triage function focusing on initial entitlement for physical injury claims to ensure appeal readiness was undertaken.
- Current initiatives undertaken by the ASD to ensure that new information relevant to the issue in dispute is flagged to the front line decision making area for reconsideration. This will ensure more timely and better quality decisions as well as ensuring that appeal readiness is addressed earlier on in the appeals process.
- Current initiatives undertaken by the ASD to bundle issues under appeal. This step will ensure that AROs are able to review all the issues under appeal for a claim (or related claim) and provide a complete adjudication and resolutions.
- The ASD undertakes quarterly sessions with key stakeholders to provide updates on current initiatives undertaken.
- Throughout the COVID period, the WSIB has taken a proactive approach to improving quality and the service delivery model for the ASD, including moving to secure email to communicate.

Executive Summary: Recommendations

The following recommendations have been developed for the WSIB to enhance the Dispute Resolution and Appeals Process.

1. Dispute Resolution

- **1.1 Mediation and Early Resolution** – WSIB should establish expertise in ADR within front line decision makers and ASD to provide early resolution and reduce the volume of cases going to appeals. This will help to improve the efficiency and effectiveness of entitlement, rehabilitation and return-to-work decisions for the workplace parties.
- **1.2 Timelines for Submission and Completeness of ARF** – WSIB should implement a timeline of one year following the initial decision date for ARFs to be submitted. This will reduce protracted decision timelines, resolve outstanding issues quicker and reinforce procedural fairness.
- **1.3 Review of front line decision maker Reconsideration / Dispute Resolution Decision** – A quality assurance check of appeal readiness including the reconsideration process and decision quality should be undertaken to ensure decisions are made appropriately and in line with policy.
- **1.4 Fragmentation of the Dispute and Appeals Process** – The WSIB should continue in its efforts to consolidate all issues and matters under dispute and seek to resolve cases through taking a holistic approach to decision making across the case file.

2. Appeals Services

- **2.1 Appeals Division Processes** – The WSIB should amend the current processes of the Appeals Services Division to ensure continuous improvement, and establish a stronger linkage and appropriate feedback mechanism to policy development and training requirements.
- **2.2 Refresh of Appeals Division** – The WSIB should consider refreshing the appeals services terminology and introduce plain language that is accessible and understandable by all parties.
- **2.3 Appeal Hearing Method**– The WSIB should move the hearing method determination process from the Appeals Registrar to the Quality Assurance (QA) Function. This will begin the QA process early to ensure that cases are thoroughly vetted for appeal readiness before proceeding.
- **2.4 Online Portal for Tracking Appeals Status and Document Sharing** – The WSIB should expand the use of its current online portal for workplace parties.

3. Appeals Implementation Process

- **3.1 Return to Work (RTW)** – The WSIB should ensure that RTW decisions meet the expedited decision timeline of 30 days as required in section 120 of the WSI Act. Case management and RTW Services practice documents should be updated so that RTW decisions which are combined with other claims related issues are expedited to meet the 30 day timelines.
- **3.2 Delay in Appeals Implementation** – ARO decisions should specify the implementation requirements including supplementary information requirements. This will reduce implementation requirements uncertainty and improve the efficiency of entitlement, rehabilitation and return-to-work requirements.

4. Other Areas for Consideration

- **4.1 Representative Community** – The WSIB should work with the Law Society of Ontario and other relevant parties to establish a roster of qualified representatives from which workplace parties can draw upon. This would include establishing specific competency and training requirements for the representative community in terms of workers' compensation and work place injury.
- **4.2 Final Decisions of the WSIB** – The WSIB should exclude decisions based on standardized calculations from its internal appeals process and rely on the calculation from the initial decision maker and any quality assurance steps undertaken. In these cases, any appeals should be directly to the WSIAT.

Appendices

Scope & Approach

Scope

Scope

The scope of the VFMA is to ensure that the WSIB is providing efficient and effective administration of the dispute resolution, appeals and implementation process, and reaching fair outcomes for injured/ill persons or businesses while enabling process compliance and adhering to the principles of administrative law and natural justice.

Areas of Focus

1. Dispute Resolution;
2. Appeals; and
3. Appeals Implementation Process.

Specific topics for consideration

- Alignment of the dispute resolution and appeals process goals and objectives with WSIB's strategic goals and Workplace Safety and Insurance Act (WSIA) requirements.
- Governance of the dispute resolution and appeals process, performance management, monitoring and reporting against established service levels.
- Effectiveness, efficiency and economy of the objection, dispute resolution and reconsideration process by the front-line decision maker.
- Effectiveness, efficiency and economy of the Appeals Services Division (ASD) appeals process including the type of resolution and hearing methods.
- Effectiveness, efficiency and economy of the appeals decision implementation process and timelines by the front-line decision maker.
 - Considerations to support timely, effective and efficient decision implementation with a view to avoiding prolonged and continuous appeals by either the injured/ill person or the business.
- Effectiveness, efficiency and economy of the overall technology used to administer the dispute resolution and appeals process.

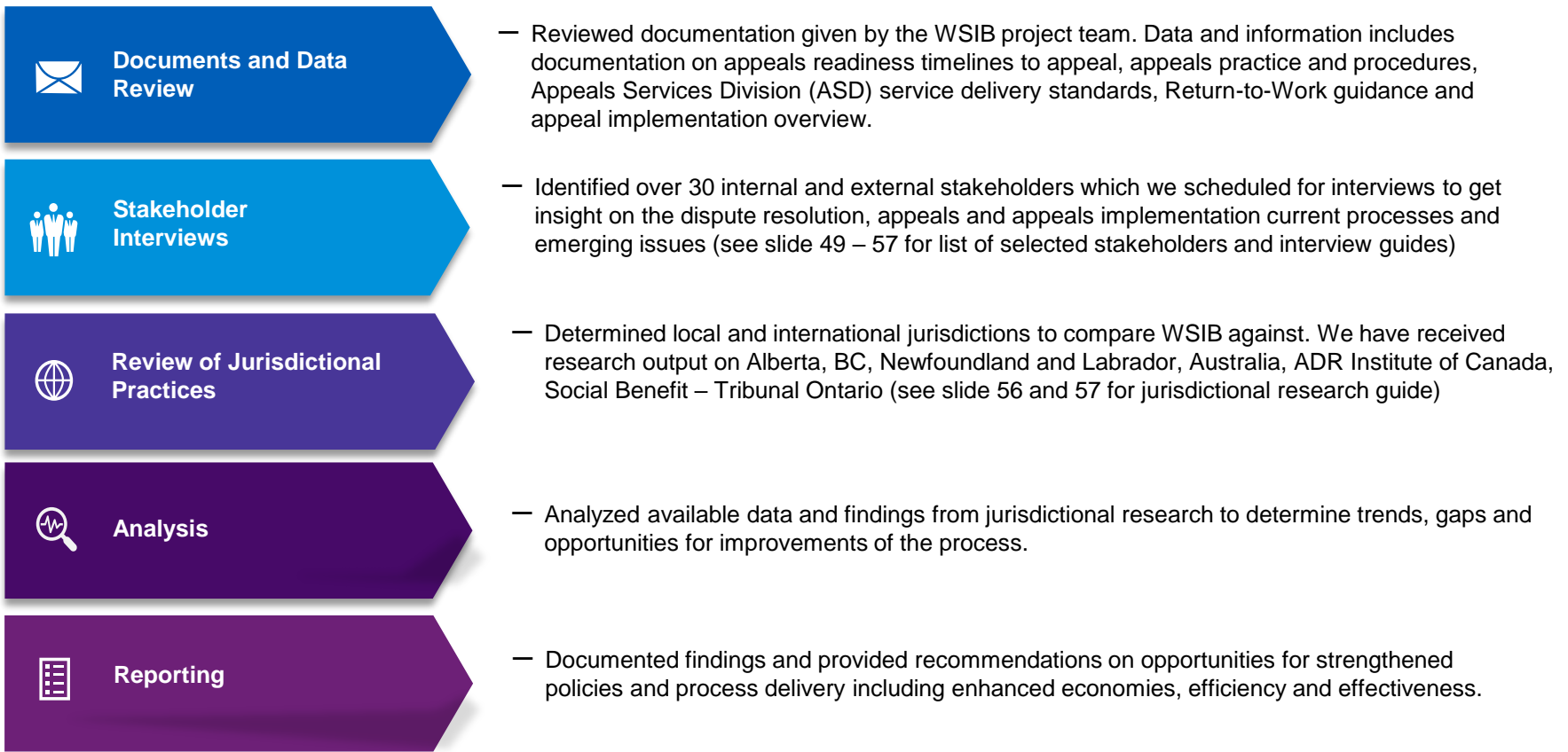
Jurisdictional Scan

The audit also included a review of the leading practices in dispute resolution and appeals processes across other workers' compensation boards, jurisdictions and other organizations both nationally and internationally.

Approach

The following approach was taken to evaluate the current state of the process and to develop recommendations on the future state for the WSIB.

To support the VFM audit, KPMG developed a Project Management Plan and worked with the WSIB to confirm milestones and key dates. At this stage, a Steering Committee, comprised of persons from the WSIB, was put in place to provide insight, oversight and foresight into the project. The VFM audit was comprised of five phases:



Further details of KPMG’s Value for Money Methodology & Approach can be found on slide 48 of this report.

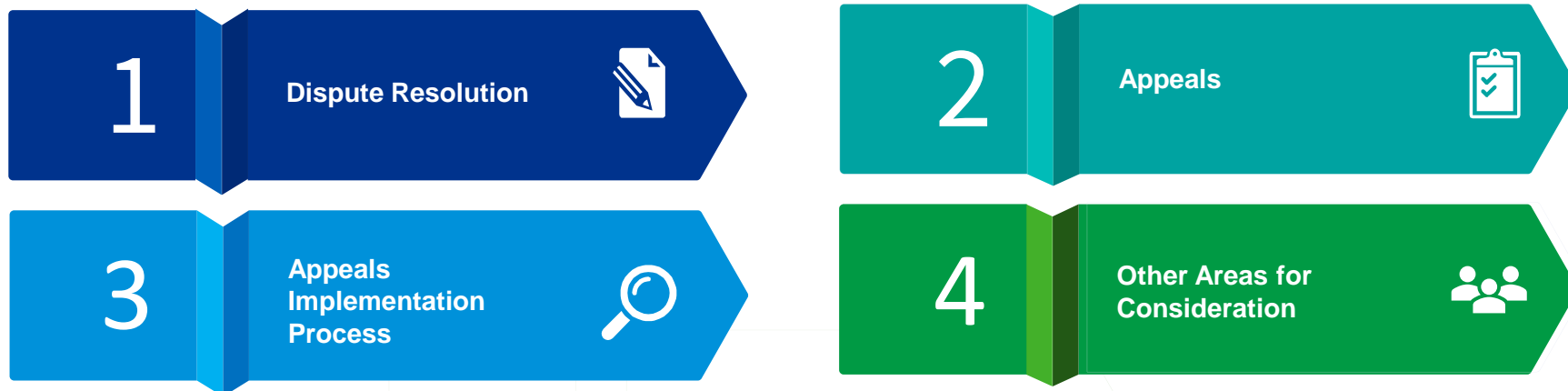
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Observations & Recommendations

Categorization and Rating of Observations and Recommendations

We have categorized our observations and recommendations to align with the scope areas of this VFMA. We have also added an “other areas for consideration” section for any other observations or recommendations which do not necessarily fit under any of the first three areas.



Each observation and recommendation has been ranked on a three point rating scale, as shown below:

High	Medium	Low
<p>Issues arising referring to important matters that are fundamental and material to value for money. The matters observed might cause a program objective not to be met, or leave a risk unmitigated and need to be addressed as a matter of urgency</p>	<p>Issues arising referring mainly to issues that have an important effect on the program’s performance but do not require immediate action. A program objective may still be met in full or in part, but the weakness represents a deficiency in the economy, efficiency or effectiveness of the program.</p>	<p>Issues arising that would, if corrected, improve performance in general but are not vital to the overall value for money of the program. These recommendations are of leading practice as opposed to weaknesses that prevent systems objectives being met.</p>

Observations & Recommendations

1.1 – Mediation and Early Resolution Capabilities of Front Line Decision Makers (High Priority)

As per the Workplace Safety and Insurance Act (WSIA), section 121, the WSIB may reconsider any decision made and confirm, amend or revoke the decision. Front line decision makers reconsider decisions when new substantive information is received to the claim file or there is a request made by either workplace party (WPPs) to review a decision through submission of an Intent to Object (ITO). As per WSIA, section 120, disputing WPPs have six months to object to the WSIB's initial decision. The Act also states that the disputing WPP must indicate in writing why the decision is incorrect / why it should be changed. This section of the Act is based on the doctrine of fairness. It is foundational to both formal and informal methods of resolving disputes in a timely and progressive manner.

Once the front line decision maker completes a review of the ITO submission, they contact the objecting party to discuss the reconsideration decision. If the original decision does not change, the objecting party receives a copy of the claim file and Appeal Readiness Form (ARF) outlining the instructions for appealing the decision to WSIB's Appeal Services Division (ASD).

Based on our discussion with stakeholders, we noted that the current reconsideration process does not support mediation and early resolution. Reconsideration of initial decisions are made based on the ITOs submitted without engaging in communication with the WPP to discuss and facilitate a mediation process. This can lead to extended timelines and delays in decision making regarding worker entitlement and return to work. It could also lead to multiple disputes being addressed by the Appeals Division.

In our jurisdictional scan, we noted that that Customer Service Department (CSD) at WCB Alberta has implemented a process of open dialogue with the workplace parties through the reconsideration process. The CSD use oral communication as an opportunity to facilitate mediation and early resolution. Other jurisdictions interviewed who incorporated mediation and arbitration within their existing processes include Tribunals Ontario (Social Benefits Tribunal) and the Office of Industrial Relations – Queensland, Australia.

Recommendation

The WSIB should establish expertise in alternative dispute resolution (ADR) within the Appeal Services Division and front line decision makers to provide early resolution and reduce the volume of cases going to appeals. This will help to improve the efficiency and effectiveness of entitlement, rehabilitation and return-to-work decisions for the workplace parties. Early resolution is aligned with leading rehabilitation and return to work practices. **ADR processes should only commence once the WPP has clearly outlined the reasons related to the decision they are objecting to, why it should be changed, and the proposed remedy.** As such, front line decision makers should ensure that a written ITO is received from disputing WPP's and that the ITO clearly outlines the reason for disputing the WSIB's initial decision.

ADR training and accreditation should be provided to front line decision makers and AROs with requirements for continuing professional education. ADR training should be extended to front line decision makers and ARO's to ensure that ADR concepts and processes are understood by all parties. The ADR process should be supported by clear workflows, submission of the ITO and timelines for other supplemental information, and processes and timelines for scheduling ADR sessions with WPP's.

Observations & Recommendations

1.1 – Mediation and Early Resolution Capabilities of Front Line Decision Makers (Cont.) (High Priority)

Recommendation (Cont.)

WSIB could consider exploring incentive/disincentive schemes to resolve disputes early through ADR and reduce the number of cases going through the costly and time consuming appeals process. File readiness and information completeness are integral to a highly efficient and effective dispute resolution and appeals process.

Reviews of overall dispute resolution and decision/reconsideration effectiveness should be assessed through a quality assurance function* (*defined on slide 7*). This QA function should act as the gatekeeper for assessing whether cases should move into the formal appeals process, proceed straight to the WSIAT, or return to the front line for further reconsideration.

The WSIB should work with the Ontario government in order to consider making legislative changes to existing timelines and implement a 30 day timeframe to submit the ITO, 30 days to submit any supplemental information and 30 days to complete the ADR and reconsideration process and communicate the decision back to the worker. This would align with timelines observed in our jurisdictional scan.

As part of this, the WSIB may wish to update the ASD practices and procedures document to extend these timelines based on exceptional circumstances, which is in line with practices undertaken in our jurisdictional scan. Reconsideration should be subject to a quality assurance review before a decision is communicated.

These changes will help reinforce the progressive dispute resolution principals which are foundational to the WSIA.

Management Response

The WSIB agrees with the recommendations. WSIB is committed to ensuring efficient and effective resolutions to support timely entitlement, rehabilitation and return to work decisions for the workplace parties. WSIB will explore opportunities to introduce ADR within appropriate cohorts of front line decision makers and AROs. Efforts will be made to establish longer-term strategic relationships with external centres of excellence to support training and accreditation for continuous professional education.

WSIB will review the current approach to front line reconsiderations. Enhanced adherence to the requirements of Section 120 of the WSIA will be applied such that workplace parties must:

- a. clearly outline the reasons for their objection and explain why the decision should be changed;
- b. provide any necessary supporting documentary evidence, and;
- c. describe their proposed remedy.

Observations & Recommendations

1.1 – Mediation and Early Resolution Capabilities of Front Line Decision Makers (Cont.) (High Priority)

Management Response (Cont.)

Each of these criteria must be satisfied prior to starting the ADR process in the front line decision making area.

WSIB will expand its existing processes, procedures, capabilities and resources within ASD and front line dispute resolution to assess, evaluate and review referrals from the front line decision making area to ensure decisions standards are met and the issues in dispute are appeal ready. The results of these reviews, in conjunction with reviews of ARO decisions and decisions from the Workplace Safety and Insurance Appeals Tribunal (WSIAT), will inform a continuous improvement loop that aligns and integrates the agendas related to policy development and updates as well as skills training for decision makers.

Related to skills training, the Learning & Development branch is currently working with a vendor to redesign the Eligibility Adjudicator program for new hires (starting with Q1 2023 trainees) to focus on the needs of the business, staff and customers. Training to address knowledge/skill gaps (hard and soft) across the customer facing roles is ultimately the goal through a recommended redesign of their six core training programs.

The WSIB will review the proposal for legislative changes with the Ministry of Labour, Immigration, Training and Skills Development. Ultimately, the Government of Ontario has jurisdiction over changes to the *Workplace Safety and Insurance Act (WSIA)*.

In the interim, WSIB will also consider policy changes using the authority provided under Sections 131 and 159 of the WSIA.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; VP, Policy and Consultation Services; Senior Director, Appeals Services Division

Secondary responsible party: Senior Director, Quality Programs (Learning & Development)

Implementation: Q2 2023 through to Q1 2025

Observations & Recommendations

1.2 – Timelines for Submission and Completeness of Appeal Readiness Form (ARF) (High Priority)

The WSIB's ASD practices and procedures document states that the disputing WPP has 6 months to submit an Intent to Object (ITO) from the date of decision or 30 days for Return-to-Work decisions. However, as per the ASD practices and procedures document, the disputing party does not need to submit a written ITO. Verbal communication of an intent to dispute a decision is considered sufficient.

Currently there are no defined timelines for the submission of the completed Appeal Readiness Form (ARF) by the disputing WPP. Based on discussion with internal stakeholders, we noted that some ARF's are submitted 4-5 years after the initial decision. Such delays do not support leading practice rehabilitation and return-to-work principles.

WPPs are responsible for completing and submitting the ARF to the WSIB. We noted discrepancies in the completeness of the ARF's by the disputing party including clearly outlining the reason / rationale for disputing a decision made by the WSIB. This does not comply with the requirements in section 120 of the WSIA, which states that the disputing WPP must indicate in writing why the decision is incorrect / why it should be changed. As a result, incremental time and effort is required by WSIB front line decision makers and Appeals Resolution Officers (AROs) to follow-up with the disputing party to understand the cause of dispute, the proposed resolution from the WPP, and request additional supporting documentation. However, this communication and follow-up is not undertaken effectively or consistently across all cases.

In our jurisdictional scan, the majority of organizations surveyed had a timeframe in place whereby an ARF (or equivalent form of documentation) had to be provided following the initial decision. For example, WCB Alberta and BC had timeframes of 1 year and 90 days from the date of the decision respectively.

Recommendation

The WSIB should implement a timeline of one year following the initial decision date for ARFs to be submitted. This would align with practices observed during our jurisdictional scan, and will reduce protracted decision timelines, resolve outstanding issues quicker and reinforce procedural fairness. **WPP's should be mandated to include their proposed resolution on the ARF, which will help define the resolution method, the scope of the dispute and the necessary expertise and documentation required.**

As part of this, the WSIB may wish to extend these timelines based on exceptional circumstances.

In order to improve the quality of the ARF submission, **the WSIB should move to an electronic form submission method which only allows forms with complete data fields to be submitted.** This should help prevent the additional time and effort spent by the WSIB in following up with workers. The form should become the foundation for the workflow and timeline management of the decision.

Observations & Recommendations

1.2 – Timelines for Submission and Completeness of Appeal Readiness Form (ARF) (Cont.) (High Priority)

Management Response

The WSIB agrees with the observations to set a time limit of one year from the date of the decision for submission of a duly completed Appeal Readiness Form (ARF). Timely and expeditious resolution of disputes is imperative for people with claims if they are to benefit from leading rehabilitation and return to work practices. In addition, the timely resolution of disputes aligns with current legislative requirements related to cooperation, return to work and reemployment. Businesses will similarly benefit in relation to their own staffing and business operations. WSIB's ability to adopt the recommendation to implement a time limit of one (1) year following the initial decision date is contingent on legislative change as outlined in the Management Response in 1.1. In the interim, WSIB will consider policy solutions as outlined in 1.1.

The current ARF does require the objecting party to identify the issue in dispute, the reasons for the appeal and information regarding the type and duration of benefits/services sought. WSIB agrees there is a need for a more disciplined approach to ensure the objecting workplace party clearly outlines the issue in dispute, the reasons why the decision is incorrect or ought to be changed, any additional relevant information to be considered, and their proposed resolution. Aligned with the management response in 1.1, there is an opportunity to build on the current intake and triage process or explore other options within to introduce more discipline to the process.

WSIB will explore opportunities through IT to move to an electronic forms submission method, contingent on appropriate enterprise prioritization and allocation of funding.

Primary responsible party: VP, Policy and Consultation Services; VPs, Case Management; VP, Specialized Claims and Recovery Services; Senior Director, Appeals Services Division

Secondary responsible party: VP, Strategy; VP, IT Application Management Services

Implementation: Q3 2023 through to Q1 2025

Observations & Recommendations

1.3 – Review of front line decision maker Reconsideration / Dispute Resolution Decision (High Priority)

Once the front line decision maker completes a review of the Intent to Object (ITO) submission, they contact the objecting party to discuss the reconsideration decision. If the original decision does not change, the objecting party receives a copy of the claim file and Appeal Readiness Form (ARF) outlining the instructions for appealing the decision to WSIB's Appeal Services Division (ASD).

Currently, front line decision makers receive ARF's from the Objection Intake Team (OIT) and review these to ensure that timelines to object are met and new information has been reconsidered through a fulsome review. Once front line decision makers complete their review of the file, they confirm appeal readiness in the 'ARF Manager Review Memo' received from OIT.

However, based on discussion with stakeholders, we noted that the review process and assessing the completeness of the ARF is incomplete and ineffective. The current process does not demonstrate strong quality assurance practices. As a result, the ASD are assigned with incomplete ARF's which include incorrect jurisdictional issues, incomplete reconsiderations, and lacking decision quality. This in turn leads to incremental time and effort spent by the AROs to follow-up on outstanding information / documentation. We reviewed the decisions overturned by the ASD and noted that 30% of the decisions by front line decision makers were overturned by the ASD in 2021.

In our jurisdictional scan, we noted that at Workers' Compensation Board - Alberta, all reconsideration decisions by the Customer Services Department (CSD) are reviewed by supervisors prior to being finalized and may also include a manager review. Further, as part of the Quality Assurance process, the QA team review reconsideration decisions monthly to ensure compliance with practices and procedures. Results from the QA process feeds back into the QA standards, all facets of policy review, and training.

Recommendation

A quality assurance check of appeal readiness including the reconsideration process and decision quality should be undertaken to ensure decisions are made appropriately and in line with policy.

This quality assurance check should be undertaken by a seasoned, independent officer based on an appropriate sampling methodology and risk-based criteria. WSIB should consider historical data, previously rejected appeals and the complexity of cases when determining what type and what volume of decisions should be subject to a quality assurance check.

The QA function should act as the gatekeeper for assessing whether cases should move in to the formal appeals process, proceed straight to the WSIAT, or return to the front line for further reconsideration.

A Quality Assurance Function* (*defined on slide 7) should be established within ASD where these quality assurance checks would reside both for the dispute resolution and appeals processes. The QA function should work in a highly collaborative manner with front line decision makers and ARO's to continuously improve the dispute resolution and appeals processes. QA reviews should inform policy and training requirements going forward.

Observations & Recommendations

1.3 – Review of front line decision maker Reconsideration / Dispute Resolution Decision (Cont.) (High Priority)

Management Response

The WSIB agrees with the observations.

We are pleased this recommendation aligns with an identified Process Strength and an initiative already underway in the ASD. This mechanism could build on ASD's current intake and triage initiative to confirm jurisdiction, evidence of appropriate reconsideration and decision standards prior to an appeal being formally registered.

As mentioned in Management Response 1.1, WSIB will expand its existing processes, procedures, capabilities and resources within ASD and front line dispute resolution to assess, evaluate and review referrals from the front line decision making area to ensure decision standards are met and the issues in dispute are appeal ready. The results of any such reviews, in conjunction with reviews of ARO decisions and decisions from the Workplace Safety and Insurance Appeals Tribunal (WSIAT), will inform a continuous improvement loop that aligns and integrates the agendas related to policy development and updates as well as skills training for decision makers.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; Senior Director, Appeals Services Division

Secondary responsible party: VP, Policy and Consultation Services; Senior Director, Quality Programs (Learning & Development)

Implementation: Q1 2023 through to Q2 2024

Observations & Recommendations

1.4 – Fragmentation of the Dispute and Appeals Process (Medium Priority)

Based on our discussion with internal stakeholders and review of the ASD practices and procedures document, we noted that there is no guidance around the scope and specific issue in dispute. Disputing workplace parties may object to a specific issue and depending on the outcome of the decision by WSIB, they may pursue a separate issue.

For example, if an appeal regarding a worker’s level of physical impairment is denied, the representative may then pursue entitlement for psych traumatic disability and if that appeal is denied as well, they may pursue entitlement to chronic pain disability. This leads to fragmentation in case review and does not allow holistic decision making.

Currently, there is an initiative being undertaken by the ASD to bundle issues under appeal. This step will ensure that AROs are able to review all the issues under appeal for a claim (or related claim) and provide a complete adjudication and resolutions.

Recommendation

In line with leading rehabilitation and return to work practices and timelines, the WSIB should consolidate all issues and matters under dispute, including future considerations which may arise from decisions made, and seek to resolve cases through a holistic approach to decision making for all matters under dispute affecting the individual. Decision making should be tied back to the ARF and the proposed remedy sought by the disputing party. The WPP and the WSIB should work to ensure that all issues under dispute are tabled, supported by the necessary information requirements and timelines are established to resolve all matters in a holistic and efficient manner. This will reinforce and align with the spirit of rehabilitating and returning injured workers to the workplace in a timely and healthy fashion. **The case management system should be enhanced to support information and decision making requirements for all matters in dispute affecting the individual.**

Current legislative, policy and procedural barriers to ensure a holistic approach is taken should be re-examined by the WSIB. This should also include assessing jurisdiction/responsibility of issues under appeal for claims at the WSIAT. This should help reduce the number of appeals going forward and ensure efficient, effective and timely decisions regarding entitlement, rehabilitation and return-to-work.

As part of this, there is an opportunity to fully leverage the ADR process as noted under recommendation 1.1.

Observations & Recommendations

1.4 – Fragmentation of the Dispute and Appeals Process (Cont.) (Medium Priority)

Management Response

The WSIB agrees with the recommendation and is pleased the ASD's current initiative regarding the bundling of issues is noted as a Process Strength (see slide 8).

WSIB will continue to focus on the holistic review of all issues in dispute for an individual. As outlined in the Management Response to 1.2, greater clarity and discipline by the workplace parties in describing the reasons for the objection, ensuring that all relevant and necessary documentary evidence has been provided and the remedy sought will:

- a. allow for more effective and comprehensive reconsiderations in the front line decision making area;
- b. allow for the applicable and timely use of ADR, subject to applicable criteria; and,
- c. where the reconsideration/ADR does not result in the desired change, position the issue for further review by ASD (formal appeal).

Through the ASD, efforts to promote holistic resolutions will ensure final decisions:

- a. are tied back to the issues identified on the ARF
- b. bundle issues in the same or related claims for review by one ARO (based on the issues identified on the ARF and the remedy sought);
- c. address the proposed remedy sought, where appropriate; and,
- d. ensure related issues that arise and/or flow from the resolution are decided, as appropriate. (Example: The presenting issue to the ASD is the denial of initial entitlement. The ASD resolution would address the issue of initial entitlement and, if allowed, proceed to rule on entitlement to loss of earnings benefits and other benefits and services, as appropriate, based on the available information).

WSIB will also explore opportunities through IT to enhance the case management system to provide an injured/ill person-centric view of all possible issues in dispute (vis-a-vis intent to object forms) across all claims in the interest of “whole-person” holistic resolutions (contingent on appropriate enterprise prioritization and allocation of funding).

Observations & Recommendations

1.4 – Fragmentation of the Dispute and Appeals Process (Cont.) (Medium Priority)

Management Response (Cont.)

WSIB will examine whether current legislation, policy and procedures can be leveraged or require changes to enable the holistic consideration of disputes.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; Senior Director, Appeals Services Division

Secondary responsible party: VP, Policy and Consultation Services; VP, IT Application Management Services

Implementation: Q4 2023 through to Q4 2024

Observations & Recommendations

2.1 – Appeals Division Processes (High Priority)

There are inefficiencies in the current front end quality assurance processes within the WSIB. While there is a process in place, this process is not robust and does not align with strong and consistent quality assurance practices. This can result in a number of erroneous cases going to the Appeals Service Division (ASD) which: 1) may be resolvable at the front line; 2) lack sufficient information to support an effective and timely review by an ARO; 3) may be more effectively resolved through alternative dispute resolution; and 4) may be bundled with other outstanding issues that are also be appealed. Cases that are not “appeal ready” cause delays and do not meet the needs of the WPPs in terms of client service, timely resolution and effective rehabilitation and return-to-work. In addition, there is no disciplined process to establish a strong linkage between the decisions made by the ASD and the WSIAT, and the resulting impact on policy development and training requirements. Furthermore, there is currently no specialization of ARO’s in areas such as mental health.

Recommendation

The WSIB should amend the current processes of the Appeals Services Division to ensure continuous improvement, and establish a stronger linkage and appropriate feedback mechanism to policy development and training requirements.

This new structure should include a robust quality assurance program that will reinforce the importance of the appeals function within the WSIB and the representative community. **A quality assurance (QA) function* (defined on slide 7) should be set up within the Appeals Services Division where these checks would reside.** The QA process should be both pre-emptive and reflective. From a pre-emptive perspective, it should occur prior to claims moving into the appeal process to ensure that files are ready to proceed from policy and information completeness requirements. From a reflective perspective the outcomes of the QA reviews, both from ARO’s and the WSIAT, should be used to inform policy and training requirements going forward.

The new structure and supporting processes should encourage greater and more timely collaboration in how ARO and Tribunal decisions may impact policy and training. This would align with leading practices observed during our jurisdictional scan including the close linkage to policy and training departments at WCB Alberta and Queensland (Office of Industrial Relations), and the structure of the policy division and internal review divisions at Workplace NL.

Linkages to WSIB training and policy development functions should be strengthened and reinforced through the findings and recommendations of the quality assurance function.

As part of its quality assurance review process, the WSIB over time can determine areas to establish ARO specialization.

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2. Appeals

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Observations & Recommendations

2.1 – Appeals Division Processes (Cont.) (High Priority)

Management Response

The WSIB agrees with the recommendations.

The primary objective being to provide customers with more options in resolution mechanisms, faster and more streamlined service with efficiency and effectiveness to delivering outcomes (aligning to the principles of return to work and recovery). This recommendation aligns, in part, with the identified Process Strengths (see slide 8) about ASD's approach to improving the intake and triage function to ensure appeal readiness and decision standards.

WSIB is committed to reviewing ASD's processes and functions to ensure appropriate mechanisms for continuous improvement that inform policy development and updates as well as skills training for WSIB staff. See the Management Response to Recommendation 1.1.

The results of any such reviews and any resulting mechanisms that identify trends, in conjunction with reviews of ARO decisions and decisions from the Workplace Safety and Insurance Appeals Tribunal (WSIAT), will create and inform a continuous improvement loop that aligns and integrates the agendas related to policy development and updates as well as skills training for decision makers.

WSIB agrees the outcome of the above may point to the need for ARO specialization in certain areas.

Primary responsible party: Senior Director, Appeals Services Division

Secondary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services

Implementation: Q4 2023 through to Q2 2024

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2. Appeals

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Observations & Recommendations

2.2 – Refresh of the Appeals Services Division (Medium Priority)

The WSIA creates a two level appeal process in Ontario. WSIB's Appeals Services Division (ASD) is the first level of appeal and is responsible for rendering the final decision of the WSIB. Appeals are resolved by Appeals Resolution Officers (AROs) who may conduct reviews through either a hearing in writing or through an oral hearing, subject to the criteria outlined in the ASD practices and procedures document.

Based on discussions with stakeholders, we noted that the decision making process by ARO's is time consuming and does not consider the principle of alternative dispute resolution (ADR) or early resolution / mediation while reviewing an appeals case. Furthermore, we also noted that ARO's are not trained in ADR in order to facilitate a more efficient and timely resolution of dispute through mediation and arbitration, wherever possible.

We also observed a siloed approach to decision making at each level (i.e. front line decision maker, ARO and Tribunal). There is limited interaction between each level of decision making during the reconsideration and appeals process.

In our jurisdictional scan, we noted that Resolution Specialists at WCB Alberta have ongoing communication with both the disputing parties and the Customer Services Division (CSD) to ensure all case facts have been considered and early resolution / mediation is practiced. Furthermore all resolution specialists are trained in ADR. At Workplace NL, Internal Review Specialists work closely with the external review board for all cases reviewed by the Board.

Recommendation

In line with leading practices, the WSIB should consider refreshing the appeals services terminology and introduce plain language that is accessible and understandable. Terms such as “Appeals Officer“ should be reviewed with the aim of moving towards terms such as Resolution Officer or Resolution Specialist.

The principles of timely rehabilitation and return-to-work should be supported through this exercise, and WSIB should ensure effective change management and communication processes are in place.

In order to overcome the siloed decision making behavior, the ADR process should encourage early communication, consultation and collaboration with the ARO, front line decision maker, and disputing parties.

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2. Appeals

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Observations & Recommendations

2.2 – Refresh of the Appeals Services Division (Cont.) (Medium Priority)

Management Response

WSIB agrees with the observation. The WSIB is committed to continually streamlining ASD's processes and services to:

- a. improve and simplify overall accessibility, including access to justice;
- b. provide personalized service and an enhanced customer experience;
- c. provide quality services in an accessible, convenient and timely manner; and,
- d. ensure decisions are fair, transparent, evidence-based and based on a holistic approach that promotes decision finality.

The objective is to provide customers with more options in resolution mechanisms, faster, more streamlined service, and efficiency and effectiveness in delivering decision outcomes. WSIB will review existing processes and functions to ensure they are aligned with the above principles and support refreshed terminology that is plain, accessible and easily understood, where possible.

WSIB supports the need for enhanced communication between the workplace parties and front-line decision makers earlier in the dispute resolution process using ADR. The enhanced communication during the dispute resolution/ADR phase requires a clear beginning and end. As outlined in Recommendation 1.1 and WSIB's Management Response, it is anticipated the combination of the following will result in a more accessible, responsive and efficient dispute resolution process:

- a. enhanced earlier communication between the front-line decision makers and workplace parties;
- b. the application of ADR;
- c. an enhanced requirement that the workplace parties clearly outline the reasons for their objection and explain why the decision should be changed; provide any necessary supporting documentary evidence; and, describe their proposed remedy.

Where the ADR approach is not successful and a formal appeal is required, the level of communication between the workplace parties and an ARO should be minimal and based on the available information, without need for an oral hearing noting the interactions conducted during the dispute resolution phase. The exception would occur in those cases where an oral hearing or mediation/arbitration is required based on the issues in dispute.

Primary responsible party: Senior Director, Appeals Services Division

Implementation: Q4 2023 through to Q2 2024

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2. Appeals

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Observations & Recommendations

2.3 – Appeal Hearing Method (Medium Priority)

The ASD has two different ways of making appeal decisions: 1) a hearing in writing; or 2) an oral hearing, which may be in person via teleconference or videoconference. The disputing workplace party can select the type of hearing in the Appeal Readiness Form or Respondent Form. The Appeals Registrar reviews a set of guidelines included in the ASD practices and procedures document to select the type of hearing for each individual appeal.

Based on discussion with internal and external stakeholders, we noted that the majority of the hearings are written (based on the defined guidelines), which do not provide the opportunity for employees or employers to provide their testimony.

In our jurisdictional scan, we noted organizations including WCB Alberta and the Office of Industrial Relations in Queensland, Australia allow disputing parties to select their choice of hearings during the resolution process.

Recommendation

The WSIB should move the hearing method determination process from the Appeals Registrar to the Quality Assurance (QA) Function* (defined on slide 7). This QA process will help ensure that cases are thoroughly vetted for appeal readiness before proceeding.

Moving the hearing method determination to the Quality Assurance Function (see recommendation 1.3) will provide early detection of cases that may not be appeal ready or would be better resolved through further mediation and arbitration. **Criteria for in person / virtual hearings should be implemented through consideration of factors such as geographical location, suitability and appropriateness of technology, and worker accessibility.**

Management Response

WSIB agrees with the recommendations. This recommendation aligns, in part, with the identified Process Strengths (see slide 8) about ASD's approach to improving the intake and triage function to ensure appeal readiness and decision standards. Further to the Management Response to Recommendation 1.3, WSIB will also explore moving the hearing method determination (along with introduction of other streaming/readiness criteria) to an expanded function/capability in ASD earlier in the process and before proceeding with a formal appeal. The review will ensure decision standards have been met and appeal readiness confirmed.

It is anticipated there will be less need for oral hearings, either in-person or virtually, given the efforts around earlier communication and possible resolutions between the front line decision makers and the workplace parties.

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2. Appeals

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Observations & Recommendations

2.3 – Appeal Hearing Method (Cont.) (Medium Priority)

Management Response (Cont.)

WSIB will also review the criteria for in-person/virtual hearings and update the Appeals Services Division Practices and Procedures document accordingly in order to remain compliant with provincial accessibility legislation and jurisprudence.

Primary responsible party: Senior Director, Appeals Services Division

Secondary responsible party: VP, Policy and Consultation Services

Implementation: Q4 2023 through to Q4 2024

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2. Appeals

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Observations & Recommendations

2.4 – Online Portal for Tracking Appeals Status and Document Sharing (Medium Priority)

While the WSIB currently have a portal for injured persons to track the status of their appeal (including progress of their appeal, expected timing and next steps), this is only available to injured workers, and not the representative community. Furthermore, if representatives or workplace parties need to interact /communicate with the ASD, they need to call the WSIB directly. Currently there is no online portal that allows parties to interact with the ASD including scheduling oral hearing dates.

Our jurisdictional scan noted that WorkSafe BC and the State Insurance Regulatory Authority in Australia use an online portal that WPP's and representatives can use to track the status of reviews. Other jurisdiction including Workplace NL (Newfoundland) and Queensland Office of Industrial Relations are planning to/interested in transitioning to an online portal for workplace parties to assist in filing documents, establishing timelines and decision gates through the decision process.

Recommendation

The WSIB should expand the use of the online portal for employers and representatives.

This will assist in filing documents, establishing timelines and decision gates through the decision process and provide workplace parties and representatives and ARO's with improved case management including upcoming meetings and information requirements. The workflow system should reinforce the requirements for WPP and representative preparation for upcoming hearings, which should reduce the number of requests for rescheduling or postponing of hearings or ADR conferences.

The case management system should be enhanced to support information and decision making requirements for all matters in dispute affecting the individual.

Management Response

The WSIB agrees with the recommendation. Efforts are currently underway to expand the use of the on-line portal for employers. WSIB will also explore opportunities to allow access for representatives, contingent on appropriate enterprise prioritization and allocation of funding.

WSIB will also explore opportunities through IT to enhance the case management system to provide an injured/ill person-centric view of all intents to object across all claims in the interest of holistic resolutions (contingent on appropriate enterprise prioritization and allocation of funding).

Primary responsible party: VP, IT Application Management Services

Secondary responsible party: Senior Director, Appeals Services Division

Implementation: Q2 2023 through to Q4 2024

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2. Appeals

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Observations & Recommendations

3.1 – Return to Work (RTW) (High Priority)

The disputing workplace party has 30 days to object to a WSIB decision related to return to work (RTW). The WSIB has an expedited process to review return to work disputes that are managed through appeals.

We noted that RTW appeals are often combined with other claims related issues that make it challenging for the workers appeal to be reviewed through WSIB's expedited appeals process. Furthermore, the current case management and RTW service practice documents do not clearly outline the responsibility between case management and RTW specialists regarding the worker's job suitability. As per the current documents, case management is responsible for determining suitability calls related to level of fitness and RTW specialist (or case management) are responsible for determining suitable occupations (SO).

Recommendation

The WSIB should ensure that RTW decisions meet the expedited decision timeline of 30 days as required in section 120 of the WSIA. Case management and RTW Services practice documents should be updated so that RTW decisions which are combined with other claims related issues are expedited to meet the 30 day timelines.

The WSIB should maintain its investment in RTW specialization within the ASD to improve the efficiency and effectiveness of decision making, and use ADR to facilitate improved and more timely decisions. This will further reinforce the highly collaborative approach currently used to help injured workers get back to work.

The case management system should be enhanced to provide improved decision making and more efficient case file tracking so that return to work performance metrics are being met consistently.

Management Response

The WSIB agrees with the observations. There is a need to leverage and prioritize the 30-day time limit for return to work issues to improve the efficiency and effectiveness of decision making and related outcomes aligned with return to work and recovery principles and use ADR to facilitate improved and more timely outcomes. WSIB will explore opportunities to leverage the 30-day time limit and expedited appeal process for any return to work issues and for those return to work issues that are related to other issues in dispute. Currently, return to work issues that are related to other issues in dispute are provided with a six-month time limit to appeal and do not benefit from access to an expedited appeal process. As part of this review, WSIB will also continue to support RTW specialization within ASD with a focus on ADR to improve the efficiency and effectiveness of decision making.

Return to work issues are the priority and shall be expedited in any claim regardless of whether they exist on their own or are bundled with other issues.

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3. Appeals Implementation Process

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Observations & Recommendations

3.1 – Return to Work (RTW) (Cont.) (High Priority)

Management Response (Cont.)

As outlined in the response to 1.2, timely and expeditious resolution of disputes is imperative for people with claims if they are to benefit from leading rehabilitation and return to work practices. In addition, the timely resolution of disputes aligns with current legislative requirements related to cooperation, return to work and reemployment. Businesses will similarly benefit in relation to their own staffing and business operations.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; Senior Director, Appeals Services Division

Secondary responsible party: VP, Policy and Consultation Services

Implementation: Q4 2023 through to Q1 2024

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3. Appeals Implementation Process

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Observations & Recommendations

3.2 – Delay in Appeals Implementation (Medium Priority)

AROs create and assign an Appeals Implementation activity to Case Managers (Appeals Implementation Team) in the system. Case Managers have 30 days to implement a decision made by the ASD or the WSIAT. Decision implementation timelines are dependent on the availability of required information on the claim file. If the Case Manager needs to make further inquiries and/or request information from the workplace parties, the timeline for implementation may be longer than 30 days.

Based on discussion with stakeholders we noted that ARO decisions may lack information and instructions on outstanding information required to implement a decision. Furthermore, we noted delays in payments to workplace parties up to 30 days due to insufficient staffing in the Payment Services Division.

Recommendation

ARO decisions should specify the implementation requirements including supplementary information requirements. This will reduce implementation requirement uncertainty and improve the efficiency of entitlement, rehabilitation and return-to-work requirements.

Communication on the implementation plan should be provided to the WPP at the same time the decision is, and be made available on the portal. **The implementation plan should be reconciled to the ARF and the proposed remedial action suggested by the WPP**, as per recommendation 1.2.

The WSIB should reinforce the 30 day timelines for appeal implementation and ensure this is measured across the organization.

Management Response

The WSIB agrees with the recommendation. As an interim measure, WSIB will review the manner in which ARO decisions are written with a view to including specific implementation requirements, where possible, along with supplementary information requirements. In addition, the direction on issue/entitlements or benefits flowing from the decision or implementation requirements will be linked back to the remedy initially sought by the objecting party, where identified. As part of the process and function review, efforts will be made to align the ARO decision implementation plan with the ARF and proposed remedial action.

WSIB is also committed to enforcing and measuring the 30-day timeline for appeal implementation across the organization, subject to the availability of information required to implement the appeal as outlined in Recommendations 1.1 and 3.2.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; Senior Director, Appeals Services Division

Implementation: Q3 2023 through to Q1 2024

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3. Appeals Implementation Process

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Observations & Recommendations

4.1 – Representative Community (Medium Priority)

Workplace Safety and Injury is complex and the knowledge base is constantly changing. The WPP's are better served by a highly informed and up-to-date representative community in terms of emerging health and safety leading practices and research. Therefore the need for competency and professional development requirements of the representative community in order to arrive at timely and well informed decisions through the appeals process is imperative.

The range and level of expertise of the representative community in terms of workers' compensation and workplace injury is highly variable. This can lead to time delays, unnecessary disputes and request for appeals which have a low probability of success. In order to address this, other jurisdictions have established competency requirements, professional development and a roster of qualified representatives available to the WPP for dispute resolution and appeals. Compensation is tied to level of effort throughout the dispute resolution or appeals process timeline.

Recommendation

The WSIB should work with the Law Society of Ontario and other relevant parties to establish a list of qualified representatives from which workplace parties can draw upon. This would include exploring the potential for specific competency and training requirements for the representative community in terms of workers' compensation and work place injury with the Law Society.

Based on the above, the WSIB should establish a roster of qualified representatives from which the WPP's can draw upon. The system of compensation for the representative community should be examined and tied to their level of effort throughout the decision process. The fee structure should incent the timely and early resolution of decisions throughout the appeals process.

We acknowledge that through implementation of the recommendations included in this report, the use of worker representatives may decrease in the future; in particular recommendations to resolve decisions through ADR and implementation of a Quality Assurance Function* (*defined on slide 7). The WSIB should monitor the use of worker representatives in the future and work with the relevant parties to establish a roster of qualified representatives from which workplace parties can draw upon.

Management Response

The WSIB agrees with the observations. The regulation of legal representatives (e.g. lawyers, paralegals and those exempt from the Law Society requirements - i.e. union representative) falls under the jurisdiction of the Law Society of Ontario. WSIB has no jurisdiction over such matters and no legal authority to create, administer and/or maintain the proposed roster. WSIB has no involvement in the establishment of fees and or payment methods between people with claims and representatives or businesses and representatives. The use of representatives by either people with claims or business can occur at any point in the life of a claim. In some instances, representatives are employed from the outset; in other cases, representatives are employed during the dispute resolution or appeals phase.

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4. Other Areas for Consideration

Observations & Recommendations

4.1 – Representative Community (Cont.) (Medium Priority)

Management Response (Cont.)

Additionally, the recommendations identified in this audit and which WSIB has agreed to implement are aimed at creating an accessible, barrier-free, streamlined, efficient and non-bureaucratic approach to dispute resolution whereby injured / ill parties and/or businesses feel welcome and comfortable in navigating the process without the need for representation. With this caveat, WSIB will make reasonable efforts to engage with the Law Society of Ontario to review the audit recommendation.

Primary responsible party: VP, Strategy

Secondary responsible party: Senior Director, Appeals Services Division

Implementation: Q1 2023 through to Q1 2025

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4. Other Areas for Consideration

Observations & Recommendations

4.2 – Final Decisions of the WSIB (Medium Priority)

In certain instances (e.g. non-economic loss (NEL)), decisions made by the WSIB are subject to a standardized calculation. The calculation is performed by a NEL specialist. Workers have the right to appeal these decisions despite a standardized calculation. This results in unnecessary delays since the ARO relies on the calculation by the initial decision maker. The initial entitlement calculation and the appeal review are effectively redundant.

Recommendation

The WSIB should exclude decisions based on standardized calculations from its internal appeals process and rely on the calculation from the initial decision maker and any quality assurance steps undertaken (e.g. during the reconsideration process, if required). If the WPP still wish to appeal these decisions then they should be instructed to appeal directly to the WSIAT.

Along with NEL decisions, the WSIB should assess whether other decisions that rely on formulaic calculations to determine entitlement (e.g. permanent impairment, Secondary Injury and Enhancement Fund (SIEF)) should be excluded from appeals based on similar grounds.

Management Response

The WSIB agrees with the recommendation. WSIB will explore which decisions could be made final decisions of the WSIB and, therefore, only appealable to WSIAT, subject to a robust internal review process that ensures decision standards are met and the outcome aligns with policy.

Primary responsible party: VPs, Case Management; VP, Specialized Claims and Recovery Services; VP, Policy and Consultation Services; Senior Director, Appeals Services Division

Implementation: Q1 2024

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4. Other Areas for Consideration

Jurisdictional Scan

Jurisdictional Scan – Key Discoveries

Jurisdiction	Description
<p>Alberta (WCB Alberta)</p>	<ul style="list-style-type: none"> - Front Line Reconsideration: The customer service department (CSD) is responsible for the reconsideration of the initial decision. There is a process of open dialogue with the WPP during the reconsideration process and decisions are communicated both verbally and in writing to the WPP. The WPP's have one year to appeal a decision from the date of the initial decision. The CSD has defined timelines (14 days) to make initial contact with the disputing WPP after the appeal is received. All reconsideration decisions are reviewed by a supervisor within the CSD and by a CSD Manager (as needed). There is an independent QA team that is responsible for performing ongoing quality reviews. Results from these reviews feedback into updates to the quality standards and customer services. ADR is embedded in the CSD. Approximately 38% of disputes are resolved within the CSD and do not go to appeals. - Appeals: The disputing WPP has 1 year to complete an appeals form (or equivalent) to indicate their desire to appeal. There is an opportunity to extend these timelines in case of extenuating circumstances. The resolution specialist (appeals officers) has 40 days to engage with the disputing WPP. 80% of the appeals decisions are made within 55 days (40 days to engage and 15 days to make the decision). Resolution specialists are trained in ADR. There is an opportunity for the disputing WPP to request a reconsideration of decisions made by the resolution specialists as well. The disputing WPPs are given an option to select between oral and written hearings. - Decision Implementation: The CSD has 30 days to implement decisions by the resolution specialists and the appeals commission
<p>Tribunals Ontario (Social Benefits Tribunal)</p>	<ul style="list-style-type: none"> - Appeals: The Tribunal offers disputing parties early resolution opportunities based on defined criteria/ types of disputes (e.g. for medical review appeals and financial disability claims). Appeals can either be done through early dispute resolution or the extended appeals process with adjudication. Early resolution is done through an oral telephone hearing. Both the disputing party and the Ministry representative participate in the hearing. The disputing party has 30 days to appeal a decision by the Ministry. These timelines can be extended until one year in case of extenuating circumstances. Approximately 8% of the disputes are resolved through early resolution and mediation. Early resolution cases are typically resolved within 30-45 days. - Decision Implementation: The Ministry is responsible for implementing decisions made by the Tribunal. Decisions by the tribunal are redacted and published

Jurisdictional Scan – Key Discoveries

Jurisdiction	Description
Newfoundland (Workplace NL)	<ul style="list-style-type: none"> - Front Line Reconsideration: Front line decision makers are not involved in the dispute resolution process. - Appeals: Internal review specialists are responsible for reviewing initial decisions made by Workplace NL. The interview review division reports to the executive counsel. Disputing WPPs have 30 days to submit the request for review form or a written request to appeal / reconsider an initial decision. In addition, the WPP has 3 weeks to provide an additional documentation / submissions. Internal review specialists have 45 days to review a file and make their decision from the date the request was received. - Appeals: All reviews are based on written submissions. There are no oral hearings. - Appeals: Monthly QA review is performed by department manager to ensure consistency of decision language / wording and grammar. Policy interpretation is not reviewed during the QA processes. The policy division falls within the internal review division. - Appeals: A lessons learnt assessments based on external review boards is performed and summary reports are shared with internal review specialists and worker service areas. - Appeals: Workplace NL is planning to transition its appeals tracking process to an online portal for workplace parties to assist in filing documents, establishing timelines and decision gates through the decision process. - Decision Implementation: The front line operations team is responsible for implementing decisions. There is a 30 day defined timeline for decision implementation. Internal review specialist work closely with the external review board for all cases reviewed by the Board

Jurisdictional Scan – Key Discoveries

Jurisdiction	Description
British Columbia (WorkSafe BC)	<ul style="list-style-type: none"> - Front Line Reconsideration: WorkSafe BC may reconsider a decision on a claim within 75 days of the date of the decision. The disputing WPP must contact the case manager who made the decision and they will explain the reasons for the decision and/or consider any additional information you provide. The case officer must complete the reconsideration process within the 75-day period. - Appeals: The disputing WPP can request a review by the Review Division within 90 days of the date of the decision. Request for review beyond 90 days will be considered under exceptional circumstances. The request for review form must outline the reason for objecting to a decision. An occupational health and safety or claims cost levy matter must be submitted within 45 days of the date the decision or order was made. The Review Division is an independent division of WorkSafe BC that provides impartial review of decisions made under the <i>Workers' Compensation Act</i>. The Review Officer must make a decision on a review within 150 days after the Board receives the request for review. - Appeals: WPP's and representatives can track the status of reviews through an online portal.

Jurisdictional Scan – Key Discoveries

Jurisdiction	Description
New South Wales (SIRA)	<ul style="list-style-type: none"> - Front Line Reconsideration: Internal reviews are (or should be) undertaken by someone at the insurer not involved in the initial decision. There is no time limit for a worker to request an internal review. Insurers must respond to the worker in writing within 14 days of receiving the request for review. The insurer can then decide to overturn or modify the original decision or maintain the decision. - Appeals: If a worker does not wish to seek an internal review by the insurer or are not satisfied with the insurer's decision after a review, they can lodge an application to resolve the dispute at the Personal Injury Commission (Commission). - Appeals: Three methods to resolve an appeal: (1) informal dispute resolution (teleconference), (2) conciliation, and (3) formal arbitration. Disputes are assigned to the most appropriate pathway. The allocated member then determines the timeframes based on the Rules and Procedural Directions. Parties can attend in person, via telephone, or via videoconferencing, depending on the circumstances of the case and external factors. Note: Most matters settle through the teleconference/conciliation process. Less than 10% go all the way to arbitration/determination. - Appeals: Disputes are lodged online. All documentation submitted in a dispute can be viewed through the portal by all parties. - Appeals: Decision makers in the Commission are legally trained and highly experienced practitioners. They receive regular training. Many are sessional – if their performance isn't up to scratch their contract is not renewed. Additionally, there is a free legal aid service available to workers.

Jurisdictional Scan – Key Discoveries

Jurisdiction	Description
<p>Queensland (Office of Industrial Relations)</p>	<ul style="list-style-type: none"> - Appeals: There is a three-month time limit from when the insurers decision is communicated to appeal, which be extended in certain circumstances (i.e., medically incapacitated, based on legal or medical advice). There is a legislative requirement to decide on the review within 25 business days. There is a requirement to issue a formal explanation for decisions. - Appeals: Oral hearings are the only method used to resolve appeals. The Office of Industrial Relations will travel around for these hearings. - Decision Implementation: There are no defined timelines for implementing decisions issued by the Commissioner. These decisions are usually governed around the time it takes for parties to all of their information and documentation together, and can take up to twelve months. Once decided, the decision is communicated to all parties. - Appeals: There is a dedicated training team who provides up to six months of formal training. - Appeals: The Office of Industrial Relations provides a lot of information and support, for both reviews and appeals, to help guide people through the process – offering a human-centered approach. While no portal is currently used, OIR would consider this in the future.

Value for Money Methodology, Approach and Rating Scales

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Approach

Our approach defines a value for money audit as “an independent, objective and systematic review of a program, activity or function designed to assess the extent to which the pre-determined goals of the program, activity or function are being achieved and the economy, efficiency and effectiveness of the processes and activities through which the organization attempts to achieve these goals.”

Three principles underlying our value-for-money audit approach are:

- **Economy:** This principle relates to the minimization of the cost of resources used for the processes and activities used to achieve objectives taking into account the quality of the goods or services delivered. In addition, this principle focuses on the soundness of the administration and management of these resources and the extent to which such administration and management is consistent with relevant corporate policies and procedures and legal and/or regulatory requirements and constraints
- **Efficient:** This principle relates to relationship between the goods and services produced or delivered and the resources used to produce them. The efficient organization produces the maximum output from any given set of inputs, without sacrificing the quality of that output
- **Effective:** This principle relates to the extent to which the organization achieves its pre-determined objectives and the extent to which the actual impact of the program or activities in question is consistent with the intended impact

Value for Money Methodology, Approach and Rating Scales

Rating Scales

We have provided an overall opinion of WSIB’s Dispute Resolution and Appeals Process using the four categories below:

Demonstrate high value for money	Demonstrate moderate value for money	Demonstrate low value for money	Demonstrate no value for money
<p>The program / activity / function’s goals are being achieved with due regard to economy, efficiency and effectiveness of the processes and activities. Any weaknesses identified relate only to issues of good practice which could improve performance.</p>	<p>There are weaknesses requiring improvement but these are not vital to the program / activity / function’s achievement of strategic objectives. There may be opportunities to improve economy, efficiency and effectiveness of processes and activities.</p>	<p>The weakness or weaknesses identified have a significant impact preventing achievement of strategic objectives; or result in an unacceptable economic, efficient, or effective outcomes.</p>	<p>The weakness or weaknesses identified have a fundamental and immediate impact preventing achievement of strategic objectives; or result in an unacceptable exposure to reputation or other strategic risks.</p>

Each observation and recommendation has been ranked on a three point rating scale, as shown below:



High – (Priority One): Issues arising referring to important matters that are fundamental and material to value for money. The matters observed might cause a program objective not to be met, or leave a risk unmitigated and need to be addressed as a matter of urgency.



Medium – (Priority Two): Issues arising referring mainly to issues that have an important effect on the program’s performance but do not require immediate action. A program objective may still be met in full or in part, but the weakness represents a deficiency in the economy, efficiency or effectiveness of the program.



Low – (Priority Three): Issues arising that would, if corrected, improve performance in general but are not vital to the overall value for money of the program. These recommendations are of leading practice as opposed to weaknesses that prevent systems objectives being met.

List of Stakeholders Interviewed

Internal Stakeholders

No.	Contact	Area
1	Scott Bujeya, Chief Operating Officer – VFMA Executive Sponsor	Operations and Service Excellence
2	Frank Veltri, Senior Director – VFMA Project Sponsor	Appeals Services
3	Sal Cavaricci, Director – VFMA Project Owner	Appeals Services
4	Armando Fatigati, Vice President	Case Management
5	Joe Civello, Senior Director	Service Excellence
6	Carmen Mancini, Senior Director – VFMA Working Committee Member	Case Management
7	Alanna Lee, Director – VFMA Working Committee Member	Eligibility & Payment Services
8	Rosanna Muia, Senior Director, Michelle Mraz, Director and VFMA Working Committee Member and Dr. Aaron Thompson, Head of Clinical Services	Special Care
9	John Mutch, Senior Director & Lucio Amodeo, Assistant Director VFMA Working Committee Member	Return-to-Work Program
10	Ahsan Khan, Director	Employer Service Centre
11	Caroline Jordan, Manager and Goretti Moes, Manager	Appeals Services
12	Appeals Resolutions Officers	Appeals Services

External Stakeholders

No.	Names	Organization
1	Margaret Townsend, Director Laura Vurma, Legislative Interpretation Specialist Nenos Isak, Worker Advisor	Office of the Worker Advisor
2	Robin Senzilet, General Counsel Susan Adams, Director	Office of the Employer Advisor
3	Laurie Hardwick David Chezzi Andrew Bome Joanne Ford Willy Noiles Janet Paterson Mark Platt Andy LaDouceur Tina Shrogen Ron Collie	Ontario Federation of Labour CUPE Hamilton Community Legal Clinic UFCW Canada ONIWG ONIWG CUPW – Canada Post USW Ontario Nurses Association Service Employees International Union
4	Antony Singleton	The Law Office of Antony Singleton
5	Michael Green	Green and Lipes Lawyers
6	Michelle Zare	Zare Paralegal Services

External Stakeholders (cont.)

No.	Names	Organization
7	Don Morrison, Director of Operations Ron Thaker	Windley Ely Inc.
8	Laura Russel Figen Dalton	Comp Claim Legal Services School Board Co-Operative Inc.
9	Les Liversidge Les Liversidge	Mechanical Contractors Association of Ontario ECO
10	Liz Scott	Organizational Solutions Inc.
11	Rob Boswell	Boswell Employment Law
12	Pamela Hughes-Ford	Fink & Bornstein Professional Corporation
13	Tharmela Ganedralingam	OTG
14	Michael Mitchell	Reed Group

Interview Guides

Internal Stakeholder Interview Guide

1. Can you describe your current role at the WSIB? What is the nature of your interaction with the Dispute Resolution and Appeals Process?
2. When you think about the Dispute Resolution and the Appeals Process, what are the challenges that you think presently confront WSIB decision-makers? How do these affect workers/employers? In other words, what are the processes:
 - a. Strengths?
 - b. Weaknesses?
 - c. Opportunities?
3. To what extent do you feel that the WSIB's Dispute Resolution and Appeals Process is sufficient to support timely, transparent and fair decisions for workers and employers in an efficient, effective and cost-effective manner? What do you see as the current policy and decision support framework:
 - a. Strengths?
 - b. Weaknesses?
 - c. Opportunities?
4. What are your views on the adequacy of internal resources available for Dispute Resolution and Appeals Process administration? Are there specific areas that present specific challenges or opportunities in terms of resourcing?
5. To what extent do you feel that the dispute resolution and appeals process is given quality, well-reasoned, and validated decisions and reconsiderations by the operating area? What are your thoughts on how a quality role within the program might assist with the above?
6. What are your views on the relationship between workers/employers and other groups and individuals who interact throughout the process? What are your thoughts on how the relationship works? From your perspective, is it working well? What improvements would you suggest?
7. Is there anything else you that feel would be helpful for us to know?

External Stakeholder Interview Guide

1. Can you briefly describe your role and the nature of your engagement with the WSIB and across the Dispute Resolution and Appeals Process in general?

Please provide your thoughts on the below questions based on the decisions made across the following focus areas:

- Reconsideration decisions made by front line decision makers
- Decisions made by the Appeals Resolution Officers (AROs)
- Implementation of ARO decisions by the operating area

2. When you think about the Dispute Resolution, the Appeals Process and the Appeals Implementation process, what current challenges do you think exist which effect workers/employers? In other words, what are the processes a. Strengths? b. Weaknesses? c. Opportunities?

3. To what extent do you feel that the WSIB's Dispute Resolution, Appeals Process and the Appeals Implementation process is sufficient to support timely, transparent and fair decisions for workers and employers in an efficient, effective and cost-effective manner? What do you see as the current policy and decision support framework's: a. Strengths? b. Weaknesses? c. Opportunities?

4. To what extent do you feel that the workers / employers are given quality, well-reasoned, and validated decisions/reconsiderations based on review of relevant supporting documentation by the WSIB? What are your views on an early resolution / mediation process being adopted?

5. From your perspective, are the defined timelines for the appeals process reasonable?

6. What are your views on the relationship with the WSIB, based on your interaction with decision makers and appeals resolution officers (ARO's) throughout the process? What are your thoughts on how the relationship works? From your perspective, is it working well?

7. What opportunities do you think exist for you, as the objecting party, to further support and promote expedited resolutions? In addition, is there anything you feel the WSIB can do better to ensure resolutions are made and decisions concluded in a timely manner?

8. Is there anything else you that feel would be helpful for us to know?

Jurisdictional Research Guide

Section 1: Front line decision making, dispute resolution/reconsideration processes:

1. Who is involved in the initial decision making and the reconsideration process? Are these duties typically performed by the same individual?
2. Can the individual and/or the employer contact the decision maker to discuss the decision and seek clarification and/or provide additional information? If yes, what are the methods that can be used to contact the decision maker?
3. Is there a defined time limit to appeal a decision? Are there defined timelines within which reconsiderations need to be completed?
4. What quality assurance processes are in place at this stage? Is there a secondary check of the reconsideration / review process by an independent individual?
5. Overall, do you feel the initial dispute resolution/reconsideration process is effective? Are decisions explained and reviewed appropriately at this stage in line with any additional documentation provided?

Section 2: Appeals Services (or equivalent)

6. Does the claimant have to complete an appeals form (or equivalent) to indicate their desire to appeal? Is there a deadline by which this needs to be completed and submitted by following the initial decision/reconsideration decision?
7. What are the defined timelines to resolved appeals? How are these tracked within the organization?
8. What are the methods used to resolve an appeal (i.e., hearing in writing or an oral hearing) and who determines the method to be used?
9. Is there an option to resolve appeals through facilitated interventions involving mediation/arbitration prior to a formal hearing taking place?
10. What quality assurance processes are in place at this stage? Are appeal decisions reviewed by a second officer prior to being formally communicated?
11. What percentage of decisions are overturned at the Appeals stage? Is there a Tribunal or alternative body claimants can appeal further to, and if so, what percentage of decisions are overturned at that stage?
12. Are appeal decisions published anywhere for transparency/lessons learnt purposes?

Section 3: Appeals Implementation:

13. Who is responsible for implementing the decisions made by the appeals division (or equivalent)?
14. Are there defined timelines set out for the implementation of the appeal officer's decision?

Jurisdictional Research Guide (cont.)

Section 4: General:

15. Is there legislation in place that outlines the right to appeal decisions (about an injured or ill person's entitlement to benefits and services) by both the injured/ill person and the employer?
16. Are policies updated and training provided to staff based on previous appeals decisions or decisions made by the Tribunal in order to facilitate continuous learning? What other training is provided to decision makers throughout the dispute resolution and appeals (e.g. alternative dispute resolution, communication/soft skills/administrative law/other legal training)?
17. Are there defined performance indicators (KPIs) used to monitor, track, and assess the performance of the dispute resolution, appeals and implementation process?
18. Are there clear policies and procedures in place around the dispute resolution, appeals and appeals implementation processes?
19. Is there a system for workers, employers, and their representatives to track the status of appeals through the appeals life cycle? (e.g. portal access to real time updates/information)?
20. Do you have any other thoughts or leading practices you would like to share around your dispute resolution and appeals processes?



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