

## Decision of the Appeal Division

**Number:** 1  
**Date:** May 29, 1991  
**Panel:** Connie Munro, Chief Appeal Commissioner  
**Subject:** Practice and Procedure

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### Introduction

The Appeal Division is a new appeal body which will be created when Bill 27, the *Workers' Compensation Amendment Act, 1989*, comes into force on June 3, 1991. Information concerning the structure of the Appeal Division, and the general practice and procedure to be followed by the Appeal Division, is set out below. This is based in large part on the legal requirements set out in Bill 27, and Decisions 1 to 5 by the Board of Governors. Additional matters have been determined by the Chief Appeal Commissioner in accordance with Section 85.1 of Bill 27 which provides:

*Subject to any policies of the governors and any bylaws enacted or resolutions passed under section 82, the chief appeal commissioner may determine the practice and procedure for the conduct of appeals by the appeal division under this Act.*

### 1.0 Jurisdiction of the Appeal Division

The Appeal Division has authority to hear the following matters:

1. appeals from Review Board findings, under Section 91;
2. referrals by the President of Review Board findings, under Section 96(4);
3. reconsideration of previous Appeal Division decisions, under Section 96.1, or previous Commissioners' decisions, under Section 17(5) of the *Workers' Compensation Amendment Act, 1989* (Bill 27);
4. Section 39 Relief of Claim Costs appeals, under Section 96(6)(a);

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5. Section 73 Occupational Safety and Health penalty appeals, under Section 96(6)(c);
  6. Section 40, 41 and 42 Assessment appeals, under Section 96(6)(a) and (b);
  7. appeals of decisions or findings under Section 22 of the *Criminal Injury Compensation Act*.

Pursuant to Section 96(6.1), the Governors have designated:

- (a) First Aid penalties levied under Section 70,
- (b) charging of claims costs under Section 47(2), and
- (c) any notice relating to an assessment, classification, monetary penalty or apportionment or shifting of cost between classes for which no appeal to the Appeal Division is specifically provided in Section 96(6),

as matters which may be appealed to the Appeal Division.

The Governors have also assigned to the Appeal Division:

- (a) the Board's obligation to issue Certificates to the Court under Section 11;
- (b) the Board's authority to reallocate claims costs between employers under Section 10(8).

## **2.0 Composition of the Appeal Division**

The Appeal Division consists of a Chief Appeal Commissioner appointed by the Governors, and Appeal Commissioners appointed by the Chief Appeal Commissioner, who are selected in accordance with the policies established by the Governors.

### **2.1 Chief Appeal Commissioner**

The Chief Appeal Commissioner is responsible to the Governors for the general operation of the Appeal Division and:

- (a) shall attend and participate as a non-voting member at meetings of the Governors,

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- (b) shall implement the policies of the Governors with respect to the administration of the Appeal Division,
  - (c) shall preside at hearings or meetings of the Appeal Division, and
  - (d) may under Section 85(8) delegate in writing any of her powers and duties to an Appeal Commissioner subject to any terms and conditions set out in the delegation.

## **2.2 Registrar**

One Appeal Commissioner will be appointed by the Chief Appeal Commissioner to serve as the Registrar, and will from time to time have certain powers and duties of the Chief Appeal Commissioner delegated to them under Section 85(8). Those duties shall include, but will not be limited to:

- (a) chairing meetings of the Appeal Division, in the absence of the Chief Appeal Commissioner, and
- (b) acting in matters in which the Chief Appeal Commissioner has declined to act due to a possible or actual conflict of interest or appearance of bias.

Notice of the appointment of and the general delegation of duties to the Registrar shall be published by the Appeal Division.

## **2.3 Appeal Commissioners**

There are Appeal Commissioners of three different characters:

1. Non-representational Appeal Commissioners – These Appeal Commissioners have no special perspective although they may have had either an employer or worker perspective in their background.
2. Worker Representatives – These Appeal Commissioners have a worker interest perspective.
3. Employer Representatives – These Appeal Commissioners have an employer interest perspective.

Where an Appeal Commissioner resigns or their appointment terminates, they may carry out and complete their duties and responsibilities and continue to exercise their powers as an Appeal Commissioner, in relation to a proceeding in which they participated, until the proceeding is completed.

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## 2.4 Panels of the Appeal Division

The Chief Appeal Commissioner may establish one or more panels of the Appeal Division. A panel has the power and authority of the Appeal Division. The Chief Appeal Commissioner may refer a matter that is before the Appeal Division to a panel or a matter that is before a panel to the Appeal Division or another panel.

A panel of the Appeal Division will consist of:

- (a) a panel of one person (either the Chief Appeal Commissioner or a non-representational Appeal Commissioner), or
- (b) a three-member panel (consisting of either the Chief Appeal Commissioner or a non-representational Appeal Commissioner, together with one Appeal Commissioner chosen from the worker representatives and one Appeal Commissioner chosen from the employer representatives).

The assignment of one or more Appeal Commissioners to a panel in a particular case will be made by the Chief Appeal Commissioner.

Two or more panels may proceed with separate matters at the same time. The Chief Appeal Commissioner may terminate a designation to a panel and may fill any vacancy on a panel. A decision of the Appeal Division or of a panel is deemed to be a decision of the Board.

In cases where an oral hearing is to be held, the appellant normally has the right to choose whether the appeal will be determined by a one-member panel or a three-member panel. Where the appellant does not elect the type of panel that will determine the appeal, the choice will be made by the Chief Appeal Commissioner.

In matters under Sections 10(8) and 11 and in exceptional cases where the Chief Appeal Commissioner considers that the issues warrant it, the Chief Appeal Commissioner has the authority to constitute a panel consisting of three non-representational Appeal Commissioners, which may include the Chief Appeal Commissioner. In such a situation, the parties shall not have the right to choose the type of panel that will determine the matter but must accept the choice of the Chief Appeal Commissioner.

### **3.0 Appeal from a Workers' Compensation Review Board Finding**

Section 91(1) provides that:

*Where the review board makes a finding under section 90, the worker, the worker's dependants, the worker's employer or the representative of any of them may, not more than 30 days after the finding is sent out, or within a longer period the chief appeal commissioner may allow, appeal the finding to the appeal division.*

There is no right of appeal to the Appeal Division under Section 91(1) against a decision of a Board officer.

The word "finding" in Section 91 normally means a finding made by the Review Board after it has considered an appeal on the merits. An appeal cannot be made to the Appeal Division solely on a procedural or preliminary determination by the Review Board. The Review Board controls its own procedures which are not therefore a matter for the Appeal Division to deal with. Complaints regarding such matters should be addressed to the Review Board. Objections to procedural or preliminary determinations may be taken into account by the Appeal Division on an appeal from a Review Board finding.

The Appeal Division will, however, consider appeals from Review Board findings on "preliminary matters" where the finding would constitute a final determination of the appeal. This includes a refusal to grant an extension of time to appeal to the Review Board. Where the Appeal Division allows an appeal on the issue of an extension of time, the matter will be returned to the Review Board to hear the appeal.

#### **3.1 Commencement of Appeal**

##### **(a) Notification of Intent to Appeal**

For the purpose of meeting the time limits for initiating an appeal, it is sufficient that notification of intent to appeal to the Appeal Division be received within 30 days of the date of the mailing of the Review Board finding. Written notification, delivered by mail or by hand, received at any office of the Board within 30 days of the date of mailing of the Review Board finding, will constitute notification of intent to appeal to the Appeal Division. Notification by FAX (276-3349) will be accepted. Oral notification (by telephone at 279-7510) received by the Registrar's office within 30 days of the date of mailing of the Review Board finding will also be accepted. If

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oral notification is provided, an acknowledgment will be sent in writing by the Appeal Division and the appellant will be asked to complete a “Notice of Appeal” form.

(b) Disclosure

After notification of intent to appeal is received, the worker and employer will automatically be sent updated disclosure of the claim file where they have received disclosure in the past in connection with an earlier decision or appeal on the same issue. If they have not previously obtained disclosure, they will be contacted and advised of the requirements for obtaining disclosure of the file.

(c) Commencement of Appeal

A policy of the Board of Governors requires an appellant to outline in writing the reasons for the appeal, explaining how the Review Board finding is in error. The appeal will be considered to be “commenced” for purposes of Section 91(3) when the Registrar’s office determines that the requirement for the provision of reasons has been met. The respondent will be advised in writing that the appeal has been commenced and provided a copy of the Notice of Appeal with reasons for the appeal.

Completion of a “Notice of Appeal From Review Board Finding” form will generally satisfy the requirement to provide reasons. Where the appellant provides the information required to commence an appeal in a letter to the Appeal Division, the requirement to complete a Notice of Appeal form may be waived by the Registrar. Where oral notification is provided of an intent to appeal, written reasons must subsequently be provided. If reasons for the appeal are not provided within 21 days following a request for these from the Appeal Division, the notice of intent to appeal shall be considered to have been abandoned.

Parties to the appeal will be advised that a copy of the tape containing the voice recording of the Review Board hearing will be provided upon request. As oral hearings will be available to the Appeal Division, however, where it is important to hear oral evidence this will normally be done by way of an oral hearing.

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(d) Extension of Time to Appeal

The Act requires that an appeal be initiated:

*. . . not more than 30 days after the finding is sent out, or within a longer period the chief appeal commissioner may allow . . .*

The Chief Appeal Commissioner will determine whether an extension of time to appeal should be granted. The following factors will be considered in determining whether to grant an extension:

- (i) substantial and material new evidence has arisen or has been discovered subsequent to the Review Board hearing;
- (ii) exceptional circumstances prevented the party from initiating an appeal in time.

It would weigh against the granting of an extension of time to appeal if the party delayed in initiating an appeal after they became aware of the new evidence referred to in (i), or after the exceptional circumstances referred to in (ii) came to an end.

This list is not exhaustive and other factors may be taken into account. None will be considered determinative. An extension of time to appeal may be granted, for example, where the appellant was outside the province for a holiday when the Review Board finding was sent out and they acted expeditiously in initiating an appeal when they received the finding.

### **3.2 Conduct of Appeal**

Section 91(3) provides that a decision on an appeal commenced under Section 91(1) must be made as soon as practicable and in any case within:

- (a) 90 days of the date on which the appeal is commenced,
- (b) 90 days of a reconsideration by the Review Board under Subsection (2), or
- (c) a longer period the Chief Appeal Commissioner may designate where the appellant requests a delay in the proceedings or where the Chief Appeal Commissioner considers the longer period necessary because of an act or omission of the appellant or because of the complexity of the matter under appeal.

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These time limits for the making of a decision are directory in nature. The Appeal Division has a legal duty to meet these time limits. If they are not met, however, the Appeal Division will not lose jurisdiction to render a decision. The primary purpose of these time limits is to ensure that the appellant is provided with a decision by the Appeal Division in a timely fashion. It would frustrate the intent of the legislation if appellants could be deprived of the right of appeal through events and conduct over which they have no control.

For the Appeal Division to meet these time limits for rendering a decision, it is necessary that the stages in the appeal process also have some time limits. Where these time limits are met, the decision will be rendered expeditiously and wherever possible within the designated 90-day period. Where the appellant requires additional time to provide information, evidence, or argument in support of an appeal, the appellant will be allowed a further period of time. However, a request by the appellant for such further time will delay the 90-day period for rendering a decision.

Section 91(3)(c) provides that the Chief Appeal Commissioner may designate a longer period for the making of the decision on the appeal where the appellant requests a delay in the proceedings. However, the Chief Appeal Commissioner does not have the power under Section 91(3) to designate a longer period where the respondent requests a delay in the proceedings. Where the appellant complies with the time frame set by the Appeal Division for their participation, the respondent will be required to meet the time limit set for their participation. Further time may be granted if the Chief Appeal Commissioner is satisfied that delay is required because of the complexity of the matter under appeal or because of an act or omission of the appellant.

### **3.3 Submissions by Parties**

#### **(a) Written Submissions**

To enable a decision to be reached within 90 days of the date on which the appeal is commenced, written submissions which the appellant wishes to make must be received by the Appeal Division no later than 14 calendar days following the commencement of the appeal.

The respondent(s) will be provided with a copy of the Notice of Appeal and any submissions, and given 14 days to reply. The appellant will then be given 7 days to provide any rebuttal argument.

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Where the appellant requests additional time for submissions or otherwise requests a delay in the proceedings, a longer period for the making of the decision on the appeal will be designated by the Chief Appeal Commissioner. This longer period will usually be 90 days from the completion of submissions.

The Chief Appeal Commissioner may also designate a longer period for the making of a decision where the Chief Appeal Commissioner considers the longer period necessary because of an act or omission of the appellant or because of the complexity of the matter under appeal.

Where an extension of time is granted for an appeal, the time frames set out above will be applied from the date the extension of time to appeal is granted. Any further written submissions must be provided within 14 days of the decision granting an extension of time to appeal, and so forth.

(b) Oral Hearing Request

Any request for an oral hearing should be submitted at the time the appeal is initiated. A request for an oral hearing will be considered as a preliminary matter on the basis set out below under "Hearings." The decision in respect of an oral hearing will normally be made by the Chief Appeal Commissioner within 10 days of the commencement of the appeal. An oral hearing will be held and a decision made within the time frames specified in Section 91(3)(a), (b) or (c). In order to prevent delays, parties are requested to provide to the Appeal Division, in advance of an oral hearing, copies of any new documentary evidence they intend to submit.

If an oral hearing is refused, the appellant will be required to provide any written submissions within 14 days of this refusal and the matter will proceed as set out above.

### **3.4 Representation Before the Appeal Division**

The Appeal Division will recognize and facilitate the appearance and participation by workers and employers acting for themselves or lay advocates acting on their behalf.

The Appeal Division operates on an inquiry basis and may obtain information from sources other than a party to an appeal. Where the participation of other persons or groups in the procedure will assist inquiry into the merits of the issues, the Chief Appeal Commissioner may give notice to or allow intervention by them. Their participation will be invited to assist the Appeal Division in the consideration of the

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appeal, through the provision of further evidence or submissions. For example, where an employer is no longer registered with the Board, the Chief Appeal Commissioner may give notice of an appeal commenced by a worker to the relevant industry association and the Employers' Advisers. Such notification may be given by the Chief Appeal Commissioner prior to the matter being assigned to a panel of the Appeal Division, or at a later date upon request to the Chief Appeal Commissioner by the panel considering the matter. On an appeal from a Review Board finding, notice will normally be sent to any organized group of employers which participated in the appeal to the Review Board under Section 90(2).

All matters raised in the decision letter which was appealed to the Review Board, and in the Review Board finding, may be considered issues in the appeal. The Appeal Division will ensure that the issues in an appeal are identified during the course of the appeal so that all parties may understand and have an opportunity to respond.

### **3.5 Hearings**

A party in any case has the right to request an oral hearing, but must provide reasons why an oral hearing is necessary. The Appeal Division has the discretion to decide whether an oral hearing will be granted in any case. A preliminary decision as to whether an oral hearing will be granted will be made by the Chief Appeal Commissioner. If an oral hearing is not granted, the parties will then be given an opportunity to provide written submissions, and the matter will be assigned to a panel for the making of a decision. The panel will also have the discretion to hold an oral hearing, should it conclude after considering the written submissions that an oral hearing is necessary.

The Appeal Division will give liberal consideration to the following factors in deciding whether to grant a request for an oral hearing:

- (a) there is significant new evidence to be presented which requires an oral hearing;
- (b) the appeal raises a significant policy issue;
- (c) there appears to be an error or confusion in the finding or decision under appeal;
- (d) there is evidence to suggest there is an error of fact in the finding or decision under appeal;
- (e) there is a significant issue of credibility involved.

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Some of the factors which would weigh against the granting of an oral hearing are that:

- (a) there are no reasons given as to how the finding or decision under appeal is in error;
- (b) there are no reasons given for the request for an oral hearing;
- (c) there was no request for an oral hearing before the Review Board;
- (d) the issue is purely medical and the appeal can be determined on the basis of written expert medical opinions alone.

This list is not exhaustive and other factors may be taken into account. None will be considered determinative. If there are grounds which warrant holding an oral hearing, for example, it may be granted notwithstanding the fact that no oral hearing was requested at the Review Board.

The Chief Appeal Commissioner will determine the extent to which oral hearings are conducted throughout the province based on the objective that as far as is practicable and reasonable all parties should have access to appear before the Appeal Division where a request for an oral hearing has been granted. The Appeal Division will primarily hold its oral hearings at the Richmond location of the Board until the existing backlog of appeals is eliminated.

If an oral hearing is to be held outside the area in which a party resides, the Appeal Division may on request make provision for travel costs in advance of the oral hearing. This would include transportation and accommodation in the Board's Richmond Residence for the appellant and respondent, and would be provided without regard to the outcome of the appeal. Other costs in connection with attending the hearing will be determined in the normal fashion at the discretion of the panel (see #100.00 of the *Rehabilitation Services and Claims Manual*).

A qualified translator will be provided upon request if required for an oral hearing.

### **3.6 Authority of Appeal Division**

The role of the Appeal Division is to inquire into the merits of matters properly before it. The Appeal Division has the discretion to initiate and to conduct a full inquiry into all of the issues arising out of an appeal. The Appeal Division has the discretion to determine what evidence it will accept in the course of conducting its proceedings. The

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Appeal Division may seek medical opinions independent of those offered by the parties, either from the Board's Medical Services Division or from practitioners outside the Board. The decision as to whether further evidence should be obtained, and as to the source of such evidence, rests with the panel hearing the matter.

The Appeal Division has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things. The Appeal Division may cause depositions of witnesses residing in or out of the province to be taken before a person appointed by the Appeal Division in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that Court before a Commissioner. A request that the Appeal Division exercise its powers under Section 87 will be dealt with by the panel considering the appeal or reconsideration.

Where the Appeal Division independently obtains information in connection with an appeal, copies will be provided to the parties and they will be given an opportunity to respond.

On an appeal under Section 91(1), the Appeal Division may reopen, rehear and redetermine any matter that has been dealt with by the Review Board.

A decision of the Appeal Division or of a panel is deemed to be a decision of the Board. Subject to a reconsideration by the Appeal Division, or to a Medical Review Panel Certificate, a decision of the Appeal Division is final and conclusive.

### **3.7 Discretionary Authority**

The Appeal Division may exercise the Board's authority to refer a worker for examination by a Medical Review Panel pursuant to Section 58(5), with or without the worker's consent, in the course of dealing with an appeal or reconsideration. The Appeal Division will take into account a request from a worker or employer that it exercise this discretion although such a request is not necessary to, nor determinative of, the exercise of this discretion.

On an appeal from a Review Board finding, the Appeal Division may under Section 91(2) direct the Review Board to reconsider the matter either generally or on a particular issue, and the Appeal Division may withhold its decision pending the finding of the Review Board. This power may be used, for example, where the Review Board has failed to exercise its jurisdiction to consider a matter properly before it.

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The Appeal Division has a specific authority to reconsider a decision of the Appeal Division under Section 96.1. The Appeal Division does not have the authority to exercise the Board's plenary independent power to reopen, rehear, and redetermine matters under Section 96(2) of the Act.

### **3.8 Board Policy**

The Appeal Division will apply and interpret the Act, Regulations and existing Board policy. The Appeal Division does not have the authority to create new policy.

The Appeal Division is not bound to follow legal precedent and will make its decisions according to the merits and justice of each case. Where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue will be resolved in accordance with that possibility which is favourable to the worker as directed in Section 99.

Where the Chief Appeal Commissioner considers it necessary that the Governors address a policy issue prior to a decision being made in one or more appeals, the Chief Appeal Commissioner has the authority to bring that policy issue before the Governors for consideration and to postpone the Appeal Division's decision in the appeal until the policy issue has been addressed by the Governors.

In the event of a conflict between the Act or Regulations and the published policy of the Governors, the Act and Regulations are paramount. In the event of internal conflict in published policy of the Governors, the interpretation of the policy most consistent with the intention of the Act or Regulations is to be applied.

The Chief Appeal Commissioner will forward copies of significant decisions of the Appeal Division to the Chairman of the Board of Governors and the President.

### **3.9 Decisions**

A decision of the Appeal Division concerning an appeal will be provided in writing, explaining the conclusion reached and providing reasons for that conclusion and for any dissent. The decision will be signed by all members of the panel that made the decision. A dissent will also be signed.

Selected decisions of the Appeal Division will be published under the direction of the Chairman of the Board of Governors with the assistance of the Chief Appeal Commissioner to ensure that all key decisions are reported.

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## **4.0 Referrals of Review Board Findings**

The President may, not more than 30 days after a finding of the Review Board is sent out, refer the finding to the Appeal Division for redetermination on grounds of error of law or contravention of a published policy of the Governors.

Upon receipt of this referral, the Appeal Division will disclose the referral documentation from the President to the parties. The Chief Appeal Commissioner will also consider whether any persons or groups who are not parties should be notified of the referral and given standing to participate (as set out in 3.4).

An oral hearing will be granted upon request (without the necessity to state reasons for seeking same) from a party to a referral who would be adversely affected by the reconsideration being allowed.

The Appeal Division will generally exercise its discretion under Section 91(2) to direct the Review Board to reconsider where it finds an error of law or contravention of published policy of the Governors in a referral from the President under Section 96(4), as set out in 3.7.

## **5.0 Appeals Prior To June 3, 1991**

The date set for the establishment of the Appeal Division is June 3, 1991. Prior to that date, an appeal lay to the Commissioners of the Board under Section 91 from a Review Board finding made after February 20, 1986, or a Board of Review decision made prior to that date.

Section 17(2) of the *Workers' Compensation Amendment Act, 1989* provides that if an appeal or a rehearing under Section 91 or 96 of the Act, as it was prior to June 3, 1991, has been commenced but has not been completed on that date, that appeal or rehearing shall be continued by the Appeal Division under and in conformity with the Act as it is after June 3, 1991, so far as it may be done consistently with the new Act.

### **5.1 Backlog of Appeals**

It is anticipated that when the Appeal Division comes into being on June 3, 1991, there will be approximately 1,500 appeals to the Commissioners already in existence. A schedule has been proposed to deal with this backlog of appeals within a 12-month period. The intention is to accomplish this while at the same time complying with the statutory requirement that the new appeals filed after June 3, 1991 be decided within 90 days (or the further period designated under Section 91[3]).

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Section 17(3) of the *Workers' Compensation Amendment Act, 1989*, states:

*Notwithstanding section 91(3) of the new Workers' Compensation Act, the chief appeal commissioner may designate the time within which a decision with respect to an appeal or rehearing under section 91 or 96 of the former Workers' Compensation Act shall be made.*

Appellants will be advised at monthly intervals of the designated time period in which they will receive a decision. The designations in respect of backlog appeals will be in the order of the earliest date on which all submissions were completed. The designations will be stated in terms of a decision being rendered within 90 days.

During the initial period following June 3, 1991, the Appeal Division will focus exclusively on the backlog appeals. As submissions are completed on the appeals filed after June 3, 1991, these will be considered by the Appeal Division and decisions will be rendered within the time frames specified by Section 91(3).

## **6.0 Reconsiderations by Appeal Division**

A worker, the worker's dependants, the worker's employer or the representative of any of them may apply to the Chief Appeal Commissioner for reconsideration of a decision of the Appeal Division on the grounds that new evidence has arisen or has been discovered subsequent to the hearing of the matter decided by the Appeal Division.

Section 96.1(3) provides as follows:

*Where the chief appeal commissioner considers that the evidence referred to in subsection (2)*

- (a) is substantial and material to the decision, and*
- (b) did not exist at the time of the hearing or did exist at that time but was not discovered and could not through the exercise of due diligence have been discovered,*

*he may direct that*

- (c) the appeal division reconsider the matter, or*
- (d) the applicant may make a new claim to the board with respect to the matter.*

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Section 17(5) of Bill 27 provides that a worker, the worker's dependants, the worker's employer or the representative of any of them may apply to the Chief Appeal Commissioner for reconsideration of a decision made under Sections 91 or 96 of the former *Workers' Compensation Act* on the same grounds and in the same manner as that set out above.

## **7.0 Other Employer Appeals**

This category primarily covers assessment and occupational health and safety matters. Most questions arising on claims are appealable to the Review Board but some are not; for example, the question whether an employer should be charged with or relieved from the costs of a claim. An appeal lies to the Appeal Division under Section 96(6) or 96(6.1) from a decision concerning the following, on the grounds of error of law or fact or contravention of a published policy of the Governors:

- (a) relief of costs under Section 39;
- (b) assessments;
- (c) a penalty under Section 70 or Section 73;
- (d) the charging of claim costs under Section 47(2).

The provisions set out above under 3.0 to 3.9 concerning practice and procedure in connection with appeals from Review Board findings are generally applicable to other employer appeals under Section 96(6) and 96(6.1). In particular, the same provisions apply in connection with the "Conduct of Appeal," "Submissions by Parties," "Representation," "Hearings," and "Reconsiderations by Appeal Division."

Some of the general requirements as to practice and procedure which apply to these appeals are set out below, followed by some additional requirements which apply to Occupational Safety and Health and Assessment appeals.

An appeal must be initiated in writing within 30 days after the employer receives the notice. The 30-day time limit for appeals applies to decisions rendered both prior to, or after, June 3, 1991. An extension of time to appeal may be granted by the Chief Appeal Commissioner.

An appellant is required to outline the error of law or fact or contravention of the published policy of the Governors in the decision under appeal.

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In appeals commenced under Sections 96(6) and 96(6.1), the Chief Appeal Commissioner may give notice of the appeal to the workers or trade union representative of the workers employed by the employer who may have an interest in the appeal.

The commencement of an appeal under Section 96(6) or 96(6.1) does not relieve the employer from paying an amount in respect of which the appeal is commenced but, if the appeal is successful, the amount to be returned to the employer will be accompanied by interest.

(a) Occupational Safety and Health Appeals

An employer may appeal a decision to levy an additional assessment under Section 73, or a decision to levy a First Aid penalty under Section 70. A “show-cause” letter to an employer from the Occupational Safety and Health Division, advising that an additional assessment is being considered, is not appealable to the Appeal Division.

On an appeal from a decision of the Occupational Safety and Health Division, a copy of the notice of appeal will normally be sent to the individual whose name appears on the Inspection Report as the worker’s representative. A copy will also be mailed to the attention of the “Chair, Industrial Health and Safety Committee” at the employer’s address. For administrative convenience, this will be sent without a determination as to whether the employer is obliged to establish an Industrial Health and Safety Committee under Section 4 of the *Industrial Health and Safety Regulations*.

A written response may be obtained from the Occupational Safety and Health Division, where written submissions are provided by an appellant. Any such response will be disclosed to the parties, who will have the opportunity to provide rebuttal or comment prior to the matter being considered by the Appeal Division.

The Board officer who performed the inspection on which the decision was based may be requested to attend the oral hearing.

(b) Assessments

An appeal may be initiated within 30 days after a decision by a Manager or Director. An employer should exhaust all internal avenues of review within the Assessment Department prior to bringing an appeal to the Appeal Division.

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Where written submissions are provided, a response may be obtained from the Assessment Department. This will be done in all cases where the employer has not exhausted the avenues of review within the Assessment Department. Any such response will be disclosed to the parties, who will have the opportunity to provide rebuttal or comment prior to the matter being considered by the Appeal Division.

A representative of the Assessment Department may be requested to attend an oral hearing in connection with an Assessment appeal.

## **8.0 Section 11 Certificates**

In Decision No. 4, dated April 8, 1991, the Governors assigned to the Chief Appeal Commissioner and the Appeal Division the Board's obligation to issue certificates under Section 11. Section 11 Certificates are provided on request by the Court, or on request by any party to a legal action. A request for a Section 11 Certificate shall be made in writing to the Chief Appeal Commissioner.

The parties to the legal action will be notified and given an opportunity to participate. In addition, other persons who might be adversely affected by the Section 11 determination may be given standing to participate, even though they are not a party in the legal action. This would include, for example, the putative employer of an individual who is alleged to have been a worker at the time of his injury. Written reasons will normally be provided for the decision.

The time frames set out under 3.2 and 3.3 above do not apply to the provision of Section 11 Certificates. Regard will be had to the requirements of the legal action and, in particular, to any trial date which has been scheduled.

## **9.0 Section 10(8) Transfer of Costs From One Class of Employers To Another**

In Decision No. 4, dated April 8, 1991, the Governors assigned to the Chief Appeal Commissioner and the Appeal Division the Board's authority to reallocate claims costs between employers under Section 10(8).

The Governors' policies concerning Section 10(8) are set out in #114.00 of the *Rehabilitation Services and Claims Manual*, and Decision No. 65 of the *Workers' Compensation Reporter* entitled "Re Cost Shifting Between Classes." Applications under Section 10(8) shall be initiated by the employer in writing directed to the Chief Appeal Commissioner.

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The procedures set out in 3.3 for “Submissions by Parties” will be followed, although there is no legal requirement that a decision be made on the application within any specified time frame. An oral hearing may be requested as set out in 3.5.

## **10.0 Criminal Injury Compensation Act Appeals**

An appeal to the Appeal Division from the findings and report of an Appeal Committee requires leave from the Appeal Committee or the Chief Appeal Commissioner. Applications to the Chief Appeal Commissioner for leave to appeal shall be made in writing.

If leave to appeal is granted, the Appeal Division may further review the findings and report of the Appeal Committee, or the decision provided by the Board officer to the victim or his dependant.

The procedures set out in 3.3 for “Submissions by Parties” will be followed although there is no legal requirement that a decision be made on the appeal within any specified time frame. An oral hearing may be requested as set out in 3.5.

## **Concluding Comments**

In setting out the above information concerning the practice and procedure of the Appeal Division, I have attempted to balance various competing interests which include:

- (a) the needs of those who will be affected to have as much information as possible (this includes workers, employers, and Board officers, as well as others);
- (b) my belief that to some extent issues as to practice and procedure should be left to the discretion of the panel of the Appeal Division which is hearing a matter;
- (c) my wish to benefit from the experience of the Appeal Commissioners and other participants.

I have therefore not attempted to codify all matters of practice and procedure for the Appeal Division, prior to June 3, 1991. Issues which are not addressed above will be dealt with by me, by the Registrar, and by the panels of the Appeal Division dealing with particular appeals or reconsideration requests. As our collective experience with the operation of the Appeal Division accumulates, I expect to develop and publish further procedural guidelines.

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Due to the time constraints imposed by the need to issue this material prior to June 3, 1991, there was insufficient time to obtain the degree of input from various parties which I would have desired. I did receive comments on short notice from a number of worker and employer representatives and Board officers which were helpful in the preparation of this document. I would welcome further comments and suggestions concerning the Appeal Division's practices and procedures on an ongoing basis.