



THE APPEAL COMMISSION
THE WORKERS COMPENSATION ACT OF MANITOBA

February 14, 2017

Legislative Review Committee
PO Box 1296, Winnipeg Main PO
Winnipeg, MB R3C 2Z1

Dear Committee Members:

Re: Legislative Review Committee 2016

On behalf of the Appeal Commission I am pleased to provide comments for the Committee's consideration.

As the Committee knows, the Appeal Commission is the final level of appeal in the workers compensation system and is intended to operate separately and independently from the WCB.

The Appeal Commission was first established in July 1990 as a result of amendments to *The Workers Compensation Act* (the Act). While there have been a few minor amendments since then, the provisions of the Act that impact the Appeal Commission have remained largely unchanged since 1990. Notwithstanding this, the Appeal Commission believes the current operational model works and significant changes are likely not required.

The Appeal Commission has limited its comments to a few key areas/concepts in the Act that directly impact the Appeal Commission. Our comments are grouped by topic and include comparison to other administrative tribunals in Manitoba.

Practices and Procedures

The Act (section 60.7) currently provides that the Appeal Commission may determine the practice and procedure for the conduct of matters before it "subject to any policies, by-laws or resolutions of the Board of Directors."

The conduct of matters before the Appeal Commission is governed mainly by Regulation 279/91, *Appeal Commission Rules of Procedure*.

Regulation 279/91 was first established in November 1991 and has not been amended since then. If amendments to the regulation are desired, the Appeal Commission has to ask the WCB Board of Directors to consider making them, as the Act only authorizes the WCB Board of Directors to make regulations, including Regulation 279/91.

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Most administrative tribunals in Manitoba have the ability to make their own rules of practice and procedure. This includes the Public Utilities Board, the Municipal Board, the Residential Tenancies Commission, the Clean Environment Commission, the Manitoba Human Rights Commission, the Automobile Injury Compensation Appeal Commission and the Labour Board. The Labour Board is explicitly given the authority to make regulations.

The limitation on the Appeal Commission's ability to determine its own practice and procedure may be seen as inconsistent with a separate and independent Appeal Commission. The Appeal Commission asks the Committee to consider recommending that the Act be amended to grant the Appeal Commission authority to determine the practice and procedure for the conduct of matters before it, including its ability to do this by regulation.

WCB Board of Directors Review of Appeal Commission Decisions

The Act (section 60.9) currently authorizes the WCB's Board of Directors to review and stay decisions of the Appeal Commission where the Appeal Commission "has not properly applied the Act, regulations or a policy of the Board of Directors." The Board of Directors has the option to rehear the matter itself or send it back to the Appeal Commission to rehear the matter.

This is a challenging area in administrative law. It is understood that this process may expedite the repair of a defective decision and do so in a less costly and timelier manner than a judicial review in the Court of Queen's Bench. However, a WCB Board of Directors' right of review appears to challenge the notion of the true independence of the Appeal Commission and whether the Appeal Commission is indeed a final level of appeal.

Our understanding is no other administrative tribunals in Manitoba are subject to this level of oversight. Across Canada, there are no other WCB appeal commissions that have this type of WCB oversight provision.

The Appeal Commission asks the Committee to consider recommending that the Act be amended to remove the WCB's Board of Director's authority to review and stay decisions of the Appeal Commission.

Jurisdiction Over Constitutional Questions

The Act (section 60(2.2)) currently provides the WCB and the Appeal Commission do not have jurisdiction over constitutional questions. This provision has been in effect since the Act was amended in 2006.

Our understanding is the amendment to the Act in 2006 was made in response to a number of decisions being made by courts across the country, including the Supreme Court of Canada. The courts were increasingly finding administrative agencies and tribunals had the authority to hear and decide constitutional challenges. There were concerns in Manitoba about how this might be implemented, and our understanding is there was discussion at that time about enacting

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legislation to limit administrative tribunals' constitutional powers, or alternatively, consolidate the power within a few tribunals. In the interim, the Act was amended to remove jurisdiction from the WCB and Appeal Commission over constitutional questions.

Ultimately, there were no broad legislative amendments regarding the jurisdiction of administrative tribunals in Manitoba to hear constitutional challenges. Most administrative tribunals in Manitoba currently have the authority to hear constitutional challenges. It is our understanding that administrative processes for handling constitutional challenges are now well-established in Manitoba.

The Appeal Commission asks the Committee to consider recommending that the Act be amended to provide the Appeal Commission jurisdiction to consider constitutional questions.

Please let me know if the Committee has any questions or requires further information regarding any of the items discussed above. If the Committee believes a meeting with representatives of the Appeal Commission is beneficial we will be pleased to meet.

Yours truly,


Alan Scramstad
Chief Appeal Commissioner