



# **2008 Value-For-Money Audit of the WSIB Appeals Program Executive Summary Report**

**March 10, 2009**

Advisory Services

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# 1.0 ENGAGEMENT OVERVIEW

# 1.1 Terms of Reference, Scope & Reporting

## Terms of Reference

- Appeals Program has been chosen for 2008 for the required annual Section 168 review of the cost, efficiency and effectiveness of at least one program that is delivered under the Act.
- The value-for-money audit has two main objectives:
  - To provide an opinion as to whether the Appeals Program is delivering value-for-money to the WSIB, in particular:
    - To assess the extent to which Program processes are designed to deliver program objectives economically (Economy);
    - To assess the extent to which Program processes result in the efficient resolution of appeals (Efficiency); and
    - To assess the extent to which Program processes result in the achievement of Program objectives in a manner consistent with the principles of fairness and transparency (Effectiveness).
  - To comment on the validity and/or recommend valid performance measurement indicators that relate to the WSIB's stated outcomes for the Appeals Program.

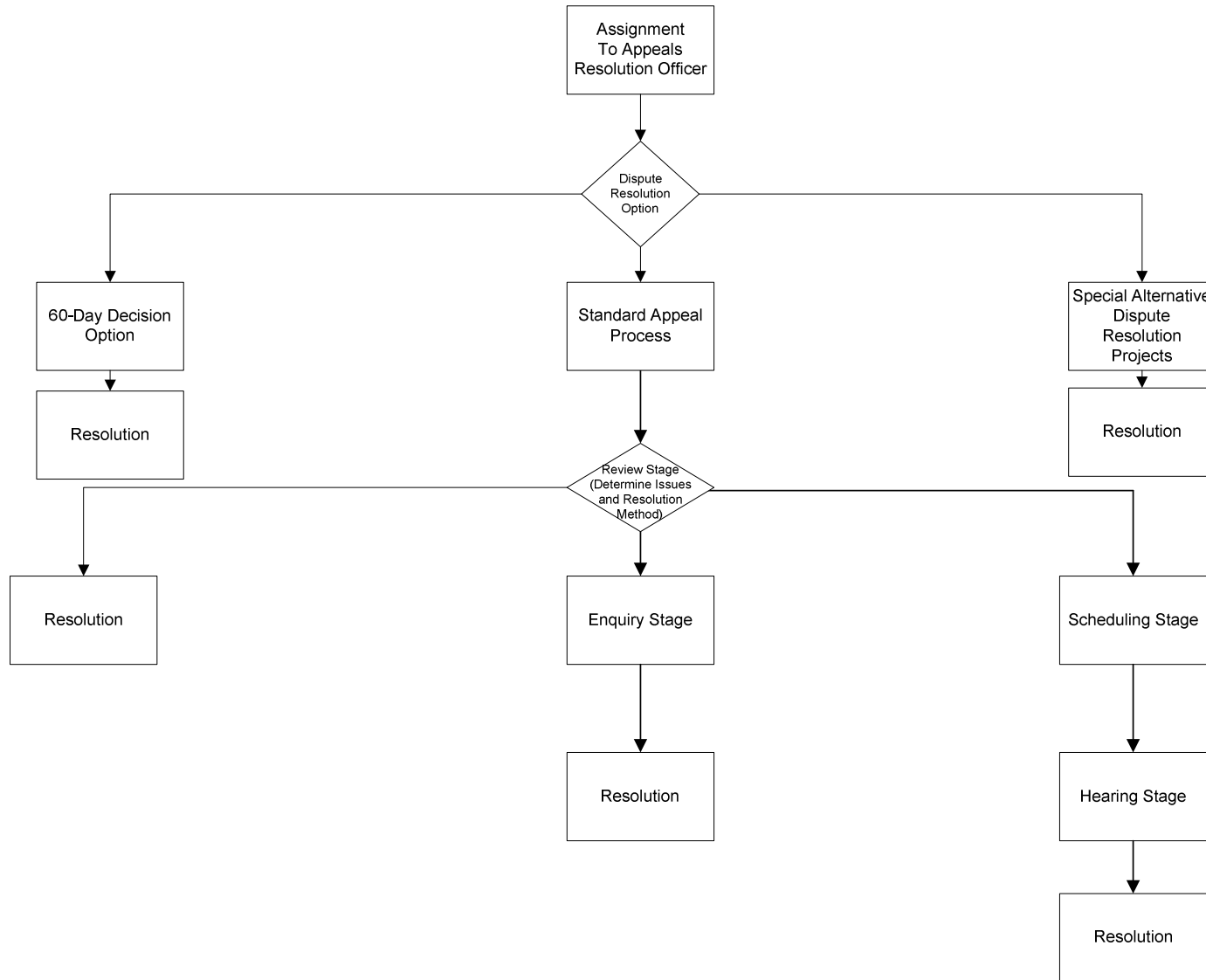
## Scope

- The scope of the value-for-money audit was the process from the registration of an appeal to the communication of a decision/outcome.
- The scope does not include the appeals process for occupational disease claims or the Workplace Safety Insurance Appeal Tribunal (WSIAT) process, which is a separate statutory entity with an arm's-length relationship to the WSIB.

## 1.2 Appeals Program Overview

- Prior to 1995, the WSIB's appeals system had two separate levels of review: Decision Review Branch (paper review only) and Hearings and Re-employment Branch (oral hearing).
- Disputes were resolved issue-by-issue in these two separate levels of review, often resulting in duplication of effort and significant delays.
- In 1995 a new appeals system emphasized less formal processes where decision-makers engaged the parties in more participative ways in resolving entitlement disputes in a holistic manner.
- Further refinement of the appeals system occurred in 1998 with the introduction of a single stream system and a single position of Appeals Resolution Officer (ARO) as the final decision-maker of the Board.
- AROs use a variety of resolution methods to make final decisions, tailoring the method to the complexity of the issue(s) under consideration and the needs of the parties. This allows for flexibility of process, with emphasis to resolve the objection in a non-adversarial, transparent and timely manner.
- The objective of the WSIB appeals system is to consider and reach final resolutions to objections to front-line WSIB decisions. These resolutions should be consistent with the *Workplace Safety & Insurance Act* and WSIB policy and are to be reached in a manner that is transparent, timely, fair and comprehensive.
- Over the three year period covered by the audit the volume of cases handled by the Appeals Branch was steady, with an average of 9434 cases per year. Worker appeals comprised 84% of the cases while 16% were employer-initiated appeals.
- The Appeals Branch consists of just under 100 staff.

# 1.3 Appeals Process Overview



## 2.0 SUMMARY AUDIT OPINION

## 2.1 Summary Audit Opinion

### **The Appeals Program is delivering value-for-money for the WSIB. In particular:**

- The Program creates value-for-money for the WSIB by providing workers and employers with a cost effective and flexible process to present their objections to WSIB adjudicative decisions by:
  - Providing an effective, quasi-independent and quasi-judicial dispute resolution mechanism that addresses worker and employer objections in a flexible, timely and fair manner;
  - Managing and resolving the most complex and difficult WSIB adjudication cases; and
  - Providing a range of dispute resolution processes, including expedited review (60-Day Option), review, enquiry and oral hearing.
- The Program processes deliver Program objectives economically.
  - In particular, the Program has sound planning, budgeting, monitoring and continuous improvement processes.
- The Program processes provide for the efficient resolution of appeals in a manner consistent with Program objectives.
  - The Program has clearly defined accountabilities, appeals procedural guidance, sufficient resources and continuous improvement to enhance Program management and stakeholder responsiveness; and
  - *Program efficiency could be enhanced by strengthening criteria around some Program procedures, timelines and exceptions.*
- The Program processes effectively support Program objectives according to the principles of fairness and transparency.
  - Program processes provide transparency, accessibility and procedural fairness consistent with the mission of rendering final resolutions to objections that are timely, fair and comprehensive; and
  - *Program effectiveness could be enhanced by continuing to work with Operations to improve the management of files that are withdrawn from the Branch or returned to Operations.*
- The Program has mature performance management including a wide variety of performance objectives and related indicators.
  - These indicators are closely tied to Program objectives and provide a balanced variety of performance related information; and
  - *Performance measurement indicators could be enhanced in conjunction with the implementation of recommendations noted in the Report.*





## **3.0 VALUE-FOR-MONEY AUDIT OF THE APPEALS PROGRAM**

## 3.1 Economy: Findings & Recommendations

**Audit Objective:** To assess the extent to which Program processes are designed to deliver program objectives economically.

	<b>Observations/Findings</b>	<b>Recommendations</b>
<b>Planning</b>	The Program has sound administration practices in place as evidenced by a robust annual planning process that clearly identifies Branch objectives and performance measures and key initiatives for the fiscal year that are consistent with these objectives.	No Improvements Recommended
<b>Budgeting</b>	The Program has achieved its budgetary objectives within the three-year period covered by the audit as evidenced by managing its budget within an acceptable variance of 3% established in Branch Business Plans with budget increases largely driven by increases in salaries and benefits.	
<b>Monitoring</b>	The Program is managed in a manner consistent with established annual Business Plans and corporate budgetary/financial policies as evidenced by achievement of Branch objectives and adherence to corporate budgetary and procurement policies.	
<b>Continuous Improvement</b>	The Program has considered and implemented delivery strategies and mechanisms to achieve objectives at reduced cost as evidenced by various cost control related initiatives adopted in annual Business Plans such as efforts to reduce the use of external hearing rooms through more efficient use of WSIB meeting/hearing rooms in the regions.	

## 3.2 Efficiency: Findings & Recommendations

**Audit Objective:** To assess the extent to which Program processes result in the efficient resolution of appeals.

	Observations/Findings	Recommendations
<b>Accountability</b>	The Program has established clearly defined objectives, roles and responsibilities which are reviewed annually through the business planning process.	<p><b>Recommendation#1:</b> The WSIB should consider strengthening the direction in the <i>Appeal System Practice &amp; Procedures</i> document (and develop related performance measures) to clarify further the criteria around some Program processes, timelines and exceptions, for example, those related to oral hearings and submissions/evidence.</p> <p><b>Management Response#1:</b> The WSIB concurs with the need to strengthen the direction regarding some of the practices and procedures outlined in the <i>Practice &amp; Procedures</i>, including those related to oral hearings and/or submissions/evidence. The changes to the Practice &amp; Procedures and the related performance measures to monitor these changes will be completed by December 31, 2009.</p>
<b>Procedural Guidance</b>	A <i>Practice &amp; Procedures</i> document has been established that provides comprehensive guidance with respect to the appeals process and particular criteria embedded within the process, though the clarity of the criteria around issues for some of the processes, timelines and exceptions (e.g., oral hearings, submissions/evidence) could be enhanced.	
<b>Resources</b>	Program resources, information systems and processes are sufficient to support the achievement of Program objectives and to address privacy and document security risks.	
<b>Continuous Improvement</b>	<p>Mechanisms are in place to monitor compliance with legislation, policies, procedures and processes on an ongoing basis. These mechanisms include regular quality audits, and feedback loops with key internal and external stakeholders.</p> <p>Management actively monitors performance indicators and addresses performance issues through the continuous improvement initiatives developed as part of the annual business planning process.</p>	

## 3.3 Effectiveness: Findings & Recommendations

**Audit Objective:** To assess the extent to which Program processes result in the achievement of Program objectives in a manner consistent with the principles of fairness and transparency.

	Observations/Findings	Recommendations
<b>Fairness &amp; Transparency</b>	Program processes provide for considerable transparency, ease of accessibility and procedural fairness consistent with Program mission of rendering final resolutions to objections that are timely, fair and comprehensive.	No Improvements Recommended
<b>Resolution Methods</b>	To recognize and respond to the diversity and complexity of issues that are appealed, the Program offers a variety of dispute resolution methods. The parties are also invited to participate in discussions/dialogue with the Appeals Resolution Officer so that the method of resolution chosen is geared to the nature of the issues under appeal and the needs of the parties. This allows the Program to provide flexibility and individualized service to its clients while balancing the program objectives of fairness, transparency and timeliness.	

## 3.3 Effectiveness: Findings & Recommendations Continued

	Observations/Findings	Recommendations
<b>Resolution Methods (Cont'd)</b>	<p>Over the three year period covered by the audit the volume of cases handled by the Appeals Branch was steady, with an average of 9434 cases per year.</p> <p>For the audit period, the average usage and duration of resolution methods leading to final decisions is contained in the table below. Approximately 64% of the decisions are made through non-hearing resolution processes and approximately 36% of the decisions are made through the oral hearing process which has the longest average duration of all the resolution methods.</p> <p>Many factors can influence the oral hearing duration including scheduling conflicts, timeliness of evidence gathering, complexity of issues under appeal, and the balance between the right of the parties to be heard and their perceived value of the quality of the outcome if another resolution method is chosen. The WSIB's service delivery values (e.g., flexibility, transparency, face-to-face accessibility) can also influence the decision to proceed via oral hearing.</p>	<p><b>Recommendation #2:</b> The WSIB should consider these influencing factors when strengthening the direction in the <i>Appeal System Practice &amp; Procedures</i> document as discussed in Recommendation #1, in particular with a view to elaborating further on the most likely circumstances in which an oral hearing should be used.</p> <p><b>Management Response#2:</b> The WSIB will consider these factors in updating the <i>Practice &amp; Procedures</i> as per Recommendation#1. This work will be completed by December 31, 2009.</p>

<u>Decision-Making Approach</u>	60 Day Decision (straight forward cases and generally one-party objection)	Review (ARO reaches agreement with parties that only written submissions necessary)	Enquiry (additional information required but can be obtained without oral hearing)	Oral Hearing (required in complex cases, reliability of evidence, or where perception of fairness gives rise to need for oral hearing)
<b>Avg. Usage (annual volume)</b>	<b>1,293 (19%)</b>	<b>1,703 (25%)</b>	<b>1,351 (20%)</b>	<b>2,438 (36%)</b>
<b>Avg. Duration (calendar days)</b>	<b>33* (*calculated from date this method selected)</b>	<b>142</b>	<b>202</b>	<b>269</b>
<b>TOTAL: 6,785</b>	<b>Non-Hearing Total: 4,347 (64%)</b>			<b>Hearing Total: 2,438 (36%)</b>

## 3.3 Effectiveness: Findings & Recommendations

	Observations/Findings	Recommendations
<b>Withdrawals &amp; Returns</b>	<p>The Program also receives and deals with a number of cases that may need to be returned to the first-level decision maker for additional handling or are withdrawn. The Program balances the need for flexibility in its procedural requirements with efficient and effective use of Program resources, however, the purpose of the Program is not to render first-level decisions. Withdrawn and returned files occupy the resources of both the parties and the Branch and can cause significant delays in the appeals process. The annual average for these cases out of the average total outputs of 9,434 is as follows:</p> <ul style="list-style-type: none"> <li>• Withdrawals 1,953 (21%)</li> <li>• Returns 633 (7%)</li> </ul> <p>Withdrawn and/or returned files may ultimately re-enter the Branch. These files have been the subject of targeted audits in the past. One such audit indicated that approximately one-third of withdrawn files ultimately re-entered the Branch. Many factors can influence the exit of a file from the Branch and the time between exit and re-entry. With respect to withdrawals these factors include: securing new information, change in representation, pursuit of other issues with Operations and failure to respond. With respect to returns these factors would include: significant deficit of information, additional investigation required to clarify issues, identification of other entitlement issues.</p>	<p><b>Recommendation #3:</b> As part of the ongoing alignment of the Program with Operations in support of the new Service Delivery Model, the WSIB should ensure that alignment planning considers:</p> <ul style="list-style-type: none"> <li>• Protocols around the management of withdrawals and returns</li> <li>• Strategies to monitor the re-entry of withdrawn or returned files and the duration between exit and re-entry, including periodic targeted reviews as appropriate.</li> </ul>
<b>Complaint Escalation Procedures</b>	<p>Program has effective internal complaint escalation procedures in place to address client concerns with a decision or with the appeals process. Management actively monitors appeals issues that are raised with the WSIB's senior management or in external forums. The lack of systemic concerns expressed through these channels over the audit period shows the appeals system is perceived by clients and stakeholders to be fair, timely and transparent.</p>	<p><b>Management Response#3</b> The Program will take the lead in coordinating with Operations the development of a refreshed protocol and monitoring methodology for the management and monitoring of withdrawn and returned files. This work will be completed by December 31, 2009.</p>

## 3.3 Effectiveness: Findings & Recommendations

	Observations/Findings	Recommendations
<b>Performance Measurement &amp; Indicators</b>	<p>Program performance measures and related formal performance indicators are reviewed and analyzed regularly to ensure the Program is achieving its objectives of rendering final resolution of appeals in a timely and consistent manner. Management and staff work to routinely meet or exceed Program objectives.</p> <p>Management has actively measured and addressed Program performance and has adjusted performance measures on an ongoing basis to ensure appropriate alignment with Program objectives.</p>	<p><b>Recommendation #4:</b> The Branch should continue to review and update performance measures and indicators as appropriate in particular with respect to any revisions to the <i>Practice &amp; Procedures</i> document resulting from Recommendations #1 and/or 3.</p>
<b>Strategic Alignment</b>	<p>The Program is aligned with the WSIB's Road to Zero strategic plan. The Program has demonstrated that it is mature with a solid foundation to be able to respond to internal or external changes, including the new Service Delivery Model. Management continues to monitor the experience with the new Service Delivery Model to ensure the Program can properly align with and/or support the current changes in Operations and any other corporate initiatives.</p>	<p><b>Management Response#4:</b> The WSIB will continue to update performance targets as appropriate and in particular giving attention to the changes in the Practices &amp; Procedures. This work will be completed by December 31, 2009 (see also Recommendations #1 and #3)</p>