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FINAL "CAPSTONE" PROJECT

Developing Professional Standards for the Workers' Advisers Office and an Implementation Plan to promote their effectiveness

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EXECUTIVE SUMMARY

This Project was undertaken to develop Professional Standards for the Workers' Advisers Office (the "WAO"), together with an Implementation Plan by which those Standards might be made most effective. The Project sponsor is Ramona Soares, Executive Director of the Workers' Advisers Office, Ministry of Labour, Province of British Columbia. From the perspective of the sponsor, the Project "product" includes draft standards and implementation recommendations.

Justification

The WAO provides advice, assistance and representation to individual worker clients in circumstances which engender a fiduciary obligation to its clients, a general duty to the administration of justice, and a duty to its employer, the Government of British Columbia. While the BC Public Service ("BCPS") Code of Conduct also governs the behavior of WAO employees, its terms are distinguishable from those of the proposed Professional Standards: The BCPS Code of Conduct addresses itself primarily to the employee's obligation to the employer, speaking only incidentally to the employee's obligation to the public. The Professional Standards developed here must mediate between the BC Government's interests, the public interest, and the more abstract interest of "justice." Furthermore, the generic BCPS Code of Conduct cannot substantively define professional conduct or clarify professional expectations within the complex and highly-specific context in which the WAO operates. Workers' Advisers Offices in other jurisdictions have tailored Professional Standards to their unique circumstances, presumably to address similar limitations in their respective government employee codes.

The most fundamental objective of adopting Professional Standards is to sensitize WAO staff to the ethical dimensions of their duties and to calibrate their responses to the ethical questions or conflicts that arise in the course of performing those duties. WAO staff have different backgrounds, training and experience and differ in their perceptions of their roles, and of the nature and priority of their duties. Hence, the need to calibrate.

Approach

A preliminary literature review suggested general principles that ought to be incorporated to the Standards to enhance their effectiveness. The research suggested that effective Standards must first have legitimacy with stakeholders, be realistic and relevant to the WAO context, and be acceptable and accepted by the intended users. This Project has solicited input from those who are or will be the most impacted by the Standards. This included 30 hours of intensive interviews involving roughly a third of WAO staff, as well as surveys of those stakeholders within the Workers Compensation system who are best placed to assess the current level of WAO professionalism (the Review Division and the Workers

Compensation Appeal Division ("WCAT")). Previous Client Satisfaction data was also reviewed to ensure that this analysis does not entirely overlook the perspective of those to whom WAO's services are directed. All of this data has been synthesized with the results of the complete literature review to inform the substantive content of the Professional Standards and to recommend the most effective means of implementation.

As the primary objective and deliverable of this Project, draft Professional Standards were developed for the WAO. These Standards employed the Professional Responsibility Guide of the Ontario Workers' Advisers (OWA) as a basic framework, and assimilated some of the components of the Ontario Guide. However, the OWA Standards were drafted by lawyers, and primarily addressed to minimizing the OWA's exposure to liability. This process involved minimal consultation. The approach taken here is a highly participatory approach, and pursues different objectives.

By promoting consistency, these Standards should preempt some of the circumstances that might otherwise give rise to potential liability for the Branch – but it was never expected that Professional Standards would immunize the WAO from liability, and that is not their principal purpose. These Standards were developed as an educational tool. They specify certain Branch expectations and highlight potential pitfalls. They suggest possible solutions and provide guidance on reaching solutions in unique circumstances. They identify those particular circumstances or conundrums with which staff should not wrestle alone. All of these purposes were supported by the Client and are consistent with WAO staff feedback.

The Professional Standard document consists of 24 rule-like Standards, as well as principles that relate to discretionary action. These are organized into a Quick Reference at the head of the document. The Table of Contents follows the Quick Reference structure, directing users to more detailed guidance on the application of these Standards to the WAO environment. The application section details some clear "expectations" but the content is more typically presented as "best practices", processes, and lists of relevant considerations. The Standards include case studies constructed from realistic scenarios, with a list of questions intended to help staff to think of some of the implications of some of the Standards.

The literature review suggests that the manner in which the Standards are implemented is just as important as their content. For Professional Standards to be adopted in a meaningful way, it is critical that they be made available to all staff, that staff be fully familiarized with their content, and that they be trained in their application. To the extent this project addresses monitoring and compliance, the approach taken is one of education, with a view to informing and shaping professional behavior rather than deterring unprofessional behavior. WAO staff appreciate that the Branch already operates in a highly professional manner and this appears to have been confirmed by those stakeholders who are best placed to

judge. Therefore, there is no pressing need to take a hard line on compliance. At the same time, it is clear from the input obtained from staff that acceptance of the Standards would be negatively affected by any perception of an enforcement function.

The Standards are presented in draft form, because additional input is still required in the final shaping and editing, and in providing supplementary content. The Branch is here provided with three options respecting the substance of the Standards: 1) The Standards could be adopted as drafted (subject to any revisions required by the Client) and revisited at a later date; 2) The Standards could be reviewed and revised by a select group of experienced staff, approved, and then published, or; 3) The Standards could be posted as a living document with an open invitation to provide additional suggestions, comments, examples, anecdotes, recommendations and rationale for the removal or addition of standards, etc., and a process to amend the document and circulate updates.

These Standards could form the core of a successful Professionalism program, but they cannot be the only component. WAO leadership must demonstrate a continuing commitment to professionalism and this requires that resources be dedicated towards the implementation of the Standards. Three implementation options are presented: 1) The first option is to have a single conference for existing staff at which the Standards are presented and reviewed, and case study exercises are conducted with reference to the Standards. New staff would have similar training in their orientation. This option would ensure that all staff had the same baseline level of familiarity and enough of a look at the Standards to see their utility; 2) The second option would require the development of a program of continuing training and reinforcement. This would build on the initial presentation of the Standards, but would involve a variety of reinforcement sessions. Sessions would include some combination of updates or exercises as a standing agenda item at Branch Conferences, regular discussions with Regional or Program Managers, Live Meeting exercises, and "professional conundrum"-themed Case Conference calls; 3) The third option would be all of the above, with the addition of an Ethics Officer, or a Program Manager with designated professional oversight duties, and/or a Committee of Peers. This person or body would be charged with developing the training sessions, organizing the calls, collecting and reviewing content additions or deletions for the Standards, consulting on professional concerns, recommending proactive or remedial action, and generally keeping professionalism top of mind in the Branch.

This report recommends the second option regarding the substantive content of the Standards themselves and the third implementation option. Staff have been outspoken about their desire to have input and to not have a document imposed. Even staff members, who were genuinely appreciative for having been involved in the intensive interviews, expressed a desire to have a hand in the final form. Thus, some additional participative opportunity is indicated. However, the Standards need to stabilize in some form before they can begin to impact practice consistency

or improved certainty around expectations. The consultation needs to end. After the extensive interview process, and some final representative input, it is unlikely that WAO staff could complain that they were not adequately consulted.

The third implementation option is recommended: The success of a program of professionalism depends largely on the degree to which it is seen as a management priority and then embedded in the culture of the organization. Management must devote the resources to reinforce its expectations of professionalism. Assigning this responsibility to an officer, manager, or to a standing Committee of Peers would be a tangible expression of management's commitment to professionalism. At the same time, the responsible person or body could ensure that training and reinforcement activities take place, and that they are relevant and current. A Committee of Peers would have the additional "grass roots" advantage of being more responsive and understanding of the professional challenges of staff, and could represent professionalism as a staff initiative rather than something imposed from above. That role or office may even evolve to where it has an investigative function, or even an involvement in fashioning a response to professional misconduct incidents – but only when staff have become familiar with the Standards, and are accustomed to the new role or office given charge over professionalism.

The Project concludes with some general suggestions for monitoring and enforcement of the Standards and for evaluating how successfully they have been implemented. However, monitoring and enforcement have been de-emphasized in the actual implementation plan presented here. It was felt that staff would need to become familiar with the Standards content and comfortable with their use before the Branch could legitimately focus on monitoring and enforcement. Staff need to be satisfied that the Standards are fair, relevant, and reflect their own views and concerns, and that they will be consistently supported by management. The feedback from staff indicated that they would be less likely to accept and adopt the Standards if they were perceived as a performance management tool or were shaded with the potential for discipline.

The Project scope does not contemplate following the Standards over the significant length of time necessary to fully integrate them. Therefore, the evaluation of their "success" is also out of scope. Nevertheless, the Standards are projected to be a useful tool to staff and should help to regularize the level of professionalism across the Branch. The Standards development process, content, and implementation incorporate many of the "best practices" supported by the literature, and are considered to represent a reasonable compromise of Management, staff and other stakeholder interests.

INTRODUCTION

“Ethical” behavior is often tested in circumstances that are novel or unique. Even for those who are sincere in their desire to do right, it is increasingly difficult to know what “right” is. Nevertheless, both public and private organizations purport to desire ethical and professional employees, even where they may not have given much thought to what they mean by those terms within their own organizational context. Many organizations have chosen to formulate professional conduct standards through the development and adoption of a set of Professional Standards or Codes of Ethics. Such documents serve to define what the organization considers to be ethical or professional and establish organizational expectations. By explicitly stating their expectations, these organizations purport to supply their employees with a set of customized standards applicable to their unique challenges and to thereby create a more ethical work climate and workforce. Their success has been mixed.

Simple statements of expectations can help to establish or clarify expectations but can never address every possible contingency: They can not affect what they have not addressed. This project was undertaken with a view to producing *effective* Professional Standards. This requires consideration of the process by which the Standards are developed, the actual substantive content and manner of presentation for the Standards, as well as the manner in which the Standards are finally implemented.

Ramona Soares (the “Client”), the Executive Director of the Workers’ Advisers Office of British Columbia offered to sponsor the development of a set of professional responsibility standards for the Workers’ Advisers Office (“WAO”), now produced as Annex 10 to this Report. Adapting the Standards of similar offices in other jurisdictions to the WAO would be relatively simple, but such a process would not necessarily produce Standards that would be effective. It was determined at the Proposal stage that the Project should include a Literature Review to consider the factors that have been found to impact on the effectiveness of such Standards in other circumstances, as well as a formal process to interview staff and to survey other stakeholders. It was expected that such a process would assist to identify existing and potential concerns with the professionalism of the WAO, as well as the best or most “acceptable” means by which those concerns could be addressed within Professional Standards. With this information, the Standards could be tailored to WAO’s particular circumstances. At the same time, the Proposal’s preliminary literature review indicated the importance of the Standards’ implementation phase. The Project would address implementation, and conceive an implementation plan.

In the end, the Literature Review was simply one tool which was employed, first: To frame the questions for the interviews; and, second: To inform the development

of the Standards and the Implementation Plan. Ultimately, the Client was not interested in the Literature Review as a stand-alone deliverable, but the Review will continue to stand as justification for the final form of the Standards and the manner in which the Standards and Plan were developed. The key deliverables for this project are the Professional Standards Guide itself and the Implementation Plan.

Under the “Background” section, this Project Report outlines the context in which the WAO operates and discusses some of the unique challenges faced by the organization. It is also here that the Project reviews the various objectives that the Client would like to see served in the Professional Standards Guide and in its implementation. Following the Background is the Methodology section. This section describes the sources that informed the project, and how data was gathered from those sources. It explains the rationale for selecting the sources and the choices made in eliciting and collating data.

The “Literature Review” is the first “source” employed, and it touches on a range of issues: It canvasses the literature to uncover the importance of the Standards development process and what that should look like; delves into the general attributes of good code content; and discusses some best practices around implementation, and of monitoring and enforcement. It concludes with a brief summary of what has been learned and how it applies to the WAO context. The Review is followed by “Findings”. The Findings section summarizes some of the more emphatic points and general trends that were apparent on review of the interview and survey data. A much more detailed compilation of findings is found in Annexes 2, 4, 6 and 8. The “Discussion” serves to compare and synthesize the results from the Literature Review with the findings from the Interviews, Surveys, and consideration of other Codes. The Discussion section points to the manner in which these results were reconciled and integrated to the Professional Standards and identifies the elements to be addressed in the next section. “Options / Recommendations” explores options and develops recommendations around the continued development and implementation of the Standards.

The Conclusion returns to the goals and key deliverables of this Project and the degree to which the Project has addressed those. It discusses a future need for monitoring, for developing some administrative mechanism of enforcement, and for evaluating the success of the Standards.

BACKGROUND

The WAO is created and mandated by the Workers Compensation Act to provide advice, assistance and representation to injured workers in respect of WorkSafeBC claim issues. WAO has a central headquarters in Richmond but maintains branch offices across the Province. It employs a single Executive Director, Regional and Program Managers, Workers' Advisers, and Workers' Advisers Assistants¹. All of those employees have the same access to confidential WorkSafeBC claim files and to the WAO's internal Case Management System. All may have contact with individual injured worker clients and are authorized to exercise at least some degree of control over the conduct of the file. A diagrammatic representation and description of WAO's Work Processes (attached as Annex 9) helps to distinguish the roles of Adviser and Assistant.

Injured workers coming to the WAO, are often in significant physical and financial distress. They may also have language or other cultural barriers, minimal education, or literacy challenges. Even without such challenges, the Workers Compensation system is inarguably complex and difficult to negotiate for those in need of benefits. Injured workers who access WAO services depend on its expert procedural and substantive advice and often rely on the WAO to manage and represent them in their appeals to the Review Division or WCAT.

All employees of the BC Public Service are required to subscribe to a Code of Conduct. But the Code does not capture all of the professional responsibilities of the highly specialized WAO context. The WAO regularly encounters circumstances which are more akin to those of the legal profession than they are to the general circumstances of government employees. No doubt because of its parallels to the practice of law, other jurisdictions with similar compensation advisory offices have borrowed heavily from the Codes of Conduct of their respective law societies.

Like lawyers, Advisers have control over the manner in which they provide their service. Each Adviser is vested with the discretion to determine the merits of a particular appeal and to determine the level of their commitment accordingly. Unlike lawyers, Advisers have a positive obligation to provide those seeking help with a service up to, and including, representation.

Workers' Advisers have all those obligations articulated within the BCPS Code. This means providing professional service to the public but also means following the instructions and direction of their employer's chain of management and taking care not to compromise the position or interests of the provincial government. Workers' Advisers also have a duty to act in the best interests of the injured

¹ There is also one Executive Assistant and one Manager of Finance. These positions do not normally access claim files, deal directly with workers, or have conduct of the worker files

workers which they represent. They have a duty to assist the Workers, and not to obstruct, the Workers Compensation appeal/inquiry system. The Workers' Advisers Office must reconcile these competing duties in a quasi-judicial context, where the potential consequences to individuals within a vulnerable client group can be severe.

Therefore, these Standards were developed as a complement to the BCPS code, providing practical and substantive standards tailored to WAO's own unique circumstances. It is hoped that the Standards will assist the WAO to maintain and even enhance the consistency and caliber of its professionalism. Beyond the broad goal of promoting "professionalism", Professional Standards may serve a number of objectives. The objectives described below were confirmed by the Client, and the Standards developed here have been cognizant of these objectives, (although not all have received the same emphasis):

Consistency of Service Quality Injured workers should be entitled to the same high quality service and the same level of professionalism, irrespective of the Adviser or other employee contacted by the injured worker, and irrespective of the office location. All employees should have the same understanding of their responsibility in this regard.

Guidance for staff Professional Standards, and the training associated with those standards, can provide accepted solutions to common ethical problems or scenarios. Professional Standards can also serve to identify the relevant considerations and provide a methodology by which unusual or unique ethical situations can be resolved. This should provide guidance as well as a level of comfort for staff.

Regulatory Professional Standards can provide a clear statement of WAO's ethical expectations. Professional Standards can assist WAO to strengthen and shape the processes by which it may address any failure to meet those expectations. Standards can also provide an objective and defensible basis for disciplinary action.

Overlap of Legal Liability Breaches of ethics by WAO staff have the potential to expose the government to civil liability. The existence of Professional Standards is not expected to immunize the government, but it may assist employees to avoid ethical breaches with legal implications.

Protection of Staff Staff will be presumptively innocent of wrongdoing where found to be acting in accordance with accepted Professional Standards. Adherence to standards should also shield employees from censure or discipline from the employer.

Internal Equity Professional Standards should ensure staff receive management support in appropriate circumstances, are treated consistently where those Standards are breached in some manner, and that all staff, including management, are held to the same standard.

External Image Workers' Adviser offices in some other jurisdictions have already developed their own Professional Standards. The existence, publication of (and conformity to) Professional Standards may solidify the professional reputation and standing of the WAO both within government and to the public, and among its sister offices.

"Professionalism" is sometimes defined as, "the skills, competence and standards expected of members of a profession." Workers' Advisers are not required to be members of any of the traditional professions per se. Nonetheless, the WAO provides a specialized form of legal advice and legal representation and the skills, and the competence and performance standard expected of Advisers (and other WAO employees) is not far removed from those demanded of the legal profession. Similarly, the Managers and the support staff within the office must, by extension, adhere to those same standards (in the same way that the Manager of a law office cannot require lawyers to contravene the requirements of the Law Society and legal support staff are constrained from actions that are inconsistent with the lawyer's obligations). For the purposes of the Workers' Advisers Office, this project will describe standards of professionalism as compassed by the duty to the public, the duty to the individual client, and the duty to the administration of justice:

Duty to the Public WAO staff are employed by the Ministry of Labour but funded by the employers of the province out of WorkSafeBC's accident fund. The entire compensation system is founded on a "historical compromise" in which employers are protected from liability in the case of their own negligence and workers are compensated for workplace irrespective of fault. However, the system is necessarily complex, and many workers cannot access their full benefit entitlement without assistance in negotiating the application and appeal system. Historically, the workers did not just bargain for theoretical access to compensation but for actual access. The role of the WAO in facilitating access to justice is a public trust. This means that Advisers or other WAO staff must provide timely and appropriate advice in response to public enquiries, and Advisers must always exercise the discretion vested in them under s.94(2) to provide an appropriate level of assistance, without reference to improper considerations. The service must be delivered without discrimination, to all manner of workers in or from BC workplaces, and subject to a standard of competence and diligence which is consistent across the Province.

Duty to the Client (the "worker") Advisers must act in the best interests of the individual "worker". They must therefore be both competent and diligent to provide advice and to fully prosecute appeals, and must in all cases exercise their professional judgment to the best of their ability. In the performance of their duties, Advisers must conduct themselves in an impartial manner, without expectation of reward or fear of censure, or in reliance on any other improper consideration. This duty would include such things as holding personal information in confidence, clear communications particularly around issues of commitment/instructions, and the manner of withdrawal.

Duty to the Administration of Justice Advisers must do nothing that would bring the administration of justice into disrepute. First and foremost, this duty requires that Advisers not knowingly misrepresent or acquiesce in any misrepresentation of fact before the Review Division, the Workers Compensation Appeal Tribunal or even WorkSafeBC. Advisers should be prepared and should assist the process to the extent possible, where that duty does not conflict with their duty to their client.

Meeting all the objectives identified as desirable while reconciling the duties to the public, to the worker, and to justice, is a great deal to expect of a single document. The Standards will have to be more than a faithful recital of the expectations and purposes of management. Professionalism cannot be imposed by managerial fiat. To be effective, the Standards will need to be acceptable and accepted by the intended users, meaning that they must accurately comprehend, and have relevance in, the environment in which WAO operates. In addition, the Standards will need to be implemented in such a way as to ensure the staff are familiar with the standards, trained and practiced in their application, and that the importance of professionalism to the WAO is reinforced. It may also be necessary to incorporate a form of compliance monitoring, and ultimately enforcement.

METHODOLOGY

The Client suggested that the Professional Standards already developed for workers' advisers offices in Alberta and Ontario would be a suitable starting point. These other Standards were reviewed and employed as a template structure, with a view to adaptation and modification as indicated by further research.

Identification of Objectives

A preliminary literature review was conducted in the preparation of the Project Proposal in which a number of potential objectives for Professional Standards were identified. Those applicable to the WAO context were put forward to the Client and endorsed (see Background section).

Literature Review

Having clarified the objectives, the Project proceeded as follows: A literature review was substantially completed. This Review emphasized the need for meaningful and substantial staff input, and suggested a number of other important factors relevant to the process by which the Standards were developed, the actual substantive content of the Standards, and the means by which the Standards would be implemented and administered.

Staff Interviews

Staff interviews were conceived as a vehicle for obtaining staff input. The questions were developed to test principles from the literature against staff perceptions, and to verify the relevance of some of the context-specific content derived from the Alberta and Ontario Standards against the different legislative framework, objectives, views, and organizational culture of the B.C. WAO. The use of detailed input from staff represented the most significant choice in the research design: An alternative approach might have fashioned Standards and an Implementation Plan from detailed specifications obtained from the Client. Staff input might still have been sought, but as an exercise to manufacture support for a predetermined Standards concept and implementation. However, this Project sought input at the formative stage because the literature spoke clearly to the need for real participation to "increase legitimacy" and "augment trust", as well as to ensure that the substantive content were realistic and relevant. Among the highly-trained and independent-minded experts of the WAO, it seemed particularly important to sincerely value their input.

The Project considered WAO staff to be the principal stakeholder and so staff were given a greater opportunity to provide input than were other stakeholders. An "intensive interview" approach was taken over surveys or tightly scripted interviews, because this format offered much richer information. It allowed for the exploration and validation of ideas not considered in the script design, and the

ensuing discussion allowed the interviewer to check the accuracy of his perceptions. Real-world examples and illustrations were solicited. At the same time, this process was effective to alleviate suspicions and concerns with the process, and correct misconceptions. It was hoped that the interviews would *collectively* provide sufficient data that the professional standards drafted and the implementation process employed would be recognizable by staff as reflective of their own suggestions, their experience and examples. Given that the success of the Standards would ultimately have to be measured by the extent to which they were adopted, it was important that staff take ownership of them, inform the Standards content for realism and relevance, and customize the format for utility.

The staff interviews involved all levels of WAO staff. 15 subjects were each interviewed over a two hour period. The sample included nine advisers, three assistants, and two of the three regional managers, roughly 35% of the staff at the time the interviews were conducted². It was stratified to ensure that respondents were equally represented based on four attributes: sex, veterans vs. the less experienced, legal background or not, and office location. The rationale for this stratification was admittedly intuitive: It was thought that these were the factors most likely to influence responses regarding professional conduct within the WAO organization and business. It was also a complex puzzle to construct a sample to meet all of the stratification criteria, which helped to eliminate selection bias. There was no self-selecting: Everyone asked to participate agreed.

The disadvantage of intensive interviews is that the data cannot be used to confirm the relationship between any variables, nor does it produce solid baseline data by which the effectiveness of the professional standards program (or WAO perceptions of effectiveness) might later be assessed (except in a general sense). Further, the complexity of the questions and responses is not amenable to easy analysis. It was difficult to systematically analyze much of the data flowing from individual respondents due to a scarcity of parallel data in other interviews.

Surveys of other Stakeholders

It was felt that the Standards must also consider the views of other significant stakeholders. External stakeholders could provide a different, more objective, perspective of WAO professionalism, and had the potential to identify existing deficiencies that could or should be addressed in the Standards. External stakeholders were identified as injured worker clients, the appellate bodies (WCAT and the Review Division), and WorkSafeBC Case Managers.

² The totals include a number of new advisers and assistants hired to fill vacant positions since the interviews were conducted.

Injured Workers

The service of the WAO is addressed to injured workers, so they are the most obvious and significant external stakeholder. It would have been preferable to survey injured workers directly, but the Client specifically restricted the scope of research to exclude any direct surveying of injured workers. Instead, Client Satisfaction Surveys for 2008 were obtained and the secondary data that could be gleaned from those surveys was employed as a proxy.

Two sections of the Client Satisfaction Survey (found at Annex 1) were employed: The General Comments section and the Satisfaction rating on "professionalism". Common themes related to professionalism were sought within the general comments and the responses were categorized and tallied under these themes. In the surveys, "Professionalism" was rated from 1-5 where 1 was "Very Satisfied" and 5 was "Very Dissatisfied" (6 was Not applicable). Beneath this was a series of attributes to describe WAO staff with boxes beside them. Most respondents put a number from 1-6 in each of those boxes. One of the boxes was Professionalism. In analyzing these survey returns, the data in the Professionalism box which used the 1-5 satisfaction scale was tallied according to satisfaction level. Where the Professionalism box was shaded in but the Very Satisfied was circled in what could appear to be the instructions, this was taken as a Very Satisfied response. If the box was shaded but no satisfaction index was circled, this was taken as "Satisfied". If the professionalism box did not contain an index number and was not shaded it was taken as a "neutral" response, (except if either "dissatisfied" or "very dissatisfied" was circled above, in which case we assigned that value to professionalism). This may not be very satisfactory but it reflects the limited value of the original survey instrument.

Appellate Bodies

The adjudicators in WCAT and the Review Division before whom Advisers appear, are sophisticated to the law and policy, and understand their own practices and procedures (and codes of representative conduct) best. They witness Advisers, as well as other independent advocates including lawyers, performing in their representative capacity. Representation is the core service provided by the Workers' Advisers Office. The intent in gathering information from these adjudicators was to ensure that the draft Professional Standards would ultimately be responsive to the particular concerns that could be identified through this independent, and trained perspective. Because their time is at a premium, short surveys were designed concerning common concerns within the realm of representative competence, diligence, and integrity.

The survey attached as Annex 3 was forwarded to the entire body of Vice Chairs by the Chair of WCAT. The survey attached as Appendix 5 was forwarded to the entire body of Review Officers by the Review Division's Director of Quality Assurance. The surveys of WCAT and of the Review Division are similar but tailored to, and

necessarily limited by, the type and extent of contact between WAO Advisers and the respective groups surveyed. These surveys tend to be a review of the professionalism of Advisers only, but the professionalism of the WAO as a whole may be inferred to the extent that Adviser behavior reflects the expectations monitored and enforced by the organization as a whole.

In respect of each concern or behavior, respondents were requested to rate Advisers on two axes; incidence of unprofessional behavior and gravity of unprofessional behavior. The surveys sought to uncover where small professional lapses were common, where lapses were uncommon but significant enough to deserve special attention, and where significant breaches occurred. The surveys were pre-vetted at WCAT through the Chair of the organization and at the Review Division through the Director, Quality Assurance and one of the Team Lead Review Officers. WCAT provided no further feedback as to the form or content of the survey. However the Review Division did make suggestions to enhance readability and ease of response for their surveys and these changes were made. The Review Officer Team Lead confirmed the relevance of the surveyed behaviours and could offer no other areas in which the Review Division might have concerns.

The surveys were limited by the need for brevity and for responses which averaged or generalized behavior across the Branch. This means that there is a possibility that the conduct of a few Advisers could either skew the results, or could go unidentified. This effect was somewhat attenuated through the 2-axis survey design: Respondents were directed to turn their mind to not just the extremity of each particular deficiency but also its incidence of occurrence.

The surveys were voluntary and only about 15% of each of the Review Division and WCAT responded. It is possible that there was some self-selection process. However, the surveys were introduced in such a way as to suggest that this could be a real opportunity for the surveyed adjudicators to impact and improve the professionalism of the WAO. If anything, a critical bias would have been expected. Instead, responses tended to be generally favourable. In all, it is not thought that response bias was a significant factor.

WorkSafeBC Case Managers

WAO staff communicate with WorkSafeBC Case Managers to determine file status, supply additional information, and request decision reconsiderations. Surveys were designed for circulation to a random sample of WorkSafeBC staff, but permission to proceed was not forthcoming. WorkSafeBC staff were not surveyed.

Best Practices Review

The Project Proposal had originally contemplated a "Best Practices Review", independent of the literature review. However, this was found to be impractical. To apply Best Practices Research in a meaningful way to the development of professional standards content, one would have to first identify comparable

organizations with similar goals or mandate to the WAO, then select only those which have developed and implemented Professional Standards, and then elect the subset in which it is possible to objectively relate a high level of professionalism to the effect of the Standards. Presuming that one were able to titrate such a sample, one would then need to scrutinize these Programs and their various Standards for common elements or best practices which could reasonably be linked to success on similar outcomes. Such a rigorous analysis was beyond the scope of this project (see Overman & Boyd (1994) and Bretshneider et al. (2004)).

This Project only reviewed the Standards from the Alberta and Ontario jurisdictions, and only the Director of the Ontario Workers' Advisers was interviewed (in relation to the success of Ontario's Standards). Other comparable or analogous Standards could not be located. The Professional Standards of a wide-range of professions including advertisers, physiotherapists, teachers, accountants, were briefly reviewed but were found to have little application to the WAO context. The B.C. Law Society's Professional Conduct Handbook, the BC Government Code of Conduct, and rules for representative conduct at both WCAT and the Review Division were reviewed, but only to ensure that there was no obvious conflict with the Standards developed here. Of course, some of the studies in the literature review were derived from some form of "best practices" and the Elankumeran (1995) case study suggests one form of "best practice" for implementation.

Analysis and Integration

Because of the individual and qualitative nature of the data obtained through the interview process, responses were simply grouped according to theme (where possible). Isolated responses that accorded with the literature and common sense and which were not otherwise contradicted, were also integrated to the Standards and implementation in some instances. However, a greater effort was made to integrate recurring themes to the Standards, particularly where these themes confirmed findings of the literature review.

The Standards were only constructed once the literature review was completed, the interview data had been classified, the client satisfaction surveys had been reviewed, and the survey results were in. An effort was made to integrate the themes and principles with some of the existing Standard-template content (from the OWA and OAA) in a new format designed for ready access, according to the manner in which WAO staff do their work.

Implementation options and recommendations were conceived once the Standards were largely complete.

LITERATURE REVIEW

Although there is some research that has considered the Professional Standards of traditional professions, most of the literature (especially in the public sector) concerns *ethical* standards and codes. This was not felt to be a concern because there is no meaningful distinction between “ethical” standards and “professional” standards. Most Professional Standards are an application of broader ethical principles to a specific context. Even where a particular standard may appear to be value neutral, it maintains an ethical dimension in its insistence that it applies broadly to all staff, without prejudice or favoritism. In considering what the literature has to offer to the development and effective implementation of professional standards, it is legitimate to apply principles taken from ethics codes research to the professional standard context.

Ethics codes have been adopted by many organizations. In some cases, the existence or non-existence of such a code has been key to judicial determinations of liability. In other cases, government has intervened, even in private sector contexts, to make codes mandatory. Yet the support in the literature for ethics codes is uneven, and the effectiveness of such codes is still controversial. Thus, the first issue to consider is whether WAO ought to even to adopt Professional Standards.

McCabe et al (1996) found support for the utility of corporate codes of ethics, identifying less unethical behavior in the workplace in the presence of a code. Kaptein & Schwartz, (2008) analyzed a large number of studies on the behavioral influence of ethical codes finding that codes of ethics can have a positive impact. However, they also reported that the results were inconsistent: *“35% of the studies have found that codes are effective, 16% have found that the relationship is weak, 33% have found that there is no significant relationship, and 14% have presented mixed results.”* Kaptein & Schwartz attributed this divergence to differences in how “code” was defined, how “effectiveness” was defined, how ambitious were the code’s purposes, the sample size and variability, and the variety of research methodologies employed.

If it is accepted that Standards can make a difference at the WAO, one must still consider what it is that they can or should do. Wotruba et al.(2001) believe that a code of ethics must accomplish the following: It must proclaim the organization’s ethical responsibility, transmit its values and standards to its employees, and ultimately affect employee behavior. However, the literature suggests that overt changes in behavior may not be the only yardstick by which to measure the successful implementation of Standards. There can be other purposes or value in promulgating ethical Standards. Frankel (qtd. in Gaumnitz & Lere, 2002) described eight potential objectives for a professional code. Of those, the following seven are relevant: (1) provide group guidance for an individual when that individual faces a

novel situation; (2) provide a basis for public expectations and evaluation of the profession; (3) strengthen the sense of common purpose among members of the organization; (4) enhance the profession's reputation and public trust; (5) deter unethical behavior by identifying sanctions and by creating an environment in which reporting unethical behavior is affirmed; (6) provide support for individuals when faced with pressures to behave in an unethical manner, and; (7) serve as a basis for adjudicating disputes among members of the profession and between members and non-members

This Review will consider three aspects of an ethical program involving Professional Standards. The first aspect concerns the Standards themselves, including the process by which they are developed, as well as the development of their actual content. The second aspect of the program is its implementation, which is the plan by which the Standards might be embedded within the organization. The final aspect describes the administration of the Standards, which could include monitoring and enforcement, evaluation and modification.

Philosophical foundation

Dobson (2003) believes that behavior is driven by self-interest and that ethical codes will be most effective where code values can be rationalized with self-interest. Howard (2001) rejects such "prudential ethics", maintaining that any set of ethical rules or standards must apply to *everyone*; apply irrespective of whether a person is the instigator or recipient of an action; they must be logically consistent, and; they must actually provide guidance for behavior. Reynolds & Bowie (2004) take a similar tack, arguing from a philosophical perspective that an ethics program should be fundamentally "moral", i.e. its primary justification should be the encouragement of right behavior for its own sake; it must respect the free will of the governed employees, and; it must be constructed as though it is agreed to by all.

Newton (qtd. in Schwartz,(2002)) would agree. He considered that the foundation of any code or guide of Professional Standards must itself be ethical and, to Newton this would require that the Standards conform to certain principles. The "principle of participation" requires that staff be involved in the development and promulgation of the code; the "principle of validity" requires that the code be coherent with general ethical principles and the dictates of conscience; the "principle of authenticity" demands coherence with the lived commitment of the company's officers. If the WAO "ought" to adopt professional standards, Newton would insist that they be justifiable according to the principles described above.

Development of Code Content

A code of ethics prescribes a set of duties or obligations, "*...clarifying the limits of reasonable behavior by providing absolute prohibitions and directives for specific acts*" (Tilley, 2009). However, Tilley notes that minimum guidelines can be insufficient to navigate all possible ethical difficulties and she cites Harrison (2009) for having identified a trend to use "values rather than deontology"; an approach

consistent with "Virtue Ethics." In some competence-driven or knowledge-based organizations value statements have even replaced codes of ethics (Hoivik, 2002). The ethics statements in these kinds of organizations provide employees with, "... *the space and freedom to act professionally.*" According to Martinson (qtd. in Tilley, 2009), "virtue ethics" is one means to provide that freedom "...*stimulat(ing) the moral imagination ... to recognize ethical issues.*" One report considered the utility of values in large companies worldwide, finding that 90% of those with written values espouse ethical conduct as a principle and also believe management practices encourage ethical behavior. (The Aspen Institute, 2005)

Kernaghan (qtd. in Langford, 2004), does not see values as supplanting rules but as providing justification for rules: "*A code of conduct and, indeed, any of the rules for public-service ethics should be firmly rooted in ethical values so that public servants understand the ethical underpinnings of these rules.*" Still, the choice of those values may be difficult to justify *philosophically*. Schwartz (qtd. in Schwartz, 2002) considered the values common to an array of organizational and global codes of ethics, reviewed feedback from employees, and surveyed the business ethics literature. He ascertained certain universal moral standards, namely; *trustworthiness, respect, responsibility (and accountability), fairness, caring, and citizenship (including lawfulness)*. It is obviously circular to find that professional standards should conform to particular values, just because those values may be seen to underlie existing professional standards. Nevertheless, the ubiquity of such values provides some assurance that they are broadly shared and accepted at least. Peter Aucoin (qtd. in Langford, 2004), reduces the core values for public service to three: The primacy of the rule of law; Impartiality in administering public services, and; Public service as a public trust. However, as Langford (2004) has pointed out, different organizations and their employees subscribe to a host of "values". Almost any value could be classified as "*broadly shared and accepted*", at least by those professing it. Langford does not believe public servants find "values pluralism" to be of much use in sorting out ethical dilemmas. He claims that this is because of, "*... the confusion about the nature of a value, the proliferation of values, the plasticity of their meaning, the resulting potential for value conflict, and the puzzling notion that some values are ethical and others are not.*"

Tilley's discussion departed from values and virtue ethics, to suggest that ethics can be judged by their probable consequences ("Consequentialism"). This involves reflection on such questions as "Would you be happy for the outcome to affect you in the same way it affects others?" or, "What it would mean to society if everyone behaved in the manner you are considering?" According to Langford (2004), public servants revert to such analysis intuitively. Langford cites Nagel (1987) and Singer (1979) as supporting consequentialism on the grounds of impartiality, and service to the greater good. Of course, when ethical dilemmas occur, administrators think reflexively of consequences in terms of "*law and due process*". (Gottner (1991) qtd. in Van Wart, 1996). Tilley had argued that an ethics program must actually address itself to all three approaches to ethical decision-making: It should

incorporate rules to require or prohibit particular behaviours, encourage consideration of the consequences of those behaviours, and it should specify the values with which behavior should accord.

According to Weaver, the applicability and specificity of the code determines its effectiveness (Weaver, 1995). However, the Ethics Resource Center (qtd in Kaptein and Schwartz, 2008) also highlighted process: *"The process of creating a code is potentially important for creating support for the code, in improving awareness, and stimulating a sense of ownership."* Consistent with Newton's principle of participation, Schwartz (2002) argued that the legitimacy of a code would be enhanced if employees, and other stakeholders, were entitled to participate in code creation relative to the code's potential impact on them. Schwartz's findings in a later paper (2004) challenged the idea (from Molander (1987) and others) that employee involvement was important to employee buy-in, except indirectly: Involvement was found to increase the likelihood that code content would be realistic and relevant. However, Van Wart (2003) insisted the debate was even more important than the outcome, and Nyberg (2008) (qtd. in (Messikomer & Cirka, 2010) said, *"... participation of members (and other stakeholders, when possible) augments trust in the organization because policies and codes of conduct are not supra-imposed by leadership or external experts."* They suggested employees could be involved in scenario building (in the code drafting process) as a form of dress rehearsal which would help them to internalize code values and build a, *"...behavioral repertoire that is more likely to become automatic"*.

Schwartz's 2004 study revisited earlier research that emphasized the effects on code compliance of such things as: acceptable objectives (Trevino, 1999), realistic code content (Harris (1978) and others), relevance of content (Pitt & Groskaufmanis (1990) and others), positive tone of content (Austin (1961) and others), appropriate length (Travino & Nelson, 1995), and the incorporation of illustrative examples. (Murphy (1995) and others.) Schwartz (2004) tested all of these, confirming that the realism and the relevance of included provisions was important to employee compliance and that it was likewise important to illustrate with examples. Schwartz also found that those provisions that do not make initial sense must be justified, particularly if they appear overbearing or unfair; e.g. if they extend the reach of the code unacceptably into private affairs or if the consequences appeared disproportionate. Interestingly, Schwartz found that employees' perceptions of the organization's purpose in enacting the code did not affect whether or not they would comply. Schwartz also found, contrary to some earlier research, that employees favoured negatively-toned codes for their clarity and precision.

VanSandt & Neck (2003) explored the language of codes as well. They expressed concern with the often deliberately ambiguous wording of codes of ethics and suggested that this was one of the reasons for the "disconnect" often observed between employee behavior and the professed organizational ethics expressed in codes. They related this to Asteley and Zammuto's view (1992) that maintaining a

high level of ambiguity provides flexibility to deal with changing or ambiguous events. VanSandt and Neck disagree, stating that an employee, left to confront a moral problem with a deliberately ambiguous code, is essentially on her own, with no leadership from senior management. At the same time, they caution against too high a level of specificity, citing Molander (1987): "... it is all too easy for the pursuit of clarity to devolve into a list of specific "dos and don'ts." Too much specificity and the code may be inflexible and inapplicable in situations that are not expressly addressed in the code. Kaptein and Wempe (1998) (qtd. in VanSandt and Neck, 2003) would agree, warning that employees following more concrete codes would be more likely to focus only on the narrow circumstances described, without regard to the broader principles applicable to analogous problems. Kernaghan (2008) has said that a code should be as specific as possible, but flexible in its interpretation.

VanSandt and Neck offered some other reasons for the "disconnect". They believed codes are often drafted with the primary purpose of protecting the organization from employees' illegal / unethical behavior, as opposed to the protection of the employee or the public. They also saw that organizational size or complexity could produce disconnect, related to communications breakdowns within the organization and to the existence of different control systems within the organization. They viewed this as a function of size, but it is clear that geographical dispersion such as found in the WAO, may produce the same difficulties. Finally, VanSandt and Neck suggested that a lack of organizational cohesion, in combination with the individualistic ideologies of employees, sets up a conflict between the organization's ethical code and the personal moral codes of employees. They argue (from the work of Raiborn and Payne, 1990) that where the behavior demanded by the code is not the cultural norm, not valued, or not rewarded, employees are more likely to behave in a manner consistent with their perception of the actual "rewards" or "sanctions" than they are to follow the pronouncements of the code. The Standards therefore, must respect the organizational context and the morality of its employees. Leaders of the organization must be careful that their own actions and requirements do not encourage staff to disregard the Code. For example, cumbersome organizational rules or workload issues can preclude the extensive time required for an effective intervention (Van Wart, 1996).

Chonko and Wotruba (2003) stated that the predominant ethic in business (and perhaps, also government) is a relativistic "craft ethic", which they sum up as, "*What is right in the corporation is what the guy above you wants from you.*" If this is an accurate depiction of the "relativist" view, then it is not surprising that they also discovered relativists to have less familiarity with their codes than idealists, and to find them less useful. According to Chonko and Wotruba the craft ethic overshadows both the Code ethic and personal morality.

The literature provides a framework for the drafting of Professional Standards. It does this by suggesting the philosophical framework by which standards may be

justified; describing the process by which code content may be developed; identifying purposes and objectives for consideration, and; suggesting features that appear to enhance or detract from code effectiveness. However, it is clear from this review that the effectiveness of any Professional Standards which are developed will depend on the implementation as much as on the contents of the Standards.

Implementation

After outlining what he believed to be six universal values (described above), Schwartz (2002) makes a case that honouring those values would require the following implementation measures: Codes should be widely distributed, fully accessible to the public, and supported with sufficient training and reinforcement; Organizational leaders should model the ethical standards; Codes should be enforced in a consistent and fair manner; Whistle-blowers should be protected, and; There must be a monitoring/feedback mechanism.

Weaver et al, (1999) and (Kernaghan, 2008) have both stated the obvious perhaps when they identified that codes cannot be effective unless they are *distributed* to employees. Simms (1991) went a little further to note that employees must be *familiar* with the content of the code before the code can impact their behavior. The Ethics Resource Center (1994) (qtd. in Kaptein and Schwartz, 2008) found that codes that were supported by ethics training and an ethics office had a positive effect on employee perceptions. Wotruba (2001) found that ethical climate was strongly correlated with the perceived usefulness of a code and even more strongly correlated with the degree of familiarity of the code. In other words, in those organizations perceived by employees to have an ethical culture, the employees were more likely to be familiar with the Code and more likely to perceive it as useful. It seems that an effective Code must either be preceded by an ethical culture or it must itself be instrumental in communicating a shift to an ethical culture. (Mayer et al., 2005) found that the introduction of Standards as a pilot and encouraging experimentation, helped to develop professionalism.

Adam & Rachman Moore (2004) surveyed employees to discover which implementation methods were considered by respondents to be most effective for implementing organizational ethical values. They found that, while the right kind of training and reinforcement (the traditional focus of implementation efforts) was the most important factor for a significant number, far more respondents rated the "social norms of the organization" as the most important. The "example set by management" and "own personal values" were other factors which were also rated most important by a large number. The study's stated implications are that relatively fewer resources should be devoted to training and especially to enforcement. Instead, the organization should construct teams and encourage social mixing in such a way that those who have internalized the organization's ethics (or whose personal ethics parallel those ethics) interact with new or recalcitrant employees. The authors also suggest that special attention should be paid to those staff who justified their adoption of organizational ethics in terms of

the correlation of those ethics with their own personal values. These people are best positioned to report accurately on the ethics in the organizational culture.

The subordination of “training and reinforcement factors” to “social norms of the organization” does not question the primacy of code familiarity in code implementation. The questions put to the respondents in the Adams and Rachman Moore’s study presuppose familiarity with organizational values. However, organizational “social norms” are clearly important. Dobson (2003) suggests that acculturation, i.e. the observation of the actual behavior of others around a person is a much more important determinant of ethical behavior than is the existence of a code. There has been some work done on the relationship of ethical work climates to misconduct at work. Vardi (2001) found that there was a significant negative correlation between intentional acts which violate the formal core organizational rules and the degree to which an organization provides emotional comfort and support. This was found to be particularly true of the organizational climate dimensions of “warmth and support” and of “rewards”. Vardi also found that employees were less likely to report misbehavior (from which it is inferred less misbehavior is actually present) in organizations in which the employees perceived that “*successful people in this company act according to the book*”, in which they perceived that people “*care first and foremost about the company’s interests*”, and in which, “*the main concern is for the well-being and safety of the people in the company.*”

These results are of particular note in the present project, which is intended to encourage professional behavior in a public service organization: According to the research of Wittmer & Coursey (1996), public service organizations are generally less effective than private ones in promoting a caring environment. They compared the perceptions of “ethical climate” by private sector managers with the perceptions of public sector managers. They found that public service managers perceived the ethical climate of their organizations less favourably. They felt that they were less supported in living up to their own moral standards, that there existed lower expectations for following either professional or legal standards, that they had a less caring environment, and that there was more self-interested behavior. The public service managers were less likely to consider either their supervisors or their colleagues as ethical exemplars, and more likely to believe that their department has serious ethical problems. Wittmer and Coursey predicted that the public organizations with the poorest ethical climates were likely the more rigid and bureaucratic ones, or were ones where “*... employees and managers have no special commitment to the public...*” Wittmer and Coursey did suggest that an organization’s commitment to values and ethical training is one way to send a “*... strong signal that ethical dimensions of the organization are important.*”

Hiring, Orientation, and Training

Orientation is a form of training, and new hires should be oriented in the code, as suggested by Elankumaran & El Anwar (2005). Tina Bryan, the Ethics and Compliance Officer for Shell International Exploration and Production, Inc., had

also emphasized the importance of addressing “ethics” at the, “*on-boarding stage for new staff and contractors*”. She felt new hires should be required to review the code before an offer of employment is made, in order to stress its importance (2009). Kaptein (2008) was also a proponent of pre-employment ethics disclosure, however he was more interested in screening, to select employees whose personal ethics were not significantly different from organizational standards. This would be supported by Sims and Kroeck (1994), Viswesvaran and Deshpande (1996), Schwepker (1999) (all qtd. in Koh & Boo, (2001)) who found that the lack of an ethical fit between employees and their organization can result in distress and job dissatisfaction among other things.

In respect of training methodology, there are several that could potentially be employed. McWilliams & Nahavandi (2006) identified some “best practices” including Live Cases, Regular Cases, Student Cases, Experiential Methods, Lectures, and Internships. While lectures can provide the *theoretical foundation* for ethical action, the other methods provide an *application*, encourage *engagement*, support *critical thinking* (except Internships), and have *relevance*. Teaching *Accountability* likely requires Live or Student Cases, and the Internship method facilitated *Transfer of Learning* (to real life situations). This study was in a formal school context, but the same methods should be just as effective in the WAO.

Winston (qtd. in Menzel (2009)) suggested the use of case studies for ethical training, emphasizing the need to acquire reasoning skills such as sensitivity to an ethical situation, and the ability to identify alternatives and to select a course of action that resolves the situation. The point of case discussion and analysis is to “... *teach judgment, not doctrine, sound practical reasoning, not system.*” Menzel (2009) elaborates on the effectiveness of cases, asserting that they ground abstract concepts, bring context to bear, and encourage learning by discovery, widely believed to be more effective in fostering knowledge and understanding (see also Lawton, qtd. in Doig & Skelcher, 2001). Bryan (2009) suggested that a good training method, and a good way to gain the interest of staff, is to disseminate sanitized incidents, including the issue and the manner in which it was handled. Alternatively, she suggested posting only the issue and circumstances of actual incidents and asking employees how it should be handled, before posting the actual resolution and the “best” resolution.

Administration

The final research issue regards the extent to which effective administration is necessary to produce a strong acceptance and integration of the standards, and what constitutes effective implementation and administration.

McCabe et al. (1996) found that both the perceived embeddedness of an organization’s code of ethics and the strength of code implementation exhibited a significant, inverse relationship with self-reported unethical behavior. An ethics code or, in this case, professional standards can only be one component of an effective ethics program. Kaptein and Schwartz (2008) also suggested that ethics

codes ought not to be deployed in isolation but should be part of a broader ethical program, with the development and implementation of the code taken to be as important as the content. Codes tailored to take into account the particular context of the organization were found to be more successful. Caiden (qtd. in Kernaghan & Langford (1990), stated it as follows: *"No codifiers of ethics have ever claimed that codification alone would solve anything."* The most significant factor is the *"...clear and continuing commitment of senior management to the values and rules expressed in the code."* (Kernaghan and Langford, 1990). Menzel (2007) (qtd. in Kernaghan & Langford, 1990, p. 23) put it this way: *"Managers who do not "walk the ethical talk" will soon experience a credibility gap that employees will see as hypocrisy - do as I say, not as I do."* Bryan (2009) said that, *"...while messages from the CEO and senior management leaders are important, the "tone in the middle" was one of the most important factors in implementing a code within an organization.* She stressed the need for the CEO to communicate the importance of a company's code of conduct to middle management *"...to ensure that the message travels down through the company in a cascading effect."* Koh and Boo (2001) found a strong positive relationship between top management support for ethical behavior, the ethical climate of the organization, and the association between ethical action and career success. Vitell and Davis (1990, qtd. in Koh & Boo) also found a relationship between top management support for ethical behavior and job satisfaction.

The relationship between management support and professional conduct needs to be emphasized. 81% of respondents in an Aspen Institute study rely on corporate values statement or standards to reinforce value, but only 37% consider it the most effective practice. However, 85% rely on explicit executives support and 77% consider it to be most effective (The Aspen Institute, 2005).

Kaptein (2008) had considered the code foundational to creating an climate. But he also endorsed the establishment of a dedicated ethics officer or ethics office (explored comprehensively by Adobar (2006)), and a formal program of ethics training and communications to clarify expectations and enhance the skill and commitment of all staff, including management. Bryan (2009) would suggest an ethics officer should meet with high-risk departments and employees, as an important part of embedding an ethical code. Roberts (2009) also recommended employing ethics officers as part of a program intended to raise the ethical culture of organizations. According to Adobar, an ethics officer could take on the following responsibilities or roles: Accountability for developing and directing an organization's ethics; Providing leadership, oversight, and expert advice to ensure development, interpretation and implementation of ethics and compliance strategies, programs and policies; Compliance enforcement, and; Accountability for all program activities relating to standards of conduct including ethical relationships with customers. Kernaghan (2008) would take care to ensure that the code was administered by a single authority.

Elankumeran (1995) provided an example of a very serious treatment of ethics by an organization, through the creation of a code successfully implemented through

an ethics office. The ethics program involved the Director as the Chief Ethics Officer to reinforce the importance of ethics and oversee the ethics office. Among other things, the Ethics Office would be charged with developing awareness / sensitization / reinforcement programs on ethics for all employees, ensuring an ethics module is included in all training programs and in new employee orientation, meet with and encourage clients to share ethics concerns, take corrective measures in response, and post the Code where it will be seen by clients. The Elankumeran case is a good illustration of a truly “embedded” ethics program and is instructive of how much can be done towards that end.

Monitoring and Enforcement

In concluding that ethical codes can establish expectations but, “...cannot alone result in consistently improved ethical behavior”, Higgs-Kleyn & Kapelianis (1999) emphasized that the implementation and enforcement of a code is the key to improving behavior. Monitoring may be applied to the individual level, for example; through annual evaluations or an “Ethics Counselor” (Menzel, 2007, at p. 80). Kaptein (2008) addressed enforcement, suggesting that there needs to be “...policies on managerial and employee accountability for unethical behavior, response policies on investigation of allegations of unethical conduct and corrective action upon the detection of unethical conduct, and policies to create incentives and rewards for ethical conduct.” On this point, Berman (2008) expressed the view that ethical feedback to employees must be swift, certain, and significant, but he viewed ethics “policing” as having a minimal deterrent force for those inclined to act unethically. He did suggest that managers take a proactive stance in investigation to increase the timeliness and certainty of their response, whether censure or positive recognition.

In the Elankumeran case, ethical behavior was reinforced through a combination of positive rewards and negative consequences. For exemplary behaviour, individuals were publicly recognized and their names and actions published. Likewise, violations were investigated and the violation cases were posted publicly. Petter (2005) implies that evaluation should be focused on employees who do not internalize organizational values.

However, Standards that, “...require excessive reporting and tracking” may result in cynicism and produce organizational ineffectiveness (Gilman, 2005 qtd. in Menzel (2007), at p. 25). In fact, taking a “compliance” approach can lead to a legalistic approach – “if it’s legal, it’s ethical” (Menzel, 2007 at p.25). The research of Adam and Rachman-Moore (2004) de-emphasized enforcement, finding that “means of enforcement” was considered influential in code implementation by relatively few respondents. Van Delden (Balía et al. 2007-2008) warned that integrity allegations, even where later found to be unfounded can be extremely damaging. According to Roberts (2009) the focus of a compliance based approach is often about disciplining individuals for “narrow low-road violations” but at the expense of organizational accountability for broader high-road ethical failures. He agreed with the 1996 OECD statement that ethics programs are not about monitoring and

policing behavior, but about seeking consensus on what is good behavior and about providing guidance to public servants on how to act, make decisions, and use their discretion. (PUMA,1996 qtd. in Roberts (2009)). Hibbeln & Shumavon (1983) wrestled with the same question when they sought to find a balance *"between the managerial and political roles of the administrator."* They saw the challenge as one of establishing the boundaries of discretion and then structuring it, *"to regularize it, to organize it, to produce order in it"*. They believe that a formal process of *"confining, structuring and checking"* discretion can yield discretionary power that is neither excessive nor inadequate.

Langbein (2000) found that the degree to which employees exercise their discretion is related to their understanding of their own manager's preferences and that it increases where either customers or peers were both "attentive and important". In the WAO context, both injured workers and Advisers are attentive and important, so a high degree of discretion is to be expected. Langbein also found that increased discretion augments productivity; a desirable side effect.

Once an ethics program is developed and implemented, the effectiveness of the program needs to be evaluated. According to Gilman (2005, qtd. in Menzel, 2007 at p.69) an effective code needs pragmatic goals and must be supported by feedback. Kaptein and Schwartz (2008) recommended that the quality of the code content and the impact of the code should be judged distinctly, that measures of effectiveness should be derived from the actual code content, and that factors such as code objectives, the range of possible impacts, and confounding variables must be taken into consideration. Kaptein and Schwartz caution that multiple methods and sources of data are really required to measure the effectiveness of the code.

Nijhof et al. (2003) had also given some consideration to evaluation. They suggested that a code must be integrated and aligned within the quality management system of the organization, that the assessment process involve identification of critical activities and response to ethical "barriers", that the aggregate ethical performance of the organization be measured (in addition to individual assessment), and that employees be involved in regular revisions to the code based on their practical experience. Wiley (1995 qtd. in Menzel 2007 at p.72) suggested an "ethics audit" as a means to determine what changes need to be made in the climate, code and enforcement practices of a program overall. Wittmer and Coursey (1996) suggested the involvement of community groups and professionals from other public organizations to define and monitor organizational (ethics) policies and practices and to help maintain an ethical work climate.

Conclusion

This Literature Review canvassed both public and private sector sources and research. Some research suggests that the public sector fares more poorly in ethical culture and leadership exemplars, perhaps explaining a greater emphasis in the public sector literature on the importance of leadership in influencing the culture (although still important in the private sector). There was general accord

between private and public literature on the significance of implementation. Both the public and private sector literature supported a role for monitoring and enforcement. However, the public sector literature was noted to disapprove of a legalistic, compliance-based approach and de-emphasized ethics policing and reporting and tracking. The public posting of ethics violation (in the Elankumeran case) would be unlikely in a public context. Instead, the public literature supported a consensual understanding of right behavior, recommended a guidance-based approach, and encouraged the appropriate use of discretion. Proactive monitoring of ethics is preferred to reactive discipline. The reviewed private literature targeted monitoring systems towards individuals as well as to organizational performance, suggested that measures should derive from the code content, and cautioned of over-simplified interpretation.

Broad "Values" cannot substitute for practical, specific guidance but may have a role as justification for Standards, and perhaps guide staff to consider the *societal* consequences of flouting them. There appears to be some relationship between organizational values and perceived ethical climate. Ethical climate was found to be of particular importance and to start "at the top" generally.

Successful standards demand a clear and continuing commitment from leadership. Leaders can demonstrate that commitment through their own conduct, through the manner in which they value staff conduct that conforms to the Standards, and through their *continuing support*. Training and reinforcement is important, and the use of examples and case studies is a good method. The idea that training should emphasize judgment and reasoning over doctrine and system is one supported from the public literature.

The success of the standards depends also on significant participatory input from staff. Staff can help to develop Standards, providing content that is realistic, relevant, and context-appropriate, all of which are important to acceptance and adoption. The Standards should also be drafted to balance the requirements of precision and clarity with flexibility and discretion. They will need to be widely read, understood, and referenced. Ideally, they should be accepted by staff as a valuable tool which will actually assist them to navigate ethically ambiguous issues.

According to Berman et al. (1994), the differences between the private and public sectors are minimal, with the exception that public agencies more commonly adopt a regulatory-based ethics strategy than a code-based ethics strategy. The public literature presented with a slightly different emphasis, but was generally congruent with the private sector research: There was no discernable conflict in any of the areas studied. In all, the literature suggests that codes of conduct, or Professional Standards, can be an effective tool. The principles of good standards, effectively implemented, seem to be the same irrespective of sector.

FINDINGS

These findings are a summary of the survey responses from WCAT and the Review Division, the general concerns noted from the Client Satisfaction Surveys, and the interview responses from WAO staff.

Prevailing professionalism

WAO Staff are of one mind that the WAO is already a highly professional organization, and they attribute this to the quality of the staff, the manner in which the WAO leadership fosters professionalism, and the nature of the work itself (Question 14). Supporting the accuracy of this self-perception it is noted that staff also generally considered professionalism to be a basic expectation of the job undeserving of special recognition or reward in itself (Question 20).

WCAT and Review Division Impressions

This self-perception of professionalism appears to be borne out by the appellate body surveys. Rating Advisers in terms of their representation activities, WCAT respondents unanimously rated Advisers to be Very Professional, and the Review Division rated all Advisers as either Very Professional or Somewhat Professional.

WCAT and Review Division Comments

The specific concerns raised in comments by Review Division concerned the completeness and organization of submissions, substantive knowledge and the representation of facts, submission tone (no "begging"), the abandonment of workers without notice near deadlines, and comprehension of jurisdiction. One Review Officer's comments were blunt. The Officer stated plainly that the quality of WAO submissions varied tremendously and that, while she still rated the WAO Somewhat Professional overall, there were a few Advisers that would rate as Unprofessional and one or two Decidedly Unprofessional.

WCAT's comments also raised "jurisdiction" as an issue, requested more objective representation, suggested a need for more efficient examination of witnesses, and identified that workers were perhaps over-represented (suggesting a "too-loose" merit call or a refusal to apply a merit criteria).

WCAT and Review Division: Identified areas of greatest concern

The number of respondents received did not produce a sufficient sample for statistical analysis (10 from each appellate body). However, this input is still useful to provide a general sense of the WCAT and Review Division perspectives on WAO professionalism. The results are set out in Annex 6 and 8 and were analyzed in such a way to highlight areas of greater concern. Thresholds were established

arbitrarily but support a greater tolerance for minor errors than for significant ones. The specific concerns exceeding thresholds are set out below in Table 1 (Review Division) and Table 2 (WCAT) below.

Significantly, neither WCAT nor Review Division registered concerns related to the volitional conduct of WAO staff, by this criteria. The principal concern at WCAT was actually substantive knowledge. The Review Division's first concern was also substantive knowledge, but respondents focused on concerns with the reasonableness of the argument, and issues identification, as well.

Table 1. WCAT Concerns Exceeding Thresholds³.

WCAT Results	Minor Deficiency (>60%)	Significant Deficiency but Unlikely to Affect Outcome (>30% of Maximum)	Deficiency with Significant Likelihood of Affecting Outcome (>10% of Maximum)
EXCEEDING THRESHOLDS			
SUBSTANTIVE KNOWLEDGE		37%	13%
PROCEDURAL KNOWLEDGE			13%
PREPAREDNESS			13%
THOROUGHNESS OF QUESTIONING			13%
ISSUES IDENTIFICATION		33%	

³ The data in both Table 1 and Table 2 was analyzed as follows: The total points from all responses (0 points for never, 1 for point rarely, 2 points for occasionally and 3 points for common) were summed for each category (i.e. minor errors, i.e. significant errors unlikely to affect outcome, and errors likely to impact outcome). Those sums were then compared to the maximum points possible for that category (10 respondents x 3 points maximum per response) to provide a percentage of maximum. Thresholds were assigned to help identify areas on which the WAO could focus its efforts to improve. An overall rating of "minor errors" with a frequency in excess of 60% of the maximum total possible for all respondents was considered problematic; an overall rating of "significant errors unlikely to affect the outcome" with frequency in excess of 30% of maximum was considered significant; a rating of errors "with significant likelihood of affecting the outcome" with frequency in excess of 10% was considered significant.

Table 2: Review Division Concerns Exceeding Thresholds.

Review Division Results EXCEEDING THRESHOLDS	Minor Deficiency (>60%)	Significant Deficiency but Unlikely to Affect Outcome (>30% of Maximum)	Deficiency with Significant Likelihood of Affecting Outcome (>10% of Maximum)
SUBSTANTIVE KNOWLEDGE	67%	50%	37%
REASONABLENESS OF ARGUMENT	67%	50%	33%
ISSUES IDENTIFICATION	63%	43%	23%
TIMELINESS OF FILING			17%
PROCEDURAL KNOWLEDGE			13%

Both WCAT and the Review Division – especially the Review Division, have identified which areas are most in need of improvement. Nonetheless, WCAT respondents unanimously rated the WAO as Very Professional, and Review Division respondents rated WAO as either Very Professional or Somewhat Professional.

Table 3: Overall Rating of Concern – WCAT

	TOTAL MINOR	TOTAL OF SIGNIFICANT : UNLIKELY TO AFFECT	TOTAL OF LIKELY TO AFFECT	TOTAL OF ALL
Respondent	15	10	3	28
Respondent	3	2	0	5
Respondent	4	1	0	5
Respondent	5	6	0	11
Respondent	4	0	0	4
Respondent	7	4	0	11
Respondent	7	10	0	17
Respondent	9	7	6	22
Respondent	6	4	3	13
Respondent	16	16	16	48
MEAN	7.6	6	2.8	
MEAN AS PERCENT OF TOT POSSIBLE (3 x 14 QUESTIONS)	15%	12%	5%	

Table 4: Overall Rating of Concern – Review Division

	TOTAL MINOR	TOTAL OF SIGNIFICANT: UNLIKELY TO AFFECT	TOTAL OF LIKELY TO AFFECT	TOTAL OF ALL
Respondent 1	5	7	7	19
Respondent 2	7	4	3	14
Respondent 3	18	9	0	27
Respondent 4	13	11	9	33
Respondent 5	19	17	16	52
Respondent 6	13	6	5	24
Respondent 7	6	1	1	8
Respondent 8	10	8	6	24
Respondent 9	2	1	1	4
Respondent 10	20	19	4	43
MEAN	11.3	8.3	5.2	
MEAN AS PERCENT OF TOTAL POSSIBLE (3 x 11 QUESTIONS)	34%	25%	5%	

From the above tables, it is apparent that neither the Review Division nor WCAT rate the WAO *overall* as exceeding the frequency of occurrence threshold for any of the three levels of impact. It can also be observed that WCAT has a measurably higher opinion of WAO professionalism than does the Review Division.

Worker Comments (Client Satisfaction Surveys)

The injured worker (client) perspective was more difficult to tease from the secondary data (Client Satisfaction Surveys, 2008). The Client Satisfaction survey instrument was not designed with a view to drawing out concerns about professionalism except in the broadest sense. There is also some apparent confusion in the responses between Assistants and Advisers and between the Workers' Advisers Office and WorkSafeBC. Although the sample size was fairly large at 251 returned surveys, relatively few respondents offered up meaningful comments that could offer insight into the nature of their perceptions of WAO professionalism or the factors that led to that perception.

One recurring theme in the Client Surveys was that the Clients (workers) felt that the WAO was not sufficiently responsive. This manifested specifically, in perceptions that it had been too difficult to reach the WAO and took too long for WAO to respond, that WAO didn't give their issue the attention it deserved, that WAO did not adequately investigate their complaint, that WAO's level of service was inadequate to their needs and didn't do enough for them, and that WAO did not keep them apprised of developments in the file or its file's progress (see Annex 2).

Worker Ratings: Overall impression of professionalism

87.5% of those respondents whose results could be interpreted still rated WAO as either Very Professional or Professional (See Detailed Results at Annex 2).

Staff Interview: detailed feedback

Utility of Professional Standards

WAO staff view themselves and their organization as professional, but they still recognized the utility of Professional Standards. Most respondents made comments to the effect that the Standards would be useful to help clarify expectations, to establish a common reference by which service could be delivered more consistently, and as a tool to help resolve ambiguous or complex problems. Most staff had no reservations, however a few were concerned that the Standards would, be used as a disciplinary tool, constrain discretion, would be misused, and one respondent felt that they would simply be irrelevant.

A list of purposes bearing directly on the work of WAO staff was presented (See Annex 3) and most staff accepted all of them (Question 9). Those other purposes suggested by staff largely concerned the means of monitoring and enforcement, i.e. ensuring the Standards would be applied consistently and universally to all staff and focusing any remedial action into constructive, non-punitive actions. There were a few respondents that were concerned that defining discretion would be equated to limiting discretion. One respondent made the point that the Standards must be harmonized with other assessment and review processes in the Branch.

Addressing discretionary action

Question 5 concerned the balance between discretion and consistency. Almost all staff were concerned to protect their discretion, particularly in relation to their merit call. So far as management's oversight, there were comments to the effect that managers should not interfere with discretion at all as well as suggestions that staff must ultimately defer to management. A larger number of respondents saw value in the Standards providing guidance on the exercise of discretion for the sake of consistency, transparency, and evaluation (Question 5, see also Questions 9,10)

Specific Content

Question 6(a) – 6(k) were intended to elicit opinions as to the treatment of specific substantive topics that are applicable to the WAO context and likely to be incorporated to the Standards. Detailed responses are set out in the Annex 4. However, some themes do emerge across topics.

The first theme was the need to manage worker expectations. This was seen by Advisers to be key to preempting many of the potential ethical dilemmas (Q.6(j), such as whether to act in the absence of instructions from a worker (and the risks

associated with that choice) (Q.6(b)) and anticipating the circumstances of withdrawal (Q.6(j)).

The second theme was the strong identification among staff to uphold the merit standard but to interpret merit broadly in the interests of equity. Representation is generally considered by staff to be non-discretionary wherever there is merit, and the ability to withdraw was most often rationalized on the basis of “lost merit” (Q.6(d)). Advisers appear to be concerned not to prejudice the worker, and many suggested that this is not a decision they would take without consulting with management (Q.6(d)). In addition, staff did not expect support to drop difficult, micromanaging workers (Q.6(d)). Every respondent stated they would act to preserve appeal rights even without specific instructions, and despite the risk (Q.6(c)) and several suggested that a staff member must attempt contact with a worker on discovery of an un-appealed decision or issue (Q.6(e)). Overall, staff had little patience for a legalistic or risk-adverse approach (such as confirming capacity (Q.6(g)) that would have the effect of impairing service quality. These responses are consistent with the values identified in Question 7.

A third theme that can be drawn from the responses is a strong preference for standards which serve as a valuable reference tool, but which also clarify expectations. Question 8 was intended to reveal the general purpose to which staff would put the Standards to use as well as the kind of tool that would accomplish that purpose. “Sign Post” was chosen as a preferred metaphor by many, indicating that staff would like Standards that will first help them to identify issues and then direct them to answers. The choice of Rule Book suggested that Staff would follow Management direction more closely, if Management made its directions more clear. The Sign Post received almost twice as many endorsements as any other. However, those that chose the Rule Book generally tended to rate it more highly, interpreted here as a more robust endorsement from those who chose it. The Mirror, Shield, and Magnifying Glass were endorsed at similar levels, a rank below Sign Post and Rule Book. There was little support for Smoke Detector, Fire Alarm, and Club functions.

These metaphorical preferences were confirmed elsewhere. The mental capacity issue is an example. As a “Sign Post”, the Standards could draw the attention of staff to the need to confirm capacity: A number of respondents indicated they had given no thought to confirming worker capacity. Respondents also discussed the need to consult with management prior to withdrawal or when reassessing merit, and of the role of management in mediating or managing a dysfunctional relationship with a worker. In considering conflict of duty, respondents offered that they struggled with this and many would always need to consult with a colleague or manager.

The need for Standards as a “Rule Book” is also apparent. For example, the manner in which individual staff respond to missed deadlines, perhaps the key area of

liability for the Branch, is extremely varied (Q.6(k)). In this area, staff need a clear and consistent process.

Implementation

Staff provided a great deal of information on finalizing the Standards and their preferences for teaching method, types of training, and follow-up (Questions 11 and 12). Staff were interested to provide input to the Standards after a draft was circulated, and for a mechanism to revise the Standards - building on the document over time. Staff recommended the Branch support periodic or ongoing reinforcement of the training after their introduction. Most indicated that this training should be done in-person as opposed to electronically, and the conference format seemed to be more popular than training with a Manager. The optimal training format would be based on shared experiences and the analysis of past situations/dilemmas and would use a discussion/case study/role play type format.

One theme that runs through the issues of training, reinforcement, monitoring and enforcement is the designation of some particular person, office, or committee to take a lead. The appointment of an individual or committee was raised for purposes such as editing and revising the Standards (Question 11), organizing and updating training (Question 12), the investigation and enforcement of professionalism (Question 18), oversight over the exercise of discretion (Q.5), and to provide second opinions on select issues (Q.6(d)). Others were not concerned with impartiality and did not see the need for a new office (although there was strong support for a fair and standardized process if unprofessional behavior might potentially result in some form of punitive action). (Question 18).

The need to harmonize the Standards with existing processes and documents, and perhaps to modify those processes or documents, arises out of various questions in different contexts. Under the implementation questions (Questions 11 and 12), an ongoing cross-check is recommended to ensure consistency with existing templates, work flow and practice directives.

DISCUSSION

The purpose of this project has been to enhance and/or maintain the professionalism of the WAO through the development and implementation of Professional Standards. The survey and interview research supporting this project was not directed towards the empirical testing of a particular type of Standards or particular method of implementation as it compares to any other Standards or implementation. Nor has this project concerned itself with the strength or statistical significance of the various views expressed by adjudicators on appellate bodies, injured worker clients or the WAO staff. The research had four goals:

- To determine if Professional Standards were likely to be useful in the WAO context
- To review what had been done with Professional Standards in other contexts and in other jurisdictions, to see what seemed to work, and to identify those general principles that could be integrated to WAO professional standards;
- To ensure that the WAO Staff (who would be expected to follow the Standards) had substantial and meaningful input to their creation and implementation;
- To ensure that the Standards addressed those areas thought to be of concern or potential concern by key stakeholders, including Staff in particular, but also appeal adjudicators and the worker clients themselves.

Development Process and Content

In discussions with the Client at the outset, a number of objectives were discussed and endorsed by the Client as appropriately served by Professional Standards. A review of the literature suggested that these many of these objectives could be served by Professional Standards providing the Standards were relevant to their context and properly embedded within the organization. In interviews later on, staff generally confirmed the utility of Standards serving those objectives.

The Professional Standards of similar offices in other jurisdictions, and Ontario in particular, were noted to have been drafted with a very legalistic tone, directed primary towards protection from liability. This was confirmed by the Director of the Ontario Workers' Advisers who stated that their very comprehensive standards were derived from the Rules of the Law Society in Ontario and had been drafted by lawyers without any real participatory process. He said that their Standards were developed in reaction to lawsuits, and to changes to their paralegal regulations. He had concerns that staff may not always conduct themselves appropriately and he characterized the mechanism of action as ensuring staff understood their responsibilities. He did also state that he was concerned that staff behave appropriately "for the reputation of the Office".

While the research literature certainly supports the value of Standards in establishing expectations, it also suggests that there can be a disconnect between the professed organizational ethics and actual employee behavior in those cases where codes are drafted with the primary purpose of protecting an organization from the illegal or unethical behavior of their employees. Most WAO staff acknowledged that it was legitimate for the WAO to be concerned about liability, but they were not interested in advancing that interest through the Professional Standards as was done in Ontario. The Director of the Office of the Appeals Adviser (“OAA”) in Alberta was not interviewed, but the OAA standards suggest a broader utility as a “*comprehensive overview of the professional responsibility issues, and as a practical reference*”. Those Standards state they may be read to develop understanding of “*conduct expectation*” and consulted for “*guidance in specific situations as they arise*”.

Both sets of Advisory Office Standards address issues that commonly arise in the Workers’ Advisers context in B.C. also. The Alberta Standards are less comprehensive of the legal issues than those of the OWA, tending to a more informal and practical approach. These standard sets provided a good starting point, in terms of identifying the underlying legal issues with which the WAO ought to be more conscious and, in the case of the Ontario Guide, providing a basic organizing structure. However, given the subordination or dilution of the “liability protection” purpose to the other purposes endorsed by the Client, it was expected that significant modification to content and format would be required.

WAO staff endorsed the Sign Post and Rule Book structures above others. In other words, staff wanted to be clear on what the expectations were and where they could go if they needed further clarification in particular circumstances. Thus, the Standards as developed set out 24 clear Standards or “expectations”, attached to an Interpretation guide, which suggests circumstances in which staff may or must consult along with managers or others. Shield, Mirror and Magnifying glass were also endorsed by a significant number of respondents and with significant strength. In response, the Standards also protect staff from inappropriate or unreasonable requests from workers and from management and protections are built in around the complaint process (“shield”), they offer lists of relevant considerations and best practices (“mirror”), and they point out particular hazards and sensitivities (“magnifying glass”).

In reviewing the Standards in these two other jurisdictions and the circumstances in which they are employed, some key distinctions were noted. Both of these other sets of Standards acknowledge that the Office itself is retained, and not the individual Adviser, which is also the case in BC. However, those other Standard sets are directed to Adviser conduct only and, according to the OWA Director, their Assistants are actually trained to not give case-specific advice. This is a key difference. Assistants in the WAO are encouraged to provide as high a level of advice as possible before elevating a file to an Adviser. It is also the case that the constituting legislative provisions for the Alberta and Ontario offices do not

explicitly mandate the assessment of merit assessment preliminary to the provision of representation, or that the decision on merit be vested in the discretion of Advisers alone. However, this is the case in BC.

According to the Director of the OWA, they apply a merit criteria nonetheless. However, he acknowledges that it is neither well-defined nor applied consistently across the Branch, and that considerations such as workload can influence the determination. Where Advisers wish to represent in the apparent absence of merit, they may vet these exceptional decisions through their manager. All decisions and merit reviews also return to the manager for review, although Managers rarely intervene and exercise an “unspoken deference”. In BC, Managers have little hands-on involvement in files and do not typically inquire as the manner in which Advisers conduct files, except where specific concerns or complaints have been raised. In other words, Advisers appear to have and to exercise a great deal more discretion in BC.

In considering differences between the jurisdictions, such as those noted above, it was felt that the Standards developed for the WAO in BC ought to have something to say to Assistants, as well as the Advisers, and that Assistants should be familiarized and trained in their application. It was also thought necessary to address the area of discretionary action in some fashion, since the “merit call”, conduct of file, issue analysis, appeal strategy, and even advice, all require the application of judgment informed by expertise and lead to a number of “discretionary” decisions. Fundamentally, most discretionary actions will flow from that first determination of merit, therefore the definition of merit and the application of the merit decision appeared to require standardization before any useful guidance could be provided on the exercise of discretion (see Standard 1).

There is research that suggests that Standards should be generally coherent with the ethical principles of staff and must grant Staff the space and freedom to act accordingly, supporting the idea that discretionary action ought to be respected. Staff spoke clearly on the importance of their discretion to them and of their reservations that the imposition of Standards might restrict their actions unduly. The injured worker “customers” of the WAO is are important to Advisers and intensely interested in the outcome. Advisers in the organization are also highly supportive of one another and assist on each others’ cases. Thus, the discretion exercised by Advisers in the WAO is a natural consequence of its business and structure per the findings of Roberts (2009). This is a good thing: As noted by Roberts, discretion increases productivity. The Standards as drafted support rather than restrict discretion where appropriate, using the same strategy as that identified by Hibbeln: Delineating its boundaries first; and then guiding its exercise in accordance with certain principles.

Some of the research literature argues that general values are not much use to staff in sorting out their ethical dilemmas. Consistent with that view, staff were generally unenthusiastic about the efficacy of value-based Standards, and the

Standards, therefore, do not incorporate a values statement. The Branch already has Vision, Mission, and Values statement which are not often referenced by Staff. However, staff did identify some values by which the Standards themselves should be consistent. In reviewing the responses, most of the values offered by staff could logically be classified under Trust, Equity, and Humanity; not too different from the public service values advocated by one researcher, namely; primacy of rule of law, impartiality and public service (and also recognizable in the longer list derived by Schwartz's review). Because the WAO office often deals with workers *in extremis* subjected to apparent injustice, it is not surprising that it has the additional although subordinate interest in acting with humanity. Thus, the Standards were drafted in such a way as to promote and not interfere with the relationship between staff and workers, and to ensure a just result. Standard 4 was drafted to permit representation for certain disadvantaged groups in the absence of merit as an "access to justice" issue. This has been turned around to specifically prohibit special consideration, due to the Client's concern that the merit standard would be undermined. Either way, Standard 4 acknowledges the inclination of staff towards a personal and compassionate response to workers, as opposed to a rigid system or policy-driven response.

Some researchers advocated the teaching of judgment and reasoning over doctrine and system. In response, case studies are integrated to the body of the Standards as cautionary vignettes for common difficulties, followed by thought-provoking questions. Illustration through examples and teaching through case studies is supported by research as well, and figured prominently in staff descriptions of what they would like to see in the Standards and how they learn. Many of the examples in the Standards incorporate a question relating to the consequences of the choices taken: These questions are responsive to the research suggesting that public servants intuitively assess their actions with a view to the possible consequences.

Staff seemed to reject specific provisions as unworkable in certain areas, particularly the specification of competence and diligence. However, they did not object to the treatment of those areas by way of value-like, "motherhood statements". As a result, while the Standards do attach broad expectations to competence and diligence, they make no effort to establish any thresholds or measurables. Yet competence and diligence (as well as integrity), comprise the aspects of professionalism on which WCAT and the Review Division were qualified to address, and the substance of the survey questions directed to them. Fortunately, the survey results did not suggest significant problems in these areas. Particular areas, such as substantive knowledge, were found to be of more concern than others but, in the end, it was felt that these concerns were more of a training issue. Professional Standards can only impact on volitional conduct and it would be unrealistic to hold all Advisers accountable to particular standards of knowledge, critical thinking, and advocacy skill under the umbrella of a general duty to be competent – and then not provide the time, training, and tools to do so.

Many of the factors implicated in the success of Standards were confirmed in the staff interviews. Staff suggested that the Standards generally emphasize guidelines and best practices, rather than an extensive set of directive rules. The research appeared to confirm the utility of this technique, finding that too much specificity in a code would render it inflexible and inapplicable to those situations not specifically addressed. However, there was also concern expressed in some of the research for the kind of “too ambiguous” wording often found in codes with a view to allowing flexibility. The WAO Standards were deliberately drafted with regard to the balance between specificity and flexibility. In response to the literature and to staff input, the Standards specify a limited set of clear rule-like standards, but the balance of the Professional Standards Guide is structured to guide and assist with the application of those standards to specific situations or circumstances likely to arise in the WAO context.

Of the comments obtained from WCAT and the Review Division, the only ones considered properly within the purview of Professional Standards, were those regarding the failure of the WAO to represent in circumstances where its services are required, and the unnecessary representation of workers in cases where it can add little value. These concerns are addressed in Standard 3 (Represent where there is merit) and Standard 4 (Do not represent in the absence of merit), and in the exceptions set out to each.

Review Division was also observed to be somewhat more critical than WCAT of the WAO’s performance in the competency-based behaviours. This might be explained in several ways:

- 1) WAO Advisers are better at oral advocacy than at written advocacy (although a large percentage of WCAT representations are also by way of written submissions);
- 2) The Review Division is not independent of WorkSafeBC the way that WCAT is, and may have more natural sympathy with the decisions under appeal by WAO;
- 3) WCAT is the final level of appeal and its adjudicators are more carefully screened and selected. Thus, they are in a better position to judge the performance of Advisers.

However, it is also possible that, because WCAT is the final level of appeal, WAO puts more effort into its representations at that level. If there is a possibility that Advisers are not putting the same effort into Review Division representation, then this should be foreclosed within the Standards. This was specifically incorporated to the body of Standard 3.

Overall, the Client Satisfaction Surveys support the conclusion that WAO is meeting their expectations for professionalism.. Workers overwhelmingly rate the service they received as Very Professional or Professional. However, the critical comments revealed some difficulties with communication and a perception of workers that they were not taken seriously. These comments are difficult to interpret: The ability to reach the WAO, or a particular WAO staff member, and to have a timely

response may have more to do with existing systems and work processes than with staff professionalism. It is also difficult to assess the degree to which the various other critical comments are influenced by factors over which the WAO has no control. For example, the Workers' Advisers Office does not have the ability to amend unpopular legislation or policy, or to change decisions (except through advocacy). Client satisfaction levels (and their view of professionalism) can be skewed by their success on appeal and on whether the evidence, law and policy supported full representation from the WAO. Unrealistic worker expectations also play into the Perceived Competence category. For example, a majority of injured workers would not have the experience or knowledge to assess whether or not their circumstances were adequately investigated by the WAO.

Nevertheless, the Professional Standards have taken notice of these worker concerns. The Standards require a level of service that is consistent across the Branch, remind WAO staff of the importance of courtesy and respect, suggest proactive strategies to manage worker expectations, and specify a communications protocol. The interviews with WAO staff had confirmed that staff could have pre-empted many of their ethical difficulties with better communication and expectation management. Of the 24 Standards that form the skeleton of the Professional Standards Guide, 3 are devoted specifically to keeping workers informed, managing their expectations and treating them respectfully.

The research stresses the importance of involving Staff in the development of the Standards to generate support, improve awareness and create a sense of ownership. Research also relates the effectiveness of standards to the degree to which they take account of the organization's particular context. Meaningful staff input to both the content and implementation of the Standards was found to be crucial for two reasons: First, to ensure that the standards would be both realistic and relevant, and; Second: Because Staff insisted on participatory involvement, even suggesting that this would be the best means of ensuring that the Standards were, in fact, realistic and relevant. Staff have provided input on a variety of substantive and procedural areas and much of this has already been incorporated to the body of the Standards. At the same time, the Implementation plan accepts that the Standards remain in draft form until experienced WAO staff have had a chance to review the product and provide final input. The Implementation recommendations also provide for regular revisions to the Standards through continuing staff input, which was supported by the research, as well as suggested by many staff in the interviews.

Implementation

If the craft ethic found by Chonko in the private sector also applies to the public sector then it is important that the Professional Standards establish some kind of "higher right", subordinating "what the guy above you wants". This will require a willingness on the part of leadership to adhere to the Standards themselves and to support compliance with the Standards, even where this frustrates some

immediate objective. It will also require that this level of executive commitment be communicated down and reinforced to all management levels. While it is felt that this is important to the success of the Standards and their implementation, the nature and extent of those communications is not detailed, being wholly within the discretion of the Director (the Client) and subject to many competing priorities.

The research supports investing significant effort in familiarization and training, as well as continuing reinforcement. This was borne out by staff feedback (as set out in the detailed responses in Annex 4), although the feedback was wide-ranging on what this could and should involve. Many researchers in the area of ethics support the value of an ethics office or officer, and there was certainly some support for the idea among staff. However, others greeted the suggestion with caution, seemingly reluctant to approve of anything that might impose another level of bureaucracy and increase the paper load. To offset this wariness while still installing a person or office to keep professionalism high on the agenda, the recommendations for implementation (and the Standards themselves) contemplate the establishment of a Committee of Peers. Members of this committee would take on the development and delivery of formal training, mentoring, trouble-shooting, communicating, and, perhaps monitoring functions. Because the committee would be drawn from senior staff members but not management, it could expertly evaluate the highly contextual problems within this specialized program as well as provide a non-threatening response to educate staff, preempt and remediate professional lapses.

Staff have provided significant input as to how they learn best, and many of their suggestions are borne out in the research of McWilliams, Menzel and others. Case study based training appears to be the best approach to ethical (or professional) issues. The Standards as drafted already incorporate some cases but the implementation recommendations are for case-based sessions to orient new staff, familiarize existing staff, and reinforce the Standards over time.

OPTIONS AND RECOMMENDATIONS

The Process to develop Draft Professional Standards

The Standards development process was detailed in the Proposal document. This process involved extensive consultation with WAO staff, however these standards were also supported by external stakeholder surveys, a review of practices and standards in other jurisdictions, and business and public administration literature research on ethics codes and professional standards.

As the Proposal was essentially accepted, and is a fait d' accompli in any event, there are no alternative recommendations to make. However, this project entailed the production of Draft Standards: The recommendations to follow do address the finalization and future amendment of the Standards.

The Professional Standards document

The WAO staff who were interviewed were appreciative of their opportunity to provide input to the draft standards but many also indicated that they would reserve judgment on the utility and efficacy of any Branch standards of professionalism until they actually saw them. They consistently reported a desire to review and comment on the draft Standards before they are adopted as branch policy. This Project recommends Option 2 as a compromise position between a staff driven document and development process and a process and final document imposed on staff by Management.

Option 1 is also rejected because the "living document" nature of the Standards under Option 1 is such that they may actually detract from their stated purpose of establishing clear expectations and promoting consistency. Option 3 imposes the lowest duty in respect of appreciating and incorporating the concerns of staff. It leaves the most control in the hands of the Director (who is ultimately accountable for the professionalism of the Branch), and it would likely require fewer resources. However, it is rejected as leaning too heavily towards the imposed "autocratic" type document that many staff pointedly derided. Most staff have consistently demonstrated the importance of professionalism to them, and their ability to self-manage. There is no significant risk to involving staff to the greatest extent possible in the evolution of the professional standards to which they will be expected to subscribe. Nevertheless, all three options below are considered reasonable.

OPTION MENU

Option 1: Staff Prerogative: Management Mediated

- A. After Management (“Director”) review and any final edits, the Draft Standards should be circulated among staff for review and be reviewed in a LiveMeeting session (or series of LiveMeeting sessions). Perhaps, the Standards could be divided into manageable sections and reviewed in separate LiveMeeting sessions by different groups of WAO staff.
- B. To the extent possible, the Standards should be a grassroots document, seen to be the product of staff input and reflecting the concerns, viewpoints, and examples provided by the WAO staff. Once the draft review is complete, it is recommended that further changes by management be minimal. Staff have spoken clearly that they do not expect to profit from Standards seen to be imposed on them from above
- C. In order to ensure that the Standards remain relevant and responsive to changing circumstances, the Standards should remain a “living document.” The Director shall delegate an editing function to a staff member (“Editor”) who shall solicit and review suggestions from staff for improvements to form and format, and additional examples and anecdotes. The Editor may be appointed specifically to the task or may be the Ethics Officer, or Program Manager with ethics responsibility, or a member of the Committee of Peers. The Editor will also receive and recommend amendments to substantive content or the inclusion of supplementary material to address unanticipated professional concerns or dilemmas. Before the Editor shall incorporate changes to content, he shall obtain the approval of the Director, and shall have confirmed the support of a majority of staff.
- D. The Standards should be posted prominently on WAO’s SharePoint, but each employee should also be presented with a desktop reference copy, which should be printed in colour, and be maintained in a three ring binder. Periodically, and when significant updates have been made to the Standards, the Standards Guide pages affected by those changes shall be printed and circulated to all staff to replace existing pages in their Binders. The receipt of these updates will serve as a regular reminder of the importance of the Standards. Because of the continuously evolving nature of the Standards, it is not recommended that the Standards should be made available to the public.

Option 2: Management Prerogative – Consultation: Obligation to Justify (Preferred)

- A. Director review and editing.
- B. Following the Director’s review, the Standards should be submitted to a select group of experienced WAO staff. In the event that Management cannot accept any particular recommendation from the select group, the Management should reproduce the recommendation in a communiqué to all Staff, together with its rationale for rejecting or amending the recommendation. Research has shown that

staff need to see understand the reason for standards (and presumably, the rejection of standards) whose justification is not obvious.

- C. The Standards are intended to represent a balance of legal requirements, political and management expediencies, a concern for external stakeholders, and staff interests. As such, it must be the Director's responsibility and her judgment alone that determines the weight and manner in which any of these factors are reflected in the final document. While Staff participation and input will be requested and respected, the weight given to that input vis a vis other relevant factors is entirely within the Director's discretion. Staff have indicated that they understand that management cannot always perfectly accommodate their perspective. As noted above, staff have more difficulty with obscure management priorities. Staff will need to at least comprehend Management's rationale. It should be recognized that staff will more readily comply with Standards whose priorities are compatible with their own.

Once the Standards have been approved and adopted, the Standards shall not be amended for one year, except if the Director, in her discretion, determines that amendments are necessary to address circumstances that could not reasonably have been foreseen at the time the Standards were finalized. This would be considered an extraordinary measure. In this event, the Director should provide Staff with notice of her intention and of her reasons for amendment, and an opportunity to respond and to provide input. All amendments and justifications should be tracked on SharePoint to preserve the history of the Standards development.

- D. Once the recommendations have been incorporated, the Standards shall be published prominently on SharePoint as Read Only and in hard copy. Each employee should also be presented with a desktop reference copy, which should be printed in colour, and be bound with a durable cover.
- E. The Standards shall be reviewed in one year's time. In the interim, the Editor (defined in Option 1 C above) shall receive suggestions from staff for improvements to form and format, and additional examples and anecdotes. The Editor may also receive and recommend amendments to substantive content or the inclusion of supplementary material to address unanticipated professional concerns or dilemmas. If the Editor is of the view at the end of the year, that there is justification for the production of a revised edition of the Professional Standards Guide, the Editor shall make that recommendation to the Director who may approve or reject the recommendation, or may recommend that the Editor canvass the WAO staff to ensure broad support. In the event, the Director decides to reject the Editor's recommendations without staff consultation, the recommendations shall be reproduced to all staff together with the rationale for rejection.
- F. In furtherance of WAO accountability and to assist client surveys to provide valuable feedback, the Standards should be made available to the public via the WAO public website.

Option 3: Management Prerogative – Limited Consultation: Obligation to Notify

- A. Once the Director has had an opportunity to review the Standards, the Director and the Researcher may debate any contentious terms or points. To the extent that the Researcher views the Director's position as at odds with survey, interview or other research on which the Standards, the Researcher shall contact those staff members previously interviewed to ask them (without disclosing the reason for the follow-up questions) whether they would be less or more likely to accept Standards with that particular point amended (and why they feel this way). This information will be documented and submitted back to the Director. The Director's decision following receipt of this input is final.
- B. Subject to the process above, amendments to the draft Standards may be made at the request of the Director. If such amendments are contrary to the staff input, it is preferable, but not required, that the reasons for the particular amendments be clearly communicated to staff.
- C. The Director may amend the Standards at any time. It is recommended that amendments be highlighted through telephone conference, email notification, SharePoint alert, and through the circulation of Update Bulletins for attachment to hard copies of the Standards.
- D. The Standards should be posted on the SharePoint site, and a Word copy will be located on the Common drive for any interested staff member to download, or a link will be provided for each Staff member's desktop. A copy of the Standards will be included with orientation materials for new staff.

The Implementation Plan

The Implementation Plan assumes that the Draft Standards have been finalized and are intended to have effect across the Branch. At the time that the Standards are finalized, they must be communicated to all staff. The level of familiarity of staff at this time will depend on the options selected above, i.e. the extent to which they are involved in finalizing the content. However, even if 100% of the staff signed on to LiveMeeting sessions prior to finalization, their level of engagement and familiarity will still vary depending on their interest. Consultation and participation in the development of the Standards, regardless of the stage or level of that participation cannot but help to familiarize staff with the Standards, but it ought not to be assumed that the involvement of each staff member is adequate to ensure familiarity. Further, it is hoped that these Standards are a useful tool, and not just a repository of management expectations. Knowing what the document says is insufficient. This is a tool intended to assist staff. It is important that staff have practice in using it.

The preferred option is Option 3. It is recognized that Option 3 is also the most detailed and involved option and will require a more significant commitment in time and finances. The principle difference between Option 3 and the others is that it would establish a Committee of Peers to oversee professionalism and

ensure it remains a top priority. Although the Professional Standards are created as the nucleus of a program of professionalism, with the appropriate support, a Committee of Peers could easily eclipse the importance of the Standards document in maintaining and augmenting the professionalism of the Branch.

The first Option would serve the function of basic familiarization but may relegate the Standards to the back of the drawer afterwards. WAO staff are busy and have little time to change their habits and adopt new tools, without some structured, disciplined follow up. Further, the continuing reinforcement of the Standards through concrete measures such as training sessions, and continuing reflection and reemphasis by management, will serve to reinforce that professionalism is top of mind for management and needs also to be top of mind for staff. This would be satisfied by Option 2. However, Option 3 is recommended because it calls for a Committee of Peers. This is considered critical in that it tasks specific individuals with the many training, mentoring, support, and even monitoring functions required by a program intentionally seeking to embed professionalism within the organization. There are many new hires in the organization and a shrinking core of veteran staff. If the professional ethic torch is to be passed, WAO must take advantage of their collective wisdom now to bring new staff along and to establish a continuing tradition. Membership on the Committee could be seen as an honour and a tangible recognition for the professionalism in the selected staff member's own work.

Option 1: Initial Training

- A. Familiarization sessions to identify what is in document, where to find it, and give examples on how it could be used.
- B. The Familiarization sessions would be preparatory to a full day Branch training session, involving guided case studies and debriefing discussion.
- C. The same process would be followed as part of new-employee orientation, except that there would be more intensive direction and control through case study / debriefing.

Option 2: Initial Training and follow-up Reinforcement

A, B, and C of Option 1 plus:

- D. One to three hour professionalism briefing every Branch conference. This can be a report on positive or negative feedback on professionalism from external stakeholders, it can be a summary of updates/amendments to the Standards, or it can be a single case study exercise based on a real or hypothetical fact pattern.
- E. One case conference call quarterly devoted to the sharing of thorny ethical/professional conundrums and/or resolutions and discussion of alternatives.

- F. Consideration of single agenda item (1-2 minutes) for each Branch conference call in which Director or other Management representative takes opportunity to commend professionalism in a particular case, or how individual staff member appropriately handled sticky situation.
- G. Regional Managers/Program Managers should take the opportunity afforded by Employee Professional Development Plan (EPDP) meetings or Service Quality Reviews (SQR) to discuss some aspect of individual staff member's professionalism. Program Managers and Regional Managers should review their own EPDP's to ensure that they prioritize working with staff on issues of professionalism and that their own progress on issues of professionalism is captured.

Option 3: Ethics Office and/or standing Committee of Peers.

A-G, above, plus the following:

- A. Appointment or creation of a Committee of Peers. This Committee will be charged with keeping professional and ethical issues front and center in the Branch. They could bring ethical or professional issues forward to the Branch; collect anecdotal examples and case studies for training purposes; develop training materials and develop exercises; edit and freshen the Standards with emerging issues or with replacement or additional examples and best practices; and act as a consultative body in respect of questions or issues from WAO staff (including management) concerning ethics or professionalism (in particular, where such referral is explicitly provided in the Standards). As peers, members of the Committee would be approachable and more likely to be seen as providing comfort and support to staff in difficulty. It is also likely that actual participation on the Committee would sharpen the professional sensitivities of those involved and result in a greater personal commitment to professionalism. Committee membership could be rotated periodically. OR
- B. Appointment of an Ethics Officer or designation of Ethics review duties to a Program Manager. This choice has the advantage of avoiding the "diffusion of responsibility" issues of committees and "committee fatigue". However, depending on the person appointed or designated to the Office, it may not have the same legitimacy as the Committee of Peers,

Potentially, this or these ethics designates could potentially sit as a kind of inquiry, publish to the WAO professionalism issues that have arisen (without identifying the parties), their response to those concerns, and alternative best practice recommendations for future reference.

Follow-up and Administration

This project does not follow the administration or formally propose administration options and recommendations. However, a series of “next steps” addressed to administration are laid out below.

A. Establish evaluative measures, and baseline.

Measures should be drawn from the Standards themselves. It is recommended that the evaluative measure be coordinated with ARK (our Case Management System) so that they can be drawn out of, or easily recorded with the system. Other potential sources of evaluative data include the Client Surveys, the feedback loops that are now, or will be, negotiated with appellate bodies, and worker complaints. The same measures should be employed for each of these evaluative processes, although captured independently.

B. Formalize data-gathering.

As suggested by Nijhof (2003) (and staff), the Standards should be integrated and aligned with the organization’s quality management system. The SQR process can proceed as it does now, with audits of random files of individual Staff, however the process should be modified as required to record and track conformity to the measures. Complaints too, can be categorized and tracked for evaluative purposes. The Client Satisfaction Surveys will require revision in order to effectively gather data on professionalism.

C. Recruit Ethics Officer/Committee of Peers.

Recruitment from staff to an Ethics Officer designation or to the Committee of Peers can also begin, but it is recommended the selection be based on the experience and demonstrated professionalism of candidates. Research supports that those with strong personal values which are aligned with the organizational ethic will also be those best able to provide accurate feedback on the ethics in the organization. The Committee of Peers should seek to recruit these individuals, and assume the role of overall professionalism evaluation. The WAO could pursue a little in-house research along these lines to identify appropriate candidates.

These positions will need to be characterized and supported such that they are coveted as positions of honour. The terms of reference for this position or positions should be settled.

D. Harmonization with existing documents and processes

Template documents (particularly commitment letters and authorizations) as well as practice directives, work process, and other documents need to be harmonized with the Standards, and reviewed regularly.

CONCLUSION

This Project has gone a fair distance towards producing Professional Standards for the Branch and, if the implementation recommendations were to be followed, WAO could be seen as a leader in promoting professional staff and a professional organization. The Standards attached as Annex 10 subsume many of the elements addressed in the Standards developed for other like Agencies, but incorporate the “best practices” identified in the literature as well as the input from staff and other stakeholders.

The WAO is already an organization in which professionalism is highly valued by staff, and recognized by other stakeholders. Therefore it may be difficult to measure how effective the Standards or its Implementation Plan will be in changing behavior. As recommended, the Branch will need to derive its measures of effectiveness from the actual content of the Standards, with due regard to the most important objectives to the Branch.

Changed behavior is not the only measure of success. If staff find guidance on difficult issues, clarification of expectations, and security in meeting those expectations as set out in the Standards, this should help with staff morale, motivation, and productivity. At the same time, the reputation of the Branch with the public, within the B.C. Government, and with other Workers' Advisers' offices is also important. Having Standards may not do much in that regard, but publishing them might. More importantly, if these Standards actually produce a more consistent (and high) service quality as a result of clearer expectations of service, this should eventually be reflected in Client Satisfaction surveys.

The Project has stopped short of a “final” Professional Standards document, recognizing that the opportunity for additional staff input and for careful consideration by the Client is still required before the Standards can be finalized. Even then, it is anticipated that the Standards will be revisited and amended on an annual basis. If followed, the Implementation Recommendations should ensure that the Standards are finalized with appropriate input, and embedded within the program. If suggestions for amendments are collected in anticipation of the release of “Professional Standards Guide 2.0, and if there is training and reinforcement throughout the year, then it is unlikely that the Branch will need more information on how to modify the tool.

The most significant issue going forward for the implementation of professionalism in the Branch is the choice between employing the Standards for use by staff as a reference and a tool, and deploying them for use by Management for performance measurement. This choice will determine how and what data is reviewed and whether it is collected and analyzed individually or collectively. It will also shape the evaluative measures employed, the recruitment choices for Ethics Officer or Committee of Peers, and the duties assigned to that Office.

A significant level of discomfort was found among staff with the utilization of Professional Standards as a performance measurement tool. It was felt that Standards that stray into the area of monitoring and enforcement could create a generalized resistance to adoption for other purposes. However, staff might still support monitoring and enforcement, if it could be shown that it was clearly directed towards the improvement of professionalism overall (as opposed to a disciplinary response in reaction to each minor offence). Staff are much more comfortable with a process that identifies coaching opportunities and training needs. The recruitment choice to the Ethics Office or the Committee of Peers is critical, as it will likely have a significant impact on the acceptance of an enforcement / disciplinary function.

However, if enforcement is going to take on a disciplinary tenor, staff have spoken emphatically about the need for due process, and the need for a dispassionate assessment according to agreed criteria. Excepting flagrant violations, monitoring processes should look for trends - not for incidents, and disciplinary action should only be considered in the case of flagrant or persistent patterns of disregard for Standards.

Hopefully, staff will have the opportunity to see the Standards employed with equal effect to prevent unprofessional conduct and to protect professional conduct. This Project looks forward to the express and continuing support for the Standards, and for all the objectives of Standards set out in this Report.

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APPENDICES

APPENDIX 1: BC CODE OF CONDUCT

Standards of Conduct

09. Policy Statement



Where ideas work

This policy statement applies to all persons and organizations covered by the Public Service Act. The policy statement supports the core policy objective that "public service employees exhibit the highest standards of conduct."

Employees will exhibit the highest standards of conduct. Their conduct must instill confidence and trust and not bring the BC Public Service into disrepute. The honesty and integrity of the BC Public Service demands the impartiality of employees in the conduct of their duties.

The requirement to comply with these standards of conduct is a condition of employment. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal.

Loyalty

Public service employees have a duty of loyalty to the government as their employer. They must act honestly and in good faith and place the interests of the employer ahead of their own private interests. The duty committed to in the Oath of Employment requires BC Public Service employees to serve the government of the day to the best of their ability.

Confidentiality

Confidential information, in any form, that employees receive through their employment must not be disclosed, released, or transmitted to anyone other than persons who are authorized to receive the information. Employees with care or control of personal or sensitive information, electronic media, or devices must handle and dispose of these appropriately. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing, releasing, or transmitting it.

The proper handling and protection of confidential information is applicable both within and outside of government and continues to apply after the employment relationship ends.

Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering any private interest, or as a means of making personal gains. (See the Conflicts of Interest section of this policy statement for details.)

Public Comments

BC Public Service employees may comment on public issues but must not engage in any activity or speak publicly where this could be perceived as an official act or representation (unless authorized to do so).

Employees must not jeopardize the perception of impartiality in the performance of their duties through making public comments or entering into public debate regarding ministry policies. BC Public Service employees must not use their position in government to lend weight to the public expression of their personal opinions.

Political Activity

BC Public Service employees may participate in political activities including membership in a political party, supporting a candidate for elected office, or seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.

If engaging in political activities, employees must remain impartial and retain the perception of impartiality in relation to their duties and responsibilities. Employees must not engage in political activities during working hours or use government facilities, equipment, or resources in support of these activities.

Partisan politics are not to be introduced into the workplace; however, informal private discussions among co-workers are acceptable.

Service to the Public

BC Public Service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient, and effective. Employees must be sensitive and responsive to the changing needs, expectations, and rights of a diverse public in the proper performance of their duties.

Workplace Behavior

Employees are to treat each other with respect and dignity and must not engage in discriminatory conduct prohibited by the Human Rights Code. The prohibited grounds are race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, sexual orientation, age, political belief or conviction of a criminal or summary offence unrelated to the individual's employment.

Further, the conduct of BC Public Service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. An employee's conduct must not compromise the integrity of the BC Public Service.

All employees may expect and have the responsibility to contribute to a safe workplace. Violence in the workplace is unacceptable. Violence is any use of physical force on an individual that causes or could cause injury and includes an attempt or threatened use of force.

Employees must report any incident of violence. Any employee who becomes aware of a threat must report that threat if there is reasonable cause to believe that the threat poses a risk of injury. Any incident or threat of violence in the workplace must be addressed immediately.

Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WorkSafeBC Occupational Health and Safety Regulations.

Conflicts of Interest

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- ▶ the employee's ability to act in the public interest could be impaired; or
- ▶ the employee's actions or conduct could undermine or compromise:
 - the public's confidence in the employee's ability to discharge work responsibilities; or
 - the trust that the public places in the BC Public Service.

While the government recognizes the right of BC Public Service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their BC Public Service duties. Upon appointment to the BC Public Service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising.

Employees who find themselves in an actual, perceived, or potential conflict of interest must disclose the matter to their supervisor, manager, or ethics advisor. Examples of conflicts of interest include, but are not limited to, the following:

- ▶ An employee uses government property or equipment or the employee's position, office, or government affiliation to pursue personal interests or the interests of another organization;
- ▶ An employee is in a situation where the employee is under obligation to a person who might benefit from or seek to gain special consideration or favour;
- ▶ An employee, in the performance of official duties, gives preferential treatment to an individual, corporation, or organization, including a non-profit organization, in which the employee, or a relative or friend of the employee, has an interest, financial or otherwise;
- ▶ An employee benefits from, or is reasonably perceived by the public to have benefited from, the use of information acquired solely by reason of the employee's employment;
- ▶ An employee benefits from, or is reasonably perceived by the public to have benefited from, a government transaction over which the employee can influence decisions (for example, investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);
- ▶ An employee accepts from an individual, corporation, or organization, directly or indirectly, a personal gift or benefit that arises out of employment in the BC Public Service, other than:
 - the exchange of hospitality between persons doing business together;
 - tokens exchanged as part of protocol;
 - the normal presentation of gifts to persons participating in public functions; or

- the normal exchange of gifts between friends; or
- An employee accepts gifts, donations, or free services for work-related leisure activities other than in situations outlined above.

The following four criteria, when taken together, are intended to guide the judgment of employees who are considering the acceptance of a gift:

- ▶ The benefit is of nominal value;
- ▶ The exchange creates no obligation;
- ▶ Reciprocation is easy; and
- ▶ It occurs infrequently.

Employees will not solicit a gift, benefit, or service on behalf of themselves or other employees.

Allegations of Wrongdoing

Employees have a duty to report any situation relevant to the BC Public Service that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the Freedom of Information and Protection of Privacy Act). Employees will not be subject to discipline or reprisal for bringing forward to a Deputy Minister, in good faith, allegations of wrongdoing in accordance with this policy statement.

Employees must report their allegations or concerns as follows:

- ▶ Members of the BCGEU must report in accordance with Article 32.13;
- ▶ PEA members must report in accordance with Article 36.12; or
- ▶ Other employees must report in writing to their Deputy Minister or other executive member of the ministry, who will acknowledge receipt of the submission and have the matter reviewed and responded to in writing within 30 days of receiving the employee's submission. Where an allegation involves a Deputy Minister, the employee must forward the allegation to the Deputy Minister to the Premier.

These reporting requirements are in addition to an employee's obligation to report to the Comptroller General as outlined in Section 33.2 of the Financial Administration Act.

Where an employee believes that the matter requires a resolution and it has not been reasonably resolved by the ministry, the employee may then refer the allegation to the appropriate authority.

If the employee decides to pursue the matter further then:

- ▶ Allegations of criminal activity are to be referred to the police;
- ▶ Allegations of a misuse of public funds are to be referred to the Auditor General;
- ▶ Allegations of a danger to public health must be brought to the attention of health authorities; and

- ▶ Allegations of a significant danger to the environment must be brought to the attention of the Deputy Minister, Ministry of Environment.

Legal Proceedings

Employees must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for government in that proceeding or unless it has been approved by a ministry solicitor in the Legal Services Branch, Ministry of Attorney General. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch of the BC Public Service Agency will obtain any necessary approvals. Employees are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings.

A written opinion prepared on behalf of government by any legal counsel is privileged and is, therefore, not to be released without prior approval of the Legal Services branch.

Working Relationships

Employees involved in a personal relationship outside work which compromises objectivity, or the perception of objectivity, should avoid being placed in a direct reporting relationship to one another.

For example, employees who are direct relatives or who permanently reside together may not be employed in situations where:

- ▶ A reporting relationship exists where one employee has influence, input, or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work, and similar matters; or
- ▶ The working relationship affords an opportunity for collusion between the two employees that would have a detrimental effect on the Employer's interest.

The above restriction on working relationships may be waived provided that the Deputy Minister is satisfied that sufficient safeguards are in place to ensure that the Employer's interests are not compromised.

Human Resource Decisions

Employees are to disqualify themselves as participants in human resource decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could accrue to them.

For example, employees are not to participate in staffing actions involving direct relatives or persons living in the same household.

Outside Remunerative and Volunteer Work

Employees may hold jobs outside government, carry on a business, receive remuneration from public funds for activities outside their position, or engage in volunteer activities provided it does not:

- ▶ interfere with the performance of their duties as a BC Public Service employee;

Standards of Conduct

09. Policy Statement



Where ideas work

- ▶ bring the government into disrepute;
- ▶ represent a conflict of interest or create the reasonable perception of a conflict of interest;
- ▶ appear to be an official act or to represent government opinion or policy;
- ▶ involve the unauthorized use of work time or government premises, services, equipment, or supplies; or
- ▶ gain an advantage that is derived from their employment with the BC Public Service.

Employees who are appointed as directors or officers of Crown corporations are not to receive any additional remuneration beyond the reimbursement of appropriate travel expenses except as approved by the Lieutenant Governor in Council.

Responsibilities

Agency Head

- ▶ Provide timely advice to managers and designated contacts respecting the application of this policy statement including guidance on an appropriate employer response to transgressions of the policy statement; and
- ▶ Coordinate the development of awareness, training, and communication programs in support of this policy statement.

Deputy Ministers

- ▶ Advise employees of the required standards of conduct and the consequences of non-compliance;
- ▶ Designate a ministry contact for matters related to standards of conduct;
- ▶ Promote a work environment that is free of discrimination;
- ▶ Deal with breaches of this policy statement in a timely manner, taking the appropriate action based upon the facts and circumstances;
- ▶ Waive the provision on working relationships under the circumstances indicated; and
- ▶ Delegate authority and responsibility, where applicable, to apply this policy statement within their organization.

Line Managers

- ▶ Advise staff on standards of conduct issues;
- ▶ Engage the ministry-designated contact as may be appropriate in the circumstances; and
- ▶ Contribute to a work environment that is free of discrimination.

Employees

- ▶ Objectively and loyally fulfill their assigned duties and responsibilities, regardless of the party or persons in power and regardless of their personal opinions;

Standards of Conduct

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Where ideas work

- ▶ Disclose and resolve conflicts of interest or potential conflict of interest situations in which they find themselves;
- ▶ Maintain appropriate workplace behavior;
- ▶ Avoid engaging in discriminatory conduct or comment; and
- ▶ Check with their supervisor or manager when they are uncertain about any aspect of this policy statement.

Questions? Please call your Human Resources Consultant.

Effective date April 29, 2008

APPENDIX 2: WORKSAFEBC'S CODE OF CONDUCT FOR REPRESENTATIVES

(applicable to representation to the Review Division)

Standards of Conduct for Practice and Procedure before the WCB

These Standards of Conduct apply to representatives who appear before the Workers' Compensation Board of British Columbia (WCB):

- (a) The conduct of a representative must be of the highest moral and ethical standard in keeping with the responsibility and trust placed with them by their clients and the importance of their function. This conduct includes unfailing honesty. The representative will not put forward any information known to be untrue, nor will he or she knowingly assist or encourage a party to be dishonest or misrepresent facts.
- (b) The conduct of a representative must demonstrate a high degree of courtesy and respect to other parties and their representatives, witness(es), and WCB staff.
- (c) A representative must be prepared. This includes being familiar with their client's WCB claim, prevention or assessment file and the relevant law and policy. This also includes consulting with the client before making representations to the WCB on the client's behalf and being in a position to attend at the WCB as requested and/or provide written submissions on a timely basis.
- (d) A representative must observe the WCB's practices and procedures in relation to attendance either at the WCB or outside the WCB on matters involving the client including meetings, hearings, medical assessments, and work assessments/evaluations.
- (e) A representative will instruct his or her client and witnesses on the appropriate conduct in relation to WCB attendance, and the requirement for courtesy and respect to WCB staff as well as to any parties and opposing representatives. A representative is expected to take whatever steps are necessary to prevent clients and witnesses from disrupting WCB-related proceedings. A representative is held responsible for the conduct of their client.
- (f) Any public statements that are made by the representative on behalf of the client should be factual and fair and never involve personal attacks on WCB staff or other parties to a hearing.
- (g) A representative will maintain and protect the confidentiality of information disclosed during WCB proceedings and must not use that information for other purposes without prior consent.

A breach of these standards may result in a representative's right of representation being restricted or denied. A representative who is abusive to WCB staff may have his or her access to WCB staff restricted. Further, the impugned conduct may be brought to the attention of the governing body of the representative.

APPENDIX 3: WCAT CODE OF CONDUCT FOR REPRESENTATIVES

From Workers Compensation Appeals Tribunal Manual of Practices and Procedures (MRPP)

21 CODES OF CONDUCT

21.1 For Parties

21.1.1 General

This Code is intended to alert parties, whether or not they are represented, to the minimum standards of behaviour. Parties are expected to know and abide by this Code.

This Code also applies to any person or representative group WCAT has requested to participate in an appeal under section 246(2)(i) (items 6.6 to 6.6.7).

21.1.2 Duties of a Party

- (a) A party will not put forward any information known to be untrue, nor will they be dishonest or misrepresent facts.
- (b) A party must meet deadlines for written submissions and for scheduling oral hearings.
- (c) A party must be prepared. Being prepared includes being familiar with the relevant Board file(s), gathering their evidence and preparing their position on the appeal based on the relevant law, policy, and precedent decisions.
- (d) A party must observe WCAT's rules of practice and procedure and practice directives.
- (e) A party must behave courteously and respectfully to the opposing party and their representative (if present), to any witnesses called during an oral hearing, to the panel hearing the appeal, and to WCAT support staff. A party must also behave courteously and respectfully in written correspondence, including written submissions.

A party's conduct and demeanour toward the WCAT panel should not be influenced by ill feelings between a worker and an employer, or between them and the Board, including previous decision makers.

- (f) The panel assigned to a hearing or pre-hearing process may make orders or give directions necessary for the maintenance of order. If a party disobeys or fails to comply with the panel's order or direction, the panel may:
 - (i) call upon a peace officer to enforce the order or direction [s. 48(1), ATA];
 - (ii) impose restrictions on the person's continued participation in or attendance at a proceeding [s. 48(3)(a), ATA];
 - (iii) exclude the person from further participation in or attendance at a proceeding pending another order [s. 48(3)(b), ATA];

- (iv) apply to court for committal of the person for contempt [s. 49(2), ATA].
- (g) A party has a duty to bring forward, at the earliest opportunity, any information which may give rise to a reasonable apprehension of bias or conflict of interest on the part of a WCAT member. However, such allegations should not be made frivolously or in a fashion which diminishes confidence in the integrity of WCAT decision making. Examples of the types of allegations that will not, on their own, raise a reasonable apprehension of bias include instances where a panel previously decided a similar issue or worked for the Board in the past.
- (h) At the earliest practicable opportunity, a party should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the party fails to do so, WCAT may deem them to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.
- (i) A party must respect the confidentiality of information disclosed during WCAT proceedings and not use that information for other purposes without the consent of the parties and the Board [s. 95(1.1), WCA].
- (j) A party should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A party who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a party should not contact WCAT by e-mail.
- (k) Following a WCAT decision, a party must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

21.2 For Representatives

21.2.1 General

Parties appearing before WCAT are not required to have representation. However, many have representatives such as friends or family members, union advocates, human resources personnel, advisers from the Workers' or Employers' Advisers' Offices, private consultants, or lawyers.

This Code is intended to alert representatives to the minimum standards of behaviour. Representatives are expected to know and abide by this Code. WCAT will investigate breaches of this Code which are brought to TCO's attention. Panels may also address breaches of this Code directly during the course of oral hearings and/or in their written decisions.

21.2.2 Duties of a Representative

- (a) A representative's conduct should at all times be characterized by candour and fairness. The representative should maintain toward WCAT a courteous and respectful attitude and insist on similar conduct on the part of their client, at the same time discharging their duty to their client resolutely and with self-respecting independence.
- (b) A representative must honestly represent the client. The representative will not put forward any information known to be untrue, nor will they knowingly assist or encourage a party to be dishonest or misrepresent facts.
- (c) A representative must have proper instructions from their client before proceeding. A representative must obtain instructions from their client before taking any significant step including, but not limited to, initiating or withdrawing an appeal.
- (d) A representative must meet deadlines for written submissions and for scheduling oral hearings. A representative should not undertake to represent a client unless they will be able to provide such representation within the statutory time frames, as required by section 253.
- (e) A representative must be prepared. Being prepared includes being familiar with their client's evidence and position on the appeal, as well as the relevant Board file(s) and the relevant law, policy, and precedent decisions.
- (f) A representative must observe WCAT's rules of practice and procedure and practice directives.
- (g) A representative must behave courteously and respectfully to the opposing party and their representative (if present), to any witnesses called during an oral hearing, to the panel hearing the appeal, and to WCAT support staff. A representative must also behave courteously and respectfully in written correspondence, including submissions. Respectful behaviour includes representatives conducting their business affairs so as to enable WCAT staff to contact them easily.

A representative's conduct and demeanour toward any other representative in the case, or toward the WCAT panel should not be influenced by ill feelings between a worker and an employer, or between the client (or the representative) and the Board, including previous decision makers.
- (h) A representative should instruct their client and witnesses about appropriate conduct in a hearing and in written correspondence, including submissions, and the requirement for courtesy and civility to the panel as well as any opposing representative and their client. A representative is expected to take whatever steps are necessary to dissuade clients and witnesses from disrupting a hearing (item 21.1).

- (i) The panel assigned to a hearing or pre-hearing process may make orders or give directions necessary for the maintenance of order. If a representative disobeys or fails to comply with the panel's order or direction, the panel may:
 - (i) call upon a peace officer to enforce the order or direction [s. 48(1), ATA];
 - (ii) impose restrictions on a representative's continued participation in or attendance at a proceeding [s. 48(3)(a), ATA];
 - (iii) exclude a representative from further participation in or attendance at a proceeding pending another order [s. 48(3)(b), ATA];
 - (iv) apply to court for committal of the representative for contempt [s. 49(2), ATA].

- (j) A representative has a duty to bring forward, at the earliest opportunity, any information which may give rise to a reasonable apprehension of bias or conflict of interest on the part of a WCAT member. However, such allegations should not be made frivolously or in a fashion which diminishes confidence in the integrity of WCAT decision making. Accordingly, if the allegation has been addressed by WCAT and rejected, the representative should not continue to raise similar allegations in other appeals. Examples of the types of allegations that will not, on their own, raise a reasonable apprehension of bias include instances where a panel previously decided a similar issue or worked for the Board in the past.

- (k) At the earliest practicable opportunity, a representative should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the representative fails to do so, WCAT may deem the party to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.

- (l) A representative should not engage in personal attacks on members.

- (m) A representative must respect the confidentiality of information disclosed during WCAT proceedings and not use that information for other purposes without the consent of the parties and the Board [s. 95(1.1), WCA].

- (n) A representative should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A representative who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a representative should not contact WCAT by e-mail.

- (o) Following a WCAT decision, a representative must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

- (p) Members who cease to hold office, and legal staff of TCO who cease to be employed by or contracted to WCAT, are prohibited from appearing or making written submissions in a proceeding or matter before WCAT as counsel, advocate, or representative on behalf of a party to the proceeding until six months after the member's/legal staff's appointment/employment/contract ends.

21.3 For WCAT Members

The requirement to comply with a code of conduct is a condition of appointment. Members who fail to comply with the standards established may be subject to disciplinary action up to and including dismissal.

The Code of Conduct for WCAT Members establishes rules of conduct governing the professional and ethical responsibilities of members to enhance public confidence in their integrity and fairness. The Code establishes reasonable minimum expectations governing the conduct of all WCAT members. Each member must ensure their own compliance with this Code. Members also have an obligation to bring to the attention of another WCAT member any circumstance which raises a reasonable apprehension of that member's possible contravention of this Code.

(Appendix 12)

21.3.1 Involvement in Legal Proceedings

Neither WCAT nor its decision makers may be sued for damages because of anything done or omitted in the performance or intended performance of any statutory duty or exercise or intended exercise of any statutory power [s. 56(2), ATA]. The immunity conferred in section 56(2) does not apply in relation to anything done or omitted in bad faith [s. 56(3)].

Members, or anyone conducting a dispute resolution process for WCAT, must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of their duties [s. 55(1), ATA].

21.4 For WCAT Employees

Section 235 provides that employees necessary to exercise the powers and perform the duties of WCAT may be appointed under the *Public Service Act*, R.S.B.C. 1996, c. 385. WCAT may also engage or retain consultants or contractors that WCAT considers necessary. All employees, officers, consultants or contractors engaged or retained by WCAT are bound by, and must agree to be bound by, the Province of British Columbia *Standards of Conduct for Public Service Employees*.

ANNEX 11: ETHICS APPROVAL CERTIFICATE

ANNEX 1: CLIENT SATISFACTION SURVEY SAMPLE

ANNEX 2: CLIENT SATISFACTION SURVEY RESULTS

(Analysis of existing secondary data)

All the general critical comments could be classified into the following categories and subcategories:

<u>Communication</u>	<u>42</u>
Difficulty reaching WAO or Adviser	11
Weren't kept adequately informed	8
Timely Response to inquiry	7
Insufficient allowance for language/ Brain injury / Other communication impediment	5
Unable to meet in-person	3
No local office/access	3
Not treated with respect	3
Difficulty with change of assigned Adviser	2
 <u>Perceived Competence</u>	 <u>34</u>
Didn't do enough for worker	15
Inadequate investigation into their Circumstances	6
WAO was not proactive in its service	5
General competence issues	4
Disagree with merit call	3
Bias in favour of WorkSafeBC	1
 <u>Workload</u>	 <u>19</u>
Too Busy/Overworked to give sufficient attention to worker concern	19
 <u>Other</u>	 <u>4</u>
No authority to influence/change WorkSafeBC decision	4

Respondents were also asked to rate the professionalism of the Adviser or Assistant with which they had been dealing:

On a scale of 1-5: (very professional, professional, neither professional nor unprofessional, unprofessional, very unprofessional)

Very Professional	131
Professional	54
Neither	12
Unprofessional	8
Very Unprofessional	11

87.5% of respondents rated the WAO as either Very Professional or Professional.
(189 / 216 = .875)

8.8% of respondents rated the WAO or either Unprofessional or Very Unprofessional).
(19 / 216 = .088)

Uncertain/incomplete/ spoiled responses	35
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ANNEX 3: INTENSIVE INTERVIEW FRAMEWORK QUESTIONS:

Part I: Workers' Advisers Office staff: Qualitative survey of advisers, management, evaluators, director

INTRODUCTION:

As you know, I am a Workers' Adviser (employed by the Workers' Advisers Office in BC). I am working on completing my Masters of Public Administration and I have been sponsored by Ramona (Soares, Director of WAO) to complete a project to develop recommendations around Professional Standards for the Branch. This is primarily an academic exercise for credit in my own MPA program and Ramona has not indicated to me whether any or all of these recommendations will be implemented. However, it is possible that she will find some value in my final report and this may be your opportunity to influence the form that Branch Professional Standards might take.

QUESTIONS:

Content of Standards Cluster

1. Would you have any concerns if WAO were to develop a set of Professional Standards for the WAO to govern its "ethics" or "professionalism"?
2. If you do have concerns, what could be done in the creation or implementation of Standards to address those concerns?
3. In what ways do you think it might be helpful to the Branch to have professional standards?
4. In other jurisdictions, Professional Responsibility Standards for Workers' Advisers include such topical elements as:
 - Obtaining Instructions;
 - Defining limits of retainer;
 - Circumstances for withdrawal
 - Describing duties of disclosure and of confidentiality;
 - Communications with workers or third parties;
 - Competence;
 - Diligence / negligence;
 - Conflict of Interest;

- Conflict of Duty (Duties to workers, the administration of justice, and to the employer)
- a) Do you think these are appropriate topics to include in Standards for our Branch also?
 - b) Would you exclude any?
 - c) Can you think of any other topical area which should be addressed?

5. One key difference between BC and other jurisdictions with Standards is that the WCA in BC grants individual Advisers the discretion to determine merit, and thus the level of service they provide.

Do you have any suggestions on how individual discretion, judgment, and file conduct might be reconciled with the Branch's desire to ensure a consistent approach across the branch and to deliver consistent service across the province?

6. Incidents of professional practice: feel free to give examples.
- a) To what extent should we "take instructions" from injured workers and how should we document this?
 - b) How do you think we should document what we've agreed to do and what we have not agreed to do for workers?
 - c) Are there any circumstances in which we would be permitted or compelled to act without explicit instructions?
 - d) Under what circumstances would you withdraw and how would you do this?
 - e) Are there any junctures in the file where you would consider it should be mandatory to communicate with workers?
 - f) When would you communicate in writing and when would you call?
 - g) Under what circumstances would it be appropriate to communicate information about a worker to a third party?
 - h) We have duties to workers, the administration of justice, and to our employer. Can you briefly describe what each of these duties means to you?

- i) Can you give me one example of circumstances in which you might find a conflict of Interest?
- j) Sometimes we have to resolve a conflict in these duties. What general advice would you give another WAO staff member attempting to resolve such a conflict?
- k) Supposing you missed a filing or a submission deadline, what would be the best way to deal with it?

7. Do you think it would be valuable to identify broad "values" with which our hypothetical Professional Standards should be required to be consistent?

If we had governing values, can you name three such values which, in your mind characterize "professionalism" in the WAO?

1. I'm going to list eight metaphors to you, one by one. Each of these metaphors is a way of describing how professional standards might influence behavior. Of these eight metaphors, prioritize the three that you think would form the most appropriate conceptual framework for a set of standards.
 - a) A Rule Book (to clarify behavior expected of employees)
 - b) A Sign Post (leading employees to consult with other individuals or Branch policies to determine whether certain behavior is appropriate)
 - c) A Mirror (providing an opportunity to confirm whether behavior is acceptable)
 - d) A Magnifying Glass (a caution to suggest greater care or reflection before acting)
 - e) A Shield (providing employees the ability to challenge or resist "unethical" requests, or fettering of your discretion)
 - f) A Smoke Detector (Leading employees to try to convince others and warn them of their inappropriate behavior)

- g) A Fire Alarm (leading employees to report violations to the appropriate authority for some sort of action)
- h) A Club (the potential for enforcement/discipline causes employees to comply)

To help me understand why you selected your particular three metaphors, give an example of a situation in which Professional Standards could usefully function like that metaphor.

9. Professional Standards could be developed for a number of different purposes. I would like to review a number of prospective purposes and have you tell me briefly why you think it is, or is not, important that the Standards advance that particular purpose in some way.

- Agree on common standards to define "professionalism"/ professional behavior.
- Enhance the credibility and reputation of the WAO.
- Reduce WAO's liability exposure for unprofessional conduct of staff.
- Clarify obligations and developing specific expectations for WAO Advisers.
- Clarify obligations and developing specific expectations and obligations for all other levels of WAO staff, including assistants and managers.
- Provide guidance for WAO staff on appropriate responses to common ethical problems or conflicts.
- Protect WAO staff from having to follow directions in conflict with Standards or from censure for adhering to Professional Standards.
- Distinguish areas of discretionary action and define the limits of that discretion.
- Provide tools to guide the "reasonable" exercise of discretion.
- Protect the reasonable exercise of discretion from management interference.
- Ensure a consistent and proportionate response to transgressions of Professional Standards.

10. Can you think of any other purpose which you believe should shape the development of Professional Standards?

Standards Implementation Cluster

11. If Professional Standards were developed, what could the Branch do to ensure you, or others in the Branch, were familiar with those Standards?

12. What suggestions would you offer on how to familiarize WAO staff with the Professional Standards and most effectively train staff to apply them in their everyday work?

13. What could be done with either the content, layout or format, or medium of the Standards to enhance their usability as a continuing reference?

14. Do you think the WAO has a culture of professionalism? Why do you say that?

15. What actions could the management/leadership of WAO take which would convince you of their commitment to a high standard of professionalism?

16. Other than leadership, can you think of any other factors which are likely to either enhance acceptance and adoption of Standards or detract from their adoption?

Monitoring and Enforcement Cluster

17. If Professional Standards were developed and implemented, how would you feel about being monitored in some fashion for compliance with those Standards?

18. If professionalism in the Branch were to be monitored, or monitored and enforced, what should that look like? What person, position, or office should be involved in the monitoring and/or enforcement?

19. What factors should be taken into account in determining an appropriate response to some transgression of the Standards.

20. Is it desirable or practicable for WAO staff to be rewarded or recognized for consistent compliance with Professional Standard Rules or for consistently "reasonable" judgment calls? How would you do this?

ANNEX 4: INTENSIVE INTERVIEW RESPONSES AND DETAILED RESULTS

Please note: In these responses, “categories” or “headings” are often imposed on the results in the process of seeking and identifying trends or themes. Except where apparent from the initial question, respondents were not asked to place their response under these headings.

Question 1: Reservations of having Standards:

No reservations	7
Disciplinary tool	3
May be too constraining	2
May be misused	2
Irrelevant	1

Question 2: Remedy (5 responses only)

- Standards must be responsive to participatory Input
- Standards should develop clear goalposts
- Individualized response to individual problems (no one size-fits- all remedies)
- Impossible to anticipate abusive interpretation of Standards
- Any changes resulting from the Standards must serve the system overall

Question 3: Utility of having Standards:

• To support consistent approach to service	8
• To help understand Branch Expectations	8
• To establish a common reference	6
• To help resolve ambiguity, uncertainty, and deal with exceptions	5
• To encourage awareness and reflection on right conduct	2

Question 4(a): Use of listed content drawn from other jurisdictions

Content is generally appropriate	15
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Question 4(b): Any Exclusions from content:

• No exclusions	10
• Competence/Diligence	4
• Defining WAO’s duties	1
• Stipulating the nature and frequency of communication with injured workers	1

Reasons for exclusion (or for qualified acceptance):

- Standards may restrict discretion (exclusion) 3
- Too difficult to capture/define professional standards (exclusion) 1
- Support for Standards will depend on where the emphasis is placed (qualify) 2
- Must serve system overall (qualify) 1

Question 4(c) Suggested Additions to content:

- Conflict resolution guidelines internally and externally: 3
- Duties to colleagues/collegiality 2
- Quality Assurance 1
- Dealing with complaints 1
- Cooperation with external stakeholders 1
- Framing questions 1

Question 5: Reconciling Discretion with Consistency

- **Six** Respondents thought there would be value in identifying useful factors/considerations for the exercise of discretion, selecting best practices or specifying criteria. The purpose of this would be calibration and consistency.
- **Two** respondents offered that this would allow for more transparency as to whether the discretion was exercised appropriately, and one of those two suggested this would provide management with some means by which to assess the exercise of discretion. **One** other respondent suggested that this kind of oversight should be delegated to an ethics officer or quality assurance committee.
- **One** respondent suggested that the Standards should operate to restrict discretion through the application of more rules; **Two** respondents stated or applied that there was no need to stipulate either rules or relevant considerations, that the reasonable exercised of discretion was a matter of "common sense".
- **Three** respondents commented that there should be no interference with the exercise of discretion at all, whereas two stated that WAO staff must ultimately defer to the judgment of management in relation to even their discretionary actions.
- **One** respondent suggested that greater discretion should be permitted in emerging areas of controversy, and **one** endorsed the value of delineating areas of protected discretion.
- **Two** respondents referred specifically to the need for a common definition of "merit".
- **One** respondent suggested that there needed to be a Branch-wide discussion to reach some consensus on the acceptable compromise between freedom of action and overall consistency.

Question 6a: Taking Instructions

The following themes were extracted from the interview responses, and each comment of each respondent which endorsed one of the themes was tallied.

- | | | |
|----|--|---|
| 1. | Never act without instructions | 5 |
| 2. | <u>Exceptions where instructions may not be required:</u> | |
| | Exception unspecified – use judgment | 3 |
| | Exception is to preserve/protect appeal rights | 3 |
| | Exception is in case of highly dependent
(severe brain injury/psychological injury) | 2 |
| | Where expectation has arisen from longstanding dealings | 2 |
| | Not applicable to file conduct/management | 5 |
| 3. | Do not follow ethically/professionally inappropriate instructions -
and never follow instructions contrary to client's best interests | 6 |
| 4. | Do not follow ethically/professionally inappropriate instructions -
but follow instructions even if contrary to client interests but document ...
<i>except where those instructions substantially undermine merit</i> | 4 |
| 5. | Potential need for acting without instructions can often be pre-empted
through good communications up front | 6 |
| 6. | Clarification on this when we need instructions and to what extent we need
to follow them would be helpful | 2 |

Question 6b: Manner of documentation

Responses vary but most include documentation of both instructions and commitments in ARK, confirmation of commitments by letter to worker, and allowing for discretion in the nature and extent of other documentation (usually based on assessment of the risk that documentation will need to be produced in connection with the particular worker).

Some other comments:

Need to carefully distinguish between live, current commitments and contingent commitments

Confirm unsuccessful attempts to contact in writing

Question 6c: Acting without instructions

There is a **virtual consensus** that we ought only to act without instructions to preserve appeal rights. **No one** thought that we should never act to preserve appeal rights. **One** respondent thought we must always act to preserve appeal rights. Only **one** respondent

stipulated any other circumstance than preserving appeal rights, that being to request a decision from WorkSafeBC on behalf of a worker.

Three respondents indicated that this is a problem that could be managed through early management of expectations, either through the individual adviser, or through modification of existing process. Suggestions included a revised client authorization that anticipated the need to take steps to preserve appeal rights or a some form of separate agreement by which the worker would consent to Adviser actions in certain circumstances (presumably, when the worker is not staying in contact).

Seven respondents commented that they would act to preserve appeal rights if contact with the worker was lost. **One** combined that loss of contact with the need to find merit, and **one** combined loss of contact with an existing relationship.

Four respondents mentioned that they would preserve appeal rights without instructions for workers who could be brain injured, had psychological problems, or otherwise could not deal with the complexity; **Three** mentioned language difficulties, and; **One** stated that the prior course of dealings might have created an expectation that WAO would preserve appeal rights.

Sometimes there is a downside risk. The appeal might result in the reduction or withdrawal of a benefit rather than a gain. Only **one** respondent indicated comfort with filing irrespective of downside risk. **One** said she would not proceed if there were mixed chances of loss or success. **Two** others said that the potential loss must be weighed against the potential gain, although one of those stated that the risk would have to be very small. **Three** respondents said the risk can be adequately mitigated by a follow-up letter describing the risk in strong terms and the worker's ability to withdraw the review or appeal filed.

Two respondents indicated a preference to have a third party review and confirm any proposed actions that they might wish to take without instructions.

One respondent commented that she would like to see a concrete example of resolving one of these dilemmas in the Standards.

Question 6D - Circumstances of withdrawal

Six respondents indicated that the decision to withdraw is one in which some third party should be involved. Most commonly this was described as management, implying that the responsibility should be passed up the chain. However, there was also reference to a "consulting group" and to a process to reassign, to obtain a second opinion, or a management review the circumstances, so the deferral to another party or body is not

necessarily about authority. It may also be concern that the circumstances are handled properly.

Three respondents raised the issue of security. If the Adviser is at risk or the worker is abusive or threatening, the Adviser may withdraw. **No one** disputed that this was legitimate cause for withdrawal. However, respondents were split **3 in favour and 3 against** withdrawal based only on behaviour which falls short of being abusive or threatening but which may still be characterized as a breakdown of relationship or apparent loss of confidence in the Adviser. Those who opposed withdrawal in these circumstances felt that the dispute could likely be mediated or managed.

Again, **one** respondent indicated that the early management of expectations should avoid a need to withdraw.

One respondent indicated that he would withdraw if a file was transferred to him and he could not support previous Adviser's merit call. However, **two** respondents would not withdraw if their merit call was different. **One** commented that the WAO is the representative, not the individual Adviser (so the Adviser should follow through on prior merit commitments even if she does not agree). **Another** respondent noted that the Adviser had conduct of the file, but on behalf of the Branch. (This response was in support of an Adviser withdrawing for lack of merit to protect the Branch's credibility.)

One respondent indicated she would withdraw if she reassessed her own merit call, **another** qualified the reassessment of merit, saying it had to be due to significant new evidence (as opposed to "second thoughts").

One respondent indicated that he would not withdraw with any kind of merit reassessment if he judged the worker hadn't the capacity to self represent. **Two** respondents said they would not withdraw if it was late in the process, i.e. presumably too late for worker to obtain alternate representation.

Only **two** respondents indicated they would withdraw if another representative was involved, perhaps because it is so obvious. The WAO has always been clear that it does not "do dual representation".

Three respondents indicated they would withdraw in the event of fraud and misrepresentation. Another **two** would withdraw if the worker's instructions were criminal or improper instructions, or if their course of action constituted an abuse of process.

One respondent indicated that he would certainly withdraw if he believed the worker would be better off self-representing.

Question 6E: Mandatory Communications.

No respondent was enthusiastic about mandating minimum levels of communication and types of communications, in particular:

Commitments:

There was substantial agreement that commitments (**13 mentions**) and file closures (**7 mentions**) must be communicated, although **two** respondents disagreed that all commitments should be in writing and **one** suggested commitments could be implied through copies of other communications such as filed forms.

Change of Strategy or Expectations:

Eight respondents indicated that any significant change in tactics or strategy, or in expectations/directions should be communicated with the worker in some fashion although two specified this should not be mandatory. **One** respondent made it clear that this did not extend to an Adviser's choice of argument.

Debriefing decisions:

The debriefing of appellate decisions was suggested by **eight** respondents, although **three** made it clear they saw this as a best practice only and not as a requirement.

Discovery of new Issue:

Four respondents suggested that communication with the worker was mandatory if a new issue or decision affecting the worker was discovered.

Review of Submissions:

Three respondents claimed that submissions should be forwarded to the worker or reviewed with worker prior to being filed.

Client type:

Two respondents commented that the nature and extent of communication would depend on risk, i.e. the Adviser's assessment of the likelihood of misunderstanding and her assessment of the individual worker

Other Comments:

- Communicate any action or procedural request
- Call worker and follow up with letter on missed appointment before closing file.
- Must get worker approval to communicate with Board
- Confirm withdrawal in writing.

Question 6F: Which communications must be in writing?

- Commitments and closures 4
- None 1
- Crucial changes to strategy 1
- Very complex communications 1
- Describing any issue or action in which the Branch took the initiatives 1

Question 6G: Communications with Third Parties

Not surprisingly, **no one disagreed** that it was necessary to obtain authorization to speak with third parties.

Seven respondents would insist on written consent, and **three** thought there were circumstances in which verbal consent was sufficient.

Interestingly, **five** respondents had concerns with the form of the general consent, feeling that it was inadequate protection. Other than the nature of the consent itself, two concerns were addressed: confirming the identity of the person granting consent, and issues of mental capacity of the person granting consent.

One person indicated a specific need to be more diligent in confirming the identity of the person giving authorization and to confirm we are authorized to respond to Ombudsman/MLA inquiries. **Another** indicated there should be a process to refer consideration of possible misrepresentation, for example, to a manager. **Another** thought we could use some Best Practices around confirming authorization.

On capacity, **three** respondents had given no prior thought to the need to establish capacity. Three said that they do not inquire as to capacity as a practical matter (it would impair ability to deliver service). **Three** others said that, if capacity appears to be an issue, there needs to a process to refer the capacity issue. **One** other said quite generically that the Branch needs to do something to address capacity. **Two** others said simply that capacity is an Adviser judgment call.

One respondent agrees that she may have released information without proper consent. **Two** others respectively referred to the disclosure of confidential information as a matter of common sense and of professional judgment (and was presumably not amendable to rule).

Question 6H: Content of Duties

Respondents were not terribly forthcoming in response to this question.

In general, the duty to the Employer, meaning the Government of BC was thought to consist of “being professional”, being discrete and not compromising the interests of the government, not acting in a conflict, doing the job well, and following government policies. One respondent said we have no duty to the Employer.

The duty to the worker was generally framed in terms of representing where warranted and being competent. One respondent also indicated we had a duty to bring forward worker concerns with policies or practices.

The duty to the administration of justice was to assist to screen out meritless or frivolous/vexatious claims, to be reasonable, truthful and otherwise ethical, to facilitate the process where requested by WCAT, and to follow the WCAT Code of Conduct.

Two respondents indicated that these duties overlapped but rarely conflicted. **Two** indicated that they would give priority to the duty to the worker in the case of a conflict. **One** said the first duty is to protect the employer, with justice second.

Question 6I and J: Conflict of Duty:

(There was some confusion on this question. Some respondents provided information relevant to conflict of duty, and some provided information respecting conflict of interest)

Few respondents saw any necessary conflict of interest, and therefore it was difficult to elicit examples. Because of this, the interviewer provided an example in which expert evidence significantly detrimental to the worker’s interest came to the knowledge of the Adviser just before the hearing. In this case, the worker’s interest and the interests of “justice” diverge. One other would put justice first. The results of Question 6I and 6J were conflated.

Four respondents indicated that their first response would be to clarify and seek a manner to neutralize or mitigate the evidence. **One** suggested it might be necessary to get an adjournment to obtain contrary evidence.

Six respondents noted that they would offer the worker the choice between WAO representation with the evidence submitted and self-representation. **Three** respondents said that they would offer this choice and it would not make a difference who obtained/paid for the report (i.e. the worker or the WAO), but **three** respondents said they would only feel they should disclose (or discuss disclosure with management) if the WAO had paid for the evidence. **One** justified this on the basis that expert evidence is just an opinion and not objective fact. **One** adviser said she would always consult with a colleague or manager in such circumstances, another said she was very confused as to what to do, and **another** said she would like some direction in the standards.

One respondent hoped that rules would not supplant discretion but that, if they did, it would be wise to discuss the professional the approach with the worker up front. **Another** agreed that discussing professional obligations up front would avoid problems.

One respondent said that the Adviser could withhold but probably should not because discovery would affect the credibility of the WAO as a whole. **Two** other respondents put their own values above any other duty and would not violate their own principles.

One respondent suggested that he would seek to avoid answering a direct question from WCAT as to his knowledge of evidence not submitted. **Another** stated that an Adviser must truthfully disclose what she knows in response to a direct question from a WCAT panel.

One respondent linked disclosure to the significance of the evidence. She would disclose if evidence was of such significance as to affect merit, likely referring to outcome.

Question 6K: Response to a missed deadline

Response elements:

Seven responses had three elements, being a discussion with management, a disclosure to the affected worker, and a discussion with the management. **One** response involved the worker and mitigation, but only involved the manager if the mitigation efforts failed. **Three** responses involved a discussion with management and mitigation efforts but no clear disclosure to the worker. **Three** responses involved mitigation only without any discussion with management or disclosure to workers.

Order of response:

In terms of order, **eight** respondents would go to management first, with **one** of those having the mitigation plan already prepared. **Two** would go to the worker before discussing with management: **One** of those would also have the mitigation plan prepared before the discussion with management.

Other comments:

Four respondents particularly stressed the need to take responsibility for our actions. **One** respondent said that we need process to back-stop adviser omissions. **One** offered an example of where it might happen. A Review Division decision was a "refer back" on one issue but another issue was lost. Entered as a win when reviewed and not diarized for appeal of other issue. **One** suggested that the lack of paper file creates problems when there is not time to make immediate entry to Ark. A quick note slipped to file would have helped.

Question 7: Three Values:

The following were identified as core values with which WAO professional standards should be consistent. The headings were chosen, after the fact, as best representative of groupings of values.

<u>Matters of Trust</u>	<u>14</u>	<u>Method of communication</u>	<u>3</u>
Integrity	8	Propriety	1
Honesty	4	Clarity	1
Accountability	1	Conciseness	1
Responsibility	1		
		<u>Miscellaneous</u>	
<u>Matters of Equity</u>	<u>14</u>	Collegiality	1
Fairness	4	Efficacy (of service)	1
Consistency	2	Values unhelpful	1
Rule of law	1		
Transparency	1		
Objectivity	3		
Independence of action/ Autonomy	2		
Reasonableness	1		
<u>Matters of humanity</u>	<u>5</u>		
Compassion	2		
Respect	1		
Courtesy	1		
Willingness to listen	1		

Question 8: Metaphors for purpose of standards:

The data is grouped by respondent with the responses assigned values: 4 for a first choice, 3 for a second choice, and 2 for a third choice. In two cases, the respondent refused to specify order of preference. All unordered responses have been assigned a value of "1"

Shield	4	Sign Post	1	Sign Post	1
Smoke Detector	3	Mirror	1	Smoke Detector	1
Fire Alarm	2	Club	1	Mirror	1
Mirror	4	Sign Post	4	Rule Book	4
Sign Post	3	Magnifying Glass	3	Sign Post	3
Shield	2	Shield	2	Magnifying Glass	2

Rule Book	4	Sign Post	4	Shield	4
Mirror	3	Mirror	3	Rule Book	3
Magnifying Glass	2	Magnifying Glass	2	Magnifying Glass	2
Rule Book*	4	Rule Book	4	Sign Post	4
Sign Post	3	Sign Post	3	Smoke Detector	3
Magnifying Glass	2	Fire Alarm	2	Shield	2
Rule Book	4	Sign Post	4	Sign Post	4
Magnifying Glass	3	Mirror	3	Mirror	3
Sign Post	2	Smoke Detector	2		

The Question 8 Results can be analyzed as follows:

<u>Sign post:</u>		<u>Shield:</u>		<u>Fire Alarm:</u>	
Total Points:	34	Total Points:	17	Total Points:	4
Respondents	12	Respondents	6	Respondents	2
Strength (13/12)	2.83	Strength	2.83	Strength	2.00
<u>Rule Book:</u>		<u>Magnifying Glass:</u>		<u>Club:</u>	
Total Points:	23	Total Points:	16	Total Points:	1
Respondents	6	Respondents	7	Respondents	1
Strength	3.83	Strength (13/12)	2.29	Strength	1.0
<u>Mirror:</u>		<u>Smoke Detector:</u>			
Total Points:	18	Total Points:	9		
Respondents	7	Respondents	4		
Strength	2.57	Strength	2.25		

Signpost was chosen as one of the three choices by twice as many respondents as the next Rule Book and Shield and almost twice as many as chose mirror. Those that chose Rule Book tended to select it as a higher priority (strength), but sign post tied shield for second place in strength. Overall, it appears that staff prefer Standards that operate as a sign post, then as a Rule Book, and finally as a Shield.

Just looking at the top five in terms of total points, respondents, and strength, the following were given as examples of the use of Standards for each of the purposes described by the metaphors:

Signpost was chosen as one of the three choices by twice as many respondents as the next Rule Book and Shield and almost twice as many as chose mirror. Those that chose Rule Book tended to select it as a higher priority (strength), but sign post tied shield for second place in strength. Overall, it appears that staff prefer Standards that operate as a sign post, then as a Rule Book, and finally as a Shield.

Just looking at the top five in terms of total points, respondents, and strength, the following were given as examples of the use of Standards for each of the purposes described by the metaphors:

Examples given of using as a Sign Post:

When to elevate (to manager or other authority)
 To lead to dialogue instead of just "C.Y.A."
 Suggest opportunity to consult on novel situations
 When to seek management advice
 How to deal with gift certificate from worker
 What to do if you think a worker is not who he say she is
 Where to go if workload does not permit you to represent in case of merit.

Examples given of using as Rule Book:

Circumstances for professional dress
 Where it is necessary to get authorization from worker

Examples given of using as Mirror:

Deciding whether to make exception to represent appropriate in the absence of merit
 Whether to disclose damaging evidence
 Check if you have appropriately responded to instructions
 Feedback on how you are doing
 When should you/can you withdraw ,

Examples given of using as Shield:

Protect own moral code
 Representing when directed by WCAT despite lack of merit
 Representing due to political intervention, despite lack of merit
 Confident we are covered from actions of difficult clients; know we will be supported in our actions
 Where med-legal request is refused

Examples given of Magnifying Glass:

Reminder of hazards
 Verify and revisit responses to abusive workers
 To realize a problem even exists

Question 9: Exclusions from list of purposes:

- No exclusions:7 respondents
- Response to transgressions
- Credibility/Reputation
- Not concerned about Branch liability
- Reduce liability
- Defining limits of discretion – need to educate management instead as to what is reasonable
- Obligations and expectations – mgmt does not have expertise to judge ability but she tries to be helpful
- Defining limits – prefer to provide guidance on exercise of discretion
- Protecting discretion is find but not restricting
- Obligations and expectations.

Other comments:

- Use to protect integrity: not to shirk
- Wonder how Standards could guide exercise of discretion.

10. Any other important purpose?

- Courtesy
- Limit to addressing “transgressions” to positive reinforcement
- Consistency to same benchmarks checked by ethics officer
- Consistency in service level
- Consistency but not at expense of discretion
- Recognition of management responsibility to support staff
- Standards must apply to all staff including assistants, except where stipulated to be different: service is all inter-related
- Must harmonize with other assessment and review processes

Question 11 and 12: Familiarization and TrainingVia Development:

- Adviser input at outset
- Continued input into completion after circulation of draft
- Circulate draft before finalized and prior to Branch Conference dedicated to discussion of Standards. Open discussion and questions/concerns
- Break into manageable sections for WAO staff review and comment.
- Feedback considered in final draft.

Via Publication

- Post prominently on WAO SharePoint

- Live Meeting to highlight
- Circulate the current “finalized standards” to existing staff via email (or email link)
- Provide hard copy to each office
- Standards should be included in WAO Staff Manual

Via Introduction

- Live Meeting teaser to highlight main points
- Introduce at Branch Conference for existing WAO staff
- Orientation sessions for new WAO staff

Via Follow-up and reinforcement

- In-person discussion at conferences as much as possible
- Regular review: annually or semi-annually, at Branch Conference
- Feature in Learning Forums
- Review annually one-on-one in EPDP process
- Some re-familiarization/discussion as part of EPDP review or at each meeting with manager
- Managers should review with all staff once finalized, and with new staff
- Practical and relevant informational sessions, relating Standards to daily practice
- Should maintain an ongoing dialogue on Standards and their application
- Must be pursued consciously to make it part of work process
- Staff need feedback mechanism for interpretive guidance

Via Continuous Improvement:

- Maintain electronic copy as a living document. Assign someone to be responsible for receiving and editing future input and for updates and revisions.
- Should build on framework document over time
- Ongoing cross-check to ensure consistency with existing templates, work flow, and practice directives

Training Suggestions:

- Training in the use of Standards should be based on shared experiences
- Training is required at orientation, periodically as refresher, and whenever there are significant amendments, updates, or revisions
- Have a designated “Ethics Officer” to lead (with Director providing explicit endorsement); alternately an Ethics Advisory Committee of new and veteran volunteer Advisers.)
- Organize workshops in which past situations/dilemmas can be deconstructed and alternative solutions explored.
- Structure as round table discussions/case studies/role plays - as opposed to lectures
- Guided case studies should involve real-life scenarios in which standards are referenced and applied (in person or virtual)
- Training might proceed through one-on-one discussions with Managers and Supervisors.
- Have succinct time-efficient refreshers from Program Managers

- Bring in inspirational speaker
- Need only a one-time presentation to all Advisers, and then once to new hires
- It would be preferable to have conference rather than live meeting or teleconference which restricts opportunity to share and discuss with each other.
- Training must be in-person with follow-up surveys on content and presentation
- Teams could role model with scenarios proposed as challenged

Five Respondents indicated that the Standards themselves should be open to revision.
Ten Respondents indicated that there needs to be some form of periodic or ongoing reinforcement of training.

Of the above responses, it is notable that **ten** respondents indicated this kind of training would need to be done in-person. Of those, **six** respondents said training should be done in-person in a conference format, **two** respondents indicated it should be done through conversations and reviews with managers, **one** respondent said through conferences and manager discussions, and **one** just specified a preference for in-person. **Three** respondents did not specify whether it made any difference: Only **one** indicated an actual preference for electronic training.

Question 13: Format

Comments from those that endorsed some manner of Quick Reference associated with Standards:

- Quick reference at front, with background detail following. Use Examples
Hard copy binder with quick reference.
- Set up as a reference manual with a one page easy reference tool.
Should have vision and mission statement.
- Might work to have a few levels of complexity with a quick reference and the ability to go deeper.
- Accepts that Standards could have levels of complexity but prefers as brief as possible.
- Full electronic version but Quick Reference Guide for individual use
- Have Cheat Sheet reference to Standards that addresses each topical element and provides tangible examples and pointers. Discuss when to refer or consult.
- Should be easy to reference.
- Bullet type format with easy to use topical table of contents.
- Indexed hard copy. Learning needs to be experiential so the document itself is limited in utility.

From those that endorsed brevity:

- A nice little booklet – not too large, i.e. just a few pages.
- As brief as possible: Not more than a page. Should focus on most serious problems and use plain language.

- Short and simple- just the gist.

From those that endorsed practical examples:

- Use brief examples. Online access with link to desk top.
- Include examples; reassurance of continuing discretion and give professionals some credit. Must be understood that document cannot be comprehensive of all situations.

From those that endorsed creative use of colour and colour-coding:

- Employ flow charts and key cards
- Should be bright and attractive with colour coded function boxes.
- Use colour and graphics.
- Index by type of problem or dilemma.
- Perhaps a poster format or little booklet

Endorsed electronic version:	3
Endorsed electronic and hard copy:	2
Endorsed hard copy only:	5

14. Culture of professionalism?

Yes.	9
No	0
Qualified Answers	5

The qualifiers were as follows:

- Not consistently professional. There is a definite expectation of professionalism but this is not always practiced without management oversight.
- Not formally professional – Decent level of professionalism based on Adviser desire to do good job for workers.
- Professionalism is not top-of-mind – Varies among staff. Those who have been subject o professional codes in the past are more sensitized.
- Moving Towards Professionalism. Consultation/participation is not always meaningful. The more that Staff has a hand in creating their own processes, the more buy-in there will be to professional behaviour.
- Management does not always acknowledge professionalism: Management's priority is liability-proofing and the appearance of professionalism (as opposed to doing good work).

14B. Reasons for agreeing that we are professionals

- | | |
|---|---|
| • Many high quality staff with an ethos committed to worker interests | 8 |
| • Leadership encourages and expects professionalism | 6 |

- Nature of the work itself demands professionalism 2

15. What more could management do?

- Lead by example 4
- Nothing. Management is doing an excellent job of promoting professionalism 3
- Implement Professional Standards or guidelines 3
- Demonstrate commitment in an active and visible way 2
- Communicate expectations 1
- "More transparency (to prevent and misperceptions and gossip)" 1
- Work collaboratively with staff 1
- "Dedicate more resources to participatory opportunities to create buy-in" 1
- Be knowledgeable of issues and challenges 1
- Independent training in professionalism for management 1

Other Individual Responses:

- Provide well-reasoned rationale for actions 1
- Consistent action 1
- Treat staff like professionals 1
- Share roll-out through training 1
- Reinforcement and recognition of professionalism 1
- Ensure we present a professional face to the external stakeholders 1

Question 16: Other Factors in success or failure of adoption

Success:

- Must be truly useful tool 5
- Genuine participation and consultation in process 2
- (like we are doing here)
- Available to external stakeholders 1
- Branch commitment to Standards 1
- Require adequate resources for training, Updating and 1
- Re-familiarization 1
- An individual application of Standards (as opposed to Program-wide response to one transgression) 1
- A safe non-judgmental place to discuss
- Easy to understand and apply

Failure:

- Standards characterized by rules and enforcement 2
- Lack of buy in 2
- Imposed from above 2
- Unwieldy and too long 2
- Useless 1
- Poor communication feeding (suspicion of heavy handedness) management 1

Question 17: Monitoring

No problem with monitoring	4
No need. We are already monitored	3
Comfortable with monitoring through existing processes	1
Not comfortable at all	2

Caveats:

Support would depend on whether monitoring will be employed and applied in an even-handed manner

The Standards by which staff is measured may be defective – rather than there being a problem with the staff

It will depend on what form of monitoring

Monitoring for consistency in professional conduct is okay.

Okay, if used for coaching and not for discipline

Question 18: Enforcement of Standards

There was a pretty strong current running through most of the responses that professional standards ought not to be enforced in a disciplinary manner and that, if discipline might result, there would need to be a process in place to protect the staff member from arbitrary action.

- Requires a fair process if disciplinary action is to result
Responses to breaches must be standardized and needs to be some sort of process by which disciplinary decisions can be challenged 5
- Standards must not be used to justify disciplinary action 4
- Could be done as part of SQR or in response to complaint 4
- Should encourage coaching perspective by whoever deals with problem 3
- Don't want arbitrary or bullying responses. Shouldn't be about personality 2
- External ethics officer, committee of peers and manager, or some other impartial party should be involved in any investigation and enforcement regarding the professionalism of a staff member 2
- Not concerned about impartiality: no need for external/new office 2
- Problems should be dealt with discretely one-on-one and monitored for improvement 1
- Need someone with understanding and expertise to consider on case by case basis 1

Question 19: Relevant factors in any response

Pattern of offence vs. isolated "offence"	6
Severity/gravity of breach	6
(Severity irrelevant)	(1)
Deliberate vs. Accidental	5
Person's experience/level of training	2
Awareness of standard	2
Willingness to address	2
Too early to say	2
Discretionary vs. Clear breach	1
Clarity of breached standard	1
Good faith	1
Whether person had been warned	1
Extenuating circumstances such as workload issues	1
Effect on client confidence	1
Adequate investigation	1
Credibility of complaint	1

Question 20: Should we reward "professional behaviour"

No, Professionalism is basic expectation	6
No, no need to single anyone out. Branch is professional overall	2
No, rewards and recognition do not motivate professionalism	1
No, doing professional work is its own reward	1
No, impractical and could be politicized	1
No	1
	12 No
Yes, by reference letter on personnel file	1
<u>Yes, small token awards or recognition as employee of the month</u>	<u>1</u>
	2 Yes

ANNEX 5: WCAT SURVEY QUESTIONS

INSTRUCTIONS:

Please rate the Workers' Advisers Office according to its performance (or the performance of its staff) with regard to each of the 15 numbered areas of potential concern.

Part A:

If you have no concern, please tick off the "no concerns whatsoever" box and move to the next area of concern.

Otherwise, you will note three deficiency headings: Minor deficiency; Significant Deficiency but unlikely to affect outcome; and Deficiency with significant likelihood of affecting the outcome. Please circle the number from 0 to 3 which corresponds to the incidence of concern for each level of deficiency.

Please note that the final area, numbered "15" gives you the opportunity to suggest and rate some area of concern not listed here.

Part B:

Question 1: is your overall assessment of the professionalism of the Workers Advises Office. Please tick the appropriate box.

Question 2: This is optional. Provide your own thoughts.

PART A:

1. Adequacy of Substantive Knowledge

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

2. Adequacy of Procedural Knowledge

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

3. Identification of Issues

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

4. Preparedness

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

5. Thoroughness of Questioning

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

6. Appropriate Demeanor

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

7. Reasonableness of Argument

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

8. Relevance of exhibits / utility of witness testimony

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

9. Timeliness of Filing

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

10. Adequate Notice of Withdrawal, Change of Representative, or Other significant developments

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

11. Appropriate use of Extensions or Postponements

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

12. Appropriate disclosures / or non-disclosures to WCAT

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

13. Fair representation of facts

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

14. Appropriate use of process (as opposed to "abuse of process")

I have no concerns whatsoever.....

OR,

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

15. Other Concern: Please Identify:

Minor deficiency

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Significant deficiency but unlikely to affect outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

Deficiency with significant likelihood of affecting the outcome

0	1	2	3
Never a concern	Rarely a concern	Occasionally a concern	A common concern

PART B

2. Having regard to the above factors, how would you assess the professionalism of Workers' Advisers overall in oral hearing representation, filing submissions, or otherwise communicating with you?

- Very professional
- Somewhat professional.....
- Neither professional nor unprofessional.....
- Somewhat unprofessional.....
- Decidedly Unprofessional.....

3. If the Workers' Advisers Office were to implement its own Professional Standards, what values, principles, or rules would you like to see reflected in those Standards?

ANNEX 6: WCAT SURVEY RESULTS

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 1: Substantive Knowledge				
Respondent 1	3	2	1	6
Respondent 2	1	0	0	1
Respondent 3	2	1	0	3
Respondent 4	1	1	0	2
Respondent 5	0	0	0	0
Respondent 6	2	2	0	4
Respondent 7	0	2	0	2
Respondent 8	1	1	1	3
Respondent 9	1	0	0	1
Respondent 10	2	2	2	6
TOTAL	13	11	4	28
Percent of possible	43%	37%	13%	31%

Question 2: Procedural Knowledge				
Respondent 1	1	1	0	2
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	1	1	0	2
Respondent 5	0	0	0	0
Respondent 6	1	1	0	2
Respondent 7	2	0	0	2
Respondent 8	0	0	0	0
Respondent 9	2	2	2	6
Respondent 10	2	2	2	6
TOTAL	9	7	4	20
Percent of possible	30%	23%	13%	22%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 3: Issue Identification				
Respondent 1	3	2	0	5
Respondent 2	0	0	0	0
Respondent 3	1	0	0	1
Respondent 4	1	2	0	3
Respondent 5	2	0	0	2
Respondent 6	1	1	0	2
Respondent 7	0	2	0	2
Respondent 8	1	1	1	3
Respondent 9	0	0	0	0
Respondent 10	2	2	2	6
TOTAL	11	10	3	24
Percent of possible	37%	33%	10%	27%

Question 4 Preparedness				
Respondent 1	1	1	1	3
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	1	0	0	1
Respondent 8	1	1	1	3
Respondent 9	0	0	0	0
Respondent 10	2	2	2	6
TOTAL	5	4	4	13
Percent of possible	17%	13%	13%	14%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 5: Questioning				
Respondent 1	3	1	0	4
Respondent 2	1	1	0	2
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	1	0	0	1
Respondent 7	0	2	0	2
Respondent 8	2	2	1	5
Respondent 9	1	0	0	1
Respondent 10	3	3	3	9
TOTAL	11	9	4	24
Percent of possible	37%	30%	13%	27%

Question 6: Demeanour				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	1	0	0	1
Respondent 7	1	0	0	1
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	0	0	0	0
TOTAL	2	0	0	2
Percent of possible	7%	0%	0%	2%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 7:				
Argument				
Respondent 1	2	2	1	5
Respondent 2	0	0	0	0
Respondent 3	1	0	0	1
Respondent 4	1	1	0	2
Respondent 5	0	0	0	0
Respondent 6	1	0	0	1
Respondent 7	0	2	0	2
Respondent 8	2	1	1	4
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	8	7	3	18
Percent of possible	27%	23%	10%	20%

**Question 8: Relevance
of exhibits / testimony**

Respondent 1	2	1	0	3
Respondent 2	1	1	0	2
Respondent 3	0	0	0	0
Respondent 4	1	1	0	2
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	0	2	0	2
Respondent 8	2	1	1	4
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	7	7	2	16
Percent of possible	23%	23%	7%	18%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 9: Timeliness of Filing				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	2	0	0	2
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	3	1	1	5
Percent of possible	10%	3%	3%	6%

**Question 10: Adequate
Notice of Changes**

Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	2	0	0	2
Respondent 6	0	0	0	0
Respondent 7	1	0	0	1
Respondent 8	0	0	0	0
Respondent 9	2	2	1	5
Respondent 10	2	2	2	6
TOTAL	7	4	3	14
Percent of possible	23%	13%	10%	16%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 11: Appropriate use of Extensions / Postponements				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	1	0	0	1
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	2	1	1	4
Percent of possible	7%	3%	3%	4%

**Question 12: Appropriate
Disclosures**

Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	2	0	0	2
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	3	1	1	5
Percent of possible	10%	3%	3%	6%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 13: Fair Representation of Facts				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	1	1	1	3
Respondent 5	0	0	0	0
Respondent 6	1	0	0	1
Respondent 7	2	0	0	2
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	1	1	1	3
TOTAL	5	2	2	9
Percent of possible	17%	7%	7%	10%

**Question 14: Appropriate
Use of Process**

Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	0	0	0	0
Respondent 6	0	0	0	0
Respondent 7	2	0	0	2
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	0	0	0	0
TOTAL	2	0	0	2
Percent of possible	7%	0%	0%	2%

	TOTAL MINOR	TOTAL OF SIGNIFICANT; UNLIKELY TO AFFECT	TOTAL OF LIKELIHOOD TO AFFECT	
Respondent 1	15	10	3	28
Respondent 2	3	2	0	5
Respondent 3	4	1	0	5
Respondent 4	5	6	0	11
Respondent 5	4	0	0	4
Respondent 6	7	4	0	11
Respondent 7	7	10	0	17
Respondent 8	9	7	6	22
Respondent 9	6	4	3	13
Respondent 10	16	16	16	48
MEAN	7.6	6	2.8	
MEAN AS PERCENT OF TOTAL POSSIBLE (3 x 14 QUESTIONS)	15%	12%	5%	

	Professionalism over all	Comments
Respondent 1	VERY PROFESSIONAL	MORE OBJECTIVE REPRESENTATION WHERE PANEL HAS JURISDICTION
Respondent 2	VERY PROFESSIONAL	N/A
Respondent 3	VERY PROFESSIONAL	N/A
Respondent 4	VERY PROFESSIONAL	OVER-REPRESENT WORKERS WHO REFUSE TO TAKE RESPONSIBILITY FOR THEIR ACTIONS
Respondent 5	VERY PROFESSIONAL	N/A
Respondent 6	VERY PROFESSIONAL	N/A
Respondent 7	VERY PROFESSIONAL	N/A
Respondent 8	VERY PROFESSIONAL	QUESTIONING OF WITNESSES AND ELICITATION OF EVIDENCE, ESPECIALLY WITH INTERPRETER
Respondent 9	VERY PROFESSIONAL	N/A
Respondent 10	VERY PROFESSIONAL	RELEVANT SUBMISSIONS WHERE PANEL HAS JURISDICTION

ANNEX 7: REVIEW DIVISION SURVEY QUESTIONS

INSTRUCTIONS:

Please rate the Workers' Advisers Office according to its performance (or the performance of its staff) with regard to each of the 12 numbered headings identifying areas of potential concern.

Part A:

If you have no concern, please tick off the "no concerns whatsoever" box and move to the next of the 12 numbered areas of concern.

Otherwise, circle the number from 0-3 that corresponds to the frequency with which you have identified a concern for EACH level of gravity

(i.e. identify the frequency of minor concerns, the frequency of significant concerns unlikely to affect outcome, AND the frequency of concerns with a significant likelihood of affecting the outcome.)

Please note that the final area, numbered "12" gives you the opportunity to suggest and rate some area of concern not listed here.

Part B:

Question 1: is your overall assessment of the professionalism of the Workers Advises Office. Please tick the appropriate box.

Question 2: This is optional. Provide your own thoughts.

PART A

1. Adequacy of Substantive Knowledge

I have no concerns whatsoever..... ?

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

2. Adequacy of Procedural Knowledge

I have no concerns whatsoever..... ?

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

3. Identification of Issues

I have no concerns whatsoever..... ?

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

4. Reasonableness of Position/Argument

I have no concerns whatsoever..... ?

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

5. Relevance of Exhibits (attached evidence)

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

6. Timeliness of Filing

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

7. Adequate Notice of Withdrawal, Change of Representative, or Other significant developments

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

8. Appropriate use of Extensions or Postponements

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

9. Appropriate disclosures / or non-disclosures to WCAT

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

10. Fair representation of facts

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

11. Appropriate use of process (as opposed to "abuse of process")

I have no concerns whatsoever.....

OR,

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

12. Other Concern: Please Identify:

a) I have noticed that "minor" deficiencies occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

b) I have noticed that significant deficiencies, but of a kind as to be unlikely to affect outcome, occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

c) I have noticed that deficiencies with a significant likelihood of affecting the outcome occur with the following frequency:

0	1	2	3
Never	Rarely	Occasionally	Commonly

PART B

2. Having regard to the above factors, how would you assess the professionalism of Workers' Advisers overall in their written submissions, procedural requests, or in otherwise communicating with you?

- Very professional
- Somewhat professional.....
- Neither professional nor unprofessional.....
- Somewhat unprofessional.....
- Decidedly Unprofessional.....

3. If the Workers' Advisers Office were to implement its own Professional Standards, what values, principles, or rules would you like to see reflected in those Standards?

ANNEX 8: REVIEW DIVISION SURVEY RESPONSES

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 1: Substantive Knowledge				
Respondent 1	1	2	1	4
Respondent 2	2	1	1	4
Respondent 3	2	1	0	3
Respondent 4	3	2	2	7
Respondent 5	2	2	2	6
Respondent 6	2	1	1	4
Respondent 7	2	1	1	4
Respondent 8	2	2	2	6
Respondent 9	1	0	1	2
Respondent 10	3	3	0	6
TOTAL	20	15	11	46
Percent of possible	67%	50%	37%	51%
Question 2: Procedural Knowledge				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	1	1	1	3
Respondent 5	2	2	2	6
Respondent 6	1	2	1	4
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	0	0	0	0
TOTAL	6	6	4	16
Percent of possible	20%	20%	13%	18%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 3: Issue Identification				
Respondent 1	1	1	1	3
Respondent 2	2	2	1	5
Respondent 3	2	1	0	3
Respondent 4	2	1	1	4
Respondent 5	2	2	2	6
Respondent 6	2	1	1	4
Respondent 7	2	0	0	2
Respondent 8	2	1	1	4
Respondent 9	1	1	0	2
Respondent 10	3	3	0	6
TOTAL	19	13	7	39
Percent of possible	63%	43%	23%	43%

**Question 4:
Reasonableness of Argument**

Respondent 1	1	1	2	4
Respondent 2	2	1	1	4
Respondent 3	2	1	0	3
Respondent 4	3	2	2	7
Respondent 5	3	3	2	8
Respondent 6	2	2	2	6
Respondent 7	2	0	0	2
Respondent 8	2	2	1	5
Respondent 9	0	0	0	0
Respondent 10	3	3	0	6
TOTAL	20	15	10	45
Percent of possible	67%	50%	33%	50%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 5: Relevance of Exhibits				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	1	2	1	4
Respondent 5	2	1	1	4
Respondent 6	1	0	0	1
Respondent 7	0	0	0	0
Respondent 8	2	2	1	5
Respondent 9	0	0	0	0
Respondent 10	3	3	0	6
TOTAL	11	9	3	23
Percent of possible	37%	30%	10%	26%

Question 6: Timeliness of Filing

Respondent 1	1	1	1	3
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	1	1	1	3
Respondent 5	2	1	2	5
Respondent 6	0	0	0	0
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	2	1	1	4
TOTAL	8	5	5	18
Percent of possible	27%	17%	17%	20%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 7: Adequate notice of changes				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	0	0	0	0
Respondent 5	1	1	1	3
Respondent 6	2	0	0	2
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	3	3	1	7
TOTAL	8	5	2	15
Percent of possible	27%	17%	7%	17%

Question 8: Appropriate use of Extensions / Postponements

Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	0	0	0	0
Respondent 5	2	1	1	4
Respondent 6	1	0	0	1
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	1	2	1	4
TOTAL	6	4	2	12
Percent of possible	20%	13%	7%	13%

	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 9: Appropriate disclosures/non-disclosures				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	0	0	0	0
Respondent 4	0	0	0	0
Respondent 5	1	1	1	3
Respondent 6	0	0	0	0
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	0	0	0	0
TOTAL	1	1	1	3
Percent of possible	3%	3%	3%	3%

Question 10: Fair Representation of Facts				
Respondent 1	1	2	2	5
Respondent 2	1	0	0	1
Respondent 3	2	1	0	3
Respondent 4	2	2	1	5
Respondent 5	2	3	2	7
Respondent 6	2	0	0	2
Respondent 7	0	0	0	0
Respondent 8	2	1	1	4
Respondent 9	0	0	0	0
Respondent 10	2	1	1	4
TOTAL	14	10	7	31
Percent of possible	47%	33%	23%	34%

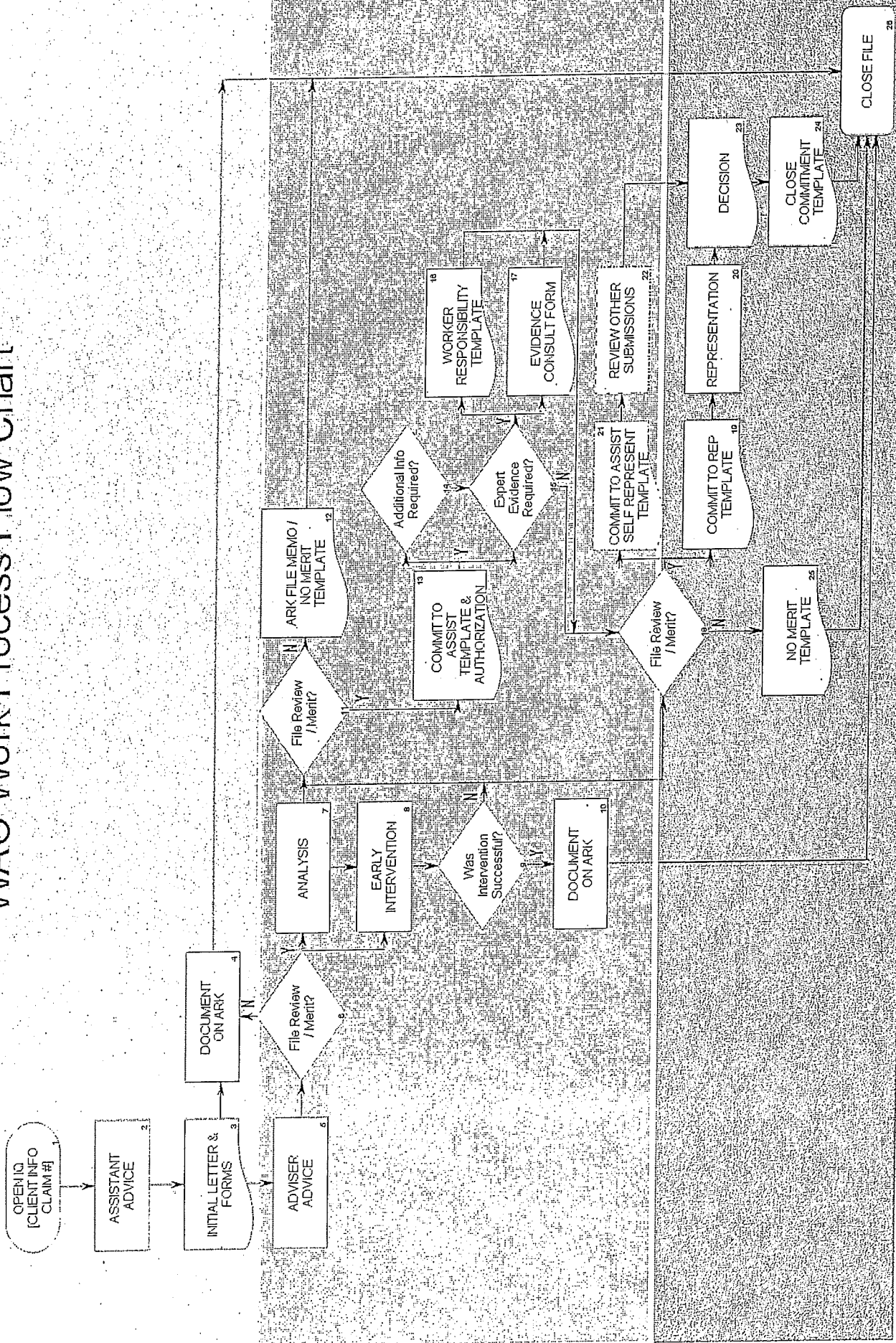
	Minor Deficiency	Significant unlikely to affect outcome	Likelihood of affecting outcome	TOTAL
Question 11: Appropriate use of Process				
Respondent 1	0	0	0	0
Respondent 2	0	0	0	0
Respondent 3	2	1	0	3
Respondent 4	0	0	0	0
Respondent 5	2	2	2	6
Respondent 6	0	0	0	0
Respondent 7	0	0	0	0
Respondent 8	0	0	0	0
Respondent 9	0	0	0	0
Respondent 10	0	0	0	0
TOTAL	4	3	2	9
Percent of possible	13%	10%	7%	10%

	TOTAL MINOR	TOTAL OF SIGNIFICANT; UNLIKELY TO AFFECT	TOTAL OF LIKELIHOOD TO AFFECT	TOTAL OF ALL
Respondent 1	5	7	7	19
Respondent 2	7	4	3	14
Respondent 3	18	9	0	27
Respondent 4	13	11	9	33
Respondent 5	19	17	16	52
Respondent 6	13	6	5	24
Respondent 7	6	1	1	8
Respondent 8	10	8	6	24
Respondent 9	2	1	1	4
Respondent 10	20	19	4	43
MEAN	11.3	8.3	5.2	
MEAN AS PERCENT OF TOTAL POSSIBLE (3 X 11 QUESTIONS)	34%	25%	16%	

	Professionalism Overall	Comments:
Respondent 1	SOMEWHAT PROFESSIONAL	N/A
Respondent 2	SOMEWHAT PROFESSIONAL	ALL SUBMISSIONS SHOULD HAVE REQUIRED ELEMENTS
Respondent 3	VERY PROFESSIONAL	N/A
Respondent 4	SOMEWHAT PROFESSIONAL (a few unprofessional and 1-2 decidedly so)	QUALITY OF SUBMISSIONS VARIES TREMENDOUSLY IN TERMS OF HOW FACTS REPRESENTED AND SUBSTANTIVE KNOWLEDGE
Respondent 5	SOMEWHAT PROFESSIONAL	SHOULDN'T ASK RD FOR INITIAL ADJUDICATION ON ISSUE NOT YET DECIDED BY BOARD
Respondent 6	VERY PROFESSIONAL	N/A
Respondent 7	VERY PROFESSIONAL	N/A
Respondent 8	VERY PROFESSIONAL	IMPROVED QUESTIONING OF WITNESSES AND ELICITATION OF EVIDENCE, ESPECIALLY WITH INTERPRETER
Respondent 9	VERY PROFESSIONAL	N/A
Respondent 10	VERY PROFESSIONAL	DON'T PLEAD OR BEG. DON'T ABANDON WORKER CLOSE TO STATUTORY DEADLINE. ONLY RAISE ISSUES OVER WHICH RD HAS JURISDICTION

ANNEX 9: WAO WORK PROCESS DIAGRAM AND EXPLANATION

WAO Work Process Flow Chart



OPEN IQ (1)

- New Client = Worker, Other (MLA, Lawyer, Union Rep)
- Default is Open IQ

Note: If information is regarding a third party and no disclosure has been provided, create IQ in the name of person calling (i.e. lawyer, MLA, etc)

Note: IQ is not to be entered in individual Adviser or Assistant's name.

ASSISTANT ADVICE (2)

- Provides Advice and Assistance to the extent possible
- Creates a BF for follow up if needed
- Provides **INITIAL LETTER AND FORMS (3)** to worker, if required
- If Assistant is asking Worker to provide more evidence or information, the Assistant must consult with the Adviser first
- **DOCUMENT ON ARK (4)**

Note: IQ stays in the name of the Assistant

ASSISTANT will then:

a) **CLOSE FILE (26)**

- IQ to be closed at this stage if successfully dealt with by Assistant

b) **ASSIGN IQ TO ADVISER (5)**

- When IQ is transferred to Adviser, ARK must reflect Adviser's name

ADVISER ADVICE (5)

- Document in ARK
- Adviser to determine if further action required
- Create BF for follow-up if necessary

FILE REVIEW / MERIT (6)

- Initial File Review by Adviser to determine merit or further action

a) If No Merit (N)

- On Review of IQ, if Adviser determines there is NO MERIT, Adviser must **DOCUMENT IN ARK (4)** with reasons
- **CLOSE FILE (26)**

Note: Adviser could send a letter or do a File Memo; however, clear documentation on ARK must be reflected for future reference

b) If Merit Determined (Y)

- Initial merit may be determined at this stage
- Adviser may decide at this time to open to assist (no letter required) and manually change file status in ARK to assist
- Conduct **ANALYSIS (7)**, further research or perform a more thorough file review to determine if there is further merit

EARLY INTERVENTION

- If early intervention (i.e. with the case manager or vocational rehabilitation consultant) results in a resolution, **DOCUMENT ON ARK (10)** and **CLOSE FILE (26)**
- If no resolution additional **FILE REVIEW / MERIT (11)** assessment may be necessary

FILE REVIEW / MERIT (11)

- Further File Review by Adviser to determine merit or further action
 - a) If No Merit (N)
 - After further research if Adviser determines there is no merit, an **ARK FILE MEMO / NO MERIT LETTER (12)** must be provided to client with reasons for no merit clearly documented.
 - **CLOSE FILE (26)**
 - b) If Merit Determined (Y)
 - Adviser must send **COMMIT TO ASSIST LETTER & AUTHORIZATION (13)** to the client, clearly documenting client and Adviser responsibilities

ADDITIONAL INFO REQUIRED? (14)

- Adviser requires client to provide more information to assess merit
- If not provided above, **COMMIT TO ASSIST LETTER & AUTHORIZATION (13)** must be provided specifying type of information required and confirming that merit will be determined on receipt and review of requested information

EXPERT EVIDENCE REQUIRED? (15)

- If Adviser determines that an expert opinion is required:
 - a) **WORKER RESPONSIBLE FOR OBTAINING (16)**
 - Adviser provides **WORKER RESPONSIBILITY TEMPLATE (16)** specifying type of information required and client's responsibility for payment
 - b) **EVIDENCE CONSULT FORM (17)**
 - If Adviser determines responsibility for an expert opinion, an **EVIDENCE CONSULT FORM (17)** must be completed and emailed/faxed to Team Lead / Regional Manager for consultation
 - There is no basic threshold for approving (i.e. \$865 threshold gone)
 - Purpose of Evidence Consult Form is to brainstorm other options/best practices

FILE REVIEW / MERIT (18)

- Further file review by Adviser after receipt of expert opinion or additional information / evidence
 - a) If No Merit (N)
 - After Adviser reviews Expert Opinion or additional information / evidence and determines there is no merit, **NO MERIT LETTER (25)** must be provided to client with reasons for no merit clearly documented.
 - **CLOSE FILE (26)**

b) If Merit Determined (Y)

- After Adviser reviews Expert Opinion or additional information / evidence and determines there is merit, a **COMMIT TO REP LETTER (19)** or in *some exceptions* a **COMMIT TO ASSIST SELF REPRESENT LETTER (21)** must be provided to the client

COMMIT TO REP (19) (default)

- Clients to be represented once a merit decision has been made
- **COMMIT TO REP LETTER (19)** letter with authorization form (if not previously obtained) must be provided to client
- **REPRESENTATION (20)** by either written submissions or oral hearing

COMMIT TO ASSIST (21) (Exceptions/Case by Case basis)

- If Adviser determines that it is in the client's best interest to receive assistance only, on issues with merit:
 - a) Provide **COMMITMENT TO ASSIST SELF REPRESENTATION (21)** letter confirming Adviser's decisions regarding commitment on all issues, with reasons clearly documented
 - b) If the expectation is that client will represent themselves at the Oral Hearing, this must be communicated in writing through the **COMMITMENT TO ASSIST SELF REPRESENTATION (21)** letter
 - c) In some instances an Adviser may commit to **REVIEW OTHER SUBMISSIONS (22)** prepared by workers or other representatives

DECISION RECEIVED (23)

- Adviser enters decision in ARK
- Send **CLOSE COMMITMENT (24)** letter

CLOSE FILE (26)

- Files must be closed within 40 days if no further decision to appeal
- All exceptions must be discussed with Regional Manager who will document reasons on ARK for file remaining open beyond 40 days

REOPENINGS

- If client returns with new issues or evidence, the client record will be re-opened
- Assistant will **OPEN IQ (1)** as the starting point of this process

MILESTONES FOR WORKERS' CLARIFICATION

Letters to Worker for Worker's clarification are required when Adviser reviews expert opinion and determines there is merit:

a) Merit on All Issues:

- Adviser confirms in writing to client and provides Commitment to Represent on issues

b) Merit on some issues (Partial Merit)

- Adviser confirms in writing to client issues where there is NO MERIT and WAO decision with reasons
- Adviser confirms in writing to Worker issues where there is MERIT and WAO COMMIT TO REP on those issues.

NOTES:

- All documents are to be uploaded into ARK.
- All Merit decisions are to be communicated via Letter and NOT File Memos.
- ARK must reflect current status of file, communications with clients/Workers are to be recorded in real time
- At the Commit to Assist or Commit to Represent stage, a written letter to the Client is a requirement
- RFR and NOA forms should correctly indicate if Adviser is providing Assistance, Advice or Representation. (i.e. Call it what it is!)
- If merit has yet to be determined indicate Advice & Assistance only.
- All correspondence standardized in Times New Roman (font 12)

ANNEX 10: DRAFT WAO PROFESSIONAL STANDARDS GUIDE

**THE WORKERS ADVISER
OFFICE**

PROVINCE OF BRITISH COLUMBIA

**PROFESSIONAL
STANDARDS
GUIDE**

December 2010

Quick Reference Standards

I. LEVEL OF SERVICE.

1. **ALWAYS provide advice to minimally identify any appealable decisions and appeal deadlines.** Page 4

What is “minimally identify”?

2. **An Adviser MUST determine merit on appealable decisions at the earliest practicable point.** Page 4

What’s merit?

Who can make this “call”?

“Earliest practicable” means what exactly?

3. **Where there is merit, an Adviser MUST provide Representation (or, alternatively, the level of service requested by the injured worker).** Page 5

Can I ever refuse to represent?

Can I ever refuse to provide service?

4. **An Adviser MUST NOT represent on any issue on which he or she cannot find merit.** Page 7

Are there any exceptions in which I might represent in the absence of merit?

What should I do if there is no merit?

Can I be required to represent where I have not found merit?

5. **Clearly define and limit the terms of your commitment agreement.** Page 9

How do I limit the terms?

6. Withdrawal from representation is generally not permitted.

Page 10

Generally.... So what are the exceptions?

II. YOUR AUTHORITY

7. Do not accept illegal or improper instructions.

Page 16

How do I know if an instruction is “improper”?

What can I do when a worker tries to micromanage the file?

What about proper instructions against the worker’s interests?

8. Do not act without instructions, or exceed your instructions.

Page 17

Do I have to get specific instructions for everything I do for a worker?

I can’t get instructions and it’s an emergency!

9. Document your instructions.

Page 22

But Workers provide conflicting instructions

Worker instructions are potentially prejudicial to their interests.

What if there’s no time for this?

10. Confirm the identity and authority of the person giving instructions.

Page 23

Can I take the worker’s word for it?

Can I assume mental capacity?

Who speaks for deceased workers?

III. COMMUNICATIONS AND SECURITY

11. Be courteous and respectful. **Page 23**

So who says I'm not?

12. Manage Worker expectations by candidly discussing merits and disclosing risks. **Page 24**

Easier said than done.

13. Keep Worker informed about actions taken, your expectations of them, and key developments. **Page 24**

I don't always have time

14. Do not disclose confidential Worker information to third parties without authorization. **Page 25**

What constitutes "authorization"?

Are disclosure authorizations comprehensive?

What about MLA's or the Ombudsman?

15. Maintain the security of Worker information. **Page 28**

Does that mean I need to clean up my office?

16. Do not use office resources or tools SUCH AS WORKSAFEBC 's CMS (Case Management System) for inappropriate purposes **Page 28**

Why would I want to?

17. Be honest and forthright to all WorkSafeBC or appellate officers.

Page 29

But what about prejudice to the worker?

IV. COLLEGIALITY AND SUPPORT

18. Provide reasonable assistance to your colleagues.

Page 30

Share and share alike.

19. Assistants (and others) should not knowingly contradict the Advisers on a file.

Page 33

The Adviser's out to lunch.

20. Management must presume their staff to be acting professionally unless the contrary be established.

Page 33

I just keep getting complaints ...

THE GREY AREAS

V. CONFLICT OF INTEREST

21. Avoid any perception of conflict of interest.

Page 35

Can I accept gifts and tokens?

What about a little business on the side?

Can I help my friends, associates or affiliates?

VI. MANAGING COMPETING DUTIES

22. Anticipate and act to avoid potential conflicts wherever possible.

Page 37

What do you mean by conflict of duty?

23. Resolve all conflicts with primary regard to the integrity of the Workers' Advisers Office.

Page 40

Guidelines for the resolution of conflicts.

24. If in doubt, ask

Page 42

CONCERNING YOUR DISCRETION

(What do you mean by "discretion"?)

Do not allow your discretion to be fettered.

Page 43

By what or who?

Are there exceptions? (How do I deal with them?)

Always exercise your discretion reasonably.

Page 44

Help me to understand what you mean by "reasonably"

Checklist for exercise of discretion.

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INTRODUCTION

WHAT DOES "PROFESSIONALISM" MEAN FOR ADVISERS?

Any standard dictionary definition of "professionalism" will tell you that it means the skills, competence and standards expected of members of a profession.

Advisers are professionals in their own right and provide what would be considered to be legal advice and legal representation in any other context. In fact, in many ways, the duties of Advisers are analogous to those of lawyers, and the skills, competence and standards expected of Advisers (and other WAO employees) are similar to those required of other legal professionals.

Of course, Workers Advisers are not required to be lawyers or members of any other traditional professions per se, but E. Norman Veasey, State of Delaware Chief Justice, did a good job of distinguishing ethics from professionalism for lawyers, and the same distinction applies to the work of the WAO.

According to Justice Veasey:

"Ethics is a set of rules that lawyers must obey. Violations of these rules can result in disciplinary action or disbarment. Professionalism, however, is not what a lawyer must do or must not do. It is a higher calling of what a lawyer should do to serve a worker and the public."

Two of the most important "skills" or "competencies" of an Adviser are expertise and judgment. Advisers must keep current their specialized knowledge of Workers Compensation law and policy and of Administrative Law. They are expected to employ their knowledge, and to exercise their professional judgment over the

course of every file. They are expected to do "what they should do", and not just do what they must. (See also: Quality of Service)

WHAT IS THE ROLE OF MANAGEMENT IN SUPPORTING PROFESSIONAL CONDUCT?

Managers of professional firms are constrained from actions which would cause their employees to act in a manner inconsistent with the requirements of their professional associations. In the same way, Managers within the WAO must also adhere to the Professional Standards applicable to WAO staff.

This means that Management:

- will lead by example;
- will not direct or suggest that any staff member will act in a manner which is inconsistent with the spirit and letter of the Professional Standards, and;
- will not require an Adviser with conduct of a file, **and whose actions are defensible according to the Standards**, to act on that file in a manner contrary to the Adviser's professional judgment.

Where a manager accepts that a staff member's conduct is compliant with these Standards, but disagrees with the Adviser's strategy or approach, it remains open to the manager to persuade the Adviser of the wisdom of an alternate course. However, on failing to do so, management must choose to either support the Adviser's judgment or must arrange for another Adviser to assume conduct of the file, without prejudice to the first Adviser.

At the same time, Management can and will insist that all WAO Staff meet the professionalism expectations set out in this Guide.

Management will support the development of WAO staff and will make every effort to ensure that everyone is given the training and tools they need to meet these Standards.

In the event of willful non-compliance however, it is Management's prerogative to take whatever measures it deems appropriate to the circumstances.

"PROFESSIONALISM" FOR ASSISTANTS

Assistants are like the support staff in a law office. Professionalism for Assistants means that they, too, must always act in a manner consistent with the Standards.

Assistants must appreciate that their communications with worker will be presumed to represent the position of the Adviser and the Branch.

Assistants must not provide any advice or commitment to workers in circumstances where they believe the advice or commitment exceeds their knowledge or ability.

In communications with workers, Assistants must not contradict the advice or the position of the Adviser on a file, or the Branch.

USING THIS GUIDE

- ❖ This document is divided into three main Parts. **Part I** is the set of “**Quick Reference Standards**” located at the front of the Guide.

- ❖ **Each of those Standards appears in the Table of Contents**, and you will find a corresponding section in **Part II** of the body of the Guide.

Part II is intended to provide clarity around the application of the Standards in different circumstances. It may include principles of application, relevant criteria, concerns or hazards, common questions, examples, the applicable exceptions or extenuating circumstances, and suggested courses of action.

- ❖ **Part III** concerns those matters which are not readily reduced to Standards or Rules, such as wholly discretionary matters.

It would not be wise to attempt to fetter the discretion of Advisers in this Guide, and Part III does not propose to do so.

Advisers are actually required by the Workers Compensation Act to exercise discretion in relation to the merit determination. This necessarily involves individual judgment within unique circumstances.

However, there are other areas in which Advisers exercise their discretion as well. Much of the daily work of an Adviser is characterized by the application of expertise and judgment. Part III has two purposes:

Part III defines the boundaries of discretion. In so doing, it is not the intention of these guidelines to circumscribe discretion; rather, Part III should help to delineate “protected” areas of discretion.

Part III describes the principles and considerations by which the exercise of discretion may be held to be “reasonable” and therefore defensible.

While discretion is neither reducible nor governable by rules, it remains possible to assist individual staff to turn their minds to the relevant and proper considerations.

PART II: APPLYING THE STANDARDS IN PRACTICE

I. LEVEL OF SERVICE

STANDARD 1: IDENTIFY APPEALABLE DECISIONS AND APPEAL DEADLINES ASAP

This Standard correlates with the Work Process Flow Chart. The earliest possible identification of appealable decisions and appeal deadlines is at the front end, i.e. in the hands of the Assistants.

When an Assistant receives and processes an initial inquiry, he or she must search the worker's claim file for decisions within the last 98 days (90 days plus 8 days grace), and should communicate any such decisions to the worker, together with a description of the significance of that decision, and the appeal deadline. If the Assistant is unclear as to the significance of any decision within the past 98 days, he or she should consult with an Adviser.

However, this does not relieve the Adviser from responsibility for identifying critical deadlines. Once a file has been transferred to the Adviser for his or her review, one of the Adviser's first actions should be to review the file for decisions which are still appealable. Further, should the worker identify a new decision to the Adviser, or reference an issue or decision from another claim, it is incumbent on the Adviser to review the new decision or other claim to ensure the worker is aware of all relevant appeal deadlines.

STANDARD 2 DETERMINE MERIT

The Definition Of "Merit".

s. 94(2) of the Workers Compensation Act says that an Adviser must provide assistance and representation where there is "merit". The Act does not define merit.

In the interests of consistency, it is important that the Branch have a single definition of "merit". The merit determination is the gateway to service from the Branch. It is therefore crucial that all WAO staff share and apply a common definition.

These standards adopt the "reasonable argument" definition of merit: For there to be merit on an issue, an Adviser must conclude that a reasonable argument may be advanced to challenge a decision of the Board.

A reasonable argument is determined with reference to the available evidence and the existing state of law and policy.

If you cannot imagine an adjudicator adopting your argument to justify his or her decision, then it is probably not a reasonable argument.

These Standards have not adopted a definition of merit using such criteria as "greater than 50% chance of success" or "substantial likelihood of success". These kind of formulations link merit to the likelihood of a favourable decision. This is not advisable as there are simply too many factors in the appeal process, over which the Adviser may have no control.

If "merit" were defined as "better than 50% chance of success", then the WAO would be operating as a third, preliminary level of appeal. However, the "reasonable argument" standard links merit to what the WAO believes it *can do* for the worker and NOT what it believes it *can get* for the worker.

Obviously, the determination of merit is one that will require Advisers to exercise their own professional judgment. Each Adviser must assess the individual facts, the strength of the evidence supporting those facts, and the application of the law to the facts. Such an assessment lies within the discretion of individual Advisers. Discretion will be addressed in more detail later.

STANDARD 3 REPRESENT WHERE THERE IS MERIT

What Is Representation?

For WAO purposes, representation means that an Adviser will minimally:

- identify the issues and confirm jurisdiction;
- identify those areas in which additional evidence is required or would be helpful;
- assist the worker to obtain and to present that evidence (this does not mean the Adviser will necessarily obtain the evidence on the worker's behalf);
- provide written submissions or oral argument as the case may be, based on his or her application of the appropriate law and policy to the facts supported by evidence.
- Ensure that the worker is aware of any post-hearing requirements and, where practicable, take steps to satisfy those requirements.

The Branch takes the position that an Adviser must represent on every issue in which he or she finds merit, unless the worker requests only a lower level of advice or assistance.

The purpose of this Standard is to ensure that injured workers have access to the same level of service irrespective of the particular Adviser or Office from which they seek service. Obviously, there will be circumstances in which this is not possible.

A good result is even better if it is an early good result.

Advisers are aware that, with some exceptions, there is a further appeal from Review Division decisions to the Workers Compensation Appeal Tribunal. However, Advisers should consider representation to the Review Division as deserving of the same level of effort as representation to WCAT. There will be cases where it is impossible to obtain the required evidence by the time Review Division submissions are due, particularly where the worker filed the Request for Review immediately upon receipt of a negative Board decision. However, where an Adviser can still find merit, he or she should make the best argument possible from the available evidence.

In addition, effective representation means that Advisers should consider early intervention opportunities. A good result early on is of much more benefit to a worker than a good result months or years later.

Conflict Of Interest

An Adviser may not represent where there is a conflict of interest, whether this is an actual or perceived conflict.

If the reason you feel you cannot represent is due to conflict of interest, then:

- Advise your Manager of the conflict, obtain his/her ruling as to whether or not the circumstances preclude you from representing;
- Obtain the name of the replacement Adviser, if applicable;
- Inform the worker that you cannot represent due to a conflict of interest, and provide the

name and contact information for the replacement Adviser.

Conflict of Interest is discussed further in the discussion for **Standard 18** Avoid any perception of conflict of interest.

Inadequacy Of Notice

There may be a conflict in the Adviser's schedule which cannot be reconciled through an extension or postponement, and which prevents the Adviser from preparing an adequate submission, adequately preparing for a hearing, or actually attending the scheduled hearing. This situation normally arises because the worker has provided insufficient notice that he or she requires WAO representation.

Case Study:

A worker comes to you the day before his morning oral hearing. He appears to have a number of issues on appeal and some appear quite complex.

You haven't had time for a full file review but you are pretty sure at least one of the issues has merit, but his success will depend on how credibly he can describe the mechanism of injury.

The other issues rely on the strength of the medical evidence correlating the diagnosis with the worker's account. These other issues seem much more iffy.

The worker is quite familiar with his claim file, has done some thinking as to what he wants to say, and he seems to express himself well.

He knew about the Worker's Advisers office but he only just heard that you can represent workers in oral hearings: He is feeling nervous about self-representing and would like you to take over.

You already have another worker whose hearing is the next day in the afternoon. You have prepared this other worker for her hearing but she had set up an appointment to come in tomorrow morning to discuss some last minute "corrections". You are the only "available" adviser in your office.

- 1. What is your responsibility to this worker who has just asked for help?**
- 2. What is your responsibility to the other worker?**
- 3. Would this be different if you couldn't adequately assess merit with the information you had?**
- 4. If you could not represent, how would justify this to the worker?**
- 5. Do you think he would have any basis to complain about your conduct?**

Process For Refusal To Represent where there is Merit.

If you believe you cannot represent owing to inadequate notice the following process should be followed:

PROCESS:

1. The Adviser should inform the worker of his or her inability to represent as and when the worker requires, and his reasons.
2. The Adviser should outline to the worker what level of service can be provided given the time constraints or type of conflict (i.e. provide advice such as issue identification and relevant evidence, or providing assistance such as reviewing evidence or submissions.)
3. If required, the Adviser should recommend that the worker seek an extension or postponement, or the Adviser may seek the extension / postponement on behalf of the worker.
4. If an extension or postponement is not granted, or the circumstances are such that it is clear such extension or postponement will be denied, the Adviser may request another Adviser in the Office to act as a substitute.
5. If no other Adviser is available in the particular Office, the Adviser shall notify the Manager of the scheduling conflict.
6. If the Manager is NOT able to assist the Adviser to reorganize his or her other obligations or commitments to resolve the conflict, the Manager may assign another Adviser for the pending submission or hearing.
7. If the Manager cannot assign another Adviser to represent, the Manager shall notify the worker (and the original Adviser) that the Branch cannot provide representation as requested owing to the insufficiency of notice.

Some Relevant Considerations for the Manager:

1. Can the Manager confirm that the particular issue for which the worker is seeking representation has merit?
2. Is this the worker's final level of appeal?
3. Would the outcome have a significant effect on the worker's benefits?
4. How complicated are the issues and how capable is the worker of self-representing?
5. Given the time constraints on preparing the worker's case, would the worker be better off self-representing?
6. If the nature of the conflict is such that representation by the original Adviser is not absolutely precluded, will a refusal to represent reflect more poorly on the Branch than would an inadequately prepared representation?

STANDARD 4 DO NOT REPRESENT WHERE THERE IS NOT MERIT

At the same time, the Adviser must generally constrain his merit assessment to whether or not a reasonable argument can be made on the basis of *the available evidence and the existing state of law and policy* - as opposed to whether an argument ought to be made given the particular Adviser's view of the equities or his particular sympathies.

Injured workers may present some claim to "special consideration". However, WAO will not allow its merit criteria to be diluted or undermined. In the absence of merit, WAO will not represent.

This would **include** workers who:

- *Have significant brain injuries or psychological problems;*
- *Have dementia, or other significant age-related infirmity;*
- *Who are illiterate, or who require an interpreter;*
- *May have learning disabilities or other challenges understanding the process.*

If an Adviser believes WAO representation is required despite the absence of merit (because of some significant concern with “access to justice”), the Adviser should refer the matter to his or her Manager for consideration.

Exceptions where representation is permitted in the absence of merit

There are four exceptions to the restriction from representation in the absence of “merit”.

1. To assist the process.

An Adviser would ordinarily represent where so requested by WCAT or the Review Division.

In the absence of merit, such representation is normally restricted to focusing the worker around the relevant issues, ensuring that the evidence presented addresses those issues, and assisting the worker to effectively communicate his position.

Whether or not the Adviser agrees to represent in such circumstances is at his or her discretion. The Adviser must also consider his or her other duties, and other relevant considerations such as whether he or she is privy to knowledge whose disclosure would be contrary to the worker’s best interests.

2. Where an Adviser determines that the particular issue under appeal is one acknowledged within the Branch to be one of general importance which ought to be pursued, despite the lack of support in law or policy.

Since merit is here related to the Adviser’s ability to make a reasonable argument. The effect of this is that certain decisions may be pursued in spite of the fact that the particular appeal is unlikely to succeed.

However, arguments are normally framed by the application of the Act and WorkSafeBC Policy to the particular facts. In certain cases, such as where a particular policy is challenged as being “patently unreasonable”, it is necessary to go outside the Act and Policy to general principles of Equity.

Such arguments are expressly permitted where the issue is of general importance.

3. Where the Adviser is already representing on one or more issues, the Adviser may, at his or her discretion, choose to advance the worker’s position on other issues contained in the same decision or in other decisions addressed in the same appeal proceeding.

4. Where the Adviser and his or her Manager agree to make an exception.

The Manager may be directed, or may deem it expedient, that the WAO will provide representation services to a worker for whom an Adviser has already determined a lack of merit.

If such a decision is taken by Management, and that decision relates to a difference of opinion as to merit, the Manager may direct the Adviser to represent but shall also provide the Adviser with a defensible rationale for merit, ratified by the Committee of Peers.

If no defensible rationale for merit exists, the Manager shall apprise the Adviser of the reason for the request but may only *request* the Adviser to represent (see Interference With Discretion:). In the absence of a defensible rationale for merit, an Adviser is entitled to refuse to represent without any prejudice whatsoever.

An adviser may not be required to represent in the absence of merit. However, in certain circumstances, he may be required to represent according to the merit assessment of another.

Revocation of commitment is considered under Standard 6 Withdrawal is restricted to very limited circumstances.

STANDARD 5 DEFINE YOUR COMMITMENT

BEST PRACTICES:

Written Commitment:

An oral commitment to the worker is just as binding as a written one. The written commitment is strongly recommended as a Best Practice, because any oral agreement can easily lead to misunderstandings or problems of proof after the fact.

While a commitment may be made to the worker verbally, this Guide recommends that the conversation be followed with a formal letter to the worker at the earliest opportunity.

Any commitment verbal or written should address the following:

- The specific issue or issues on which the Adviser is prepared to act;
- The Adviser's level of commitment on each of those issues;
- The Adviser's obligations in respect of the commitment (including the level of appeal);
- The Worker's obligations and the manner in which the worker may abrogate the commitment agreement.

Every commitment communication must be absolutely clear:

- That WAO shall not be obligated to assist or represent on any issue on which it has not specifically agreed to assist or represent.
- That this remains true irrespective of whether advice is given relating to other issues, or whether the WAO performs particular services, such as may be taken to preserve appeal rights.
- That any such advice or actions shall not entitle a worker to assume that the WAO has taken on responsibility for his or her compensation issues generally, or in respect of the particular issue on which advice is given or action taken.
- If specific issues on which the Adviser is not prepared to represent or assist, as the case may be, were discussed prior to the initial commitment, it is also appropriate to clarify that no commitment is made in regard to those specific issues.

Absolute Requirements:

The particular issues on which an Adviser has agreed to represent must be clear to both the worker and the Adviser.

The commitment agreement and the basis for the commitment must be clearly documented in ARK, whether or not a specific commitment letter has gone out.

If a commitment is amended or revoked, the Adviser shall make reasonable efforts to communicate this verbally, and shall also provide a letter setting out the particular amendment / revocation, and the reasons for that amendment or revocation.

**STANDARD 6 WITHDRAWAL IS RESTRICTED
TO VERY LIMITED CIRCUMSTANCES**

Workers Advisers Office staff are not required to be lawyers, but the rules and standards applicable to lawyers are instructive: The **Professional Conduct Handbook of BC** requires a lawyer to withdraw if:

- he is discharged by the client;
- he is required to act in a manner inconsistent with his professional responsibility;
- the client takes a position solely to harass or maliciously injure another;
- the matter will place the lawyer in a conflict of interest or concerns a matter in which the lawyer is not competent.

The Professional Conduct Handbook permits a lawyer to withdraw in the following circumstances:

- if there has been a serious loss of confidence between the lawyer and client, or
- where the withdrawal would not be unfair to the client and would not be motivated by an improper purpose.

The “unfairness” noted above is normally concerned with whether the worker would be prejudiced by loss of representation, i.e. where he needs, but could not retain, a replacement representative with adequate time to prepare and represent the worker.

The principles of withdrawal for Workers Advisers are similar - but not exactly the same ...

Case Study:

You are an Adviser. A file is transferred to you from another Adviser. ARK contains a File Memo in which the Adviser describes his reasons for finding merit. You don't agree. You

think the Adviser's argument is predicated on the application of a particular policy from “former provisions” which has no application to the current provisions issue. You see no reasonable alternate argument.

- 1. Can you reassess and “merit-out” the issue?**
- 2. What if the defect with merit, in your view, was not incorrect policy but rather your different interpretation of the facts? Would this change your response?**
- 3. Who made the commitment? Was it the previous Adviser or is it the Branch? Does it matter in this case?**
- 4. If you merited out the worker, under what circumstances do you think he would be able to justify a complaint against you?**

Withdrawal For Lack Of Merit.

If an Adviser has done a thorough merit assessment and his or her commitment was been properly restricted to individual issues and particular levels of appeal, the Adviser should rarely have to withdraw for lack of merit.

Merit undermined by new Evidence

It is possible of course, that new evidence will come to light that alters the likelihood of success, but unless that new evidence substantially undermines the foundation of the evidence on which the original merit call was made, there is

probably still a "reasonable argument" (although the likelihood of success may suffer).

Merit undermined by Worker's Lost Credibility

More problematic is the case where the argument is dependent on the worker's credibility and it becomes apparent to the Adviser that the worker is not credible, implausible, evasive, or incapable of resolving critical contradictions in his testimony. In such a case, the Adviser should consult with his or her Manager before withdrawing. The Adviser should recall that he or she is not the trier of fact: Ultimately, it is up to the Review Officer or Vice Chair to assess credibility.

The Adviser's obligation is to be sure the worker is aware of the Adviser's assessment on credibility and of the importance of credibility to appeal success. If the worker wishes to pursue the appeal and wishes the Adviser to represent despite the Adviser's candid assessment of credibility, the Adviser would normally be expected to honour his or her commitment.

However, this does NOT apply where the Adviser is made aware that the worker intends to deceive the Panel. In such a case, the Adviser has an obligation to withdraw immediately, and to do so irrespective of the date of the worker's hearing or the date the submission is due.

Similarly, if a worker instructs an Adviser to do something which is inconsistent with the Adviser's duty to the tribunal that is deciding the matter, the Adviser should inform the worker of his inability to follow that instruction and why. If the worker is insistent that the Adviser follow his instructions, the Adviser should withdraw.

This would include the situation where the worker's conduct or position is solely intended to harass or maliciously injure another person.

It should be obvious that it would also include the circumstance where continuing to represent the

worker would likely result in a breach of the law or the Adviser's professional responsibilities.

(See discussion on duties at The Duty To The Administration Of Justice.)

Merit reversed by legal analysis

It is also possible that the Adviser recognizes a mistake in his original analysis. If that mistake is of an order as to reverse the Adviser's merit assessment, he or she may withdraw

This is not an absolute right of withdrawal. The Adviser must ensure that the worker's ability to pursue his appeal is not prejudiced by the withdrawal. This means that there must be sufficient time that it would be reasonable to expect the worker could obtain alternate representation. In some cases, the Adviser will have to continue as representative, regardless.

Merit when file is transferred to new Adviser

If a file is transferred to an Adviser, the Adviser should always review the commitments made to the worker as well as the merit assessment. If there is work underway for which a commitment has not been made, this should be rectified. If the new Adviser does not agree that there is merit to some issue which is the subject of an existing commitment, the Adviser needs to decide whether to stand by the original commitment or revoke it.

If the new Adviser cannot confirm merit for any of the reasons described within this Standard, he or she may withdraw subject to the worker's reasonable ability to obtain alternate representation (as above).

If the worker resists the new Adviser's view of merit and cannot be persuaded of its correctness, the Adviser should immediately notify the Manager, who shall take appropriate steps to confirm the new Adviser's merit determination.

If the Manager disagrees with the new merit analysis or has reason to believe the worker will not accept the Adviser's revocation then the process outlined under Standard 4, Exception 4 shall apply.

Withdrawal For Loss Of Confidence

If the worker is challenging the Adviser on every action he or she takes, refuses to accept advice, or insists that the Adviser employ unnecessary evidence or address irrelevant issues, this may represent a loss of confidence such that the Adviser needs to withdraw. However, such a "loss of confidence" is expected to be extremely rare. The Adviser is expected to set and manage expectations so far as possible to preempt such a problem with confidence.

It is also true, that Advisers are public servants and have a duty to serve members of the public no matter how difficult they may be. They are expected to deal with difficult workers who are in difficult circumstances.

Case Study:

You have completed a merit review on a file and have found merit on one narrow issue. You are willing to represent on this issue.

The worker insists that you also respond to other issues although you have told him they are either irrelevant or have no merit.

The worker is very demanding and insists on regular meetings to case conference, to review your submissions, and to direct your strategy.

- 1. How would you manage such a worker?**
- 2. At what point/under what circumstances would you withdraw from representation?**
- 3. Or would you?**
- 4. If you think withdrawal is appropriate, how would you go about it?**
- 5. How would you manage this file and/or the withdrawal to ensure your actions are defensible?**

In order to justify a withdrawal based on the worker's "loss of confidence", the Adviser must have an *objective* basis for finding that he or she is unable to effectively represent the worker's interests (as a result of the loss of confidence).

Further, the Adviser must review the circumstances and his reasons for finding a loss of confidence with his Manager.

If the Manager determines that the Adviser can still effectively represent, the Manager may direct the Adviser to represent, or may exercise his or her discretion to refer the file to an alternate Adviser.

The loss of confidence can be either by the worker or the Adviser. For example, if the worker has lied or deceived the Adviser on a foundational issue or fact, or he or she lies or deceives the Adviser persistently, the Adviser could withdraw on the basis that he has lost confidence in the worker.

OTHER REPRESENTATIVE

The Worker's Adviser does not endorse dual representation. No Adviser shall provide advice or assistance to a worker who has another representative.

In the event an Adviser learns that the worker has other representation, the Adviser should provide the worker with the option of WAO representation or the representation of his or her alternate representative.

Union Representation

The fact that the worker has a Union, or that the Union has employees who provide Worker's Compensation representative does not mean that the individual worker is represented. Such workers should be referred to their Union representatives as a first course of action, but if the Union is unable or unwilling to represent the worker, then the WAO must apply its merit criteria and represent where there is merit.

If the Union confirms that they are unable to represent but only because the worker is unwilling to follow what is, in the view of the Adviser consulted, their reasonable advice – then it may be appropriate for the Adviser to confirm the actions and advice of the Union representative and refer the worker back. The Manager should be consulted if the worker insists on WAO representation in such circumstances.

Mandatory Withdrawal

Representative Not Competent

If continuing to represent the worker would require the Adviser to provide advice in respect of a Workers Compensation issue in which he or she is not competent, the Adviser should take such steps as are necessary and appropriate to adequately inform himself and prepare. This may involve consultation with more senior Advisers or a request for the assistance of the Committee of Peers.

If the Adviser still believes that he or she is not competent to represent, it is appropriate to inform the Manager who can put in place appropriate supports or assign another adviser.

No Adviser should hold himself out as being competent in areas of law other than Workers Compensation. Where an appeal includes issues involving principles of labour/employment law, tort law, or contract law, the Adviser must be absolutely clear that his or her representation is limited to Workers Compensation issues and further that he is not qualified to advise, and will refuse to advise, on any negotiations or settlement in which rights, entitlements, or benefits arising from any area of law other than workers compensation law.

In some cases, it may be impossible to represent on Workers Compensation issues without having regard to these other issues. In such case, the Adviser should inform the worker that the matter will be referred to the Manager to arrange alternate representation if possible or for reassignment of WAO services.

In other cases, it may be possible to represent in respect of the Workers Compensation issues alone. However, if the worker is insistent that the Adviser represent on all issues, the Adviser shall refuse, and may ultimately have to withdraw.

Instructions Inconsistent With Duty to Tribunal

If a worker instructs a representative to do something which is inconsistent with his or her duty to the tribunal that is deciding the matter, the Worker should inform the worker of the inconsistency and provide an explanation. If the worker is unwilling to change the instructions so that the Adviser can comply with his or her duty, the representative should withdraw.

Case Study:

You have represented a worker to the Review Division based on a version of events provided to you by the worker and which is consistent with other information on the Claim File. You

were unsuccessful and have agreed to further represent to WCAT.

At the 11th hour, the worker changes his story. If believed, his new version of events would be more favourable to claim acceptance but you know that, by changing his story at this late hour, it is very likely that he will destroy his own credibility - which is key to the appeal.

He is insistent that this new version is the "real truth", explaining that the Board officer had got the facts wrong: He hadn't thought it was very important, and he was afraid correcting the record would make him look like a liar. Now he wants to make a clean breast of it.

1. Do you agree to put forward his new story and provide his explanation or do you withdraw.
2. If you withdraw, do you do so as a result of his prior misrepresentation to you, or as a result of your reassessment of merit?
3. Do you withdraw if he reverts to the original story after you have explained the risks of late revisions?
4. If you withdraw, what reason do you give WCAT?
5. What do you do if you felt compelled to withdraw but believe the worker

is incapable of understanding the process and self-representing?

6. Is there any real downside to just presenting the worker's revised version?
7. Could there be a downside to your last minute withdrawal?

Dishonourable, Harassing or Malicious Conduct by Worker

An Adviser should not continue to represent a worker whose conduct in the proceedings is dishonourable. Similarly an Adviser should withdraw if the worker's conduct or position is solely or primarily intended to harass or maliciously injure another person.

In assessing these types of situations, it should be remembered that pursuing a meritorious claim—even aggressively—is not harassment. Pointless appeals or objections may, however, be seen as harassment or malice if their sole purpose is to annoy, inconvenience or waste the money of the employer.

Likely Breach of Law or Professional Responsibility

An Adviser should withdraw if it becomes clear that continuing to represent the worker will likely result in a breach of the law or of the Adviser's professional responsibilities.

Withdrawal / Discharge By Worker

An Adviser should not continue to act for a worker once the worker has terminated the relationship.

Manner Of Withdrawal

Regardless of the reason for doing so, when a representative withdraws from representation, he or she should attempt as much as possible to:

- avoid prejudice
- minimize expense
- attempt to assist with transfer of the matter to another representative, if any.

If the withdrawal occurs at or soon before a hearing, the Adviser should generally request an adjournment in order to minimize prejudice to the worker. Depending on the timing of the withdrawal, it may be necessary to provide an explanation to the decision-maker.

The fact that an Adviser has had to withdraw—let alone the reason for doing so—should not be disclosed to the Board, Tribunal or other parties. To do so would not only be a breach of confidentiality, but would also likely be highly prejudicial to the worker. In such cases, it is appropriate only to indicate that the Adviser is no longer representing the worker. If pressed for some sort of explanation, it would be acceptable to indicate that there was a breakdown in the relationship and that the reason cannot be disclosed.

The Adviser should provide a thorough closing letters. The letter should include confirmation that the Adviser withdrew and the reason for doing so.

Threatening Withdrawal

Advisers should never threaten to withdraw representation as a means of pressuring a worker to do or not do a particular thing or to make a hasty decision about a significant issue.

However, an Adviser may warn a worker if an action he or she proposes to take will lead to mandatory withdrawal. For example, if a worker proposes to lie to an adjudicator, the Adviser could warn the worker that he or she would be obliged to withdraw representation if this occurred.

II. YOUR AUTHORITY

STANDARD 7 DON'T ACCEPT ILLEGAL OR IMPROPER INSTRUCTIONS

Obviously, WAO staff must not follow illegal instructions; i.e. instructions which required an Adviser to be a party to an illegal act.

For example, an Adviser must not knowingly participate in fraud, such as the manufacture of evidence.

WAO staff must also refuse instructions which would involve the Adviser in a breach of his professional obligations or other duties. Here we are talking about duties such as those described in the Standards of Conduct for Practice and Procedure before the WCB set out in Appendix 2 and found at:

http://www.worksafebc.com/publications/how_to_work_with_the_wcb/standards_of_conduct/pub_30_10_10.asp

Or the Code of Conduct section of WCAT's Manual of Practice and Procedures set out in Appendix 3 and found at:

<http://www.wcat.bc.ca/research/MRPP/mrpp.html>

However, improper instructions may include many other circumstances. Some examples include:

- Active solicitation by the worker for "coaching" of their evidence may be improper.
- Instructions that amount to an abuse of process such as harassing or malicious conduct. (See Mandatory Withdrawal)
- Instructions to pursue actions which impose an onerous and unnecessary burden on the appeal system, such as the inundation of an appeal

body with irrelevant, marginally relevant or redundant documentary material, the calling of witnesses whose evidence is expected to be irrelevant, or an "excessive" number of witnesses to corroborate a particular point.

Case Study:

The father of a worker killed in a workplace accident comes into your office. He is still grief stricken but also very angry. WorkSafeBC conducted what appears to have been a thorough investigation and found there was nothing the employer could have done – that it was just a freak accident.

The father doesn't accept this. He never liked the employer in the first place. When asked if he has any evidence which would support an argument that the employer was negligent in some way, he becomes furious, saying there is no way he can get any evidence: That it's your job to find the evidence, and you better find it, too!

He wants the employer to pay for what he's done, and he'll drive him right out of business if he has to drag him through every court right up to the Supreme Court of Canada.

- 1. What do you think is the best way to handle this bereaved father?**
- 2. Would you represent him? Why or why not?**

3. Do you think representing such a case would impact on the reputation of the Branch or your own credibility?

4. Do you think you or the WAO could be ordered or required to represent to fulfill its service mandate?

If a worker gives illegal or improper instructions, the representative should explain why the instruction is illegal or improper and give the worker the opportunity to change his or her mind. If the worker still insists that his instructions be followed, the Adviser may withdraw.

Instructions contrary to the worker's best interests

The worker's instructions may be both legal and proper but still be contrary to the worker's best interests, in the judgment of the Adviser.

An Adviser should advise workers if they feel that following the worker's instructions would not be in the worker's best interest and should also provide their rationale. Workers will almost always change their minds if the Adviser provides a clear explanation why their instructions are imprudent.

Loss of merit

If the worker is insistent that an Adviser follow instructions that seriously undermines merit in respect of an issue, the Adviser may withdraw representation on that issue on the basis that the issue no longer has merit.

Reduced chance of success/increased downside risk

An Adviser may judge that the worker is less likely to succeed if his instructions are followed, or that

the worker risks a reduction of some existing benefit. In such cases the Adviser would normally continue to represent but reference should be made to Standard 9, Documenting Instructions.

Loss of confidence

There may be extreme situations, where the Adviser is of the view that the worker's failure to follow advice represents a loss of confidence in the Adviser's abilities.

In such cases, the Adviser should consult with the Manager to determine whether the Adviser should follow the worker's instructions, whether another Adviser should be assigned or whether WAO can continue to represent at all. However, Advisers will generally NOT be permitted to withdraw in such circumstances.

STANDARD 8 DON'T ACT WITHOUT, OR EXCEED, INSTRUCTIONS

Advisers have a general duty to obtain proper instructions from their workers. Because of the complexity of Workers Compensation issues and the relative lack of sophistication of most workers in these matters, it is generally necessary to discuss the issues and the implications of existing decisions with the worker before informed instructions can be obtained.

If a worker has given specific and relevant instructions, an Adviser cannot refuse to follow them, except as outlined above in Standard 7: Illegal or Improper Instructions.

However, depending on the circumstances, it may be reasonable to take steps to preserve appeal rights and prevent prejudice to the worker, even without instructions.

Case Study - (a)

You have represented a worker to the Review Division on the issue of acceptance of a certain medical condition. You provided written submissions and a supportive letter from his family physician.

Unfortunately, the worker lost on Review. The Review Division relied on a new medical opinion from its own Review Division Medical Adviser which distinguished certain points of the worker's medical evidence and concluded that the injury was not biologically plausible.

Your worker's doctor is unable to refute the particular points of the Review Division Medical Adviser's opinion, saying only that the RDMA's opinion does not absolutely rule out claim acceptance.

Without evidence directly challenging the RDMA, you do not think you can construct a reasonable argument for a further appeal to WCAT.

You had written the worker to advise her that she had a further appeal avenue to WCAT, and you set out the kind of evidence she would require if she hoped to be successful. You requested that she contact you if and when she obtained that evidence.

But because of a problem with the closure letter template, you neglected

to advise the worker that she only had 30 days to file a Notice of Appeal.

It is now the 38th day from the date of the Review Division. You have not heard from the worker in response to your letter, and her phone appears to be disconnected.

Today is the last day to file a Notice of Appeal.

- 1. Can you act without instructions to file the Notice of Appeal?**
- 2. What might happen if you do not file?**

Even though an Adviser may file a Request for Review or a Notice of Appeal to preserve appeal rights, the Adviser should first make reasonable efforts to obtain instructions.

Whether or not the Adviser ought to act to preserve appeal rights will depend on the circumstances, including the Adviser and WAO's past dealings with the worker.

Actions which prejudice or potentially prejudice any right of a worker should never be taken without the worker's instructions to do so.

Case Study - (b)

Supposing there had been two issues in the WorkSafe decision on Review, and the Review Division had allowed the other issue on a clever but rather dubious technical argument. There is some risk that WCAT could take

jurisdiction over this other issue and reverse the Review Division.

3. Would this change your answer?
4. If you filed, and the appeal resulted in the worker losing the benefits allowed by Review Division, what kind of fallout could you expect?

decision but she is insistent that you said "...if we lose at the Review Division we will appeal to WCAT".

5. Are you responsible for the worker having missed the appeal deadline?
6. What do you do now?
7. What could you have done to avoid this situation?

The above situation is complicated by the significant possibility that a worker may be *relying* on the Adviser to preserve his or her appeal rights.

It could result in the following scenario:

Assume you didn't file the Notice of Appeal without instructions:

Case Study – (c)

A month after the deadline has lapsed, the worker finally calls you to discuss the medical evidence she would need to go to WCAT. She claims she had to move to Alberta and she still hasn't had a phone hooked up, but that she had been trying to get in contact with you from a payphone to tell you she has located a specialist that she thinks will be helpful.

You have to tell her she is out of time to appeal.

She is furious, claiming that you told her you would handle everything. You explain your commitment letter only referenced the Review Division

One possible solution to such a circumstance is for the Adviser to file the Notice of Appeal without instructions, but then to write the worker confirming his/her actions, explaining the potential downside risk, and advising the worker that the filed appeal will be withdrawn unless the worker contacts the Adviser within a specified period of time.

The Adviser might then attempt to contact the worker by other means periodically prior to the lapse of the deadline which the Adviser has set for the worker to confirm her intention to proceed or consent to withdrawal. If the worker cannot be reached, then the Adviser should follow through on the actions described in the letter.

Even if there is no difficulty contacting a worker, there may be other factors which complicate the task of obtaining proper instructions, such as:

Instructions Relayed Through Third Party

In a situation where the worker is communicating with the Adviser through a third party, such as a family member or friend, the Adviser must ensure that the instructions that are being given come from the worker and not the intermediary.

A third party may **RELAY** instructions from the injured worker, so long as the Adviser can be justified that the instructions received are actually coming from the worker. However, an Adviser must never act on instructions **ORIGINATING** with a third party unless that third party is legally authorized to act on the worker's behalf (e.g., under a power of attorney).

If it appears that an intermediary is not passing on advice to the worker or is altering or not obtaining the worker's instructions, the Adviser should arrange to deal more directly with the worker. For example, the Adviser could insist on speaking to the intermediary only when the worker is also present (or party to the telephone call).

Case Study:

A worker does not speak English at all attends your office with her uncle as her interpreter. It is clear that she defers to her uncle. You have told the uncle that it is important your words and the worker's responses be translated as accurately as possible. Still, in the course of your discussion, you observe that your long-winded explanations are often reduced to a single phrase in the translation, and that the worker's responses are often greatly expanded in the translation back to English.

1. Should you act on the worker's instructions obtained in this interview?

2. Would the worker have a legitimate complaint if your actions did not produce the result you had hoped and she later claimed that she did not authorize those actions?

Mental Capacity Of Worker To Give Instructions

In the course of representing a worker, an Adviser may become concerned that the worker lacks the mental capacity to make decisions and give proper instructions.

Generally, in such cases, a third party is also authorized by the worker to discuss the file with the Adviser. Of course, the question remains: "Did the worker even have the capacity to designate a third party to discuss his or her claim?"

Definition of Capacity.

The standard for capacity to give instructions focuses on whether the worker has the basic ability to understand his or her situation and the options presented. The following is a useful and generally accepted definition of capacity:

To be "mentally capable" means that a person must have the ability to understand information relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

It is important to understand that as long as the worker has met the standard, the quality or wisdom of the decisions he or she makes is not a factor to be considered. Simply put, workers have the right to make bad decisions.

It is also important to distinguish mental illness from mental capacity. Mental illness is a medical diagnosis while mental capacity is a legal determination. A person who has been diagnosed with a psychiatric condition will not necessarily lack capacity and, in most cases, will be fully

capable of making decisions. Similarly, a person may lack mental capacity without having been diagnosed with a psychiatric condition.

Assessing Capacity

As stated above, the threshold for capacity is a relatively low one. We expect that virtually all workers who contact the Branch will have this minimum level of capacity.

Therefore:

This Guide does not place any obligation on any WAO staff to engage in a formal assessment of capacity.

There is a legal presumption that all adults have the capacity to instruct a representative. Unless there is evidence to rebut it, the WAO can and should rely upon this presumption and need not inquire into a worker's capacity.

Nevertheless, all WAO staff, including Advisers, Assistants, and Managers **need to be aware that the worker's capacity is always an issue and that the Branch cannot accept instructions from anyone who does not meet the threshold set out above.** Therefore, the worker's capacity must be appreciated on an ongoing basis and in view of the specific decisions required of the worker. In most cases, the more significant the consequences of a decision, the higher the standard will be.

If the facts or circumstances are such as to give rise to a reasonable suspicion that the worker does not have the requisite capacity, an Assistant should discuss the concern with the Adviser. If the Adviser also feels there is a capacity issue, the Adviser should refer the matter to the Manager.

Seeking Instructions where Capacity is at Issue.

The Manager should take such steps as are appropriate to ensure the Branch can obtain instructions. This may involve suggesting that family or associates of the worker seek a Committeeship or that the Public Trustee step in. In cases, where the worker has appointed a Representative under the Representation Agreement Act, the Manager may wish to confirm that the appointment is valid before authorizing the Adviser to accept instructions from the appointed representative.

While direction is being sought, the WAO staff should take steps to preserve and protect the worker's appeal rights.

It is generally NOT appropriate to contact the worker's doctor or family in these situations without the worker's consent. Concerns about capacity do not give an Adviser the right to breach confidentiality.

Deceased Workers

If an injured worker is deceased, the "worker" is the worker's estate in respect of any outstanding benefits owing to the worker, or issues which may result in benefits to which the worker would have been entitled during his lifetime.

Advisers should therefore ensure that they are dealing with someone who is legally authorized to act for the estate (e.g. the executor or estate trustee). Again, the relevant documentation should be obtained and kept on file.

Representing both the worker's estate and a survivor (in respect of survivor benefits) may result in a conflict of interest. The Adviser should consult with a manager before proceeding on both files. In the event the Manager clears the Adviser

to pursue both interests, the two interests must still be treated separately - as individual files, individually instructed and with their own distinct commitments. This should be done even where the person authorized to act for the estate is also the survivor seeking survivor benefits.

STANDARD 9 DOCUMENT YOUR INSTRUCTIONS

General Instructions

The Adviser must document all instructions on ARK on which he or she has made a commitment.

Worker instructions contrary to the worker's interests

The worker's instructions and the advice of the Adviser in response should be entered in ARK at the earliest opportunity and followed with a letter confirming the Adviser's advice and the worker's instructions.

The worker may simply be misinformed or confused. Many problems associated with taking instructions from worker can be avoided by ensuring that workers are well-informed regarding the progress of their cases and understand what is going on as much as is possible.

Where a worker insists on making what the Adviser believes to be a decision contrary to his or her interests, the Adviser is entitled to require the worker to confirm these instructions in writing before the Adviser proceeds.

If it is not possible to obtain written instructions, the Adviser should confirm his advice and the worker's instructions in a letter to the worker.

Conflicting Instructions

If a worker has provided conflicting instructions, the Adviser should put the conflict to the worker and seek a clarification which resolves the conflict.

If the worker cannot or will not resolve the conflict, the Adviser should seek advice from his or her Manager or a member of the Committee of Peers to determine if there exists a means of reconciling the instructions. In cases where the Manager or the Committee of Peers agree that the instructions cannot be followed as given, the Adviser should inform the worker that no further action will be taken on the file or issue as the case may be, until the conflict is resolved.

If the worker has provided conflicting instructions in relation to an issue or decision requiring immediate action, and the Adviser cannot contact the worker to clarify the instructions, the Adviser may take such steps to preserve appeal rights as he or she deems appropriate, but the Adviser's involvement shall be noted as being in an "Advise and Assist" capacity only.

The Adviser shall copy the worker any document or letter which he has issued on the worker's behalf, and:

It is highly recommended that the Adviser shall also:

- **warn the worker that the worker's instructions were unclear and that the action taken may not be according to his instructions or in his best interests;**
- **clearly state that the action will be withdrawn unless the worker contacts the Adviser by a date specified.**

III. COMMUNICATIONS AND SECURITY

STANDARD 10 AUTHENTICATE YOUR INSTRUCTIONS

It is important for the WAO to know and be able to confirm that the instructions received are actually coming from the worker.

Excepting actions taken to preserve appeal rights, no action should be commenced without:

- Physically meeting with the worker or his authorized representative;
- Placing a call to the worker at a phone number already provided to WorkSafeBC, or;
- Mailing a letter confirming the commitment, and allowing sufficient time for the letter to be delivered and reviewed by the worker.

In the case of representatives providing instructions, the WAO should review and copy the Will, Power of Attorney, Representation Agreement or Committeeship Order as the case may be. The Manager may be involved if an Assistant or Adviser has any doubt as to the authenticity or effectiveness of the authorizing instrument.

STANDARD 11 BE COURTEOUS AND RESPECTFUL

WAO staff must treat workers with courtesy, respect and sensitivity.

In addition to being injured, workers are usually under great personal and financial stress. Furthermore, they are usually dealing with a system that is confusing and alienating to them. Advisers should be sensitive to these pressures and keep them in mind when dealing with workers.

Representatives should never make derogatory or mocking comments about workers to co-workers or others. Similarly, personal opinions about workers should never be written in worker files or in dockets.

Case Study:

You are discussing with another adviser in your office the best way to handle certain behaviours of a particularly difficult worker. Some of the worker's behavior is truly bizarre and you find some humour in the whole situation. Before you know it you are joking and laughing at the worker's expense.

You believe there is no one else in the office but then you hear a cough in the outer office and emerge to find another worker in the office with a shocked look on her face. She says she overheard the entire conversation and would hate to think our staff would discuss her in the same way. She asks for the phone number of your manager

- 1. Do you believe that a discussion between advisers about worker workers is always unprofessional?**
- 2. At what point does it become unprofessional?**
- 3. How do you handle this situation?**
- 4. How could you ensure you did not repeat this situation?**

5. What are you going to say to your manager?

STANDARD 12 MANAGE WORKER EXPECTATIONS

At the outset, the Adviser needs to discuss with the worker not just the merit of those issues which he or she will take forward for the worker but also the lack of merit for those issues raised by the worker on which WAO is not representing.

It is recommended as a Best Practice that the Adviser review (and document) the following with the worker:

BEST PRACTICES ON EXPECTATIONS

Communications-related

- When and how the Adviser will be communicating with the worker;
- What kind of inquiries are properly addressed to WAO and what kind should be directed to WorkSafeBC;
- Approximate time-frames for responding to worker calls (as it relates to priority of matter);
- Contingency instructions in the event the worker can't be reached when action is required (actions to take on issues not yet discovered);
- Any authorizations to discuss worker's matters with third parties.

Respective Responsibilities

- What the worker is expected to do and when.
- What the Adviser is committed to do and to what level.

- What specific commitments the Adviser has refused.
- Circumstances in which, and the extent to which, the Adviser will subordinate to the worker his professional judgment on either legal analysis or process management.

Ethical Obligations

- Circumstances in which instructions will be refused
- Circumstances in which reassignment or withdrawal will be considered;
- How the discovery of evidence adverse to the worker's interest will be managed.

Decision Related

- What success on appeal looks like, i.e.:
- Those issues and findings which will be within the jurisdiction of the appellate body
- What sort of benefits the worker might expect out of a success, if any;
- Whether a referral back is expected and the timeframe for a new decision;
- If there is a strategy expected to involve multiple appeals or decisions, what is the ultimate goal.

The extent to which WAO staff will choose apply these practices is dependent on the circumstances and the individual worker.

STANDARD 13 KEEP WORKER INFORMED

The Adviser should ensure that the worker is reasonably informed as to the progress of his file.

This normally means ...

PROCESS:

- The Adviser must inform the worker of the next step to be taken by the Adviser or response expected from WorkSafeBC or from the Review Division or WCAT, and the Adviser's best estimate as to when that might occur;
- The Adviser shall immediately forward any information or correspondence concerning the Worker of which the Worker does not appear to be aware;
- WAO staff shall copy to the worker all correspondence issuing from the WAO concerning his file, including submissions;
- The Assistant or Adviser shall contact the worker as soon as practicable concerning any new decision or issue of which he or she becomes aware and which bears on issues on which the WAO is representing or which may require the Worker to take action to preserve or prosecute his appeal rights;
- The Adviser shall contact the Worker at the earliest opportunity concerning any reassessment of merit, inability to follow worker instructions, or withdrawal;
- The Adviser shall contact the worker at an appropriate time regarding any significant change to some advice or strategy that has previously been confirmed with the worker;
- In cases where the worker is waiting for a decision of WorkSafeBC or an appellate body, the worker should be informed that WAO will not receive them earlier than the worker. The worker can be invited to contact the appropriate Office or Adviser when he receives the decision, but should know that the Adviser

will not be checking on the progress of these decisions.

BEST PRACTICE:

- It is a best practice to call a worker whenever you receive an Appeal decision on which you have represented or the implementation
- decision flowing from an Appeal decision to debrief the worker on the effect of the decision
- In the case of written submissions, it is also recommended that Advisers discuss the submission they have prepared with their worker prior to filing the submission or that the Adviser send a copy to the worker providing a deadline by which workers may still provide additional comments.

It is recognized that time constraints and difficulty reaching workers may make this impractical at times.

**STANDARD 14 MAINTAIN
CONFIDENTIALITY OF WORKER
INFORMATION**

WAO has an obligation to keep confidential any and all information obtained in the course of advising or representing a worker. Additionally, as government employees, WAO staff have an obligation to keep confidential all other information obtained as a result of their employment

The duty of confidentiality

Confidentiality is widely regarded as being not only a defining characteristic of the representative-worker relationship, but also as a prerequisite for its existence. In order for Advisers to fully and properly advise their workers, they require

complete and honest disclosure of all relevant information. Workers would be unwilling to provide such a level of disclosure without the assurance that the information they provide will be kept confidential.

5(1) of the Professional Conduct Handbook of the BC Law Society describes the duty of confidentiality as follows:

“ A lawyer shall hold in strict confidence all information concerning the business and affairs of the worker acquired in the course of the professional relationship, regardless of the nature or source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly authorized by the worker, or is required by law or by a court.”

Representatives owe a duty of confidentiality to all of their workers regardless of whether the relationship is long or short, formal or casual. The duty continues after the representative-worker relationship has ended or the worker has died. The duty of confidentiality also continues after an individual has ceased being an employee of an organization that provides representation, such as the Workers Advisers Office.

What must be kept confidential?

- All communications to and from worker

The duty of confidentiality applies to all communications with the worker. Thus, it applies equally to information received from the worker and information and advice provided to the worker by the Adviser.

- All information obtained in the course of the relationship

It is also important to note that the duty of confidentiality applies to all information obtained in the course of the Adviser-worker relationship,

not just information which pertains to the matter for which the Adviser has provided a commitment or that which the worker has expressly informed the Adviser is confidential.

- Information obtained on worker's behalf

The duty is not limited to information obtained directly from the worker: it extends to information obtained on the worker's behalf as well. The duty also applies regardless of the format of the information: written, oral and electronic information must all be kept confidential.

Use of Confidential Information

Information remains confidential even if people outside of the Adviser-worker relationship are also aware of it.

The WAO should never use information obtained from or on behalf of a worker for any purpose outside of the Adviser-worker relationship. This applies even where use of the knowledge would not result in any gain for the Adviser or loss for the worker.

The fact that a worker has consulted or retained an Adviser is also confidential and should not be disclosed unless doing so is necessary. For example, an Adviser may disclose to the Board that he or she is assisting or representing a worker if we are representing in an appeal, but it would be inappropriate for WAO to discuss its involvement with the worker if the WAO only provided summary advice on how to file an appeal.

An Adviser should not gossip or discuss details of workers' cases with family, friends or others even if names are not used. This is especially true if the information shared could result in the worker being identified.

WAO staff should never share confidential information about or received from a worker with another worker, unless expressly authorized to do

so. Advisers should also be careful that worker information is not accidentally disclosed to other workers: Confidential information should not be discussed where another worker could overhear.

It is not a breach of the duty of confidentiality to discuss confidential worker information with co-workers for the purpose of providing advice, assistance or representation to the worker. The worker has obtained the services of the WAO - and not one individual Adviser or Assistant. Staff should be free to consult with other staff regarding worker files for the purpose of obtaining or lending assistance.

Disclosure Of Confidential Information Without Worker's Consent

Although the duty of confidentiality is a strong one, it is not absolute. In certain situations disclosure of confidential worker information is acceptable.

Case Study:

You get a call from a person who claims to be a lawyer representing an injured worker. He asks for your advice on how to proceed on some specific issues and decisions on the worker's claim file.

You have heard of this person before and you know he represents injured workers but you have seen some of his work and do not think he is very good at what he does. You are not even sure he is a lawyer.

- 1. What would you tell the lawyer?**
- 2. Could you provide him with any information from WorkSafeBC's Case Management System (CMS)?**

3. If the lawyer had disclosure and was asking you about the application of law and policy, procedure and tactics to the facts, how much information and assistance would you give him?

4. Would you need the worker's authorization to discuss the file with his lawyer (or Union rep.)?

The analysis required to justify disclosure is a complex one. It is recommended that Advisers contact their Managers for advice in any situation where staff are being asked to disclose confidential information without the worker's authorization.

Specific Authorization

Care should be taken to ensure that the terms of the worker's consent or authorization contemplate the particular circumstances in which you are preparing to disclose personal information.

For example, you may know that the worker's illicit drug habit will be relevant to a medical opinion that you are seeking. It would be prudent in such circumstances to seek the worker's specific authorization before disclosing this habit to the doctor.

WAO staff should exercise common sense and seek specific authorizations in circumstances which may be sensitive or which were unlikely to have been contemplated by the worker at the time he or she provided the general authorization.

Required By Law

Where required by statute, regulation or order of a Court of Tribunal (assuming jurisdiction), the Adviser may disclose confidential information. The Adviser should ensure that only the minimum amount of information required to comply with the law is disclosed.

The interpretation and application of the Statute, Regulation or Order of the Court or Tribunal relied upon is complex. Any WAO staff who receive a summons, subpoena or order to disclose information obtained in the course of their work should contact their Manager immediately.

Enquiries from the Ombudsman or MLA Offices

The BC Ombudsman may on occasion seek information respecting a worker from the WAO when investigating complaints. The Adviser should confirm the Ombudsman has authorization from the worker before disclosing or discussing the worker's confidential information.

The Ombudsman has certain powers to compel government employees and agencies to provide information, even without worker authorization. If such authority is claimed, WAO staff should contact the appropriate Manager for direction.

Similarly, WAO staff should not discuss a worker's confidential information with an MLA or the Constituency Assistant of an MLA without first obtaining authorization from the worker.

STANDARD 15 MAINTAIN SECURITY OF WORKER DOCUMENTATION

Files or papers should not be left out when meeting with workers. It is probably best to meet in a room other than the Adviser's office, since meetings with workers are often unplanned.

All files and confidential information should be stored in locked file cabinets overnight or,

alternatively, the Adviser's individual office should be locked. Assistants must also store files or papers in file cabinets or in individual locked offices at the end of the work day.

All worker-specific information to be disposed of shall be placed in locked bins for shredding or shredded immediately.

Electronic worker specific-information shall only be removed from the office on encrypted data sticks or on the hard drives of password-protected laptop computers.

STANDARD 16 DO NOT ACCESS OFFICE RESOURCES OR TOOLS (SUCH AS WORKSAFE'S CMS) FOR INAPPROPRIATE PURPOSES

The office resources and tools provided to WAO Staff are intended to facilitate efficient and effective service delivery.

They are not provided for personal use, nor to aid or pursue independent business ventures. This is a general principle which is applicable to all public servants and it is also addressed within the BC Government Code of Conduct.

However, this does not mean that personal internet access, personal photocopying, and personal calls or email are forbidden in all circumstances. In all cases, the test will be whether the use, whether individual or cumulative, was reasonable in the circumstances, having regard to the cost of the resources expended, (personal internet access has an insignificant additional cost – printing 100 copies of your novel manuscript may have a significant cost), and the degree to which the personal use precludes productive work for the WAO (personal internet use can have a enormous cost in lost time – emailing your spouse that you will be late coming home does not).

CMS Access

In the case of CMS or ARK access, additional considerations apply. The permission to access confidential information through these tools is qualified by the imperative that such access is for purposes appropriate to and approved of by, the WAO management and Labour executive, and by WorkSafeBC.

It may be the case that friends or acquaintances seek the advice of a WAO staff member on their own or some others' claims related matters and request an update on the claim status. If the only concern is claim status, it is acceptable to direct them to the WorkSafeBC worker access portal.

However, if they are seeking advice that would require the Adviser or other staff member to access claim file information, WAO staff are required to direct the worker to call the WAO switchboard, where they will be properly routed, tombstone information will be entered to ARK, and the Inquiry will be assigned to an Assistant or Adviser.

No WAO staff may access CMS for the purpose of:

- Accessing his or her own claim file;
- Accessing the claim file of any family, friend, acquaintance or associate;
- Accessing any other person who has not first been properly registered as an inquiry and entered in the ARK system.

STANDARD 17 BE HONEST AND FORTHRIGHT IN DEALINGS WITH WORKSAFEBC AND WITH APPELLATE BODIES

WAO staff will not deceive, nor will they participate in any deception, of any WorkSafeBC staff or any staff at the Review Division or WCAT, whether for some procedural advantage, to influence a decision, or for any other reason.

This does not mean that WAO can be required to volunteer information which may be adverse in interest to the worker. WAO is entitled to refuse to answer questions or provide requested information. However, depending on the circumstances, it may follow that an adverse inference will be drawn from such refusal. The worker should be involved to the extent possible in responding to such requests, understanding that it will not help his case if the decision maker perceives that the worker is uncooperative or evasive.

The courtesy and respect owed by an Adviser to the Review Division or WCAT Panel is not an absolute deference. The Adviser can respectfully disagree with the Panel and pursue avenues of inquiry, irrespective of the Panel's opinion, or of its apparent impatience. The Adviser may well be more familiar with the particular file and the applicable law and is better placed to understand the evidence yet to be provided. The Adviser may also have given more thought to the application of the law to the facts than has the Panel at the time of the hearing.

An Adviser is entitled and expected to be critical of decisions of the Board and of the appellate levels. However, this criticism should never extend to the decision makers themselves.

IV. CONFLICT OF INTEREST

STANDARD 18 AVOID ANY PERCEPTION OF CONFLICT OF INTEREST

WAO staff have a duty to actively identify and to avoid any conflicts of interest, both as representatives, and as WAO and government employees. Where a conflict does arise, the public interest must take precedence.

The BC Public Service Agency Code of Conduct states that:

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- *the employee's ability to act in the public interest could be impaired; or*
- *the employee's actions or conduct could undermine or compromise;*
- *the public's confidence in the employee's ability to discharge work responsibilities; or*
- *the trust that the public places in the BC Public Service.*

(See appendix 1: BC Code of Conduct)

The decision in WAO most likely to be influenced is the Adviser's merit call, although a multitude of subordinate decisions within conduct of his case load may also be influenced.

The most common potential conflicts in the WAO are where a WAO Adviser might be influenced to represent in the absence of merit, or to refuse to represent on a file despite merit, or to give special attention or priority or attention to any matter.

Because of the difficulty in distinguishing perceived conflict from actual conflict, and because the distinction is largely irrelevant to the

public, these Standards are concerned with the perception of conflict. Present or prior personal, business, or financial relationships with workers invite the perception of conflict of interest.

If an Adviser continues to act for a worker in a conflict of interest situation, there is a real risk that the Adviser will—whether intentionally or not—alter the way in which he or she proceeds in order to maximize the benefits or minimize the consequences to him or her personally.

Examples of conflicts of interest:

1. Having a financial interest in one of the parties to an appeal.

For example, if an Adviser had a financial interest in the accident employer, he or she might not make an argument that could lead the employer to be fined.

2. Having a personal or business relationship with a worker.

If an Adviser agrees to work on a best friend's claim, the file might be given greater attention and a higher priority than other files.

3. Being involved in a business venture which "competes" with the service of the WAO.

An Adviser is likely to refer workers to his or her own private consulting business, on the basis that he/she would be able to devote more time and energy to their cases - for a fee.

4. Purchasing real or personal property from workers.

An Adviser should never purchase real or personal property from a worker client, regardless of value, and regardless of his or her motivation. There may be a perception that the Adviser is taking advantage of the worker's circumstances to get a good deal.

Case Study:

In the course of your discussion with an injured worker, you discover he will need to sell a classic 1963 Mustang Convertible to raise some funds to meet his mortgage payments until you win his appeal.

You collect and restore Mustangs as a hobby, and you know what they are worth. You would really like to have a 1963 convertible and the worker probably won't get a good price if he has to sell quickly.

1. Is it okay to buy the Mustang from the worker if you pay him a fair price?

Workers are seeking WAO services are often in tough financial circumstances. It may be that a worker may offer to sell real or personal property to an Adviser to meet his other expenses or debt obligations.

An exception may be made to allow the Adviser to purchase worker property in limited circumstances. The Adviser's Manager would need to agree, and the Adviser must obtain an independent and qualified appraisal of the property and pay the worker fair market value according to that appraisal.

5. Gifts are a form of conflict of interest.

Many workers are genuinely grateful for the service they have received, and some may even be offended if their tokens of gratitude are rejected. Nonetheless, it is not permitted for

WAO staff to accept gifts. Accepting gifts engenders a feeling of obligation to the giver.

However, common sense must prevail. WAO staff need not refuse tokens or personal gifts of nominal value only, such as cards, knitted mittens or home-baking.

Items with a face value, such as gift cards, cannot be accepted. In some circumstances, purchased items with an estimated value of \$10.00 or less may be acceptable but such gifts must be vetted through the staff member's immediate superior.

Otherwise, accepting gifts in connection with WAO service in the WAO is not acceptable.

6. Representing workers in conflict

On claims issues, it will be unusual for an Adviser to be placed in the position of representing two or more workers whose interests differ. However, Advisers should be live to the possibility that such conflict may arise, particularly in Discriminatory Actions or with Prevention issues.

7. Errors and Omissions can present a conflict of interest

If an Adviser commits an error or omission, it creates a conflict of interest with the worker. This conflict arises because, once an error is made, the interests of the worker and the Adviser diverge. For example, it may be in the worker's best interest to take legal action against the WAO or the Adviser—something which is clearly not in the Adviser's best interest. Additionally, in such situations the Adviser's judgment often becomes so clouded that it is impossible to fairly and objectively assess the situation.

In all cases of an error or omission, an Adviser or other WAO staff should seek direction from their Manager as soon as possible.

Example: Missed Time Limits:

In the workers' compensation context, the error or omission that is most likely to arise is a missed time limit. Missed time limits, whether through action or inaction, can be a problem in any of the following circumstances:

- *The missed time limit was in respect of an issue for which the WAO had committed to represent;*
- *The time limit was missed on an issue on which the WAO may be perceived as representing, even if there was no formal commitment;*
- *The time limit was missed and the WAO through its action or inaction was responsible for additional delay in the filing of the appeal.*

The Process in the event a missed deadline or other error or omission is discovered is as follows:

PROCESS:

1. Notify the Manager;
2. Outline the steps you will take to rectify or mitigate the error;
3. Subject to direction from the Manager, notify the worker of the error, and the steps being taken to remedy/mitigate the error.
4. Keep the worker and the Manager informed of any progress or developments.
5. In some cases the Manager may assume conduct of the file or reassign it to another Adviser, in order to avoid a conflict, potential for conflict, or perception of conflict. This will be determined on a case by case basis.

V. COLLEGIALITY AND SUPPORT

STANDARD 19 PROVIDE REASONABLE ASSISTANCE TO YOUR COLLEAGUES

The WAO has a long-standing practice and tradition of mutual support. The Branch takes pride in the success of every meritorious appeal and encourages the sharing of success.

Many Advisers have compiled extensive files on leading decisions, submission precedents, and reports and reference materials regarding medical conditions. However, effective representation is not a competition among Advisers and no Adviser should maintain these resources as though they were proprietary. Each Adviser, or Assistant as the case may be, should be prepared to freely share of their resources, whether independently developed or discovered, as well as of his or her own experience and knowledge.

Obviously, the ability of staff to assist on the files of others will depend on their own caseloads and urgent priorities. Nonetheless, it is an expectation of the Branch that staff shall respond to specific requests for mentoring assistance wherever practicable.

SharePoint is one forum in which specific queries are put to the Branch at large. Those with a particular expertise regarding a general query should continue to respond on SharePoint, or individually at their discretion, wherever possible.

Hearing and submission deadlines are always the first priority. However, the mentorship and mutual support of fellow WAO staff must also be viewed as a high priority.

STANDARD 20 WAO STAFF SHOULD NOT KNOWINGLY CONTRADICT AN ADVISER WITH CONDUCT OF A FILE

There will often be times when an Assistant, or another Adviser, has a different view of the file or would take a different approach than the Adviser managing the file.

However, it is important that Advisers retain the confidence of their workers. It is also important that the Adviser with conduct of a file is able to manage worker expectations. In conversations between any other WAO staff and the worker, care must always be taken not to contradict or seem to contradict the Adviser who has the file. Conflicting information may make their job that much more difficult.

A BEST PRACTICE would be:

- To fully discuss the difference of opinion with the Adviser IN PRIVATE;
- The Adviser can decide whether or not to revisit his approach and the manner in which he communicates any change with the worker;
- In cases where the Adviser remains committed to his present course, the Adviser should take the opportunity to communicate his rationale to the Assistant or other Adviser.

Case Study:

You have conduct of a file which you see was previously managed by an Adviser who has retired.

In the file you are reviewing, the long term wage rate was established four years ago under current provisions, at a time when the worker was expected to

fully recover from a relatively minor shoulder injury – although the worker still complained of pain.

Your issue is loss of earnings. The worker went on to develop what was finally diagnosed as RSD. She has even had her entire arm and shoulder amputated, and you don't think she can return to any productive employment. Unfortunately, her long term wage rate failed to account for a significant period of time she was off on another claim, and so her wage rate grossly underestimates her earnings. The Adviser, who appealed the original refusal to refer to Disability Awards, did not consider whether the worker's wage rate was correct.

- 1. Do you mention the wage rate issue to the worker?**
- 2. If so, what would you say?**
- 3. Do you think the previous Adviser was negligent?**
- 4. Do you have enough information to determine this?**
- 5. Would you admit to the error of the other Adviser?**
- 6. Would you raise this with your Manager?**

7. Would it make a difference to you if the Adviser was still with the Branch?

Sometimes an Adviser or Assistant may find fault with some action of another WAO staff member who managed the file previously.

If this occurs, and:

- if there is no means to remedy the fault, and;
- the fault has no bearing on the matter in which the Adviser or Assistant is engaged

then

the Adviser does not have a positive obligation to address the fault with the worker or to raise it with management.

However, if the "fault" is clearly not simply a matter of preference or opinion, but an action or inaction which is likely to be viewed as negligent in the particular circumstances, the Adviser shall raise the issue with his or her Manager.

The nature and source of any such report shall be treated as strictly confidential.

It shall be understood that any such report is made solely for the purpose of taking such steps as may be required to mitigate the effects of the negligent action, and to prevent repeat occurrences. This report should not be treated as a complaint against a staff member, nor should it result in any kind of disciplinary action.

Any significant fault raised by a worker, which is, in the opinion of the worker, negligent or incompetent, shall be treated as a complaint and referred to the Manager as such.

STANDARD 21 MANAGEMENT MUST PRESUME PROFESSIONALISM

The WAO has a highly professional staff. WAO staff have been hired specifically for their ability, and for their judgment and discretion. Staff are entitled to a presumption that their actions are competent and appropriate.

Handling Complaints

Any conversation by a Manager with a worker, any other third party stakeholder, or even internal WAO staff in respect of a complaint brought against an Adviser, shall be conducted with a view to this presumption. The Manager will fully support the staff member's action to the staff member as well as to the worker or other complainant *until some substantial basis for the complaint emerges*. Obviously, the Manager has a positive obligation to investigate the complaint and the complainant will need reassurance that their complaint will be taken seriously. However, it is not appropriate for the Manager to indicate in any way that he or she agrees with or supports the complaint, prior to the completion of the investigation.

At the same time, WAO staff should not be subjected to investigation for specious complaints. Substantial time and energy ought not to be diverted from service to the public, in order that the staff member can compile documentation in their own defense. In the case of weak or baseless complaints, the Manager should deal summarily with the complaint without involving the staff member complained of.

Case Study:

A worker complains that his Adviser isn't doing anything for him and will not return his calls.

As the Adviser's Manager you look in the file and you see that the Adviser discussed the merits with the worker on two occasions, provided a merit letter after the second conversation, and attempted to return the worker's call to discuss the merit letter on two occasions, but could only leave messages. The second of those voice mail messages appears to have been quite detailed regarding the key issues in the merit call.

The worker called back a couple of times without reaching the Adviser and, in a third call, was told by the Adviser's assistant that the Adviser would not be returning any more calls, but that a second letter is on the way.

In that letter, you see that the Adviser confirms she is open to help the worker on any other issues that may arise, but that there is nothing further to discuss in regard to the merit call, and to please stop calling about the same thing because she doesn't have the time to keep returning his calls

- 1. Has the Adviser done anything wrong?**
- 2. Could the Adviser have done anything better?**
- 3. How would you handle this complaint?**

4. Would you handle it differently if you strongly disagreed with the Adviser's merit call?

It is only where the Manager finds some substantial basis for the complaint that the Manager should inform the staff member. At this time, the Manager should treat the complaint as a complaint against the Branch, and work cooperatively with the impugned staff member to provide a Branch response to the complaint.

The Manager must not get ahead of the evidence. The Manager shall not hold the complaint to the staff member's prejudice in any manner until such time as the substance of the complaint has been established.

Of course, the Manager is required to follow the evidence wherever it leads and to validate legitimate complaints. Where the complaint appears to have some foundation there is a need for due process. The following process is recommended:

PROCESS where a complaint appears to have some substantial foundation:

- The Manager is required to inform the staff member of the nature and source of the complaint and allow the staff member the opportunity to make a full answer.
- The staff member should have every opportunity to review the file, and may elect to respond to the Manager verbally or in writing
- The staff member, at his or her option, may request a telephone call with the complainant mediated by the Manager, to discuss the nature of the complaint.
- Should the Manager conclude, or the staff member agree, that the complaint is justified, the Manager shall take such reasonable and proportionate measures on behalf of the Branch as may be appropriate to the circumstances.

- The Manager's decision and response should be communicated to the staff member without delay.
- The staff member is entitled to have the matter referred to the Committee of Peers for a non-binding opinion on the finding of fault and on the remedy.

This isn't to say that even those actions or decisions taken by staff which are perfectly *defensible* would be the best actions possible:

There may well have been other reasonable options open by which the staff member could have avoided the complaint. The Manager should take full advantage of the situation to coach the staff member on these alternatives.

VI. MANAGING COMPETING DUTIES

STANDARD 22 ANTICIPATE AND ACT TO AVOID POTENTIAL CONFLICTS OF DUTY

What Do We Mean By Conflict Of Duty?

There are essentially three duties owed by WAO staff in the course of discharging their duties. These are the Duty to the Worker, Duty to the Administration of Justice, and Duty to the Employer. Sometimes, these duties conflict.

The Duty To The Worker

According to the Canons of Legal Ethics set out in the BC Law Society's Code of Conduct:

(5) A lawyer should endeavour by all fair and honourable means to obtain for a worker the benefit of any and every remedy and defence which is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any worker, violation of law or any manner of fraud or chicanery. No worker has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

(6) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the worker's instructions, every defence that the law of the land permits, to the end that no person will be convicted but by due process of law.

Unlike a lawyer, an Adviser's ability to represent is circumscribed by the necessity of finding merit. In the Adviser context, "every remedy and defence" and "every defence the land permits" means every reasonable remedy and stratagem.

Case Study:

In the course of an oral hearing, the employer makes unequivocal assertions of fact which the worker informs you are false and which could be shown to be false by a particular document purportedly in the possession or control of the employer. At your request, the Vice Chair orders production of the document.

Before the employer provides the ordered document, your worker provides you with a copy obtained through his own sources. You don't know how long he has had this document or how you got it. He says it's a "public document" that everyone in the workplace can view.

The document contradicts the evidence given by the employer on certain relevant, but not definitive points. The document's principal value to your worker is in its support for the worker's credibility and its challenge to the credibility of the employer's.

You know the Panel is waiting for this information and wants to conclude the hearing. However, if you submit the worker's copy to the Panel immediately, the employer will have an opportunity to reconcile the document with his testimony. The worker believes the employer wouldn't be

above editing or altering the original to maintain his credibility.

- 1. Do you have any duty to the Panel to provide the evidence as soon as you can obtain it?**
- 2. Does this duty conflict with your duty to your worker?**
- 3. If there is a conflict, how do you resolve it?**
- 4. Would you have asked the Panel to order production from the employer if your worker already had a copy of the document, and you knew it?**

The Duty To The Administration Of Justice.

The provisions of the Canons of Legal Ethics most appropriate to the WAO context are as follows:

(1) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of workers, at the same time discharging professional duties to workers resolutely and with self-respecting independence.

(2) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.

(3) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the worker's cause or in the evidence tendered before the court.

(4) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a worker's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery, or pretended solicitude for their personal comfort.

Case Study:

The Vice Chair asks you if you are aware of any other medical evidence relevant to the issue on appeal. You know that the worker has obtained a specialist report at his own expense which would be damaging to his appeal.

- 1. What should you say to the Panel?**
- 2. To the Worker?**
- 3. If you equivocate, and the Vice Chair discovers that you were aware of the evidence, do you think it will affect your ability to represent other workers?**
- 4. Does your answer to Question 1 depend on the likelihood that the Vice Chair will discover you were aware of the report?**

Unfavourable Evidence:

In the course of providing representation, an Adviser may receive or become aware of evidence that is unfavourable to his or her worker's case.

Determining whether to disclose this evidence can be a challenging professional responsibility issue. The following process is recommended:

PROCESS:

Negative evidence should be discussed with the worker at the earliest opportunity. The best approach is to determine how best to neutralize or distinguish that evidence, but to disclose it all the same. It is also good practice to provide the worker with an opportunity to withdraw the appeal before the evidence is submitted. If a worker insists on withholding evidence that must be disclosed, withdrawal may be the Adviser's only option. (See Mandatory Withdrawal)

If the negative evidence is expert *opinion* evidence, and if it was obtained by the worker at his own expense, the worker may choose not to disclose it. However, the worker should then be informed:

- that you will not either expressly or by implication be suggesting that the expert evidence available to the Panel is comprehensive;
- that you will disclose the existence of such evidence if questioned;
- that, in the event you are asked and reveal the existence of the negative evidence, that the failure to disclose in the first instance will impact on the worker's credibility.

In the event that the WAO has obtained expert opinion evidence on the worker's behalf, and that evidence is negative, the Adviser should disclose the evidence to the Panel. The worker should be informed of this contingency before WAO solicits the evidence.

In the event the evidence concerns objective facts and not opinion, and if the failure to disclose the evidence would constitute an attempt to mislead the Panel, the worker should be informed that the Adviser must disclose the evidence. If the worker insists that the evidence be withheld, the Adviser should withdraw. The circumstances of

withdrawal should be immediately communicated to the Manager.

In the event the Adviser comes into the possession of or is made aware of evidence, whether factual or opinion, whose disclosure is mandated by law or has been ordered by the Panel, the Adviser should inform the worker of the obligation to disclose and immediately disclose the evidence or the existence of the evidence to the Panel.

If Advisers are asked directly by a decision-maker whether other evidence exists, they must answer truthfully and disclose the evidence if in their possession. The same duty applies to workers if they are asked directly.

As noted, all of these matters should be discussed with the worker early on in the representation. The worker's understanding and acceptance of these terms may influence his or her choice of representation

If an Adviser cannot resolve whether a piece of evidence should or should not be disclosed, they may choose to consult with their Manager.

Case Study:

A worker claims that his psychologist believes that WorkSafeBC should accept responsibility for the worker's psychological disability. According to the worker, the Psychologist wants to know what would be more helpful: Should he diagnose the worker with Chronic Pain Syndrome, Pain Disorder, or Depression?

- 1. What do you tell the worker?**
- 2. Supposing the worker's psychologist calls you and confirms that the worker's presentation is a little**

ambiguous but he would like to help because the worker really is psychologically disabled.

- 3. What do you say to the psychologist?**
- 4. If you “assist” the psychologist, and the circumstances around the psychologist’s opinion come out, whose reputation will suffer the most; yours or your psychologist?**

The Duty To The Employer (the Province of British Columbia)

The duty to the Employer is governed by the BC Public Service Code of Conduct. Some of the provisions which are particularly relevant to the WAO and to the balance of their respective duties follow:

“Public service employees have a duty of loyalty to the government as their employer. They must act honestly and in good faith and place the interests of the employer ahead of their own private interests.”

“BC Public Service employees may comment on public issues but must not engage in any activity or speak publicly where this could be perceived as an official act or representation (unless authorized to do so).”

“Employees must not jeopardize the perception of impartiality in the performance of their duties through making public comments or entering into public debate regarding ministry policies. BC Public Service employees must not use their position in government to lend weight to the public expression of their personal opinions.”

“BC Public Service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient, and effective.”

The duties set out above are entirely consistent with these standards. Few of the duties mentioned above have the potential to conflict with the other duties to the worker or the administration of justice.

Best Practices to Avoid Conflicts

Having said that, the Adviser should ensure **at the outset** that his or her worker is aware of all of his other duties. It may be valuable for the Adviser to have the discussion on how he or she would manage some of the more common conflicts that arise (see also **Standard 12** Manage worker expectations).

In discussions with workers or the media, the Adviser should avoid critical comments in respect of the WorkSafeBC or the Provincial Government or any of their Officers.

An Adviser should NEVER recommend that workers take their concerns to the Media, however valid those concerns may appear.

STANDARD 23 RESOLVE CONFLICTS OF DUTY WITH REGARD TO THE INTEGRITY OF THE WAO

Principles for resolving conflicts

1. Advisers must always act to uphold the integrity of the WAO. An Adviser should never take an action which, if discovered, would reflect poorly on the WAO.
2. Confirm the facts giving rise to the conflict. Sometimes, the conflict is just a misunderstanding.

3. The first duty of an Adviser with regard to any particular worker, is the worker's interests. In cases where there is no *necessary* conflict between the Adviser's duty to the worker and his other duties, (*and irrespective of how helpful he or she would like to be*) the Adviser must represent the worker's interests. He or she must resist directions or suggestions from WorkSafeBC, from the Review Division, from WCAT, and even from WAO management, which would have the effect of compromising the Adviser's ability to represent the worker.
4. However, in the event of a clear conflict between the Adviser's duty to the worker and his other duties, the Adviser should seek the resolution of that conflict which will *minimize* prejudice to the worker, but without compromising the Adviser's other duties. It is recommended that the conflict be discussed with either the Manager or the Committee of Peers at the option of the Adviser.
5. The worker should be informed of the nature of the conflict and the proposed resolution should be discussed. If the worker and the Adviser are unable to agree on a course of action that will allow the Adviser to proceed without unacceptable compromise to his other duties, the Adviser should withdraw.
6. In the event the Adviser believes that a clear conflict exists between the duty to the Administration of Justice and the Adviser's duty to his Employer, the Adviser should bring this conflict to the attention of his or her Manager, Director, or Executive, at his discretion, and seek direction. If the Adviser is directed to follow a course of action which, in the considered view of the Adviser, would still violate his duty to the Administration of Justice, the Adviser may refuse to follow that direction and may withdraw, having notified his or her Manager of his decision.

Case Study:

As part of your job, you are asked to work on a committee that conducts a final review of policy amendments before they go to WorkSafeBC's Board of Directors for approval.

You learn that the Board of Directors is likely to make a change to the policy for occupational illness as follows: A worker who does not suffer a loss of earnings attributable to the illness within six months of the first indication of physical disability will be presumed to have no economic loss due to the illness and will not be entitled to any wage loss benefits. When the policy comes out, it is expected to have immediate effect.

You have a worker who is employed at a pet shop, and suffers from rashes and headaches. She was diagnosed 5 months ago and her doctor had thought her symptoms were related to the pet dander. The worker continues to work despite terrible aggravation of her symptoms, because she cannot afford not to. You have appealed the worker's denial. The worker will not take time off, despite her doctor's urging, until she can get compensation benefits.

- 1. Can you tell the worker about the expected Policy?**
- 2. What should you do?**

STANDARD 24 IF IN DOUBT, ASK.

There comes a point when any Adviser's expertise, experience, and judgment are inadequate to resolve some particular problem.

These Standards have identified a number of circumstances in which it is appropriate to elevate the issue to the Manager. For example; whether it is appropriate to withdraw or where the authority of another representative must be authenticated.

Usually, the elevation of an issue concerns a matter in which any mishandling may result in a political or legal backlash for the Branch.

There is no reason that any Adviser should assume any risk or liability on behalf of the Branch. Neither should he or she knowingly place the Branch in significant jeopardy.

These kinds of determinations properly reside at the senior management or executive level. Of course, risk cannot be eliminated: It must be managed. Many of these Standards represent a form of compromise between, on one hand, a liability firewall that would paralyze WAO's ability to act and respond and, on the other, an absolute freedom of action that would leave the Branch wide open to civil liability.

In between those two polarities is a great deal of discretion – but, **when in doubt, ask.**

PART III. YOUR DISCRETION

GUARD YOUR DISCRETION

Areas Of Discretion

These Standards do not propose to limit or circumscribe the existing discretion of WAO staff. However, it is considered valuable that certain protected areas of discretion be specified. These protected areas would not be comprehensive of WAO discretion -in the same way that National Parks are not comprehensive of natural habitat. The purpose is to ensure that discretion residing within the protected areas is not shot through with holes.

1. Merit:

The merit call is an area of protected discretion. Subject to the exception set out in "Interference With Discretion: which follows, no manager or other staff member may require an Adviser to change his merit call or to represent in the absence of merit.

2. Conduct Of File:

The Adviser is presumptively competent to manage his/her files. Management acknowledges the expertise and ability of its staff, and will not overrule the decision of an Adviser on any such conduct of file matter. The following list is not exhaustive but comprises many of the more common "conduct of file" elements in which the Branch would ordinarily defer to the Adviser's discretion, *on a particular file*:

- the content of an Adviser's file reviews;
- the identification of issues by Advisers;
- the assessment of the facts and application of the law to the facts;
- the manner in which the worker's case is prepared and presented, and

- the development of an overarching strategy.

This does NOT mean that Managers, the Committee of Peers, colleagues or others are not permitted to hold or express a contrary opinion or recommend changes. However, it does mean that the Adviser is entitled to represent on an individual worker file according to his best judgment and without undue interference.

However, any Adviser may be required to justify his or her general practices in regard to his or her management of files. "Conduct of file" as described here is confined to the particular facts of particular files. It does not extend to whether and how the Adviser's actions comply with the established Work Process.

3. Hearing Conduct Specifically:

In respect of hearing conduct and tactics in particular, the following types of decisions are generally seen as being within the discretion of the Adviser and may be made even without the consent of the worker:

- agreeing to adjournments
- agreeing upon facts not in dispute
- calling or declining to call witnesses
- agreeing to introduction of evidence by other parties
- raising, refusing to raise, or abandoning positions or defences

Although an Adviser may make such decisions over the worker's objection, doing so should be avoided if at all possible. In most cases, it should not be necessary to act contrary to the wishes of a worker except at or immediately before a hearing. If sufficient time exists, the worker should be consulted and his or her opinion sought.

4. Improper Conduct:

As discussed in Standard 21, the Manager will presume the Adviser to have conducted the file in a professional manner until she has reviewed any

evidence to the contrary with the worker, and considered the Adviser's response. If the evidence establishes little more than a difference of opinion, the matter is at an end. Otherwise, the Manager shall follow the process outlined in Standard 21.

Interference With Discretion:

There is one narrow exception to the sanctity of the merit call: Standard 5: Exception 4 does allow the Manager to direct an Adviser to represent contrary to that Adviser's merit call – although not in the absence of merit. The exercise of this exception is anticipated to be a rare event.

Further, the Manager must provide a defensible rationale for merit, ratified by the Committee of Peers. This ensures that the interference with discretion is not unreasonable, nor arbitrary. It is hoped that an Adviser, presented with the Committee's merit rationale, would revisit his own merit conclusions.

Workers are also known to interfere with Adviser discretion, particularly in regard to the Adviser's conduct of file/hearing conduct. Most workers will only care to provide instructions on significant issues, but there are some workers who will attempt to micromanage every aspect of their Adviser's actions. For example, they may ask to approve the wording of correspondence, insist on being consulted on insignificant details of the case, or insist that irrelevant arguments be advanced.

The degree to which an Adviser should tolerate such demands is a matter of professional judgment and depends upon the degree to which they interfere with the Adviser's ability to properly represent the worker. If the Adviser believes his or her effectiveness is impaired, the worker should be informed of the problem and requested to stop.

In some situations, especially if the interference continues after the request to stop, a continued and excessive micromanagement by workers can demonstrate a lack of trust or confidence in the

Adviser. If this is the case, the Adviser will have to review the circumstances with his or her Manager as set out in Withdrawal For Loss Of Confidence).

EXERCISE YOUR DISCRETION REASONABLY

How To Be *Reasonable*.

- It is not always necessary to do a full file review to find merit on an individual issue.
- It IS ALWAYS necessary to do a full file review to determine if there may merit in respect of *any* of the issues in a particular file.
- It IS ALWAYS necessary to do a file review to find that an issue has NO merit.
- Wherever possible an Adviser should speak to a worker directly before meriting the worker out – particularly where merit relates to the worker's credibility.
- Maintain objectivity. An Adviser must ensure that his or her judgment is not governed by irrelevant considerations. The Adviser should consider whether he or she is attached emotionally or recoils emotionally from a particular worker or a particular issue. Consider any conflicts of interest (see **Standard 18** Avoid any perception of conflict of interest above.) Be careful not to discriminate against any people group.
- In returning a worker's call or telephone message, three attempted calls (not on the same day) would be presumptively sufficient. The onus is on the worker to contact the WAO.

- Where the WAO is unable to contact a worker but wishes to confirm some significant action on which WAO is representing or assisting, one attempted call followed by a letter requesting contact is presumptively sufficient, providing that adequate time is allowed for the worker to receive the letter. Where there is no time to allow for receipt of a letter, the Adviser should probably make several attempts at telephone contact but this will depend on the circumstances.
- In all communications, WAO staff should consider the worker's capacity to understand and respond to correspondence or advice, and staff should adjust their communication style, method, and frequency accordingly.
- Consider the worker's personality. Communications and documentation should be adapted for particularly vulnerable or particularly belligerent workers.
- Consider your knowledge and ability to represent on the particular issue. Research or seek assistance where required.
- On issues involving specialized knowledge (such as medical issues), it is necessary to assess whether additional expert evidence could be of assistance and whether it could be obtained.
- On credibility issues, it is necessary to inquire as to the existence and availability of witnesses or witness statements to corroborate.
- On difficult issues of legal interpretation of policy, it is reasonable to seek authoritative interpretation such as may be provided through searches of legal databases, WCAT; Review Division or Appeal Division. This does not apply to decisions in which the application of policy is uncontroversial; either clearly correct or clearly incorrect.
- Consider whether the issue is one of "standing on principal" or whether success would confer a substantive benefit.
- Consider the significance of the impact of the issue on the worker.
- Consider the worker's ability to self-represent.
- Consider potential downstream consequences of success or loss of appeal.
- Consider whether the pursuit of the particular issue has the support of the Branch.
- Consider the broader implication. Does the issue address some fundamental inequity of general importance.
- So far as strategy, consider how your level of investment in one file or on one issue, is affecting your ability to service your other files.
- Do not act as judge and jury. There is no need to guarantee success to take on a file. It is not even necessary to believe the appeal will succeed: However, an Adviser does need to believe he/she *could* succeed, and probably *should* also believe he/she ought to succeed.

A USEFUL DISTINCTION

WHO IS THE REPRESENTATIVE?

The worker is represented by the WAO – not by the individual Adviser. It is the prerogative of the WAO to reassign files or to withdraw representation from a worker. WAO must take steps to ensure that the worker's interests are not prejudiced in the event that an assigned Adviser takes an unexpected absence or the file is transferred.

However, s.94(2) defines the duties of an Adviser, not of the WAO, and specifically vests the discretion to determine merit with the individual Adviser. This implies that, so long as the Adviser has conduct of a particular file, he or she is obligated to meet all of the professional responsibility obligations that would apply as if he/she personally was the representative. Many of these obligations—e.g., confidentiality—continue to exist after staff are no longer working on the workers file and even after they the Adviser or other WAO staff member is no longer employed by the WAO.

S.94(2) also implies that the WAO ought not to unduly interfere with the Adviser's discretion in terms of his or her merit call and management of the file – unless blatant mismanagement of the file is apparent.

QUALITY OF SERVICE

COMPETENCE

Advisers have a professional obligation to deliver their services to workers in a competent manner. Competence involves not only substantive legal knowledge or advocacy abilities, but extends to all of the skills that representatives must use to properly serve their workers.

- advocacy
- problem-solving

As with knowledge, Advisers should ensure that their skills are up-to-date and seek to expand and improve them.

KNOWLEDGE

Advisers are expected to know the general legal principles and procedures that apply to the area in which they provide services to workers. WAO staff must have an adequate grasp of workers' compensation legislation, case law, Board policy and procedures, Review Division practices and Procedures and WCAT's MRPP. They should also have a general knowledge of administrative law principles. As part of this obligation, Advisers are also expected to keep their knowledge current and up-to-date.

Advisers are expected to communicate effectively with their workers. This is discussed in Standard 13.

Advisers must tailor their communications with workers to the particular abilities of the individual worker. Level of understanding, literacy, language and disabilities should all be taken into account when determining the best way to communicate with a worker.

In addition to the professional responsibility obligation to be knowledgeable, WAO staff should be familiar with the content of these Professional Standards and of the WorkSafeBC's and WCAT's Code of Conduct for Representatives, and of the BC Public Service Code of Conduct.

JUDGMENT

Advisers are expected to apply their best judgment at all times and to all services that they provide to workers. At all stages, they should apply their knowledge and skills to consider how to achieve the best possible outcome for the worker.

SKILLS

Advisers are expected to possess and apply the skills necessary to carry out the work they have been retained to do. Although they change from worker to worker, these skills could include:

Good judgment also involves knowing and recognizing one's own limitations. This Guide requires or recommends the involvement of the Manager or the Committee of Peers in specific circumstances. It is always good practice for WAO staff to seek confirmation from a manager or from peers wherever they are uncertain of their course of action.

- legal research
- analysis
- application of law to the relevant facts
- writing
- negotiation
- alternative dispute resolution

DILIGENCE AND ORGANIZATION

Advisers are expected to be diligent and conscientious in representing workers and to carry out their responsibilities in a timely manner.

Implicit in this obligation is the ability to manage their affairs in a way that ensures that this occurs. This includes effective time management, filing systems and appropriate use of technology.

The consistent use of an effective bring-forward system and proper ARK entries and document maintenance are the two most critical tools supporting diligence.

(FIPPA also provides individuals with the right to access personal information about them held by the government. This includes information in WAO paper and electronic files. Staff should therefore assume that workers will have access to their files and govern themselves accordingly.)

HONESTY AND CANDOUR

When advising workers, Advisers have an obligation to be honest and candid. In order to properly serve the worker, the Adviser's advice must disclose the merits and faults of the case, and any downside risk, however slight. The degree of formality required for advising a worker about downside risk and for documenting that advice will vary depending on the degree of risk. (See **Standard 7** Don't accept illegal or improper instructions" and **Standard 9** Document your instructions")

Workers are often required to make important life decisions based upon their expectations of the outcomes of their claims or appeals. Nevertheless, Advisers should take particular care when asked to predict the outcome of an appeal and no Adviser is obliged to discuss the probability of success. However, expectations need to be managed around particularly difficult appeals (See **Standard 12** Manage worker expectations").