The Workers Compensation Board of Manitoba: Environment, Structure, and Process

By

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Contents

Abstract

This thesis analyzes the environment, structure, and process of the Workers Compensation Board of Manitoba. It examines the operation of this modern regulatory body with reference to the literature on regulation. Regulatory bodies are created in specific circumstances. They perform particular mandated functions within identifiable, external policy environments. The outputs of these bodies are also influenced by their internal administrative structures and dynamics of decision-making.

The thesis begins with a brief examination of the history of workers compensation. Early common-law remedies available to workers injured in the course of their employment proved inadequate. The progress toward the development of no-fault compensation systems in common-law jurisdictions reflected a concern with these remedies. The Meredith Report, commissioned by the Ontario Government in the early 1900s, provided the blueprint for the subsequent implementation of provincial workers compensation legislation in Canada.

The next chapter of the thesis examines the external policy environment of the Workers Compensation Board of Manitoba. As a regulatory body, the W.C.B. operates within a policy community which includes both governmental and non-governmental actors and institutions. These interests have the potential to influence the outputs of the regulatory body through various points of contact. The thesis identifies and analyses the component features of the policy community of the W.C.B. of Manitoba.

The outputs of modern regulatory bodies are also influenced by their internal administrative structures. The structure of Manitoba's W.C.B. mirrors those of other modern disability programs. Chapter 4 begins with a description of the structural elements of disability programs and their associated decision-making processes. These elements and decision-making processes within the W.C.B. of Manitoba are then discussed and their influence on program output examined.

The conclusion of the thesis summarizes the chapters of the thesis. In addition, it briefly comments on the complexity of regulatory agencies and their accompanying regulatory environments.

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Introduction:

Governments in Canada formulate and implement policy through a variety of what have been called governing instruments. Such instruments are categorized according to their respective levels of coercion and "public profiles". Government expenditure programs, taxation, and "symbolic exhortation" are generally considered to be relatively less coercive and more public forms of government activity. Alternatively, public-owned enterprise and government regulation are looked upon as the more constraining and at the same time less public forms of government intervention (Doern and Phidd, 1992).

Regulation refers to the use of rules or restrictions to control particular activities. Government regulation consists of rules legitimized by government authority which are generally designed and employed to direct private sector behaviour. Government regulation was initially associated with the control of economic activity. Economic regulation was pursued by governments as a response to various types of perceived market failures. For example, it was used to control the rate of return allowed to the providers of service in areas of economic activity which are under monopoly or near monopoly control. More recently, governments have used regulation as a means of pursuing various social objectives. Social regulation includes regulation designed to insure occupational health and safety, environmental protection, and cultural protection (Adie and Thomas, 1987).

The literature on government regulation has been principally focused upon the political accountability of regulatory bodies. This focus derives from the fact that the majority of

regulatory activity is pursued through independent regulatory bodies which are to varying degrees removed from government departmental structures, ministerial responsibility, and the broader political process. As appointed bodies, these organizations have been described as "structural heretics", a term intended to emphasize the fact that they represent a compromise of the principle of full ministerial responsibility for all government activity and could be seen as threatening ultimate democratic accountability to elected representatives serving in legislatures.

Regulatory bodies vary considerably in their organizational structures and processes. Thomas and Zajcew (1993) suggest that individual regulatory agencies each develop somewhat distinctive governance structures and internal cultures. The term "governance structure" refers to the informal understandings about the core purpose of the organization, who should make particular decisions, the roles for decision-making, and the most appropriate responses to environmental change and policy uncertainty. The governing structures of these organizations also include often-submerged administrative cultures that make each of these bodies a distinct entity. The rules and routines characteristic of a particular governance structure are generally driven by both the external and internal influences represented by the internal administrative structure, the government framework in which it operates, and larger societal influences. This perspective is useful in interpreting the performance of the Manitoba Workers Compensation Board.

Workers Compensation Programs are social insurance programs designed to address the risk of work-related injury. These programs developed out of particular historical

circumstances and an understanding of their current activities requires some knowledge of their historical backgrounds. The regulatory function they perform is based upon policy mandates and administrative structures laid down in statutes passed by provincial legislatures. Implementation of those policy mandates is influenced by a wide range of factors, including individuals and organizations inside and outside of government.

The purpose of this thesis is to draw attention to the unique nature of the regulatory function by demonstrating the complexity of the environment in which the Workers Compensation Board of Manitoba operates. It will be argued that regulation by the W.C.B. involves far more than simply applying well defined policy principles established by legislation to individual cases involving injured workers. The Board plays a policy role in refining and implementing the principles set forth in legislation and it functions amidst a wide range of both formal and informal influences. The three models of administrative justice identified by Mashaw in his study of the U.S. disability program are also seen to be at work in the Manitoba case. The values represented by each model are reflected in the structure of the program.

Chapter Two of the thesis provides a brief history of the development of Workers Compensation Legislation as a response to workplace-related injury. The chapter begins with a discussion of the historical antecedents of the workers compensation system. Injured workers faced a difficult task in seeking compensation for injuries suffered in the course of employment prior to the establishment of systems of workers compensation. Common-law remedies were heavily weighted in favour of employers. However, in spite of this, injured workers experienced increasing success in litigation

against employers. Eventually, employer and labour groups lobbied for the development of legislation which would establish a system to address the risk to both parties presented by workplace-related injury. A review of the history of workers compensation contributes to a better understanding of the structure, environment, and process of the current workers compensation system.

Chapter Three of the thesis identifies and describes the external policy environment of the W.C.B. of Manitoba. The chapter begins with a general discussion of regulation. This discussion includes a review of the literature on regulation. Economic and social regulation are identified as the two principal types of regulation. In addition, the primary functions of regulatory bodies are presented.

The chapter then moves on to an analysis of the policy environments of regulatory bodies in general terms. Regulatory agencies operate within particular policy communities which include both governmental and non-governmental interests. The governmental interests influencing regulatory activity range from government cabinets and departments to legislative committees. Non-governmental interests impacting upon regulatory agencies and the regulatory process include interest groups, political parties, and certain "informed publics" such as the media and private consultants.

The final section of chapter three will scrutinize the policy environment of the W.C.B. of Manitoba with reference to the framework identified in the literature review. The points of access to the regulatory environment of the board available to governmental interests such as the provincial cabinet, legislature, and the government department responsible

for the W.C.B. (the provincial department of labour) and non-governmental interests such as interest groups, political parties, and various informed publics are identified and reviewed.

The governance structure and internal organizational culture of a particular regulatory body greatly influences the outputs of that body. This is true of the W.C.B. of Manitoba whose internal structures and processes impact upon the case decisions of the workers compensation program. Chapter four of the thesis examines in detail the potential influence of the Board's internal organizational culture on W.C.B. policy and practise.

After identifying the goals and functions of modern disability programs, chapter four concentrates on an analysis of the available literature on these programs. Relying heavily upon Mashaw's description of the internal administrative environment of disability programs, three distinct models of administrative decision-making which coalesce within these programs are discussed. The first of these approaches, the Bureaucratic Rationality Model of Administration, emphasizes a classic bureaucratic approach to the management of disability claims based on processes which stress rationality and efficiency. The second approach, the Professional Treatment Model of Administration, stresses the use of professional judgement in disability claims determinations. It implies an approach to the management of disability programs which emphasizes individual discretion in the disability claims process. Finally, the Moral Judgement Model of Administration focuses upon the guarantee of procedural rights in individual claims determinations. It combines some of the rational elements of the

bureaucratic rationality model with a commitment to the individual consideration of claims characteristic of the professional treatment model of administration.

The balance of chapter four is concerned with the application of Mashaw's model to the internal organizational environment of the Benefits Division of the W.C.B. of Manitoba. Specific structural and program elements within the division are identified which correspond to the models of administration found in Mashaw's typology. In addition, consideration is given to the relative influence of these administrative elements and the values they represent within the overall claims process.

The fifth and final chapter provides a brief summation of the findings of the thesis and some general comments about the nature of the regulatory function.

Generally, it is hoped that the thesis will provide some insight into the complexity of regulatory agencies and regulatory activity. The structures and processes of these bodies are influenced by their historical development. In addition, the internal and external environmental elements associated with these bodies have a significant effect on their operations and output. The relative dominance of any of these elements at any point in time can influence the policy-making and adjudicative outputs of these bodies.

Chapter 2:

A Brief History of Workers Compensation

2.1 Early Common Law Remedies for Workplace-Related Injury

> Social change may be revolutionary, but it normally comes about in a more-or-less orderly manner, out of the conscious and unconscious attempts of people to solve social problems through collective action. (Friedman and Ladinsky, 1967, P.50-51)

The development of Workers Compensation as the prevalent remedy for workplace-related injury in modern, industrial democracies has been variously described as "...the out-come of a massive and violent struggle between labour and capital during the nineteenth century,..."(Schmidt, 1980, p.46), and as a compromise between business and labour resulting in the formation of a new, workable, and predictable mode of handling workplace accident liability (Friedman and Ladinsky, 1967). Regardless of the ideological "spin" placed upon the history of the development of this remedy, Workers Compensation represents the culmination of a long history of efforts by involved parties to deal with this issue.

The advent of industrial capitalism had a tremendous impact on all aspects of life in many countries. Patterns of population, social structure, leisure, residence, culture, transport, and government were transformed (Bartrip and Burman, 1983). This, in turn, led to increased recognition of problems associated with this transformation of society.

One of the problems that had emerged was the risk to the safety and health of workers posed by the new conditions of industrial production. Initial responses to workplace-related injury focused upon the safety of women and children. Also, the efforts of government in this area were oriented toward prevention rather than compensation. For example, early British efforts centred upon the establishment of an inspectorate with certain constrained powers of inspection and enforcement (Bartrip and Burman, 1983).

This emphasis on prevention through the British Factory Acts of the early to mid-nineteenth century was largely unsuccessful because of the capitalist spirit of the age which accentuated economic growth over social concerns. This lack of success also reflected the limitations of prevention-oriented measures in dealing effectively with the risks attendant to industrial processes:

> However, Factory Acts did not answer the equally pressing issues of the worker's loss of income owing to work-related accidents and the sense of financial insecurity that working people, particularly those in hazardous occupations, must have endured for themselves and their families. (Guest, 1980, p.40)

Compensation for injuries suffered in the course of employment in common law jurisdictions such as Britain, Canada, and the United States was initially addressed through the courts. The common law contained remedies available to the injured worker,

but it also presented significant barriers to injured workers in pursuit of compensation. These barriers were related to both the process and the substance of the common law.

Early English Common Law Doctrine with respect to workplace-related injury rested upon Tort Law related to negligence. Specifically, The Common Law held that when two people were so closely and directly related that the activities of one of them may involve an appreciable risk of injury to the other, then a general duty of care rested upon the one who pursued the activities (Young, 1964). Failure to observe this general duty of care could result in a right of action for the aggrieved party before the courts. This duty of care eventually evolved to include the principle of vicarious liability. The inclusion of this principle left employers generally responsible for the negligent acts of their employees if those acts were committed within the scope of their employment (Hanes, 1968). However, the effect of this law on the employer-employee relationship was mitigated by various legal defenses available to employers.

When confronted with an action for negligence by an employee, an employer had at his disposal three basic and powerful defenses. First, the employer could successfully defend against an action if the situation was not one of negligence but rather one of unavoidable accident. Second, the employer enjoyed the defense of assumption of risk ("volenti non fit injuria") which did not allow for a successful action where the plaintiff "voluntarily" assumed the risk in question. Finally, the employer had available the defense of contributory negligence. This defense would bar recovery if the employer could prove that the plaintiff was at least partially responsible for causing the accident. These defenses, coupled with the fact that the burden of proof concerning the

negligence rested with the plaintiff in a court of law, left the injured worker in a difficult position before the courts (Hanes, 1968).

This difficult position was further exacerbated by Common Law treatment of the principle of vicarious liability as it applied to the employer-employee relationship. Initially, this principle held out some hope for injured workers in an economy in which an employer's direct personal negligence rarely arose due to the emergence of large, industrial joint stock companies. However, this principle did not hold in early court decisions specific to employer-employee disputes. The courts ruled that "...an action will not lie if the victim is a fellow servant with the actual tortfeasor, i.e. if the two share a common employment" (Hanes, 1968, p.11). This limitation to the principle of vicarious liability came to be known as the "Doctrine of Common Employment".

The Doctrine of Common Employment originated in the British case of Priestley vs. Fowler in 1837. Priestley, a butcher's assistant, suffered a broken leg when the delivery cart which he was driving overturned. The cause of action was based in his contention that the cart had been overloaded by, or at least with the knowledge of, his employer (Bartrip and Burman, 1983).

While the particular details of the situation which led to the initial cause of action did not seem to be correctly understood by the presiding judge based upon the reasons provided in the resulting judgement, the case was important in establishing the precedent that an employee did not have a cause of action against his employer if the accident was caused by the negligent act of a fellow employee (Schmidt, 1980). In

establishing this precedent, the court restricted the application of the principle of vicarious liability to the employer-employee relationship. The employer would not be held responsible for the negligent acts of those in his employ. Instead, the injured worker's legal rights in such situations would be restricted to a right of action against a negligent fellow employee. In practise, this right was of little value given the financial position of the fellow employee.

The legal defenses available to employers provided them with a heavily favoured status before the courts in cases of workplace-related injury. Further buttressing these extensive, substantive rights were economic and psychological barriers faced by injured workers contemplating an action at law.

The economic position of industrial workers during the nineteenth century was such that the possibility of pursuing a remedy through the courts was, financially, beyond their reach. The introduction of a contingent legal fee system in the latter part of the nineteenth century partially addressed this problem (Friedman and Ladinsky, 1967). Unfortunately, this system was insufficient as the injured worker could still not afford the delays associated with the legal process.

In addition to these financial difficulties, the injured worker faced certain psychological barriers in pursuing such an action:

> A man who sued his master was liable to be dismissed and could possibly have found himself dubbed a

> trouble-maker, unable to obtain another job, depending on the state of the local labour market at the time. As a result, a worker was most unlikely to take his master to court, even if he could, unless he had been so badly injured that he had lost his job as a result of his injury. (Bartrip and Burman, 1983, p.28)

These identified psychological barriers were aggravated in an economy characterized by restricted labour mobility and an extremely limited social safety net.

2.2 New Responses to Workplace-Related Injury

The balance of the nineteenth century saw a gradual erosion in the common law legal defenses available to employers. A number of rationales have been provided to explain this erosion. For example, it has been viewed as a natural evolution in the law corresponding to the demands of an emerging, modern industrial society (Castrovinci, 1976). Alternatively, it has been attributed to political pressure as the public became aware of the frequency of, and the consequences associated with, injuries related to employment. Finally, it has been explained as the consequence of organized pressure group agitation by trade unionists and other groups (Guest, 1980).

The gradual change in the common law was achieved through litigation and legislation. Initially, legal history recorded few cases regarding workplace-related injury. The documented cases were concerned primarily with the common employment principle.

The arguments of the plaintiffs in these cases "...relied either on a narrow definition of a fellow-servant, or else sought to show that the relevant fellow-servant was incompetent and that the employer should be held liable for appointing such a man" (Bartrip and Burman, 1983, p.107).

The narrowing of The Doctrine of Common Employment centred on what became known as the vice-principal rule. This rule held that a supervisor or foreman was a representative of the employer, not a fellow employee of those supervised (Bartrip and Burman, 1983). This position was upheld in a number of court judgments in Scotland during the mid-1800's. In addition, the courts in the United States were receptive to this substantive change in the common law. For example, in Wedgwood v. Chicago and Northwestern Railway Co. (1877), the plaintiff was injured by a bolt which had been inappropriately attached and subsequently brought an action against the employer. The trial court dismissed the case, but the Wisconsin Supreme Court reversed the decision. The judgment read, in part,

> It is true the defendant ... is a railroad corporation, and can only act through officers or agents. But this does not relieve it from responsibility for the negligence of its officers and agents whose duty it is to provide safe and suitable machinery for its road which its employees are to operate. (Friedman and Ladinsky, 1967, p.62)

An alternative line of attack for an injured worker trying to obtain compensation was to base a case on violation by the employer of his personal duty of care, rather than on his vicarious liability (Bartrip and Burman, 1983). While it was generally assumed that employers would only be liable for their own negligence where they participated in the work, court challenge based upon personal duty of care resulted in an extension of liability to include situations where employers had personal knowledge of a particular danger and failed to act upon it and in situations where employers did not take necessary precautions to insure at least the initial competence of their employees (Bartrip and Burman, 1983).

In spite of the above-noted changes in the position of the courts with respect to employer liability for injuries occurring in the workplace, there remained significant judicial reluctance to extend this liability. The courts in the various common law jurisdictions would continue to struggle with this issue throughout the nineteenth century. Concurrently, the issue would be further addressed through legislation.

Agitation for legislation which would effectively address the issue of workplace-related injury took place in the common law jurisdictions during the second half of the nineteenth century. In Britain, calls for the abolition of the Doctrine of Common Employment surfaced in the British Parliament in 1862. Two members of parliament introduced a bill which sought to restrict its application. The bill proposed that an injured worker be provided with the legal right to pursue damages against his employer if injured:

> In consequence of his master, of any other person employed by his master, not doing any act or providing anything which may be improper, in or for carrying on the undertaking, work, or business in or about which such workman or servant shall be employed by or on account of his master. (Bartrip and Burman, 1983, p.112)

In general, the bill continued support for the principle of restricted employer liability. However, its support for an extension of that liability met with overwhelming opposition in Parliament.

The recorded reasons for this opposition would be repeated in future debates by those supportive of employer interests. First, any extension of employer liability was portrayed as a first step on a "slippery slope" toward leaving the employer responsible for all workplace-related injuries including those for which the employee was solely responsible. Secondly, it was argued that such legislation could lead to a flight of capital as employers attempted to avoid the added costs of production which were likely to result from the passage of such legislation. Finally, in the laissez-faire spirit of the period, opponents saw such legislation as an unwarranted intrusion into the freedom of contract between employer and employee (Bartrip and Burman, 1983).

The 1870's were pivotal in the development of a new parliamentary attitude toward the issue of workplace-related injury in Britain. In addition, this period marked the

emergence of the organized labour movement as the principal advocate for reform of the law relating to this issue.

Alexander Macdonald, an independent M.P. described as one of the labour movement's primary spokesmen in Parliament (Hanes, 1968), introduced a bill in the British Parliament in 1876 calling for the abolition of The Doctrine of Common Employment as well as the Defense of Assumption of Risk. This bill was eventually withdrawn with the commitment that a select committee of parliament would be appointed,

> to inquire whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops is committed, and whether the term "Common Employment" could be defined by legislative enactment more clearly than it is by the law as it at present stands. (Hanes, 1968, p.15)

The committee held five meetings during the following year at which employers and The Trades Union Congress (T.U.C.), an umbrella group representing organized labour, made representations. Subsequent committee deliberations led to the submission of two reports. The majority report proposed a limited extension of employers liability to include liability for accidents caused by or through the negligence of their chief manager (Bartrip and Burman, 1983). The minority report recommended a more substantial

extension of this liability to include all others in positions of authority relative to the injured worker:

> The funds of every industrial undertaking shall be liable to compensate any person employed in such undertaking for any injury he may receive by the reason of the negligence of any person exercising authority mediately or immediately derived from the owners of such undertaking, with this qualification, that the liability to indemnify shall not extend to persons who, through exercising authority, are "bona fide" employed in actual labour as distinguished from superintendence. (Hanes, 1968, p.16)

These reports, coupled with the recommendations of a royal commission on railway accidents which held that railway companies should not escape liability for accidents by reason of acting through managers, led to further pressure by the T.U.C. and other interested parties on the British Parliament (Hanes,1968). This interest group pressure was supplemented by increasing awareness on the part of the public of the extent and severity of industrial injury. These viewpoints were subsequently voiced in Parliament where many parliamentarians conceded the inadequacy of the legal remedies (Bartrip and Burman, 1983).

When the Liberal Party won the British Election in 1880, its election platform included a promise to abolish The Doctrine of Common Employment. The new government

proceeded to introduce an Employers Liability Bill. The specifics of the bill were directed toward extending employer liability by holding employers liable for workplace accidents caused by or through the negligence of employees found to be in a position of supervision (Hanes, 1968).

The Employers Liability Bill of 1880 was the subject of tremendous interest group pressure as both employer groups and organized labour attempted to have their views incorporated into the final legislative act. This interest group pressure was manifested in various amendments to the original bill. The relative strength of the employers interest was evident in the amendments made to the bill which largely served to re-strengthen the legal position of the employer (Bartrip and Burman,1983; Hanes,1968).

The Employers Liability Act of 1880 provided for four changes to The Doctrine of Common Employment. Specifically, the injured worker would enjoy a cause of action "...where the accident was caused by the negligence of a fellow servant exercising the duty of superintendent; where it was caused by a workman's obedience to orders or directions issued negligently by a fellow servant whom he was obliged to obey; where it was caused by the act or omission of a fellow-servant in obedience to rules or by-laws of the employer or particular instructions given by a person with delegated authority; and where it was caused by the negligence of a fellow-servant who had charge or control of any signal points, locomotive engine, or train upon a railway" (Bartrip and Burman, 1983, p.156).

The development of employers liability legislation in Britain was mirrored in other common law jurisdictions, such as Canada and the United States, later in the nineteenth century. In Canada, The Ontario Government enacted the first employer's liability act in 1886. Under this legislation, an injured worker could sue the employer when the accident was caused by 1) the employer's negligence, 2) defective "ways, works, machinery, plant buildings, or premises," 3) negligence on the part of another employee who had supervision over the work of the injured employee, or 4) the failure of the employer to maintain proper guards for the machinery (Piva, 1975). As in Britain, the development of this legislation resulted primarily from the agitation of organized labour and other concerned interest groups as well as from increased public awareness of, and concern for, the mounting toll of death and disablement related to increased industrialization (Guest, 1980).

These changes in the common law left employers with the greater likelihood of facing damage suits and, often, with the prospect of having to pay compensation as a consequence of these suits (Guest, 1980). To limit their liability, employer groups began to discuss alternative remedies for resolving these situations.

The notion of an insurance scheme as a solution to the issue of how best to make provision for those injured in the course of employment was first proposed in Britain at approximately the same time as The British Parliament's Select Committee was considering changes in the common law related to this issue. The recommendation of an insurance scheme was based on the view that while both an extension and a reduction of employers liability could be argued for on the grounds of justice, there could

be no difference of opinion on the desirability of some provision for workers injured in the course of dangerous work (Bartrip and Burman, 1983).

Worker associations and labour unions had adopted a variant of this insurance solution earlier. Various workers sought protection against the loss of income due to injury or death by contributing a certain sum to a worker's pool from which they gradually fostered their own compensation insurance funds (Hanes, 1968). These funds eventually became large enough that they spawned autonomous organizational arrangements which managed the funds. These arrangements became known as "Friendly Societies":

> These societies provided financial remuneration to the worker or his dependents in case of disability or death; such financial assistance was given irrespective of any considerations of negligence on the part of either the worker, his foreman, or the employer. The only consideration was that the worker should be a contributing member of the fund at the time of his accident. (Hanes, 1968,p.22)

The initial insurance schemes proposed by employers and their parliamentary representatives emphasized the need for a compulsory plan, primarily supported by employee contributions. Organized Labour was firmly opposed to such schemes. Labour representatives feared that insurance would mitigate against efforts to introduce

or maintain a safe work environment. In addition, labour argued that employers should assume all costs associated with industrial accidents. This opposition delayed further serious consideration of the insurance alternative in Britain until following the passage of The Employers Liability Act in 1880.

The Employers Liability Act of 1880 led to renewed interest in the insurance alternative as employers pursued arrangements with their employees which would abrogate the powers of the act. Principle among these arrangements was "contracting out".

Contracting out referred to situations where workers gave a written undertaking not to avail themselves of the terms of the Employers Liability Act. The advantage of contracting out to employers was that they were relieved of the potential substantial financial obligations anticipated as a consequence of the Employers Liability Act (Bartrip and Burman, 1983). The advantage to workers was often an offer on the part of the employer to make a sizeable contribution to a workers' insurance fund of a previously mentioned friendly society arrangement (Hanes, 1968).

Acting upon the impetus provided by contracting out arrangements, British employers began to actively pursue insurance as a remedy to workplace-related injury. For example, in 1880 The Lancashire Coal Miners Association established a mutual insurance fund (Bartrip and Burman, 1983). The relationship between this type of activity and the terms of the recently passed Employers Liability Act was noted at the time by the Mining Association of Great Britain, which resolved "...that the principle of insurance ...was the principle which was most likely to succeed in avoiding litigation, in

satisfying the object and spirit of the Employers Liability Act, and in meeting cases of accidents of all descriptions" (Bartrip and Burman, 1983, p.162).

The decade following the passage of The Employers Liability Act in Britain saw a dramatic evolution in private, contracted employers liability insurance. The Employers Liability Assurance Corporation, the dominant firm in the field during the 1880's, issued between 12,000 and 13,000 policies covering some 500,000 men by 1886 (Bartrip and Burman, 1983). Supporters of these private insurance arrangements claimed a number of advantages. First, private insurance was supported on the basis that it promoted safety by not covering companies with a history of negligence. In addition, it was supported on the basis that it provided prompt payment to "legitimate" claimants (Bartrip and Burman, 1983).

Consistent with their earlier opposition to insurance, organized labour took a critical view of the growth of these private insurance arrangements. The T.U.C. found the benefit levels associated with these plans to be inadequate and questioned whether employees had entered such arrangements under duress (Bartrip and Burman, 1983).

The North American Common Law Jurisdictions experienced similar results from the passage of their own employers liability legislation. Passage of the Ontario Employers Liability Act led to the greater involvement of private insurance companies in the provision of workplace insurance (Guest, 1980). Later, various other provinces stipulated in their liability acts the prerogative of employers to pursue contracts with their employees or insurance to avoid involvement with the courts so long as these schemes

were at least equivalent to the law. The courts would retain final jurisdiction in the event of any dispute (Harding, 1988).

The British response to injuries suffered in the workplace continued to evolve into the last decade of the nineteenth century. Consistent with the enactment of the earlier employers liability legislation, progressive forces continued to press for the abolition of the common law defenses previously outlined. A legislative initiative early in the decade proposed that the injured worker enjoy the same legal remedies against the employer as third parties (Hanes, 1968).

Successive governments in Britain supported this and other initiatives based upon the rationale that a new response to workplace-related injury consistent with the demands of an industrial society was needed. They emphasized that so long as industry had remained on a small scale with employer and worker in close contact, the employer's liability for his own negligence was an adequate source of relief for the injured worker. However, with the growth of large scale industries organized into corporations it had become increasingly difficult for those injured to meet the legal standard of proof of personal negligence on the part of the employer for the loss sustained (Hanes, 1968).

Paralleling these proposed legislative measures was the gradual weakening of the initial common law defenses as actions were pursued under the provisions of the 1880 act. Injured workers found increasing sympathy in juries who were provided some latitude under the terms of the act in determining an appropriate remedy. While it was not uncommon for trial judges to dismiss actions after juries found in favour of plaintiffs, this

practise gradually fell into disuse resulting in more and greater "wins" for the injured worker in the courts (Hanes, 1968).

The response to this liberalization of employers liability law continued to be support for further extension of the insurance principle. Employer groups suggested that the government should legislate a system of compensation through some form of universal insurance. Their position was based largely upon the view that further extension of employer liability made a mockery of the notion of "fault" which underlies the principle of liability:

> You have entered on a new principle. You are no longer punishing an employer for a matter in which he is morally liable, but you are fining him in order to provide compensation in the case of deaths or injury of people where he has had no moral liability whatever. (Hanes, 1968, p.62)

Further initiatives with respect to employers liability were introduced in the British Parliament in 1893. These initiatives included a call for the abolition of The Doctrine of Common Employment. In addition, they proposed an end to contracting out.

These initiatives were challenged in Parliament by supporters of employers. The substance of the challenge was in support of some form of insurance in lieu of continued amendment of employers liability legislation.

In the debates which followed, the issue of contracting out took on significant importance. Organized labour, which had successfully pressured the government to include its prohibition in the original Bill, viewed these arrangements as the outcome of coercion based on unequal bargaining power. In spite of the fact that statistics indicated that contracting out provided greater benefit to the injured worker, on average, than litigation, labour remained adamantly opposed to any scheme which mitigated the injured worker's legal rights (Hanes, 1968).

Employer advocates were as adamant in their support of contracting out for without it employers would be exposed to increasingly generous court settlements. Also, they viewed these arrangements as fundamental to the evolution toward a system of insurance as the remedy to workplace-related injury.

The Employers Liability Bill of 1893 was eventually "scrapped" as the result of the impasse over the contracting out issue. Then, a new British Government was elected in 1894. The government was supportive of the principle of contracting out. However, in recognizing the opposition of the T.U.C. to the principle, the government was also aware that the election of a future government with ties to organized labour would result in the prohibition of contracting out (Mallalieu, 1950). This, in turn, would leave employers exposed to an increasingly liberal legal remedy. The government would have to balance this concern with the concerns of their supporters for the continuation of some form of contracting out scheme to buffer the effects of the 1880 Act (Mallalieu, 1950).

These considerations left a general compensation bill as the only alternative in the view of the government (Mallalieu, 1950). Compensation implied a new principle, the principle of strict liability. This principle required, in the case of workplace-related injury, that employers forward compensation to workers injured in the course of their employment without the then standard prior attribution of fault (Hanes, 1968).

The subsequent Workers Compensation Bill of 1897 reflected this change in orientation. The Bill went unopposed by employers who had grown accustomed to having their liabilities extended and found in a compensation system the opportunity to more easily determine this liability (due to the payment of premiums as opposed to court judgements). In addition they were hopeful that it would put an end to the litigation characteristic of the previous system (Hanes, 1968).

Organized Labour was somewhat more lukewarm in their support of the bill. However, its objections were directed largely toward details of the bill. The introduction of the principle of strict liability was a significant improvement which would result in greater (and quicker) financial security for injured workers. Also, the British variant of the scheme still allowed the injured worker freedom to choose between seeking remedy under the former Employers Liability Act or, alternatively, under the Workmens Compensation Legislation. Organized Labour ultimately contented itself with agitating for extension of the bill (Hanes, 1968).

2.3 The Introduction of Workers Compensation Legislation in Canada

The introduction of compensation legislation in Britain in 1897 stimulated immediate interest in Canada. This interest eventually led to "The Final Report on Laws Relating to the Liability of Employers to Make Compensation to their Employees for Injuries Received in the Course of their Employment which are in Force in other Countries", commissioned by the Province of Ontario and more popularly known as The Meredith Report, which provided the cornerstones for the development of a remedy for workplace injury in Canada based upon the compensation principle. Consistent with the earlier history of this issue, the ascendency of compensation as the principal remedy for those suffering injury in the course of employment was arrived at in Canada in a way similar to that in other common law jurisdictions.

Following the introduction of workers compensation legislation in Britain, The Province of Ontario commissioned a study by Professor James Mavor of The University of Toronto to report on this new law and its possible application to Ontario. "Mavor submitted his report in 1900, recommending that the existing employers liability type of legislation be retained because The English Compensation System, if adopted, would throw the whole cost of insuring against industrial accidents upon industry. The government accepted Mavor's arguments and took no further action for a decade" (Guest, 1980, p.41).

In the intervening years between Mavor's report and the commissioning of The Meredith Report, the hardships of the employers liability system as a remedy for injured workers came more sharply into focus. As in Britain, the system became untenable for both employers and labour. Workers could not afford the delays and costs associated with litigation (Guest, 1980). Employers were increasingly found financially liable by juries sympathetic to injured workers (Piva, 1975). In addition, employer groups were unhappy with private liability insurance as most of their premium payments went to administration and lawyers rather than to injured workers:

> Wenegast said that the Canadian Manufacturing Association was chiefly concerned with the elimination of "the waste that is incident to our present system, and to any system of employers' liability". Wenegast prophetically pointed out that "if we can eliminate the ambulance-chasing-lawyer...and the dividend collector of the liability insurance, then we shall have conserved to a very large extent the interests of the employers". (Piva, 1975, p.46)

Ontario had a great many small industries with little financial resources and a large farming community which regarded social measures like workers compensation with suspicion and concern (Harding, 1988). However, the manufacturing sector and its attendant organized labour groups (organized labour in Canada was generally supportive of the principle of compensation) were eventually able to apply the pressure

necessary to move the Conservative Government in Ontario to commission a study of alternative remedies employed in other countries (Piva, 1975).

"The Final Report" of Sir William Meredith concluded a three-year process involving hearings, investigations of other countries' remedies, and an interim report. The final report has been termed "...a masterpiece of conciliation" (Harding, 1988, p.5). The report called for the replacement of the existing employers liability type of legislation in favour of a new system of workers compensation. It recommended five basic principles upon which the new system should be based. These principles were

1. No Fault Coverage- workers gave up all rights to sue their employer for the effects of a work injury in return for automatic benefits if injured on the job, irrespective of fault on the part of the worker, co-workers, or the employer.

2. Collective Liability- in return for freedom against lawsuits by workers injured on the job, employers became collectively liable to pay for the costs of workers compensation.

3. Guaranteed Benefits- workers were guaranteed payment of benefits at a legislated level, irrespective of bankruptcy of individual employers or insurers.

4. Independent Administration- workers compensation was to be administered by an independent board. This has been understood to mean a tripartite board with equal representation by the two parties of interest, chaired by a neutral third party.

5. Exclusive Jurisdiction- The independent boards were granted quasi-judicial authority to make final determinations on all matters pertaining to workers compensation law, with no review by the courts or other external agencies. (Donner, 1988, p.3-4)

The hearings which preceded the final report were heavily dominated by business and organized labour. While in general agreement as to the desirability of the principle of compensation relative to earlier remedies, their respective positions as to various aspects of the structure of a compensation system were at odds. The position of labour, represented at the hearings by The Trades and Labour Congress (T.L.C.), was that the new system should 1) be financed exclusively by employers; 2) be a totally no fault scheme; 3) compensate for all lost wages; and, 4) pay benefits for as long as the disability lasted (Workers Compensation Commission, 1912).

Employers, primarily represented at the hearings by The Canadian Manufacturers Association (C.M.A.), wanted 1) the fund to be financed by workers and government, as well as employers; 2) time limitations placed on benefits; 3) a bar to workers who had contributed to their own misfortune; 4) application of the law only to those employers with three or more workers; 5) administration of the system by a state-run board, but with access to the courts on matters of law; and, 6) application of the act only to "accidents"; i.e., no provision for compensation for industrial diseases (Workers Compensation Commission, 1912).

Meredith was considered a representative of employers' interests as a former leader of The Conservative Party of Ontario. However, it is generally held that the

recommendations of his report were at least as sympathetic to the interests of labour as to employer interests (Piva, 1975). Piva (1975) suggests that this may have been the result of the relative preparedness of the T.L.C. at the hearings.

Following the tabling of the report in October, 1913, together with a draft of a Workmen's Compensation Act based upon the recommendations of the report, the Ontario Government convened another meeting of the two principal interest groups in January of 1914 to discuss the pending legislation (Guest, 1980). Following this, the government introduced a Workmens Compensation Bill in the Ontario Legislature in March of 1914.

The Bill, which passed through the legislature and became law by January 1 of the following year was based primarily upon Meredith's five principles. Benefits collected solely from employers would be paid at a legislated level by an independent compensation board. Compensation would be automatic, but a waiting period of seven days would be required before any benefits were paid, and there would be no benefits if the compensation board was satisfied that the accident had been caused by the serious and wilful misconduct of the worker (except in the event of death or serious injury). The board was given exclusive jurisdiction of all matters related to workers compensation law. Finally, the administrative structure of the board provided both labour and employers with an integral role in the ongoing administration of workers compensation (Guest, 1980).

The Ontario Legislation provided the foundation for the general introduction of the compensation principle throughout Canada. This legislation was followed by the introduction of similar legislation in other provincial jurisdictions in the country including Manitoba which introduced workers compensation legislation in 1917 (Harding, 1988, December). The subsequent introduction of compensation systems created a new locus for decision-making in this area of public concern. The issue of workplace-related injury was substantially removed from the court system in favour of a new, legislated environment involving an independent administrative agency. This agency would be responsible for the implementation of a comprehensive program designed to meet the needs of injured workers. Its surrounding policy environment would institutionalize the historical conflict between the two primary interest groups, business and labour, involved in this issue. A neutral third party, government, was intended to mediate this conflict. It is to a more detailed description and evaluation of this administrative body and its surrounding policy environment that we now turn.

Chapter 3:

The External Policy Environment of the W.C.B. of Manitoba

3.1 Government Regulation and the W.C.B. of Manitoba

> "Regulation, in the broadest sense, is the essential function of government." (P.1, Hartle)

The Workers Compensation Board of Manitoba was created to respond to workplace-related injury following the removal of this issue from the purview of the Canadian legal system. Provincial workers compensation legislation made provision for the creation of this administrative body and provided it with exclusive jurisdiction over this area of public policy within the parameters of the legislation.

The WCB of Manitoba can be categorized as a quasi-independent, regulatory agency. It performs a function delegated to it by statute passed by the Provincial Legislative Assembly. The responsibilities of the Board are carried out in a public policy environment which includes other government actors and institutions as well as non-governmental groups and individuals.

This chapter will outline in detail the policy environment in which decisions concerning injured workers are made. It will focus upon The W.C.B. of Manitoba as a regulatory body operating within a particular, provincial policy environment. The chapter begins with a review of the literature on government regulation. It then describes the major

elements of the policy environment of regulatory boards in general and analyzes the specific policy environment of the WCB of Manitoba.

The expansion of government regulation during the twentieth century has been significant. Along with other modes of government action such as taxation and government expenditure, it has been used by governments to pursue a variety of public policy objectives.

Regulation involves the use of rules to direct and/or constrain private sector activity (Adie and Thomas, 1987). Initially, it was introduced as a means to correct perceived imperfections in the market system:

> Its purpose is to make private economic activity safe for liberal democracies by remedying imperfections in the market place that prevent business activity from being self-regulating. (Weaver, 1978, p.45)

This direct economic regulation involved intervention to correct one or a combination of a number of dimensions of economic behaviour: the entry and exit of firms into particular economic activity (eg.,broadcasting licenses and trucking licenses); the setting of prices (eg.,rent controls, telephone rates, and airfares); the volume of output (eg., the management of supply of agricultural products under marketing boards); and, the rate of return allowed to the providers of a service (eg., telephone and hydro rates)

(Adie and Thomas, 1987). This type of regulation tends to be industry-specific and relies mainly on economic analysis for its justification (Reagan, 1987).

More recently, regulation has been associated with public policy objectives of a "social" nature (Adie and Thomas, 1987; Weaver, 1978). Social regulation includes rules which are imposed in pursuit of various social, as opposed to strictly economic, objectives. It is recognized that while the ends of these regulations may be social, there are often economic consequences associated with them. Identified areas of social regulation include health and safety regulations (eg., occupational health and safety and consumer product safety); environmental protection (eg., regulations restricting pollution and requirements for environmental impact assessments); information and fairness regulations (eg., regulations against misleading advertising and protection against fraud); and cultural regulations (eg., Canadian content rules and language legislation) (Adie and Thomas, 1987). Social regulation is generally applied beyond the parameters of a specific industry. In addition, it does not exclusively rely upon economic analysis as a supporting rationale for its implementation (Reagan, 1987).

Regulation takes place through departments of government and through a variety of non-departmental entities variously called boards, commissions, or tribunals. The non-departmental bodies enjoy some degree of freedom from direct political supervision and control (Adie and Thomas, 1987). The independence characteristic of these bodies has been alternatively supported and criticized and remains the principal issue of discussion relating to this instrument of public policy.

Arguments in favour of regulatory independence are rather broad ranging. A principal argument in support of autonomy is the increasing complexity of government activity. Various areas of government are now seen to require a level of expertise in decision-making beyond that possessed by most politicians. This has created a vacuum which some argue must be filled by individuals with the necessary expertise to make "rational" decisions. Further, these experts require some independence from the political process in order to insure that rational choice is not unduly influenced by political factors. Mallory (1983) emphasizes the importance of expertise (and the implied need for independence in decision-making) in his discussion of transportation policy:

> In a world of complex and rapidly changing technology it is unavoidable that we must depend upon an expert agency to determine from time to time the degree of permissible hazard in substances in common use or the rules for the safe operation of common carriers. (Mallory, 1983, p.133)

A related argument focuses upon the need to separate the administration of a particular function from the personnel and budgetary procedures that apply to government departments. Those supportive of regulatory independence believe that experts must be allowed sufficient latitude to pursue their goals without the encumbrances related to

the hiring and budgetary procedures generally associated with line departments (Adie and Thomas, 1987).

Another argument in support of regulatory independence centres upon the nature of the activities of regulatory agencies. Regulation often involves the arbitration of conflicts. It requires the deliberating body to determine the "winners" and "losers" in such disputes (Brown-John, 1981). The need for such bodies to appear impartial suggests that these functions be entrusted to independent agencies at arms length from the government (Adie and Thomas, 1987).

The arguments against regulatory independence are generally directed toward the accountability problem which it creates for government. Fundamental principles of responsible government such as ministerial responsibility and legislative supremacy are often compromised by the use of independent bodies as vehicles for the pursuit of public policy objectives.

The principle of ministerial responsibility is based upon the notion that government ministers are accountable for the decisions and actions of the government departments for which they are responsible. Ministers cannot entirely escape responsibility for the boards and commissions for which they are statutorily responsible. However, the principle of ministerial responsibility is attenuated when decision-making is delegated to an independent board, commission, or tribunal. In such situations, the minister may be somewhat excluded from the decision-making process (Adie and Thomas, 1987).

Legislative supervision of the functions of independent, regulatory agencies is often undermined by the initial need to enact legislation of a broad, enabling nature to allow agencies the requisite latitude to effectively deal with a particular area of public policy. This may result in the development of regulations which may not have been contemplated nor supported by the framers of the initial legislation (Mallory, 1982).

The quasi-independent, regulatory agency potentially performs a number of functions depending upon the nature and extent of its mandate. Brown-John (1981) identifies four principal functions of a regulatory body: A) It enforces policy; B) It promulgates policy statements and guidelines; C) It administers policy: and D) It renders policy advice. An individual agency may not perform all of these outlined functions. The particular mandate of an individual agency will largely determine their priority.

Brown-John (1981) describes the enforcement of the statutory policy mandate as the raison d'etre of a regulatory agency. He uses the example of the Federal Broadcasting Act (since replaced in legislation) to make this point. The Act outlines the broad policy goals of the government's broadcast policy and designates that "...a single, independent public authority should exist to achieve these purposes" (Brown-John, 1981, p.87).

One provision of the legislation cited above reveals the broad discretion delegated to the designated regulatory body responsible for this area of public policy, the Canadian Radio-television and Telecommunications Commission, to enforce the provisions of the Act:

g) The national service should:

(i) be a balanced service of interest to Canadians in fair proportion.

(ii) extend to all parts of Canada as funds are available.

(iii) be bilingual, and

(iv) contribute to national unity and the Canadian identity. (Brown-John, 1981, p.87)

The C.R.T.C. is left with the responsibility to enforce these provisions which include such nebulous concepts as "Canadian identity" and "balanced service".

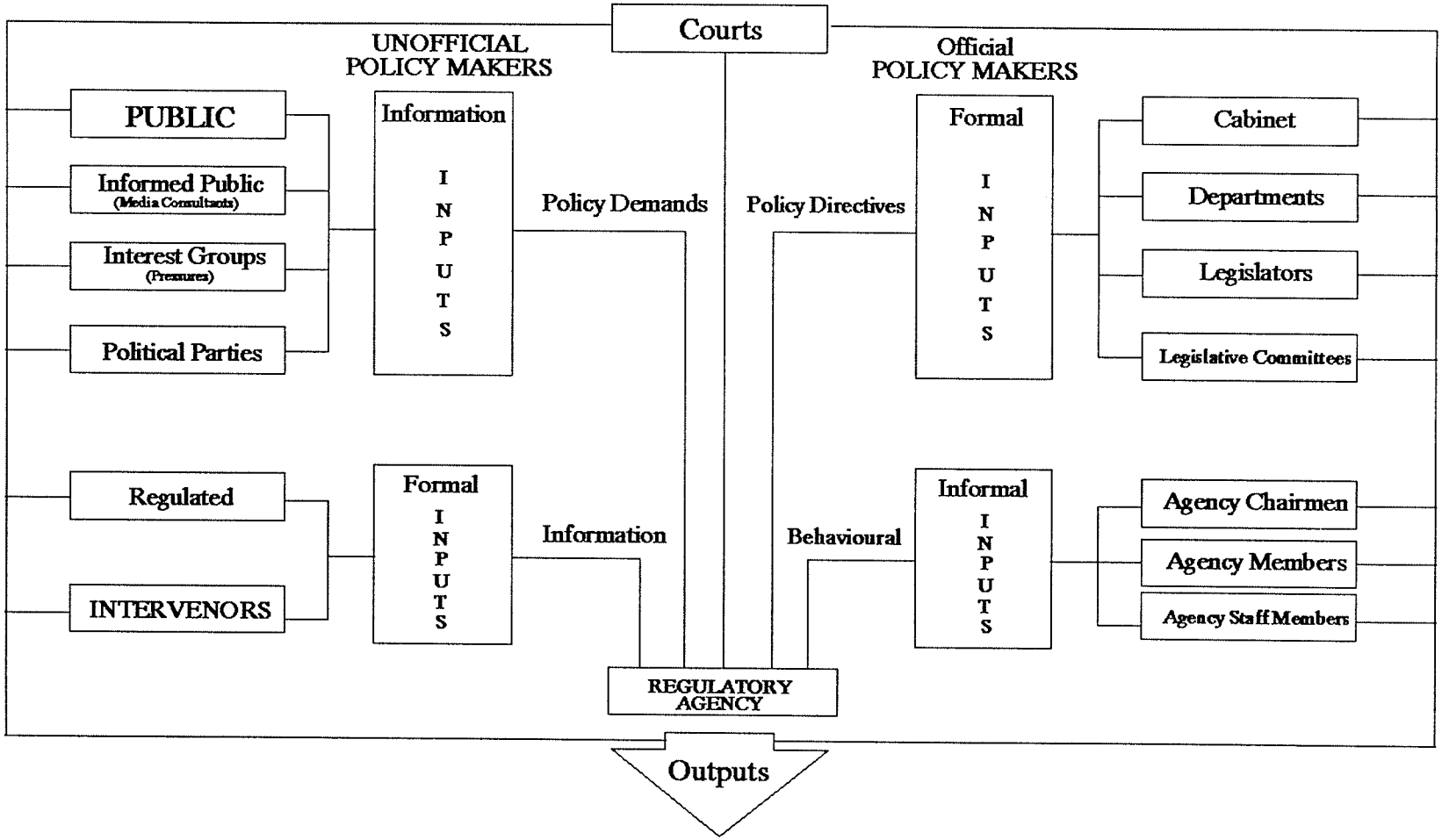
In attempting to enforce the statutory mandate, the regulatory agency will issue statements of policy pursuant to that mandate. These policy statements can take alternative forms depending upon the goals being pursued through their promulgation. Directives are also available to provide guidance to those within the agency policy environment concerning the agency's position with respect to a particular policy issue. Reports can be issued by regulatory agencies to obtain views from those in the policy environment on a proposed, new direction for the agency or, alternatively, to influence government on particular policy issues. In addition, the agency may employ what Brown-John (1981) terms "queries" to solicit opinion from interested parties concerning matters of policy.

The administration of policy constitutes for some agencies the bulk of their activity. They follow the dictates of agency policy in performing their duties. These duties can

range from assisting interested parties in meeting the demands of the agency to enforcement of agency policy (Brown-John, 1981).

The final identified function of regulatory agencies involves the rendering of policy advice. This function is associated with the notion of the regulatory agency as an expert body with collective skills and experience and with contacts cultivated in the surrounding community (Pross, 1985). These qualities are useful to governments. Brown-John (1981) explains that this expertise is the product of agency employees performing duties in a particular field over a period of time coupled with the shared contacts that they establish with others involved in a particular area of public policy.

In performing these identified regulatory functions, regulatory agencies operate within what Pross (1985) has termed policy communities. These policy communities are characterized by competing interests which yield information to be interpreted and acted upon by the agency in its decision-making process. This decision-making process can be depicted, structurally, in the manner outlined in Figure 1.



POLICY STATEMENTS; POLICY ENFORCEMENT; POLICY ADMINISTRATION; POLICY ADVICE

(Brown-John, 1981, Pg. 57)

This structure emphasizes the involvement of both governmental and non-governmental elements in the regulatory decision-making process. In addition, it exhibits the considerable demands placed upon individual regulatory agencies in their respective fields of jurisdiction.

3.2 Governmental Interests in the Regulatory Process

The structural relationship of what Brown-John (1981) terms "official" policy makers to regulatory bodies reveals the relative influence of the cabinet, departments, and legislators in the regulatory process. These bodies enjoy distinct points of access to the regulatory process through which their inputs into the process generally occur.

The cabinet is the principal locus of decision-making in a system of responsible government. Cabinets exercise significant authority over regulatory bodies. Cabinet powers are often found in the enabling statutes of these agencies. In addition, cabinet influence can be exerted through the general powers which the cabinet possesses as a consequence of its central position within the government.

Cabinet enjoys powers relative to the appointment of individuals to positions of authority within regulatory bodies. This power of appointment allows cabinet to retain some measure of control over regulatory policy. Powers of appointment are often found in the enabling legislation of regulatory bodies. The terms of these appointments range from those of a guaranteed term to others which remain "at the pleasure" of the cabinet (Adie and Thomas, 1987).

Schultz (1982) describes the appointment power as an indirect mechanism of political control. He suggests that it is too blunt and time-specific and insufficiently discriminating to be substantively influential with respect to regulatory policy. Adie and Thomas (1987) disagree with this view. They believe that the appointment power provides cabinet with substantial control over the policy direction of regulatory bodies. This view is supported by Johnson (1991) who believes that the appointment power allows the cabinet to insure that senior regulatory body officials share policy positions consistent with those of the sitting government.

The enabling legislation of regulatory bodies may also make provision for further cabinet control through mandated order-in-council approval of agency decisions (Adie and Thomas, 1987). This can be a significant measure of control relative to both current agency decisions and to future agency policy as current decisions often provide the basis for the articulation of future agency policy positions (Schultz, 1982). Found in some enabling statutes, this cabinet prerogative can extend to the setting aside of agency decisions (Adie and Thomas, 1987).

Supporters of order-in-council powers believe that they are useful to the extent that they ensure that cabinet enjoys the power to strike down unpopular agency decisions. In addition, they point out that the authority under this vehicle is restricted in that the cabinet does not have the authority to compel the regulatory body to develop regulations if it chooses not to (Janisch, 1979; Schultz, 1982). Opponents point out that this power can place undue political influence on a presumably independent process (Janisch, 1979).

Another power which cabinets often possess relative to the regulatory process is the authority to consider appeals of agency decisions. The enabling legislation of regulatory agencies often includes provision for these appeals. Appeals are usually initiated by parties to the original regulatory proceedings, such as interest groups. Such appeals deal only with matters of policy. Legal issues related to the jurisdiction of regulatory agencies must be settled in the courts. Adjudicative decisions of regulatory agencies are most often appealed through the court system (Adie and Thomas, 1987), although they can also potentially be changed or vetoed through the use of this cabinet prerogative (Schultz, 1982).

Janisch (1979) argues that the use of this "political" appeal power is not conducive to credible decision-making. He feels that the process associated with the appeal provision is a destructive one involving a drastic alteration in the rules of the game after the game has been played. He believes that it leads to disillusion among those involved in the regulatory process and negatively impacts upon affected regulatory agencies by undermining their capacity for independent judgement.

Those who support this appeal power prerogative believe its presence will not substantially affect the ability of regulatory agencies to exercise their independent decision-making capacity (Schultz, 1982). They point to evidence which suggests that "...appeals to cabinet from decisions of regulatory agencies do not appear to impair the regulatory process" (Brown-John, 1981, p.76).

The cabinet directive is the final identified vehicle through which cabinet can access/influence the regulatory process. The authority to issue these directives is found in the enabling statutes of some regulatory bodies. This power is used by cabinet to provide specific policy direction relative to matters which, while not requiring legislative action, are of sufficient importance in policy terms that they are not left to the regulatory agency (Adie and Thomas, 1987). The regulatory agency is required to follow such directives in its decision-making (Schultz, 1982).

The cabinet directive suffers from the same shortcoming of the other cabinet powers in that it raises the issue of political interference in the regulatory process (Roman, 1985, Spring). In addition, the cabinet directive has been specifically criticized as circumventing the role of the legislature. It allows policy to be formulated by cabinet and then implemented by regulatory bodies without legislative review and approval (Adie and Thomas, 1987; Brown-John, 1981; Roman, 1985, Spring).

On the other hand, the cabinet directive is supported as "..an effective mechanism for the timely transmittal of the government's policy concerns.." (Adie and Thomas, 1987, p.349). Adie and Thomas (1987) suggest various safeguards which could respond to the concerns of those opposed to cabinet directives. These safeguards include various policy and procedural guidelines which could be implemented to insulate cabinet directives from strictly political considerations and subject them to parliamentary review.

While cabinets occupy a central position in the lives of regulatory agencies, the role of legislatures at both the federal and the provincial level in the regulatory process is rather

limited. The policy mandates of regulatory agencies must be approved by the legislature, but, as already has been suggested, the complicated and dynamic nature of the policy fields being regulated has forced legislators to draft authorizing statutes in broad, general terms and to confer wide discretionary powers on regulatory agencies to respond to changing circumstances. Even though legislatures must debate and approve the authorizing statutes for regulatory agencies, in practice under conditions of majority government and party discipline cabinets control much of the content of such legislation.

The devolution of these legislative powers has been a cause of concern given the fundamental importance of legislative supremacy to a system of responsible government. The proliferation of regulatory agencies has significantly strained this principle. Schultz (1982) notes the reduction in legislative control associated with the growth of regulatory activity:

> Today, in areas of fundamental importance-telecommunications, transportation, energy- regulatory agencies can make decisions that may have an enormous impact on the allocation of resources, on the organization of production and consumption, and on the distribution of income. The fact that these agencies are empowered to make such decisions, free to a very large degree from authoritative

> political control and direction is the reason for the contemporary debate." (Schultz, 1982, p.93)

Beyond debates over the original legislation establishing regulatory agencies and the periodic passage of bills intended to amend such legislation, the opportunities for legislatures to review the performance of regulatory agencies are limited. In effect, the refinement and implementation of regulatory policy is transferred to unelected officials.

Legislative committees provide another opportunity for legislatures to monitor regulatory agencies. These committees can be of a standing or ad-hoc nature. They consider amendments to legislation, specific regulations, agency annual reports, and numerous other issues related to specific regulatory agencies. In general, these committees offer an opportunity for occasional legislative review of the operations of regulatory agencies although they often remain subject to the control of the governing political party (Anstett and Thomas, 1989).

The effectiveness of legislative committees has been questioned. Often, they have a substantial amount of material to review (Mallory, 1982). In addition, they lack the necessary staff support to deal effectively with their workloads (Brown-John, 1981; Adie and Thomas, 1987; Anstett and Thomas, 1989). Finally, legislative committees suffer from the fact that committee work is considered to be arduous and with little political "payoff" to legislators:

> The work of the committee..was not an activity calculated to give much pleasure. It took a great deal of time and it was, generally speaking, politically unrewarding. It was not an activity likely to commend itself to members of the house,... (Mallory, 1982, p.137-138)

The final identified avenue of legislative access to the regulatory process is the daily question period in the legislature. The sources of these questions range from the daily newspaper to complaints lodged with legislators by their constituents (Brown-John, 1981). The media attention given to the legislature is such that questions asked in question period can often become matters of immediate, though often not long lasting, concern to regulatory agencies:

> In interviews with members of regulatory agencies it was universally conceded that questions in a legislature, especially oral, were one of the few things (in addition to unfavourable newspaper stories or editorials) which caused them the greatest concern. (Brown-John, 1981, p.80)

Regulatory bodies are also influenced through their association with specific government departments. Governments will generally subordinate regulatory agencies (to varying degrees) to particular government departments. Often, departments will maintain access to their structurally associated regulatory agencies by providing staff, information

and research to these bodies. In addition, they may provide supervision to agencies relative to the pursuit of broad departmental goals.

Employees of regulatory bodies are frequently career public servants. Often, they move between the regulatory agency and the departmental structure. Generally, there are two distinct subgroups within the staff of regulatory agencies whose primary loyalties flow in different directions. One of these subgroups, made up of those who continue to be on an upward career path within the bureaucracy, tend toward departmental loyalty. This group provides the department with continuing access to, and a measure of control over, the regulatory agency (Brown-John, 1981).

Departments also maintain access to regulatory agencies through a variety of joint endeavours with their associated regulatory bodies. For example, departments and regulatory agencies establish joint committees to pursue issues of common interest. In addition, departmental staff are sometimes called upon to supplement agency research. Often, a shared administrative culture develops out of these formal endeavours and the informal relationships associated with them (Brown-John, 1981; Thomas and Zajcew, 1993).

The final identified means by which government departments influence regulatory agencies is through existing, statutory relationships. The legislative mandate of a regulatory agency will often explicitly outline the desired relationship between the department and the regulatory agency. An individual department will structure its

relationship with an associated regulatory agency based upon the direction provided in the enabling legislation (Brown-John, 1981).

The relationships between government departments and regulatory agencies raise some concerns about the integrity of the regulatory process. The ability of a regulatory agency to render independent decisions is called into question if that agency is subordinated to a particular departmental structure. In addition, an agency's impartiality may be compromised by processes dominated by the personnel, information, and research of the superordinate departmental structure (Brown-John, 1981).

3.3 Non-Governmental interests in the Regulatory Process

The "unofficial" policy makers in the regulatory process are many and varied. This category includes interest groups, political parties, and various interested "publics". These constituencies also have identifiable points of access to regulatory agencies and their processes.

Brown-John has identified four principal functions of interest groups in relation to the regulatory process:

> (1) To promote, oppose or seek modifications in enabling legislation in a policy area that involves a regulatory agency;

> (2) To provide specialized information to the regulatory agency;
>
> (3) To represent its specific interests as required by an agency on individual occasions; and
>
> (4) To liaise with the interest or pressure group members thereby legitimating the regulatory agency's role (system support). (Brown-John, 1981, p.63)

In pursuing the interest of their members, interest groups use a variety of means to influence the content of the enabling legislation of regulatory agencies. Specifically, they perform this function through representation on advisory committees to cabinet and government departments, through submissions to legislative committees, cabinet, royal commissions and task forces, and through direct representations to legislators (Brown-John, 1981).

Interest groups also seek to influence regulatory policy through the provision of information to regulatory agencies, on both a formal (for example, during formal hearings) and informal (for example, in telephone conversations between interest group and regulatory agency representatives) basis. The level of sophistication of the information provided is generally dependent upon the resources available to a particular interest group. The Business Council on National Issues, a major employer interest

group, provides the following example of the various potential processes employed in generating this information:

> Issues are identified through members' meetings or the policy committee, priorities are established and the various task forces take over to direct the effort. On some issues, the necessary background for assessing a position can be collected from members' knowledge, or from their corporate resources. On other problems, it is necessary to contract for research work by reputable, independent agencies, such as the conference board in Canada. (Archibald, 1977, p.14)

Representation of the interests of their members before regulatory bodies is another function of interest groups relative to the regulatory process (Brown-John, 1981). The performance of this function involves activities ranging from the preparation of background materials in support of a group member's position to the direct representation of members before regulatory agencies (Brown-John, 1981). Interest groups will generally interface with the policy-making, adjudicative, and appeal elements of regulatory agencies in the performance of these responsibilities.

The final identified function performed by interest groups in the regulatory process involves their role in the communication of regulatory agency decisions, requirements and notice of prospective policy alternatives to group members (Brown-John, 1981).

This function is termed the legitimation function of interest groups. It is a useful function to governments and agencies who use interest groups to test policy proposals and to secure support for them (Pross, 1986). It is also useful to involved groups "..since government recognition enhances their own stature and guarantees a measure of influence over policy decisions that are of concern to them" (Pross, 1986, p.93). This function is normally manifested through formal and informal interaction between government, agency, and interest group representatives.

The influence of interest groups in regulatory policymaking varies according to the level and nature of their involvement in the process. Pross (1986) suggests that certain interest groups have preferred access to their particular regulatory environment. He states that regulatory environments are organized into what he terms "policy communities". Such communities are composed of dominant interests, other less powerful interests, the government, and the relevant regulatory agency. Further, he identifies what he terms a "sub-government" within the construct of the policy community. These sub-governments are composed of the cabinet, the responsible minister, the "home" department, the involved regulatory agency, and certain groups that are regularly consulted in the development of policy pertaining to a particular policy field.

Pross (1986) believes that the relative influence of an interest group within a particular policy community can often be determined by its presence in the sub-government of that community. He holds that "...securing a recognized position in the sub-government is a first priority for any group intending to exert continuing influence on policy" (Pross, 1986, p.145). Pross' analysis suggests variable access to the regulatory process.

The variability in interest group access to the regulatory process is often a reflection of, and reflected in, the characteristics of these groups. Group characteristics such as adaptability, cohesion, and financing are important determinants of successful group access to the regulatory process.

Interest groups attempting to influence regulatory agencies must adapt their organizational structure to the structure of their respective targeted government agencies (Pross, 1986). Goldstein (1979) exposes this process of adaptation in his discussion of the experience of one interest group, The Consumers Association of Canada, in its struggle to effectively adapt to a bureaucratized policy environment:

> There was increasing tension in the association between the "professionals" and the volunteers. The label "professional", although widely used within the group, was not always used consistently; but in general it was applied to the new consumer advocates, mostly men, who possessed expert skills, were accustomed to work within a rationalized institutional framework, and who spoke the language of the academy or the government. They were sometimes uncomfortable with the uncertain decision-making strategies and unsophisticated politics of the other members. Some volunteers, in turn, feared the professionals were "taking over" the organization and cutting it off from its roots. (Goldstein, 1979, p.147)

Another determinant of the effectiveness of interest groups in the regulatory process is the relative cohesiveness of the group. Goldstein (1979) identifies three general types of interest groups involved in public policy processes. These three categories include a) economic groups; b) constituency groups; and c) public interest groups. Goldstein holds that each of these group categories is characterized by a degree of cohesiveness which in turn affects their influence within the regulatory process.

Economic interest groups demonstrate the greatest cohesion. This reflects the similarity and singularity of their priorities and the legitimacy of their role in a market-driven society. The Business Council on National Issues (B.C.N.I.) provides possibly the most prominent contemporary Canadian example of this type of interest group.

Constituency interest groups are somewhat less cohesive but most establish sufficient unity of purpose to achieve influence in the regulatory process. The cohesion of these groups is the product of two principal characteristics. First, these groups are generally characterized by a relatively small, committee membership. Second, this membership has very specific goals. A Canadian example of such a group would be the Automobile Protection Association (Goldstein, 1979).

The final category of interest group identified by Goldstein (1979) is the general public interest group. Goldstein characterizes this type of group as one with diffuse goals and a broad membership lacking in ideological cohesion. He believes that these characteristics lead to a less cohesive interest. Consequently, he feels that such groups

tend to have less sustained influence in the regulatory process. He uses the Consumers Association of Canada (C.A.C.) as an example of this type of interest group.

Financing is yet another (and quite possibly the principal) determinant of successful interest group influence in the regulatory process. Interest groups need financing to effectively "compete" for influence within a particular policy community. "Mal-distribution of wealth and unequal access to...resources mean that some will have more influence, power, and means to effective participation than others" (Clague, 1971, p.39). There is general agreement that funding disparities can lead to differential access to public policy processes. Suggested strategies for addressing this concern include making provision for government funding to various interest groups who meet specific requirements as well as payroll deduction schemes targeted toward constituencies supportive of the positions of a specific interest group (Goldstein, 1979).

The suggested provision of government funding has been questioned by some who believe that such funding will lead to a form of dependence which may serve to blunt effective group involvement in the policy process (Pross, 1986). In addition, there are those who hold that there is a structural variability in the influence of interest groups over public policy processes which is not readily amenable to change through ameliorative strategies such as those outlined above. Specifically, these critics believe that in a market-driven society powerful economic interests are predominant in their influence over government policy (Panitch, 1977).

Political party influence in the regulatory process, and in other areas of public policy, is the subject of some debate. There are those who feel that political parties are effectively involved in the leadership and policy-making processes of government (Engelmann and Schwartz, 1967). Others believe that the role of political parties in the political process has declined (Alger, 1989; Pross, 1986).

Brown-John (1981) states that the principal function of political parties is the identification of issues. He suggests that in so far as their identification of issues influences regulatory agency decisions or has consequences for the policy area in which a particular regulatory body operates, political parties are a relevant participant in the regulatory policy process.

Political party access to regulatory agency processes is also a function of their electoral success. The electorally successful party will form the government. The active party membership can then influence government regulatory policy and administration through the party platform (Engelmann and Schwartz, 1967).

In practise, political party access to regulatory and other public policy processes is often mitigated through party processes which serve to insulate the political party leadership from the collective views of its membership. Engelmann and Schwartz (1967) identify this process of insulation in their description of the structures and processes of political parties. They explain that Canadian political parties are composed of intra-parliamentary and extra-parliamentary elements. The intra-parliamentary element

includes the party leader and other elected representatives. The extra-parliamentary wing refers to the general active membership of the party.

The development of a political party's platform is generally considered to be the product of the extra-parliamentary element of the party. The active membership of the party passes policy resolutions at policy conventions and annual meetings. However, the influence of these resolutions is often mitigated through processes which serve to ensure the prevalence of the views of the party leadership in the party's official policy platform (Engelmann and Schwartz, 1967).

The final grouping of "unofficial" policy makers influential in the regulatory policy process can be referred to as the "informed public". The informed public is composed of the media, consultants, and individuals within the more general public who, for a variety of reasons, take a particular interest in a specific regulatory policy field.

Brown-John (1981) identifies ways in which informed individuals within the general public influence areas of regulatory activity. Some individuals contribute through intellectual pursuits such as through writing books and articles. Others contribute to regulatory policy processes, and by implication their outcomes, through modalities such as letters written directly to regulatory agencies to inquire about, approve, or disagree with agency policy.

The media enjoys access to the regulatory process as a result of its more general prominence in the political process. The media has a prominent role in the

dissemination of political information and opinion. The public has come to rely on the media for this function:

> For the vast majority of the general public, with their attention focused primarily on personal concerns, there is a great physical and psychological distance from political affairs. That distance between political actors and the public (during elections and between them) is bridged by the communications of the mass media. The public receives its information on and impression of candidates and other political actors principally from the media. (Alger, 1989, p.6)

The media has two identified means by which it gains access to the regulatory process. First, it can obtain entry to the process by focusing public attention on a particular regulatory body and/or its policies. Secondly, the media often acts as a "professional witness" to particular proceedings, exposing the debate over a particular regulatory policy issue as well as the identity and views of those involved in the debate (Brown-John, 1981). It should be noted, however, that media attention to regulatory activities is highly selective and is generally limited to those regulatory events with wider political significance.

The involvement of the media in regulatory and other public policy processes is generally useful given its important role in keeping the public informed. However, the

impartiality of the media has been questioned concerning issues in which it may have a vested interest (Brown-John, 1981). In addition, the impartiality and effectiveness of the media has been questioned given its relationship to dominant interests in a market-driven society:

> Increasingly, the channels of communication are developed and built largely for business communication. This whole process of growing and private corporate involvement in cultural production and politics needs much more study than it has received. (Garnham, 1990, p.14)

Consultants make up the final, identified sub-group within the informed public. Consultants perform a variety of functions within the regulatory process. Generally, they are relied upon to bring specific expertise to a particular policy issue. In committee and adversarial proceedings they provide information in support of the positions of various parties to those proceedings. As a source of information contracted by various regulatory bodies, they are often employed to assist in the development of regulatory policy. The role of consultants can be of particular importance should regulatory bodies rely upon their advice in developing policy and rendering decisions (Brown-John, 1981).

In summary, a number of different policy actors form the policy communities of regulatory agencies. Together, these actors create a complex environment. While the dominant actors and sets of ideas within a policy community associated with a particular

regulatory agency will often change over time, regulatory agencies must pursue their respective mandates while attempting to "manage" their specific policy communities.

3.4 Governmental Interests and the W.C.B. of Manitoba

The Workers Compensation Board of Manitoba is a regulatory body created through a legislative act of the Province of Manitoba. The Workers Compensation Act of Manitoba provides the W.C.B. with its mandate to respond to the needs of workers injured in work-related accidents. In responding to these needs, this regulatory body operates within a specific, identifiable policy environment composed of governmental and non-governmental interests.

The Workers Compensation Act defines the formal , structural relationship between the board and the provincial government. Section 50.2 (1) of the Act directs that there will be a Board of Directors at the W.C.B. of Manitoba. It instructs that the power of appointment with respect to positions on this Board of Directors is the prerogative of the Provincial Government Cabinet (Lieutenant Governor-in-Council) within the following stated parameters:

50.2(1)

There shall be a Board of Directors of the Board,..., consisting of

A) A member who shall be chairperson;

B) Three members representative of workers;...;

C) Three members representative of employers,...; and

D) Three members representative of the public interest.

(Workers Compensation Act of Manitoba, 1992, p.138)

The legislation also provides in Section 50.2(3) that a member of the Board of Directors shall be appointed for a fixed term not exceeding five years (Workers Compensation Act of Manitoba, 1992).

Cabinet's power of appointment of directors is important given the Board of Directors' authority under Section 51.1(1) of the Act:

51.1(1)

The Board of Directors shall

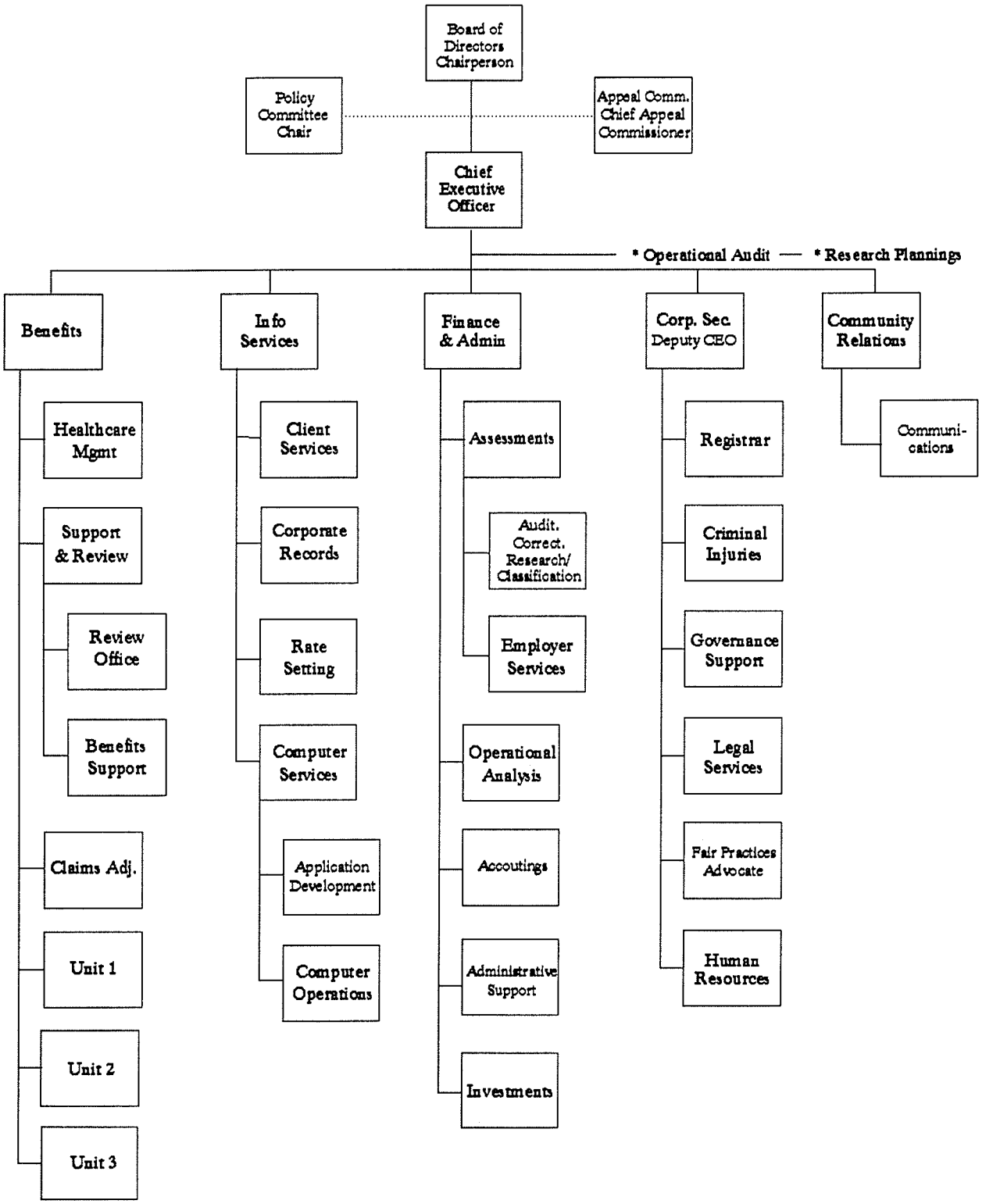
A) Approve and superintendent the policies and direction of the board, including policies respecting compensation, rehabilitation, assessment, and appeal procedures;

B) Consider and approve operating and capital budgets of the board;

C) Plan for the future of the compensation system;...

(Workers Compensation Act of Manitoba, 1992, p.139)

Other sections of the Act specify the responsibilities of the Board of Directors with respect to the policy-making and appeal functions. The Board is required to establish a policy committee from its membership and this committee is responsible for the development of policy for approval by the full membership of the Board. In addition, the W.C.B.'s appeal process is subordinated to the Board of Directors through Section 60.9 of the Act which provides that the directors may stay a decision of the appeal commission and direct that the case from which the decision arose be reheard by either the appeal commission or by the Board of Directors or one of its designated committees (Workers Compensation Act of Manitoba, 1992). The importance of the Board of Directors to the overall operation of the W.C.B. is further emphasized in the following organizational chart (Figure 2).


Board of Directors Chairperson
Policy Committee Chair
Appeal Comm. Chief Appeal Commissioner
Chief Executive Officer
* Operational Audit
* Research Planning
Benefits
Info Services
Finance & Admin
Corp. Sec. Deputy CEO
Community Relations
Healthcare Mgmt
Support & Review
Review Office
Benefits Support
Claims Adj.
Unit 1
Unit 2
Unit 3
Client Services
Corporate Records
Rate Setting
Computer Services
Application Development
Computer Operations
Assessments
Audit. Correct. Research/ Classification
Employer Services
Operational Analysis
Accoutings
Administrative Support
Investments
Registrar
Criminal Injuries
Governance Support
Legal Services
Fair Practices Advocate
Human Resources
Communi-cations

In addition to the power-of-appointment, the provincial government oversees the operation of the W.C.B. through other legislative requirements found in The Workers Compensation Act. Section 70 of the Act requires that the W.C.B. shall "..make a report to the minister of its transactions during the last preceding year" (Workers Compensation Act of Manitoba, 1992, p.178). This requirement for the submission of an annual report is supplemented by a further mandated requirement that W.C.B. management submit to the responsible minister on an annual basis a five year plan with respect to the future, planned operations of this regulatory agency (Workers Compensation Act of Manitoba, 1992). Finally, the Workers Compensation Act provides for government oversight of the financial operations of the Workers Compensation Board:

> 69(1) The accounts of the Board shall be audited by the provincial auditor or by an auditor appointed by the Lieutenant Governor in Council for that purpose; and the costs of the audit shall be paid by the Board. (Workers Compensation Act of Manitoba, 1992, p.178)

The access of the Manitoba Legislative Assembly to the operations of the W.C.B. is limited. The Act provides for the required disclosure of information to the legislature pertaining to the operations of the Board. In addition, the Act delegates authority to a committee of the legislature to more closely review those operations.

The Act requires that the Minister responsible for the W.C.B. submit its annual report and five year operating plan to the legislature within established time frames (Sections 71 and 71.2 of the Act). The Act (Section 71.3) also requires that these documents "...stand permanently referred to the Standing Committee on Public Utilities and Natural Resources of the Legislative Assembly" (Workers Compensation Act of Manitoba, 1992, p.179).

The Standing Committee on Public Utilities and Natural Resources of the Manitoba Legislative Assembly meets on a number of issues in a number of subject areas. The committee membership includes M.L.A.s' from all three recognized political parties with the governing party holding a majority of the committee positions when a majority government exists. Generally, the committee holds an annual hearing on workers compensation matters during the spring session of the legislature. This hearing is occasioned by the presentation of the W.C.B.'s annual report and five year operating plan by the Board's Chief Executive Officer (Reid, 1992).

The committee hearings are open to the public who, as individuals, groups, or organizations may make representations concerning issues under review. Members of the legislature who are not members of the committee may attend hearings and may question representatives of the W.C.B. of Manitoba appearing before the committee. Voting on matters before this committee is decided by a majority vote of its members (Rules, Orders and Forms of Proceedings of The Legislative Assembly of Manitoba, 1988). With a government M.L.A. in the chair and a majority on the committees, governments are usually able to retain close control over the proceedings of such

committees. Reports are seldom issued and even when they are, criticisms of agency performance that might reflect badly on the government tend to be avoided.

Beyond the annual review by the committee, individual M.L.A.'s and opposition parties can during the legislative session use the daily Question Period to raise issues of concern to them or their constituents. Also, individual members of the legislature can make representations (orally and in writing) on behalf of their constituents. Finally, opposition political parties will often issue press releases and hold press conferences on matters associated with the policies and practises of the Board (Reid, 1992).

The Minister of Labour of the Province of Manitoba is designated as the minister responsible for the Workers Compensation Board. While the ministers are not expected to be involved in the daily operations of the agency, they are expected to keep sufficiently well informed about board operations to be able to answer questions in the legislature.

In formal terms, the W.C.B. maintains an arms length relationship with the Department of Labour. There is no formal reporting relationship between the Board and the senior departmental bureaucracy. However, there is evidence of departmental involvement in the operation of the W.C.B. through the secondment of senior departmental bureaucrats to the regulatory body (Reid, 1992).

Beyond the secondment of departmental personnel, departmental access to the W.C.B. is limited to the activities of the Department of Labour's Worker Advisor Office. The

Worker Advisor Office in Manitoba was created in 1982 following the determination by the provincial government of the day that injured workers required representation in dealing with the often complex workers compensation system. Prior to the creation of the office, injured workers had to pursue, and often pay for, legal representation. The costs associated with such representation were often prohibitive. In addition, legal representation was not considered consistent with a system based upon an inquiry, as opposed to an adversarial, model (Anderson, 1992).

Provision for Worker Advisors is found in the Workers Compensation Act. Section 108(1) of the Act provides that "..Worker Advisors and other employees necessary to enable the Worker Advisors to carry out their duties effectively shall be appointed or employed as provided in the Civil Service Act" (The Workers Compensation Act of Manitoba, 1992, p.255). Section 108(2) goes on to outline the potential duties of the Worker Advisor:

108(2) The workers advisors may

> (a) give or cause to be given assistance to workers and dependents having claims under this part;
>
> (b) on behalf of workers and dependents having claims under this part, communicate with or appear before the board, or any boards of

review, or any other tribunal established by or under this act;

(c) advise workers and dependents as to the interpretation and administration of this act and any regulations made under this act and of the effect and meaning of decisions made under this act; and

(d) perform such other duties and functions as the minister may require. (The Workers Compensation Act of Manitoba, 1992, p.256)

The three regional worker advisor offices in Manitoba are offices of the Provincial Department of Labour and are located within the Safety and Health Services Branch of the department. The worker advisor positions are filled through the Provincial Civil Service Commission. The operating costs of the offices are assumed by the W.C.B. of Manitoba. The financial arrangement associated with the payment of these costs involves Board payment of an amount equal to these operating costs into the Province's Consolidated Revenue Fund. These funds are then allocated to the offices. This particular funding arrangement is employed to preserve the appearance of independence of the Worker Advisor Office (Anderson, 1992).

The duties of the Worker Advisor Office can be categorized into three broad areas. The first area is concerned with the Office's role as provider of information and advice to injured workers. The second area refers to the role of the worker advisor as a "troubleshooter" in the compensation system. The final area refers to the Office's pure advocacy role relative to the claims of injured workers (Anderson, 1992).

The Worker Advisor Office assists injured workers by providing them with information and advice about the compensation system. Worker advisors assist injured workers to gain access to the system. Specific duties associated with this role include assisting injured workers to fill out required forms. In addition, worker advisors provide injured workers with direction as to which individuals at the W.C.B. to approach on specific issues of concern (Anderson, 1992).

The second set of duties which worker advisors perform in assisting injured workers can be categorized as "troubleshooting" duties. Worker advisors can often play a role in reducing bureaucratic delays in the compensation system. The individual worker advisor will often liaise with specific W.C.B. officials around clerical and other issues affecting the claims of individual claimants. Often, claimants do not know the system well enough to deal effectively with particular types of issues and situations (Anderson, 1992).

The principal role of the Worker Advisor Office is to represent claimants on appeals of W.C.B. claims decisions. Worker advisors often meet with claimants who have received an adverse decision from the W.C.B. They will identify if there is an appealable issue.

Following a positive determination on a particular claim, the individual worker advisor will have the claimant sign a release of information form which will be used to solicit a copy of the claimant's file for review of the relevant available file documentation.

Worker advisor appeal representations will generally be made in writing to the W.C.B. of Manitoba's Review Office (the W.C.B.'s first level of appeal). Beyond this initial level of appeal, the individual worker advisor can assist individual claimants to pursue appeals further to the final level of appeal, the W.C.B. of Manitoba Appeal Commission. These appeals can be done in writing but more often take the form of oral hearings in a quasi-judicial environment (Anderson, 1992).

The involvement of the Worker Advisor Office in the workers compensation system is generally limited to the roles described above. The Office also attempts to pursue remedies for injured workers on an ad hoc basis through its director who enjoys some access to higher level officials of the Board. Finally, the director may be able to informally request a meeting with the agency's Board of Directors for the purpose of making representations concerning W.C.B. policy and practise (Anderson, 1992).

3.5 Non-governmental interests and the W.C.B. of Manitoba

The "unofficial" or non-governmental interests active within the policy environment of the Workers Compensation Board of Manitoba include a variety of interest groups, advocacy bodies, and other "informed" publics. The views which they represent are

varied. However, these interests generally congregate around the two major stakeholder groups, labour and employers, connected with the compensation system.

The Manitoba Federation of Labour (M.F.L.) is the principal union organization in the province. Its membership numbers 88,000 and it represents 418 affiliated locals of national and international unions. The primary role of the M.F.L. is to promote the interests of its affiliated unions, and the interests of workers in general, in the Province of Manitoba (Manitoba Federation of Labour (M.F.L.), 1992).

The Executive Council of the Manitoba Federation of Labour, a representative body of twenty individuals, governs the activities and implements the policies of the organization. These policies are determined by the votes of delegates to biennial conventions of the organization (M.F.L., 1992).

The M.F.L. also has various standing committees staffed by specialists. The subject areas of these committees are representative of the subjects of greatest interest to the organized labour movement. These committees report directly to the executive council on issues of concern in their respective subject areas in order to ensure that the M.F.L. remains informed on these issues. Among these committees is a committee responsible for the subject area of workers compensation (M.F.L., 1992).

As the principal representative of the labour interest in the Province of Manitoba, the M.F.L. enjoys influence over the operation of the workers compensation system in the

province. The M.F.L.'s involvement comes primarily at the legislative and policy-making level, but it also becomes involved with individual cases on an occasional basis.

Section 50.1 of the Workers Compensation Act requires consultation concerning appointments to the W.C.B.'s Board of Directors and Appeal Commission. This section of the Act states, in part, that "...the Lieutenant Governor in Council shall consult with...workers in industries subject to this part regarding the appointment of persons representative of workers;..." (Workers Compensation Act of Manitoba, 1992, p.137). In practise, the M.F.L. has been consulted by the W.C.B. on the appointments of the representatives of labour to these bodies (Mesman, 1991).

The M.F.L. employs considerable effort in lobbying the provincial government. Workers compensation issues are a primary area of concern to the organization in these efforts. The M.F.L. employs a Safety and Health Officer whose responsibilities include workers compensation issues. The specific, formal lobbying activities of the M.F.L. with respect to workers compensation matters include meetings with the minister of the government responsible for workers compensation and presentations to the legislative committee (the Standing Committee on Public Utilities and Natural Resources) responsible for the Workers Compensation Board (Mesman, 1991).

The final means by which the M.F.L. pursues access to the W.C.B. is through the involvement of the member unions in assisting workers injured in the course of their employment in pursuing their claims through the system. Representatives of these member unions will often assist their members in making application for benefits and

in appeals of W.C.B. decisions. However, this type of assistance is limited by the availability of the necessary expertise within the union to deal effectively with W.C.B. claims. In addition, it is somewhat limited by legislative provisions which restrict access to claimants' files (Workers Compensation Act of Manitoba, 1992, p.243).

The Injured Workers Association of Manitoba, Inc. is an organization founded in 1971 by an individual injured worker who identified a need for services in the community for injured workers. Since its inception, the association has functioned as a grass roots organization with a limited budget. Currently, its primary source of revenue comes from funds which it raises through the operation of three bingos in the City of Winnipeg (Woloshyn, 1992). The association operates through a Board of Directors composed of ten members. Board members are volunteers, consisting of a combination of injured workers and community members (Woloshyn, 1992).

The association's organizational objectives, as stated in its bylaws, are:

> (1) to facilitate, assist and encourage injured workers in pursuit of their lawful rights, their claims and other such benefits they may be entitled to under existing legislation in the Province of Manitoba.
>
> (2) to further assist in the problems of individuals, who are recipients of such benefits and who are disabled, in their rehabilitation.

> (3) to counsel and assist in matters pertaining to injured or disabled people in need.
>
> (4) to approach, with direct consent of any individual seeking such assistance, any tribunal, judicial body or court of law as may be required.
>
> (5) to serve as an aid to all human beings in distress.
>
> (6) to provide education for members of the public in any matters related to injured workers, workers compensation or matters relevant to workplace health and safety, as required. (Injured Workers Association (I.W.A.), 1989)

The association maintains an office in Winnipeg and employs a full-time advocate who performs a number of functions on behalf of injured workers, such as assisting injured workers with their W.C.B. claims, providing referral services for injured workers, and representing the interests of injured workers at a broad policy level (Woloshyn, 1992).

Advocacy with respect to compensation claims is the largest part of the advocate's duties. The advocate pursues remedies on behalf of the injured worker at the primary, decision-making level of the Board and will also handle appeals for injured workers at

both the primary (Review Office) and final (Appeal Commission) appeal levels (Woloshyn, 1992).

The Injured Workers Association Office also provides a referral service for injured workers. Often, adverse decisions of the W.C.B. result in financial hardship for injured workers. These decisions can also lead to other difficulties such as individual and family stress. The office acts as a referral agent in these situations (I.W.A., 1992).

The final role assumed by the Injured Workers Association Office involves the representation of the interests of injured workers at a broader, policy level. The association categorizes this type of representation as group advocacy. The association lists the following activities related to this role:

> (a) lobbying government for improved legislation.
>
> (b) monitoring Workers Compensation Board policies and practises and making recommendations for improvement.
>
> (c) promoting issues involving injured workers in the community. (I.W.A., 1992)

In practise, the efforts of the association office are largely directed toward pursuing individual appeals through the W.C.B. of Manitoba's appeal structure. Association officials meet periodically with higher level W.C.B. administrators on issues of general

concern. In addition, the association makes written and verbal representations to legislative committees and to ministers responsible for compensation matters (Woloshyn, 1992).

The employer interest in the policy environment of the W.C.B. of Manitoba is represented by a number of groups. Included within this category are organized employer groups and coalitions of employer groups. Individual employers and employer advocates also represent employer interests in the system. The relationship of the employer interest with the workers compensation system is largely governed through legislation.

Section 50.1 of the Workers Compensation Act of Manitoba requires consultation with employers concerning employer appointments to the W.C.B.'s Board of Directors and Appeal Commission. This section states, in part, that in making employer appointments to these bodies the provincial government cabinet shall consult with "...(a) persons on whom assessments are levied under this part, regarding the appointment of persons representative of employers..." (Workers Compensation Act of Manitoba, 1992, p.137).

Legislated employer access is not limited solely to these appointment provisions. Individual employers also have statutory rights of access relative to individual claims files. Section 101(1.2) of the Act states:

> Notwithstanding Subsection(1) and Subsection 20.1 (Medical Reports), an employer or the agent of the employer by the Board or an appeal to

> the Appeal Commission, may examine and copy such documents in the Board's possession as the Board considers relevant to an issue in the reconsideration or appeal and the information shall not be used for any purpose other than a reconsideration or appeal under this Act, except with the approval of the Board. (Workers Compensation Act of Manitoba, 1992, p.243)

This provision for file access allows employers to consider, and properly formulate, appeals of W.C.B. decisions with respect to claims by their employees.

Employer rights in this area are further supported by Section 60.8(4) of the Act which provides employers, as parties with a direct interest in particular claims, with standing in individuals cases heard by the W.C.B. of Manitoba Appeal Commission:

> 60.8(4) In hearing a matter under Subsection(1), the Appeal Commission shall give all parties who have a direct interest in the matter an opportunity to make representations, and may allow the presentation of new or additional evidence. (Workers Compensation Act of Manitoba, 1992, p.157)

The Canadian Federation of Independent Business (C.F.I.B.) provides an example of the involvement of an organized employer interest group in the workers compensation system. The C.F.I.B. is a political action organization created in 1971. It represents the

interests of small and medium-sized Canadian-owned enterprises (Canadian Federation of Independent Business (C.F.I.B.), 1992).

The C.F.I.B., whose national membership numbered some 83,000 business people in 1992, offers a variety of services through the organization in exchange for a relatively nominal membership fee. The organization articulates the interests of its members on a broad range of public policy issues. In addition, it provides information about, and interpretation of, the following government programs and regulations:

Providing information on government programs:

(a) government subsidized employment

(b) apprenticeship training programs

(c) other skills training programs

(d) government loan programs

Interpretation of government regulations:

(a) interpretation of employment standards regulations

(b) W.C.B. regulations

(c) federal and provincial regulations

(d) paperburden regulations

(e) U.I.C. regulations (C.F.I.B., 1992)

The involvement of the C.F.I.B. with the workers compensation system is focused principally at the legislative and policy levels. The organization is consulted on

nominees to represent the employer interest on the W.C.B.'s Board of Directors and Appeal Commission. Also, it lobbies government and makes representations to the legislative committees responsible for the W.C.B. on legislative issues. The organization also provides advice and direction to its members on matters of W.C.B. policy and practise (C.F.I.B., 1991).

As a proponent of the employer interest relative to the workers compensation system, the C.F.I.B.'s representations on W.C.B. issues tend to emphasize the financial aspects of the system. Specifically, the C.F.I.B. emphasizes the effect of W.C.B. assessments on the competitiveness of Manitoba companies (C.F.I.B., 1991). The stated goals of the organization relative to the workers compensation system in Manitoba are

> (1) to provide a fair and reasonable benefit program to employers
>
> (2) to address the issue of the unfunded liability
>
> (3) to provide for competitive assessment rates (C.F.I.B., 1991, p.6)

While the C.F.I.B. acknowledges the need for the system to be fair to injured workers, these goals and the majority of the report from which they were drawn focus principally upon financial issues. For example, the report notes what the C.F.I.B. perceives to be inordinately high workers compensation premiums and a lack of financial accountability at the Board (C.F.I.B., 1991).

In addition to organized employer groups such as the C.F.I.B., the employer interest is represented in the system by a variety of employer advocates. These advocates represent employers on a fee-for-service basis (Manning, 1992). They provide a range of services with the goal of reducing individual employers' workers compensation costs.

Mike Manning and Associates, Ltd., founded in 1990, represents an example of a company providing service to employers on W.C.B. issues. The company follows what can be described as a comprehensive disability management approach. Its interventions are intended to help employers to better manage their W.C.B. claims costs (Manning, 1992). It assists a variety of companies in a number of areas of workers compensation.

One area in which the company assists employers is in the area of general disability management. Company consultants assist employers in examining their long term disability costs to determine if any efficiencies can be made. Suggested ameliorative action in this area would focus upon improvements to production processes and worksites aimed at reducing workplace-related injuries (Manning, 1992).

Another area in which the company assists employers is in the area of claims management. Consultants help employers to minimize their workers compensation costs through effective management of individual claims. The specific duties of this role include providing assistance to employers in determining individual worker compensation entitlements, appealing claims, analysing employer assessment costs,

and minimizing surcharge penalties and compensation costs (Mike Manning and Associates Ltd., 1992).

The final area in which Mike Manning and Associates Ltd. assists client employers with their W.C.B. claims is in its involvement in the vocational rehabilitation of client employers' employees. The company's consultants assist employers in returning their employees to active employment. They will evaluate the employee's employability, assess potential barriers to employment, and develop and implement a highly action oriented vocational plan aimed at returning the injured employee to active employment (Mike Manning and Associates Ltd., 1992).

The services offered by individual employer advocacy firms will vary. The services offered may be less comprehensive than those of the company considered above (Manning, 1992). For example, a particular employer advocacy firm may offer service solely in the area of individual claims management. The individual employer will generally pursue in the marketplace the advocacy firm whose services best meet its needs.

The primary points of access to the workers compensation system available to employer advocates are the primary decision-making and appeal levels of the organization. Employer advocates monitor and evaluate client assessment rates through the W.C.B. of Manitoba's assessments branch. They monitor the progress of individual claims to resolution through the Board's benefits division. The access to this information at both

the primary decision-making level and appeal levels of the system is secured through the status of such firms as agents of employers (Manning, 1992).

The influence of employer advocates relative to the general policy process at the W.C.B. is more limited. The access of these firms to the policy making body of the Board, its Board of Directors, is restricted. However, they will take advantage of formal and informal opportunities to address issues of broader concern with higher level officials of the W.C.B. administration. These opportunities are presented through arrangements ranging from W.C.B.-sponsored employer information seminars to ad hoc meetings with senior administrative officials (Manning, 1992).

Beyond the representations of employees and employers, other non-governmental interests within society have potential influence in the W.C.B. process. However, few of these interests are involved directly or continuously in Board activities.

The subordination of the W.C.B. of Manitoba to an act of the provincial legislature allows political parties in the province a measure of involvement in the operation of the workers compensation system. The nature and extent of the influence of these parties at any particular point in time relative to the operation of the Board is largely a function of their electoral success.

An electorally successful political party (i.e., a majority party in the legislature) exerts indirect influence over the W.C.B. at the legislative, policy, and individual claims levels. Its influence is based in the control of its elected representatives over the legislative

agenda. The party's policy platform contains policy positions which assist the party's legislative arm in directing the government legislative agenda. This policy platform will generally include policy positions with respect to the operation of the W.C.B. (Reid, 1992).

In addition to enjoying access to the system at the legislative level, an electorally successful political party may also influence the operation of the W.C.B.'s policy process. While compensation legislation requires that the cabinet solicit nominees from organized labour and business to the W.C.B.'s Board of Directors, it also provides for the appointment of directors who represent the "public interest" (The Workers Compensation Act of Manitoba, 1992). In practise, the public interest representatives tend to be drawn from the membership ranks of the governing party and therefore are sympathetic to the policy positions of its leadership (Mesman, 1991).

The political party machinery of a governing party will often also enjoy preferential access to the claims process of the compensation system. For example, the system provides for vehicles such as the ministerial inquiry through which individuals, advocates, and constituency offices can seek information and potential redress from the system. While the W.C.B. seeks to maintain objective neutrality in its handling of claims, it is reasonable to assume that the use of political avenues of access to the system are more readily available to the governing party's membership and constituency offices than to opposition M.L.A.s' (Reid, 1992).

Opposition parties in the legislature are usually limited to criticism of government policy. In pursuing their role as critics, opposition M.L.A.s' can ask questions in the legislature, participate in committee proceedings, issue press releases, and advocate for injured workers on individual claims. Matters of W.C.B. legislation and policy are discussed in caucus and positions taken are generally reflective of party policy with respect to this area of public policy (Reid, 1992).

The informed public associated with the workers compensation system is dominated by the media. Electronic and print media monitor the activities of the Workers Compensation Board on an ongoing basis. The focus of their coverage is on the legislative and policy views of the two major stakeholder groups in the system and on the discussion of compensation issues in the formal political process. In addition, they report on individual claims.

The media reports on issues of concern raised by the two major stakeholder groups, organized labour and employer groups, involved in the compensation system. It will report on press conferences called by these groups (Winnipeg Free Press, 1991, June). In presenting the often disparate views of these two stakeholder groups, the print media tends to segregate each of them to distinct sections of the newspaper (Winnipeg Free Press, 1991, June; Winnipeg Free Press, 1991, April).

The media also follows W.C.B. issues through their coverage of the political process. W.C.B. legislation and policy are the subject of occasional discussion in the legislature. This, in turn, provokes comment from the broader policy community (i.e., the W.C.B.

administration, major interest groups) of the workers compensation system (Winnipeg Free Press, 1991, June).

The final identified point of access through which the media involves itself in the W.C.B. system is at the primary decision-making level. Periodically, the media will become involved with the system around individual claims decisions. The media will pursue these claims through what could be termed an advocacy format or, alternatively, through the vehicle of the individual human interest story.

In summary, this chapter has described a general theory of regulation as a distinctive policy instrument. In addition, it has presented a generic model of the regulatory policy process within the framework of a cabinet-parliamentary form of government based upon ministerial responsibility. There are a tremendous number of regulatory agencies, each with its own distinct environment of policy-making. The W.C.B. of Manitoba provides one example of a regulatory body operating in a distinct policy context. Within its particular policy environment, the W.C.B. operates with a significant level of independence relative to other regulatory agencies. This independence is a consequence of the adjudicative responsibilities of the W.C.B.. It is also consistent with an agency whose funding is not dependent upon government outlays. The next chapter will provide an identification and analysis of the internal organizational environmental factors influencing the operation of regulatory agencies with specific reference to the W.C.B. of Manitoba.

CHAPTER 4:

The Internal Administrative Structure of the W.C.B. of Manitoba

4.1 The Administration of Disability: The Mashaw Model

> The Bureau is not a receptacle for the perspective and preferences of other institutions, a vector sum of contending external forces that impinge on its functioning. It is a focus for political initiative combined with technical competence, for the assertion of values beyond the time horizon of most other political actors. (Mashaw, 1983, p. 15-16)

The internal environment of the modern bureaucratic organization is a significant factor influencing organizational output. The bureaucratic organization's structure is generally composed of a variety of identifiable interests. Often, these internal interests compete for control over the organization. The successful assertion of dominance by any particular sectoral interest within such an organization can lead to a process of decision-making reflective of that interest.

The internal organizational environment of the WCB of Manitoba resembles that of other modern disability programs. According to Jerry Mashaw, the administration of these programs is characterized by the presence of distinct models of administration. The first of these models, termed the "Bureaucratic Rationality Model", emphasizes traditional,

bureaucratic methods of operation. The second model, the "Professional Treatment Model of Administration", accentuates the role of the professional in the administrative structures and processes of the bureaucratic environment (Mashaw, 1981, April; Mashaw, 1983). Finally, there is what is termed a "Moral Judgment Model of Administration" identified within these programs. This model stresses the importance of considering the merits of each particular situation in disability program administration:

> This entitlement-awarding goal of the moral judgment model gives an obvious and distinctive cast to the basic issue for adjudicatory resolution. The issue is the deservingness of some or all of the parties in the context of certain events, transactions or relationships that give rise to a claim. (Mashaw, 1983, p. 30)

This chapter will describe the formal, internal administrative environment of the Benefits Division of the WCB of Manitoba with reference to these theoretical models of administration. It will begin with a brief discussion of the goals and functions of modern disability programs and, more specifically, of the WCB of Manitoba. Then, it will review in detail the three identified theoretical models of administration. Finally, the chapter will outline the administrative structures and processes of the Benefits Division of the WCB of Manitoba corresponding to those models of administration.

4.2 The Goals and Functions of Modern Disability Programs

The existence of physical disability programs reflects an acknowledgment in contemporary society of the need to provide for the consequences of physical disability. Generally, the goal of such programs is to address the medical, financial and other needs of those suffering from a variety of disabilities. The philosophy of these programs can be termed "cautious benevolence" as their intent is to provide financial and rehabilitative support to only those individuals suffering from a "legitimate" debilitating condition (Mashaw, 1983).

The philosophy of cautious benevolence characteristic of these programs requires an administrative structure focused upon making accurate, ongoing determinations between legitimate and illegitimate claims of disability. These decisions are made with reference to the mandate of the particular disability program. The program will generally also have specific policies and administrative guidelines to assist in these determinations.

The workers compensation program in Manitoba is responsible for addressing the claims of workers who have suffered workplace-related injuries. The program's goal is expressed in section 4(1) of the Workers Compensation Act which states, in part, that "...where, in any industry within the scope of this part, personal injury by accident arising out of and in the course of the employment is caused to a worker, compensation as provided by this part shall be paid by the Board out of the Accident Fund..." (Workers Compensation Act of Manitoba, 1992, p. 23).

As the administrative body responsible for the implementation of the program, the Workers Compensation Board of Manitoba is principally concerned with managing individual claims. To do this, the administration of the Board requires input from elements within the organization representative of the aforementioned theoretical models of administration. The relative influence of these models over program administration can materially affect both the direction and the outcomes of the workers compensation system.

4.3 The Bureaucratic Rationality Model of Administration

The bureaucratic rationality model of administration is based on classic, Weberian principles of administrative structure and decision-making. Weber identified three types of authority which he believed corresponded to different types of organization (Albrow, 1970). In each case, authority rested on claims to legitimacy:

1) Traditional Authority: legitimated by time, by its existence in the past, that is, by the sanctity of tradition;

2) Charismatic Authority: legitimated by outstanding personal leadership characteristics of the bearer;

3) Legal-Rational Authority: legitimated by

> being in accordance with formally correct rules and by the right of those in authority-under such rules-to issue commands. (Etzioni-Halevy, 1983, p. 27)

Weber went on to outline what he believed to be the structure of organizations based in legal rational authority. He formulated the following eight propositions about the structuring of such organizations:

(a) Official tasks are organized on a continuous, regulated basis.

(b) These tasks are divided into functionally distinct spheres, each furnished with the requisite authority and sanctions.

(c) Offices are arranged hierarchically, the rights of control and complaint between them being specified.

(d) The rules according to which work is conducted may be either technical or legal. In both cases, trained individuals are necessary.

(e) The resources of the organization are quite distinct from those of the members as private individuals.

(f) The office holder cannot appropriate his/her office.

> (g) Administration is based on written documents and this tends to make the office (bureau) the hub of the modern organization.
>
> (h) Legal authority systems can take many forms but are seen at their purest in a bureaucratic administrative staff. (Albrow, 1970, p. 43-44)

Weber believed in the fundamental superiority of bureaucracy as a system of legal rational authority. He held that a bureaucratic type of administrative organization provided the most rational means of carrying out a particular administrative task or set of tasks:

> Experience tends universally to show that the purely bureaucratic type of administrative organization...is, from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of carrying out imperative control over human beings. (Merton, 1952, p. 24)

Consistent with his belief in the fundamental superiority of what he termed the bureaucratic administrative staff as a system of legal rational authority, Weber formulated a conceptual model of bureaucracy which he termed the "ideal type" bureaucracy. This model was meant to identify the primary characteristics of bureaucratic organizations (which may not correspond exactly to any particular

bureaucratic organization that existed in the real world). The defining characteristics of Weber's ideal type model included

1. Staff members are personally free, observing only the impersonal duties of their offices.

2. There is a clear hierarchy of offices.

3. The functions of the offices are specified.

4. Officials are appointed on the basis of a contract.

5. They are selected on the basis of a professional qualification, ideally substantiated by a diploma gained through examination.

6. They have a money salary, and usually pension rights.

7. The official's post is his/her sole or major occupation.

8. There is a career structure, and promotion is possible either by seniority or merit, and according to the judgment of superiors.

9. The official may appropriate neither the post nor the resources which go with it.

10. The official is subject to a unified control and disciplinary system (Albrow, 1970, p. 44-45).

The decision-making processes associated with the ideal type model are consistent with its structure. They emphasize the same fundamental principles of rationality and efficiency. In a pure, rational model of decision-making, the making of a decision requires prior gathering and subsequent consideration of all information pertinent to a particular decision (Hogwood and Gunn, 1984). Subsequent decision-making involves the consideration of this information relative to a set of established decision-making criteria.

The bureaucratic rationality model of administration is based in these same structural and decision making concepts. Structurally, the bureaucratic rationality model stresses selection and training of personnel, detailed specification of administrative tasks, specialization and division of labour, coordination via rules and hierarchical lines of authority, and hierarchical review of the accuracy and efficiency of decision making (Mashaw, 1983). It emphasizes information retrieval and processing in its decision-making processes. However, in practise, it tempers this pursuit of pure, rational decision making through processes designed to take account of administrative costs.

The bureaucratic rationality model of administration is the principal theoretical model of administration underlying the operation of modern disability programs. These programs

have a general administrative process which is followed in the pursuit of their particular program goals. Elements of the bureaucratic rationality model can be identified in the general structure of that process.

The practical task of paying disability benefits to eligible individuals implies a particular administrative goal. The goal is to develop, at the least possible cost, a system for distinguishing between true and false claims. Modern disability programs attempt to minimize the "error" costs associated with incorrect individual claims determinations while controlling the administrative costs associated with their respective programs (Mashaw, 1981, April).

Disability programs pursuing this administrative goal define the associated administrative process in factual and technocratic terms. The process is generally concerned with the real world facts that relate to the truth or falsity of a particular claim. At the level of practise, the individual decisionmakers on claims, known as claims adjudicators or claims officers, internalize a definition of disability consistent with the mandate of the program in which they are employed. Then, they collect sufficient information to allow a determination as to whether a particular claim meets that definition. Internalization of statutory program goals and pursuit of the facts relevant to a particular claim are activities characteristic of a bureaucratic, rational administrative model.

The bureaucratic, rational model of administration has some identifiable weaknesses as a model of administration. The limits of this model within the context of a particular administrative program are of three types:

> First, there are certain necessary conditions for the successful application of an instrumentalist method to a set of decisional tasks. To the degree that these conditions are not met, individual (much less bureaucratic) decision-making cannot fully conform to the ideal type. Second, organizational (as distinguished from individual) decisions present special difficulties for, and therefore limitations on, rational decision making. Bureaus are not organisms, and ensuring rational behaviour by all those individuals who might act for the bureau is a task for which management science has not produced tidy formulae. Third, rationality, as we have here defined it (the effective pursuit of some set of programmatic goals), does not exhaust our ambitions for a good life or a good government. Rational administration of disability benefits (or of any other program) comes at a cost-the opportunity costs of pursuing other social goals. Pursuit of rational administration in any program is limited by competition with these other goals (Mashaw, 1983, p. 50-51).

The success of disability programs is often impaired by problems with their mandates and administration. A pure model of bureaucratic rationality presumes that the goals upon which a particular program is based are relevant, stable, consistent, precise and

exogenous. These conditions are necessary to the pursuit of bureaucratically rational decisions. None of these conditions fully obtains in a disability (or any other administrative) program (Mashaw, 1983).

The apparent absolute nature of the legislative mandates upon which modern disability programs are based is questionable when subjected to close review. For example, the criteria found in the Workers Compensation Act of Manitoba defining the parameters of program eligibility are not absolute. There will always be claims which will call for judgment. These situations are not always easily captured in legislation. This observation should not be read as critical of the legislative mandates of such programs. Somewhat vague mandates reflect the politics of program creation and it is unrealistic to expect them to produce fully coherent policies at an administrative level. Generally, legislative mandates contain a number of policy and administrative goals which may not always be consistent (Mashaw, 1983).

The individual disability determination also lacks precision. It is not often possible to know very much after the fact about the tendency of a disability program to differentiate appropriately between those who meet, and those who do not meet, the parameters of the program. The line between acceptable and unacceptable claims on a disability continuum cannot be precisely located. This imprecision limits the degree to which a particular decision can be considered a correct application of a particular program's mandate (Mashaw, 1983).

The statutory mandate of a particular disability program may lack relevance relative to the operation of that program. Generally, the notion of legislative supremacy is said to ensure that administrative programs will be a direct expression of the legislative mandate. However, the administrators of such programs are often bombarded by government politicians, legislative committees, interest groups, and appeal decisions. Each of these institutions may carry a somewhat different interpretation of the program mandate. While the statute is the relevant guide for the administrative direction of the program, its relevance in any particular situation may be muted by other factors of relevance raised by any of the aforementioned or other groups operating in the policy environment of a specific disability program (Mashaw, 1983).

The senior administration of a particular bureaucratic organization can also influence the goals of its administrative program. The values or goals that are pursued by a disability program will be affected to some not easily specified degree by the views of its senior bureaucrats. Senior officials may influence the program in identifiable ways such as the promulgation of policies and regulations which define critical criteria of decision-making associated with the program. In addition, they can use more subtle ways to influence program goals. For example, senior administrators can alter the structure of a program's decision-making process to include or exclude particular organizational elements. This, in turn, may materially influence program output (Mashaw, 1983).

In addition to the problems that mandates and administrators can potentially create for disability programs, there are several different kinds of factual uncertainties that can afflict disability programs. These uncertainties also raise questions concerning the

applicability of a pure bureaucratic rationality model of administration to the disability claims process. Included in the list of identified uncertainties are the problems of fragmentary evidence, subjective evidence, predictive extrapolation, and, finally, the unknowability of certain facts (Mashaw, 1983).

Fragmentary evidence refers to gaps in the available information on a particular claims file. Often, in spite of their efforts, disability claims adjudicators are not able to secure all information relevant to a particular claim. This can often lead to decision-making based on partial knowledge. In such situations, evidence of disability can hardly be considered determinative (Mashaw, 1983).

Subjective evidence refers to the identifiable subjective interpretations characteristic of the medical aspects of claims. Medical tests are subject to interpretation. Also, medical examinations consist of visual and verbal judgments. Interpretation or evaluation of these medical indicators involves judgments by medical professionals. These judgments are influenced by a host of subjective factors that are difficult to bring to light or to evaluate (Mashaw, 1983).

The problem of predictive extrapolation is simply the problem of predicting the future on the basis of the past. Disability claims processes often require the prediction of impairments for determinate periods. Determinations of this nature are based as much on an individual's response to a particular injury as on some generic standard applied to the "average" individual. Other judgments associated with the claims process, such as the capability of an individual claimant to do a particular job, are predicted on the

basis of an individual's vocational and medical history. Again, there is a lack of precision in the judgments. This uncertainty can be identified in the equivocal responses to such issues by various agency personnel:

> More important, in many cases the disability determination is a determination concerning whether a claimant can perform jobs that he or she has never before performed. That is, it is a prediction about how the claimant's prior vocational and medical history will condition his or her response to some new job environment. In answer to the question, "Can X do Y job?" one can easily imagine responsible predictions of the form "probably so" or "probably not". The disability system requires that the question be answered "yes" or "no". (Mashaw, 1983, p. 63)

The final, identified category of factual uncertainty associated with the disability claims process refers to information which can be classified as inherently unknowable. The ability to function depends substantially on such abstractions as motivation, tolerance for pain, and energy levels. These factors are not readily susceptible to testing in a manner similar to that of other medical factors. In spite of this, they may be highly relevant to ongoing decisions associated with the claims process (Mashaw, 1983).

In addition to the difficulties which factual uncertainties present to the application of a pure, bureaucratic rationality model of administration to the disability claims process, there are certain general organizational characteristics which further mitigate against its application to that process. These characteristics include (1) limits on organizational capacity; (2) competition between program goals and organizational goals; and (3) competition between program goals and the personal values of adjudicators (Mashaw, 1983).

Administration based upon a pure, bureaucratic rationality model implies what has been termed optimizing behaviour. This type of administrative behaviour is based in the philosophy that all available values and facts relevant to a particular decision must be considered in order to maximize total benefit from every administrative decision.

Individual decisionmakers acting in real situations often fall short of the optimizing ideal. Instead, they employ what has been termed a satisficing model of administrative behaviour. The satisficing decisionmaker makes individual decisions based on some subset of relevant facts and values. The effort of such decisionmakers is to reach a satisfactory decision, even though some other decision based on better information and more cogent reflection on a more full range of values might be more beneficial, even after taking account of the costs of a more comprehensive decisional methodology (Mashaw, 1983).

A series of general limits on rational organizational behaviour in the optimizing mode suggest themselves. The first is cognitive competence. Neither individuals nor

organizations can faultlessly collect and process all of the information that is relevant to administrative decisions. The decision as to what amount of information is sufficient will always be the subject of debate. Administrative procedures can lead to too little or too much information being inputed into the decisionmaking process with its consequent effect on decisional output (Mashaw, 1983).

Communication problems can also adversely affect administrative decision-making. One type of communication problem in organizations is referred to as "organizational slack". Information filters through organizations. Each transmission through the hierarchy dilutes the message.

Another communication problem found in modern bureaucratic organizations refers to messages which are difficult to communicate. Bureaucratic administrative structures contain a substantial amount of information pivotal to the administration of a program which are not readily amenable to transmission through straightforward administrative policies or procedures. A substantial amount of the "experience" of the system will not yield its secrets or permit their transmission through straightforward cognitive techniques. It involves things like the sense of what works and what does not. These dynamics are often an implicit part of the culture of the system but are not found in administrative manuals or regulations. This type of information is generally termed the "conventional wisdom of the bureaucracy" (Mashaw, 1983).

Organizations and the employees who work in them have their own goals, desires, and motivations. Actions that seemingly contradict statutory purposes may be taken not only

because those purposes are vague and their application uncertain, but also because it is in the interests of either the organization or of particular decisionmakers to behave in that fashion (Mashaw, 1983).

Organizational actions may sometimes reflect a particular organization's active pursuit of its own self interest. An organization may pursue activities aimed at preserving its status. Alternatively, its activities may be aimed at increasing the status and wealth of the organization and its employees. Identified activities of the former type include activities designed to assist the organization to stay out of political trouble and protect its reputation. Activities of the latter type include developing and marketing organizational programs and pursuing increases in the organization's budget (Mashaw, 1983).

The applicability of the bureaucratic rationality model of administration to modern bureaucracy is often mitigated by competition between program goals and the personal values of individual adjudicators. Disability program administrators must contend with two types of human rationality that may skew decisionmaking about disability claims in directions that depart from official policy (Mashaw, 1983).

One type of human rationality with which administrators must cope is termed "contextual rationality". Human decisionmakers appear in context. They have personal intellectual and emotional histories. They operate in an environment that is rich in behavioral signals. Administrators must control decisionmakers who exercise discretionary judgment within the context of their own personal value set. These same programs may

employ some individuals who operate within the context of a particular professional culture. In these situations, administrators may sometimes have to contend with the divergencies between the aims of such a culture and the goals of a program structured around discrete decisions concerning claims for entitlement (Mashaw, 1983).

Another type of human rationality which may intrude upon the pursuit of a pure, bureaucratic rationality model of administration might be termed "game rationality". People have personal preferences and values which they seek to maximize in relation to those of other actors in the environment. When the satisfaction of their preferences conflicts with the satisfaction of the preferences of others, they will generally attempt to maximize their own advantage. A loser in this "game" could be the program.

Administrators must seek to minimize this type of behaviour. Decisionmakers will sometimes seek to avoid work, stress, and threatening supervision. For example, an individual claims adjudicator may grant claims to avoid work or stress. There is no appellate review of such claims. Less work need be devoted to justification and documentation of the decision in such situations. In addition, the adjudicator avoids the psychological stress of denying a poignant appeal for assistance (Mashaw, 1983).

4.4 The Professional Treatment Model of Administration

The professional treatment model of administration identified within modern disability programs is based in values and principles quite distinct from those of the bureaucratic

rationality model of administration. These values and principles imply a different approach to the management of claims in those programs.

The professional treatment model is grounded in the philosophy of the professions. Professions have had, and continue to have, a significant influence upon society. A number of approaches have been used to identify and define the characteristics of the professions. These approaches include structure, process, and power approaches to the study of the professions (Ritzer, 1975).

The structural approach to defining the professions is ahistorical. It stresses static characteristics possessed by professions which are lacking in non-professions. Goode (1957) offers one list of these characteristics in his analysis of the relationship of the professional to the larger community.

Goode (1957) suggests that each profession is distinguished by what he terms a "community of profession". This "community" is called a community by virtue of its shared characteristics. Goode identifies the following attributes as those generally shared by those within a particular profession:

1) Its members are bound by a sense of identity.
2) Once in it, few leave, so that it is a terminal or continuing status for the most part.
3) Its members share values in common.

> 4) Its role definitions vis-a-vis both members and non-members are agreed upon and are the same for all members.
>
> 5) Within the areas of communal action there is a common language, which is understood only partially by outsiders.
>
> 6) The community has power over its members.
>
> 7) Its limits are reasonably clear, though they are not physical and geographical, but social.
>
> 8) Though it does not produce the next generation biologically, it does so socially through its control over the selection of professional trainees, and through its training processes it sends these recruits through an adult socialization process (Goode, 1957, p. 194).

Professions vary in the extent to which they possess these attributes and, consequently, the degree to which they can legitimately be called communities. It is likely that as a profession emerges, or as an occupation begins to approach the role of professionalism, it begins to take on the traits outlined above (Goode, 1957).

The processual approach to defining professions focuses upon a series of historical stages through which it is held that an occupation must pass in order to become a profession (Ritzer, 1975). It suggests that an examination of the history of particular established professions yields these stages. Less established and marginal professions display a different pattern (Wilensky, 1964).

The processual approach identifies a sequence of stages which is considered typical in the development of a profession. The first identified stage in an occupation's movement toward professional status involves the pursuit of certain activities on a full-time basis. These activities may have been previously carried out. However, they were carried on for one reason or another as other than a full-time occupation. For example, the sick were always cared for, but technical and organizational developments created nursing as a full-time occupation (Wilensky, 1964).

The second stage in the movement of a particular occupation toward professional status refers to its involvement in training. The occupation will press for the establishment of a training school. The training school will gravitate toward contact with universities. Also, there is movement toward the development of standard terms of study, academic degrees, and research programs to expand the base of knowledge. Eventually, this standardized training becomes a prerequisite to entering the occupation (Wilensky, 1964).

The next stage in the process toward full professionalization refers to the formation of a professional association (Wilensky, 1964). This stage is characterized by a period of soul searching within the profession. It is accompanied by a campaign to separate the competent from the incompetent. It involves further definition of essential professional tasks, the development of internal conflict among practitioners of varying backgrounds, and competition with outsiders who do similar work.

The competition with "outsiders" is manifested in the persistent pursuit of those within a defined profession of the support of law for the protection of their job territory. The level of control which a particular profession enjoys over its defined area of competence will depend upon the degree to which it is successful in achieving exclusive jurisdiction. In those situations where the area of competence is not exclusive, alternative professional groups can be found within the area pursuing protection of their claim to legal title and right to exclusive jurisdiction. Where jurisdiction over the area of competence is more apparent, the profession in control may command such authority that performance of their role by someone outside the profession may be declared a crime (Wilensky, 1964).

Elaboration of a formal code of ethics represents the final identified stage in the process of professionalization. The code will generally embody rules to eliminate those not qualified to practise as well as rules designed to protect clients and emphasize the service ideal. In some situations, this code may appear at an earlier point in the process. However, the code is usually formalized at the end of the process of professionalization (Wilensky, 1964).

The power approach to the study of professions is a more modern approach to their study than the structural and processual approaches. It prioritizes among the defining characteristics of professions. It suggests that the single most important characteristic of the professions is their monopoly over their work tasks. It holds that a profession achieves this monopoly by convincing the state and the lay public of its need for, and deservedness of, such a right (Ritzer, 1975).

The focus of the power approach upon this single characteristic defines the nature of its approach to the study of professions. The power approach concentrates on the categorization of occupations between "true" professions, aspiring professions, and non-professions. Friedson provides an example of the use of this approach in practise in his discussion of professions and professionalism in the health care industry:

> While it is dangerous to assume too much fixity in organizations since, in the United States in particular, many occupations are aggressively seeking to improve their prestige and position, nonetheless the comprehensiveness of its scope and strategic importance of its focus virtually guarantees medicine's superiority over others. An aggressive occupation like nursing can have its own schools for training, can control licensing boards in many instances, and can have its own "service" in hospital, in this way giving the appearance of formal, state-supported, and departmental autonomy, but the work which its members perform remains subject to the order of another occupation...As the case of nursing shows, those paramedical occupations which are ranged round the physician cannot fail to be subordinate in authority and responsibility and, so long as their work remains medical in character, cannot gain occupational autonomy no matter how intelligent and aggressive its leadership. To attain the

> autonomy of a profession, the paramedical occupation must control a fairly discrete area of work that can be separated from the main body of medicine and that can be practised without routine contact with or dependence on medicine (Friedson, 1971, p. 69).

The literature on professions and professionalism has tended to concentrate on the patterns of behaviour of independent professions. It portrays these professions in an entrepreneurial role separate from employment in large-scale industrial or government bureaucracies. However, the more recent reality of professions is of an employment situation characterized by organizational associations. For example, physicians are now affiliated in large numbers with hospitals and clinics, lawyers with law firms and, in increasing numbers, with industrial corporations, and scientists and engineers with government, industry, large independent research organizations, and a collection of institutes and departments in academic institutions. Professions have not escaped the advance of bureaucracy and bureaucratization (Scott, 1966).

The involvement of professionals in bureaucratic organizations has led to alterations in their characteristics. The work of the professional in bureaucracies is subject to the evaluation and control of other individuals who are not necessarily members of the profession. The authority of bureaucratic administrators in governing the work of employees, including professional employees, derives from the legitimating principles of bureaucratic administration. In contrast, the professional follows a model of operation controlled by ethical standards determined by colleagues in a professional association,

rather than by managers in an administrative hierarchy. This difference provides the basis for considerable role conflict when professionals become salaried employees in complex organizations (Scott, 1966).

The conflicts experienced by professionals in bureaucratic organizations are many. They are rooted largely in the different characteristics associated with professions and bureaucracies.

The professional and bureaucratic approaches to administration suggest alternative ways of organizing tasks. The professional approach is one which instills in each professional all of the basic skills required for doing the work together with the norms and standards which will govern performance. This approach allows the professional to perform tasks independently. Performance standards are internalized by the individual practitioner. While the professional's performance is somewhat controlled by the presence of colleagues who will apply their knowledge to others' actions, the major control over performance is left largely in the hands of the individual professional (Scott, 1966).

The standard bureaucratic approach to the organization of tasks involves the division of a particular task into its constituent activities and the training of workers to perform those various activities. Norms and standards are not internalized. Instead, a system of rules which specifies how the work is to be done will be necessary. Individual workers are given the job of interpreting and enforcing the rules. This supervisory class also performs a coordinating function:

> In addition, the rules and the supervisory officials must function to coordinate the efforts of the various workers to assure that the several activities will each contribute to the accomplishment of the assigned task. (Scott, 1966, p. 267)

There are four specific areas of conflict experienced by professionals working in a bureaucratic environment. These areas of conflict include: (1) the professional's resistance to bureaucratic rules; (2) the professional's rejection of bureaucratic standards; (3) the professional's resistance to bureaucratic supervision; and (4) the professional's conditional loyalty to the bureaucracy (Scott, 1966).

Bureaucratic administration emphasizes the division of tasks among workers and the implementation of rules to control and coordinate these tasks. The worker in this model exercises little discretion. Evaluation of a worker employed in such a manner focuses upon conformity to or deviation from the rules that control the employee's performance. Professionals acquire the skills which allow for the performance of entire tasks and they have internalized norms which control the application of those skills. Professionals expect to enjoy autonomy consistent with this skill base. Evaluation of the professional takes place on the basis of both adherence to procedures of a particular professional process and on an assessment of the performance outcomes of that process (Scott, 1966).

The employment of professionals in bureaucratic organizations creates a fundamental change in their situation. In such situations, they do not possess all of the necessary skills for doing the work but rather are part of a larger and more complex system in which they perform only some of the required skills. The activities of professionals must be regulated to fit in with the overall administrative design. The bureaucracy superimposes its own rules on the profession constraining professional behaviour and restricting professional choice (Scott, 1966).

Professionals experience conflict with the bureaucratic form of administration when rules contradict their professional norms. This leaves professionals in conflict with bureaucratic officials who are insistent that bureaucratic rules be obeyed (Scott, 1966).

The membership of the bureaucratic organization receives on the job training which includes some indoctrination into the goals and objectives of the organization. The limit on the bureaucrat's training experience leaves s/he with little basis for questioning the appropriateness of prevailing organizational norms and standards.

In contrast, professionals share a common knowledge base and a set of shared skills and standards. These standards can be used to evaluate the standards and objectives of any prospective employer. Professionals can marshall colleagues' support when professional standards are in danger of being compromised by bureaucratic standards.

The conflicts which result from the differences between bureaucratic and professional standards are also troublesome for a bureaucratic organization. It must balance pursuit

of bureaucratic standards with concern for insuring continued professional support of the organization and its activities (Scott, 1966).

Authority in bureaucratic systems of administration is embodied in positions which have as their major function coordination and supervision. Employees filling these positions may or may not have had experience in performing the various tasks that they supervise. The authority of such supervisors does not stem primarily from their competence in the tasks being supervised but from the fact that they occupy a position which has been allocated certain supervisory rights.

The authority of professionals is based upon their superior competence, not on their occupancy of a particular organizational position. Professionals are expected, and expect, to function independently and autonomously. Individual professionals may seek the assistance of more competent or experienced colleagues, but such assistance comes in the form of advice and counsel rather than orders (Scott, 1966).

Professionals working in bureaucratic organizations are often subject to the authority of administrators, who have overall responsibility for the accomplishment of organizational goals. Professionals are often uncomfortable with this authority relationship. They believe that supervisory arrangements are largely unnecessary in directing the professional's tasks. This situation is exacerbated when the professional is subordinated to the direction of an administrator with little or no experience in the field in which the professional works (Scott, 1966).

The professional's loyalty to the bureaucratic organization is often conditional. Prolonged exposure to a particular training institution results in the development of a professional self-image which leads to loyalty to the profession becoming stronger than commitment to the organization. The professional is generally more concerned with obtaining and maintaining a reputation among his peers than with pleasing organizational superiors. In contrast, the loyalty of most administrators to the organization is normally stronger. Bureaucrats will express greater commitment to the bureaucratic organization due to their training through the organization. The bureaucrat may also be more apt than the professional to commit to the bureaucracy because career advancement may be tied to approval of his organizational superiors:

> While the professional follows his career line between organizations, the bureaucrat achieves success by moving up within a single organization. (Scott, 1966, p. 274)

The extent to which professionals employed in bureaucratic organizations experience these types of conflict is a function of several factors, including the relative bureaucratic orientation of the profession in question, the structural adjustments that an organization makes to mitigate conflicts with professionals, and the nature of the work of the particular bureaucracy (Gillespie, 1975). However, in spite of these potentially mitigating factors, the general areas of conflict remain to a greater or lesser extent inevitable.

The professional treatment model of administration reflects the particular philosophy of the professional. It emphasizes the distinctiveness of each disability claim in modern

disability programs. While it mirrors the bureaucratic rationality model of administration in its requirement of the collection and manipulation of information according to standardized procedures, the professional treatment model recognizes the incomplete nature of this information, the distinctiveness of claimants' problems, and the ultimately intuitive nature of judgment.

The principal techniques of professional treatment are personal examination and counselling. Professionals combine the information of others with their own observations and experience to reach conclusions that are as much art as science. These conclusions are subject to revision as conditions change or as interventions prove unsatisfactory or miraculously successful. The model implies a continuing relationship between the professional and the consumer of service which may involve repeated service-oriented decision-making (Mashaw, 1981, April; Mashaw, 1983).

An administrative system based on a professional treatment model would have a number of characteristics distinct from those of an administrative system based upon a bureaucratic rationality model of administration. It would emphasize the use of an appropriate professional in a particular situation. The administrative structure would be directed to the referral of claimants to multi-professional centres for assessment and follow-up action. Professional contacts would be facilitated, the activity of multi-professional teams coordinated, and professional judgments implemented on particular claims. The substantive and procedural rules, hierarchical controls, and efficiency considerations characteristic of the bureaucratic rationality model would be subordinated to the norms of the profession (Mashaw, 1981, April; Mashaw, 1983).

In practise, the disability claims process requires some professional input. The disability must be medically determinable, a standard that contemplates delegating authority to the medical profession to establish the basic condition underlying eligibility. In addition, decision-making authority is often delegated to vocational rehabilitation services, staffed by counsellors, to assess the residual vocational capacity of individuals (Mashaw, 1981, April, Mashaw, 1983).

The professional treatment model of administration is required in the disability claims process. However, it contains a number of disadvantages which mitigate against its acceptance for use as the dominant model of administration in that process. These disadvantages can be identified in difficulties associated with the claims process. For example, claims adjudicators are instructed to ignore the conclusions of treating physicians' concerning a claimant-patient's capacity to work. This screening is done to minimize the effects of the physician-claimant relationship on claims duration:

> The reports of treating physicians are carefully analyzed for their clinical findings, of course, but not for their professional judgment concerning the therapeutic desirability of continued work. The programmatic profligacy of conservative medical advice is thus avoided (Mashaw, 1983, p. 44).

Similar concerns associated with individualized, professional judgments are often found in the internal decisions of vocational rehabilitation professionals. In assessing the residual vocational capacity of a particular claimant, the vocational rehabilitation counsellor might classify the particular claimant within one of the following categories:

> (1) Those not sufficiently disabled to require rehabilitation or...income support;
>
> (2) Those requiring services to regain self-sufficiency, but who are not permanently disabled; and
>
> (3) Those who are too impaired to justify rehabilitation efforts and who should be afforded early retirement supported by disability benefits. (Mashaw, 1983, p. 45)

It is commonly believed that delegation of decision-making authority to the vocational rehabilitation professional relative to such assessments will lead to too many disabled individuals classified under the third of these categories (Mashaw, 1983).

4.5 The Moral Judgment Model of Administration

The moral judgment model of administration is based in classical legal principles. The model emphasizes the importance of procedural justice in the design and delivery of administrative programs. Procedural justice refers to the implementation of process which is just and fair in administrative decision-making (Lind, Thibault and Walker, 1979). Procedure, in a moral judgment model of administration, is viewed as an end in itself:

> Procedures becomes not merely a means to the end of distributive justice, but a means that profoundly affects the psychological meaning of that end...We would expect that procedures rated highly on a procedural justice continuum would enhance the perceived fairness and acceptability of the outcomes those procedures yield. (Lind, Thibault and Walker, 1979, p. 1403)

Procedural justice consists of adherence to such values as equality, predictability, transparency, rationality, participation and privacy. While these values are not mutually exclusive (and can in fact be contradictory), each provides separately some justification for the need for procedural integrity in legal and quasi-legal proceedings.

The value of equality refers to the principle that in decision-making one person's or group's standing before a decision-making body must not receive preferred status as

a consequence of the identity of that person or group (Mashaw, 1981, May). Equal treatment contributes to the appearance of administrative fairness. However, the pursuit of strict equality can be controversial. For example, decision-making processes that protect formal equality can in some instances serve to promote generally undesirable outcomes:

> The ability of both sides in a conventional adversary dispute to question a witness seems essential to formal equality. Yet, such questioning may so increase the costs of litigation to certain parties--Rape victims or malpractice defendants, for example--that they appear substantially disadvantaged. (Mashaw, 1981, May, p. 900)

Predictability, transparency, and rationality are a group of related process values that make a significant contribution to the confidence of participants in the integrity and objectivity of the process. Respect for these values avoids the appearance of arbitrariness which is important since most participants have limited knowledge of what their procedural rights and program entitlements are. Participants must be provided with the rationale for the decision (Mashaw, 1981, May).

Decision-making processes that are transparent, predictable, and rational include a number of readily identifiable qualities. Participants are given adequate notice of the issues under consideration, of the evidence relevant to those issues, and of the particular steps employed in the process of decision-making. Also, the process is

rational in that the issues, evidence and processes are seen, through the articulation of the basis for the decision, to be meaningful to the outcome (Mashaw, 1981, May).

The values of transparency, predictability, and rationality can also be controversial in their implementation. For example, these values may lead to excessive rigidities in decision-making processes which may be undesirable in the conduct of human services. Random, unstructured process may appeal to certain aspects of the human psyche which would otherwise be inhibited through excessive structure. The specific way in which each of these values is manifested in a particular decision-making process may be a function of the way in which each is defined:

> A conflict may lurk somewhere between two aspects of our individuality: rationality and freedom. And this conflict might be redescribed as a conflict between different notions of rationality: "rationality" as an intuitive process in which goals, means of achieving them, and states of the world constantly interact, each thereby reshaping our perceptions of the others; or a paradigm of means-ends "rationality" in which goals, at least, are fixed, coherent and unambiguous. A demand that a process be "rational" thus does not define the process ultimately desired. It leaves open the question, "rational in what way?" (Mashaw, 1981, p. 902)

Participation in decision-making processes contributes significantly to perceived procedural justice. The level of participant satisfaction with a particular decision-making process will often correlate positively with the level of participant involvement afforded in that process. Participant satisfaction with decision-making processes may be augmented further by the perception of participants that they enjoy a measure of involvement in determining the outcomes of the process. However, involvement in the determination of outcomes is generally not required to insure an adequate level of participant satisfaction:

> We conclude that essential causal mechanisms involve the participant's perception that he exercises some measure of control in the adversary process, not only on the conduct of the proceeding but also on its outcome. Enhanced acceptability of outcome may result directly from the exercise of control, possibly because people may tend to favour persons or situations that they control. Alternatively, the exercise of control may work indirectly to reduce dissatisfaction with an unfavourable outcome by securing a heightened degree of commitment to the consequences of the procedure. (Lind, Thibault, and Walker, 1979, p. 1417)

Participation as a characteristic of an administrative decision-making process can be conceptualized on a continuum. At one end of the continuum is the total exclusion of

participation by affected parties in administrative decision-making processes. At the other end of the continuum, all decisions of the administrative state are made by some combination of popular referendum, adversary adjudication, and negotiation to consensus (Mashaw, 1981, May). Perceived substantive participation in particular decision-making processes would fall between these two polarities. It would allow input from all affected parties while respecting the ultimate authority of the decision-making body to make the necessary decisions.

The final, identified value of importance to insuring procedural justice in administrative decision-making processes is privacy. Privacy, in principle, is a demand to be let alone, to be respected as an autonomous being with a legitimate right to separateness (Mashaw, 1981, May). This value stands in contradiction to some of the other values important to procedural justice. If process rights such as participation imply a duty on the part of the holder (the affected parties in a particular decision-making process) to exercise such rights, this duty is potentially inconsistent with maintaining that same party's right to privacy. The balance between privacy and these other "due process" values will be determined pragmatically within the context of particular cases. This potential contradiction does not diminish this particular value's impact as a check on the arbitrary power of decision-making bodies.

Procedural justice in administrative decision-making processes is operationalized through the moral judgment model of administration. This model is the third model of administration found in modern disability programs. It shares common elements with both the bureaucratic rationality and professional treatment models of administration.

It also has certain elements which are particular to a model of administration focusing upon procedural justice.

The moral judgment model of administration stresses rationality in its decision-making processes. It advocates a model of adjudication which centres upon ascertaining the facts which are pertinent to a particular situation and upon applying existing rules to those facts. In this respect, this decision-making processes of this model are consistent with those of the bureaucratic rationality model of administration (Mashaw, 1981, April; Mashaw, 1983).

The moral judgment model differs from the bureaucratic rationality model in its concern for context in decision-making. The model's basis in procedural justice leads to a process of adjudication focusing upon the deservedness of the affected parties to a particular claim in the context of the events, transactions or relationships that gave rise to that claim (Mashaw, 1981, April; Mashaw, 1983). Subsequent decision-making may yield decisions which do not conform to existing rules. The flexibility of this decision-making process implies a personalized form of decision-making process more consistent with that of the professional treatment model of administration than with the bureaucratic rationality model.

The moral judgment model entails distinctive administrative structures and processes. Claims must be specifically stated in this model. In addition, all affected parties must be given the opportunity to state their positions and respond to the positions of others.

Also, this model of decision-making requires that the decision-maker involved not have a substantial interest in the decision being made:

> In order for this exploration of individual deservedness to be meaningful, the decision-maker must be neutral-that is, not previously connected with the relevant parties or events in ways that would bias his judgment. (Mashaw, 1983, p. 189)

The traditional court system provides the most prominent example of the structure and process of a system based in the principles of the moral judgment model. It employs passive, impartial arbiters in the form of judges and juries. They are charged with making decisions. In making these decisions, they determine not just who did what but who is to be preferred when specific interests, and the values to which they are connected, conflict (civil litigation) or whether and to what extent the actions of a particular actor imply culpability (criminal litigation) (Mashaw, 1983).

The process associated with the court system contains rules which define the issues for adjudication, identify affected parties, and structure the participation of those parties in the process. It includes evidentiary rules, notions of standing and in some cases procedures for the removal of an issue from the court system for resolution in a non-judicial environment. Finally, the court system employs an adversarial process as its general method of operation although this feature of the process is not critical to its successful operation (Mashaw, 1983).

The moral judgment model of administration is principally associated with the appeal structures of modern disability programs. The notion of bureaucracy first, then appeal appears to be firmly established in these programs (Mashaw, 1981, April; Mashaw, 1983). Claimants who make application for benefits and who are turned down in either an initial determination of eligibility or in a subsequent claim review have an opportunity to make representations orally and/or in writing to the particular program's formal appeal structure for reconsideration of the initial decision. The appeal structures of these programs may be either single or multi-stage. In addition, they may use either a judicial or non-judicial format or a combination of these formats. Finally, these structures may have various levels of formality associated with their respective processes.

The principal strength of the moral judgment model as a model of administrative decision-making within the disability claims process lies in its symbolism as an element of recourse in the process. Determinations concerning the fairness of a particular adjudicatory process often focus on the extent to which the process is supported by an appeal structure (Mashaw, 1981, April; Mashaw, 1983). The public expects due process in legal and administrative decisions affecting their lives and defines due process as the opportunity for remedy from a perceived-to-be unjust initial decision to an impartial third party. Regardless of the substantive results of the process, the simple provision of an appeal structure contributes to the public acceptance of a particular administrative decision-making structure.

Another strength of this model of decision-making is its role as a check on the accuracy of initial decisions. Fairness in a claims determination process can be defined as the

degree to which the process of making claims determinations tends to produce accurate decisions. A robust appeal structure can serve as a quality assurance measure to insure that administrative decisions are consistent with the mandate of the particular disability program:

> It is not, therefore, a significant overstatement to suggest that, from the traditional perspective of the legal system, adjudicatory processes which contain adequate procedural safeguards in hearings and appellate checks on initial decisions are considered self-correcting mechanisms for the accurate finding of facts and the authoritative application of law to fact. (Mashaw, 1974, p. 775)

The "weaknesses" of the moral judgment model of administration relative to the context of a modern disability program are primarily an outcome of its pursuit of values different from those of the bureaucratic rationality model of administration dominant in those programs. In addition, the model may have some deficiencies in its role as a check on the quality of initial claims determinations in the disability claims process (Mashaw, 1974).

The moral judgment model's view of administrative decision-making as a process tied inextricably to the deservedness of affected parties within a particular situational context lies in direct conflict with the bureaucratic rationality model's view of adjudication as a straight forward fact-finding process. This divergence may create systemic stress as

the accuracy and efficiency characteristic of the bureaucratic rationality model is subverted by an appeal process which may grant redress to individuals based upon the merits of their particular situations regardless of the "facts" of those situations. The management of disability programs requires that there be a measure of control over appeal structures in order to insure that the primary purpose of those bodies remains consistent with the mandate and policies of their respective programs (Mashaw, 1981, April; Mashaw, 1983).

Appeal structures and processes act as a check on the quality of primary decision-making in the disability claims process. However, they have some weaknesses in this regard. First, they do not provide a check on the quality of favourable claims decisions. Secondly, they may not provide effective quality control relative to those claims decisions which are the subject of review on appeal. Appeals might effectively monitor the quality of initial decisions if a limited stream of appeals effectively produced information representative of the total population of initial decisions. However, appeals often include information not used in the initial adjudicative decision. This mitigates the usefulness of such information as a measure of quality control:

> Because the claimant would often be seriously prejudiced if at a hearing he could rely only on evidence originally presented to or developed by the claims examiner, an "appeal" is often not an appeal on the record of the initial determination. It is rather a de novo determination on an open record which may be supplemented. Hence, a

> finding on appeal which diverges from the initial determination on the claim is not necessarily a finding of error. (Mashaw, 1974, p. 785-786)

4.6 A Summary of the Three Models of Administration

A review of the three theoretical models of administration reveals that each has distinctive goals, specific approaches to framing the questions for administrative determination, basic techniques for resolving those questions, and subsidiary decision processes and routines that functionally describe the model. These models are not mutually exclusive. They may shade into each other at the margins. The distinctive features of the three models, framed as models of bureaucratic justice, are outlined in the following chart:

Features of the Three Justice Models

Dimension/Model	Legitimating Values	Primary Goal	Structure or Organization	Cognitive Technique
Bureaucratic Rationality	Accuracy and Efficiency	Program Implementation	Hierarchical	Information Processing
Professional Treatment	Service	Client Satisfaction	Interpersonal	Clinical Application of Knowledge
Moral Judgement	Fairness	Conflict Resolution	Independent	Contextual Interpretation

(Mashaw, 1983, Pg. 31)

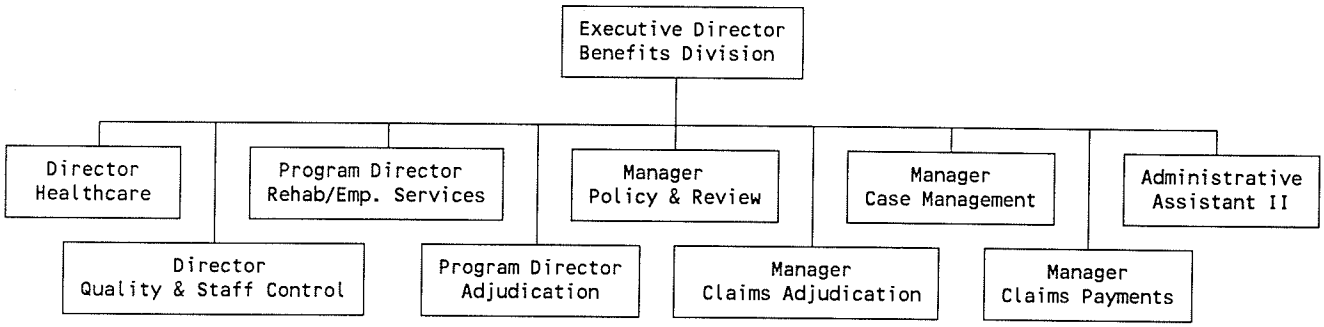
The models of administration outlined above do not exist in pure form in the real world. However, they do provide a useful theoretical construct from which to ananlyze the internal administrative structure of modern disability programs. The balance of the chapter will review the internal structure and operation of the W.C.B. of Manitoba's Benefits Division based upon these models of administration.

4.7 Managing Compensation Claims: The Benefits Division of the W.C.B. of Manitoba.

The Workers Compensation Board of Manitoba's Benefits Division is principally responsible for the management of claims in the workers compensation system. In its

structures and dynamics of decision-making, It embodies Mashaw's three models of administration.

The Benefits Division is composed of a number of departments and programs which together contribute to the effective management of claims and the claims process. The departments of the division include claims adjudication, case management, healthcare management services, review office, claims payments and vocational rehabilitation. The division is depicted structurally in the following manner:



(WCB of Manitoba, The Employee Information Book, 1992, Pg. 5)

The Claims Adjudication Department of the Benefits Division is responsible for the initial consideration of claims. It is composed of a number of units. Front counter and benefits information representatives provide important information to workers who come to the WCB in person or who call to inquire about their claims. The Advance Unit within the department makes advance payments on claims which are likely acceptable, but where further information may still be required. Also included in the department is the Occupational Disease Unit. This unit adjudicates a number of types of complex claims including hearing loss and myocardial infarction claims. The Registry Unit is responsible

for opening new claim files and for keeping those files updated. Finally, field representatives working in the department meet with workers and employers to take statements and clarify information needed to process claims (WCB of Manitoba, The WCB Employee Information Book, 1992).

The Case Management Department consists of three benefits units. These units are made up of case managers and benefits information representatives. Claims requiring ongoing benefits and, possibly, rehabilitation services, are referred to a benefits unit by claims adjudication. Individual case managers manage claims carefully with assistance from a variety of health-care, vocational rehabilitation and rehabilitation professionals. The benefits information representatives respond to claims inquiries by injured workers requiring information about their claims (WCB of Manitoba, The WCB Employee Information Book, 1992).

Healthcare Management Services coordinates the contribution of healthcare professionals to the adjudication process. These professionals provide adjudicators with information and opinions concerning particular claims. In addition, they act as a liaison between the WCB and external healthcare professionals. However, these healthcare professionals, who represent a number of specializations within the healthcare field, are limited to the provision of advice with respect to particular claims:

> While internal healthcare professionals provide advice to WCB adjudicators on medical evidence relevant to a claim, the adjudicators retain full responsibility as the

> decision-makers on claims. (WCB of Manitoba, The WCB Employee Information Book, 1992, p. 3)

The Claims Payment Department is responsible for the timely processing of benefit payments to workers. Ongoing benefits payments to injured workers are processed by payment assessors located in the three benefits units. In addition, medical aid staff within the department process payments related to the health care and vocational rehabilitation of injured workers. Finally, this department includes a Special Payments Unit which is responsible for addressing special types of payments including payments such as lump sum settlement payments and fatality claim payments (WCB of Manitoba, The WCB Employee Information Book, 1992).

The Vocational Rehabilitation Department assists injured workers to return to employability. Vocational rehabilitation consultants meet with workers to develop formal rehabilitation plans designed to return them to employment within their physical capabilities. Employment specialists maintain a prospective employer inventory for potential job opportunities and meet with workers to establish and pursue employment possibilities. Instructors in the department's job finding club provide services in the areas of resume writing and job search skills training (WCB of Manitoba, The WCB Employee Information Book, 1992).

The final identified department located within the WCB of Manitoba's Benefits Division is the WCB of Manitoba's Review Office. The office serves as the first level of appeal on claims decisions. Independent review officers consider claims appeals on a

case-by-case basis with reference to relevant WCB policy. In addition, the office offers quality control and technical expertise to the claims process. These duties may also involve a role in the development of proper guidelines for various WCB activities (WCB of Manitoba, The WCB Employees Information Book, 1992).

The bureaucratic rationality, professional treatment, and moral judgment models of administration are all present within the decision-making structures and processes of the WCB of Manitoba's Benefits Division. The bureaucratic rationality model is closely associated with the adjudicative structures and decision-making processes in the division. The professional treatment model is connected with both the healthcare management services and vocational rehabilitation services departments of the division. The moral judgment model is linked to the decision-making model employed in the review office located in the division. In practise, these decision-making models tend to merge as the division's departments work together to serve injured workers.

4.8 Adjudication at the W.C.B. of Manitoba

The Workers Compensation Board of Manitoba is mandated to provide workers compensation for workers injured in the course of employment. Adjudication at the Board is primarily responsible for the initial and ongoing acceptance of claims for compensation pursuant to this mandate. It promotes the use of objective criteria in its decision-making processes although in practice the application of these criteria often involve the use of some intuitive judgement by the individual adjudicator. The principal

section of the Workers Compensation Act of Manitoba directing the adjudicative function at the board is Section 4(1):

> Where, in any industry within the scope of this part, personal injury by accident arising out of and in the course of the employment is caused to a worker, compensation as provided by this part shall be paid by the Board out of the Accident Fund... (Workers Compensation Act of Manitoba, 1992, p. 23)

Adjudication at the WCB of Manitoba is divided into two branches. The first branch, initial adjudication, is responsible for the initial acceptance/rejection of claims pursuant to Section 4(1) and other related sections of the Workers Compensation Act. The second branch, case management, assumes responsibility for the ongoing adjudication of established claims.

Claims through the WCB of Manitoba are established through a process of information gathering. The process is normally straightforward. The Board will receive a "Form 2" (Employers Report of Accident) or a "Form 3" (Workers Claim Form). The receipt of one or both of these forms generates internally a variety of request for form completion forms which are sent to other parties to the accident. Claims decisions will then be made following receipt of this solicited information. (WCB of Manitoba, Adjudicator Training Manual I, 1991)

Initial adjudication will receive a file for consideration where there is some question concerning the legitimacy of the claim. Generally, initial adjudication is required when injuries are "non-specific" in nature. These types of injuries cannot be attributed to a specific cause and effect situation such as one particular accident. For example, injuries that result from the repetitive use of a particular anatomical site are classified as non-specific.

The decision-maker working in initial adjudication employs predetermined decision-making criteria in determining eligibility for compensation benefits once it has been determined that a worker covered by the Act has suffered a personal injury by accident or disease. The adjudicator will be concerned with establishing both that the "accident" causing the injury arose out of the worker's employment and that it arose in the course of the worker's employment. In addressing these threshold decision-making criteria, the individual claims adjudicator is assisted by legislation and policy. For example, the Workers Compensation Act contains a presumption clause. This clause directs that in the determination of whether an injured worker's injury arose out of and in the course of employment, the onus is not on the claimant to prove that the injury or condition meets these criteria. Instead, it is the Board's responsibility to prove that the injury or condition does not meet them:

> 4(5) Where the accident arises out of the employment, unless the contrary is proven, it shall be presumed that it occurred in the course of the employment; and, where the accident occurs in the course of the employment, unless

> the contrary is proven, it shall be presumed that it arose of the employment. (Workers Compensation Act of Manitoba, 1992, p. 25)

Initial adjudication of a claim may sometimes require further investigation. Statements may be requested from involved parties to a particular accident. Medical documentation on file may require further review. Prior claims history may receive further consideration. Identified pre-existing conditions might be considered relative to the injury in question.

Once a decision has been made to pay benefits on a particular claim, the file is generally referred to one of the benefits units in the case management branch. There, the file is assigned to a particular case manager. The case manager is then responsible for ongoing management of the claim. The focus of the case manager is on resolution of the claim.

The case management process is similar to that of initial adjudication. The assigned case manager is engaged in the collection of information. Ongoing medical information is gathered which is used to justify ongoing payment of the claim and to assist in decisions concerning the medical management of the claim. In addition to managing the medical issues on the file, the case manager makes decisions on a number of other issues that arise on a claim form. These issues include medical aid issues, psychological issues, pre-existing conditions, and rehabilitation issues.

Medical aid refers to payments made for claimants' medical requirements such as physiotherapy payments, medication payments, payments to physicians and chiropractors, and other "non-specific" payments for such things as surgery, hospital costs, and prosthetic devices (WCB of Manitoba, Adjudicator Training Manual II, 1991). The case manager oversees such payments and provides ongoing authorization for them within established internal guidelines. For example, the guidelines differentiate between authorization where there is an ongoing time loss with no change in service provider or type of service provision and authorization where there is an ongoing time loss with a change in service provider. They outline that in the latter, situational scenario, the case manager should

> i) Complete the medical aid authorization form, indicating the date that the authorization extends to and the type of medical aid being authorized.
>
> ii) If a change in health care practitioner is being authorized (i.e. from a chiropractor to a physiotherapist), the case manager must complete the medaid authorization form, or invoices will be returned, unpaid.
>
> iii) The completed form should be given to the unit clerk, who will update the claim through "UCLM". (WCB of Manitoba, Adjudicator Training Manual II, 1991, p. 5)

The case manager also has responsibility for adjudicating psychological conditions. Again, the case manager is guided by WCB policy in determining those psychological

claims which are compensable. Among the psychological claims which are generally considered to be compensable if they meet the earlier-mentioned threshold decision-making criteria are:

1. Organic brain damage from a traumatic head injury.
2. A psychological reaction or condition which is a direct result of a serious compensable life-threatening injury/ event (serious in this context means an accident that threatens life or direct involvement in a life threatening incident or event).
3. Psychosis resulting from exposure to harmful chemicals at the worksite.
4. Psychosis resulting from use of drugs used in the treatment of a compensable injury... (WCB of Manitoba, 1986, p. 1)

In addition to these listed specific conditions, the assigned case manager will also consider various "non-specific" psychological maladies (those not associated with a specific, identifiable event or events). These claims will be adjudicated on their individual merits and circumstances.

The case manager will consider a number of factors in making decisions on psychological claims. For example, consideration must be given to whether the psychological reaction is a direct result of a work-related accident. Also, the degree of

seriousness of any prior psychological impairment is considered in the investigation of any psychological claim (WCB of Manitoba, 1986).

Pre-existing conditions refer to those medical conditions which a claimant had prior to suffering a work-related injury. In these situations, the case manager must closely monitor the medical information on file to insure that a "combined effect" (i.e. elements of both the pre-existing condition and the compensable injury together continue to leave the injured worker totally disabled) continue to exist, thereby justifying continued payment of compensation. The case manager may request a medical opinion from a WCB of Manitoba medical advisor concerning the respective contributions of the pre-existing condition and the compensable injury to the claimant's ongoing disability (WCB of Manitoba, Adjudicator Training Manual II, 1991).

Pre-existing conditions may also be considered at other points in the case management process. The case manager may have to determine at some point in the process whether a compensable injury has permanently enhanced a claimant's pre-existing condition. This type of determination has implications for claimant entitlement under the WCB program. Also, the determination of a combined effect may have concrete cost implications for a particular "accident employer" who may be entitled to some cost savings on the basis of the pre-existing condition's contribution to a claimant's ongoing disability.

The case manager also plays a principal role in the management of a range of activities in the medical and vocational rehabilitation of injured workers. The involvement of case

management in these areas would include pro-active management of the physical rehabilitation of injured workers through referrals for functional capabilities evaluations and work hardening programs. In addition, case managers may play a role in insuring that psychosocial barriers preventing effective rehabilitation of injured workers are addressed through referrals to rehabilitation psychologists and chronic pain facilities. Finally, the case manager is responsible for ensuring the timely, cost effective vocational rehabilitation of injured workers through referral to internal and external vocational rehabilitation services.

The primary adjudicative structures and processes at the WCB of Manitoba reflect an orientation to administration consistent with that of a bureaucratic rationality model of administration. These structures and processes stress information collection. This information is then processed with reference to WCB legislation and policy. Training for individual adjudicators and case managers focuses upon the accurate and efficient collection of the information required to make individual disability determinations (WCB of Manitoba, Adjudicator Training Manual I, 1991). Adherence to strict program goals and processes of implementation is promoted through a departmental structure characterized by strict hierarchical review and control. The elements of this approach can be identified in the following definition of the case management approach to disability claims management:

> Case management involves a pro-active, comprehensive, systematic, goal-oriented approach to managing the outcomes of disability.

> The goal of case management is to provide co-ordinated services which facilitate/promote timely rehabilitation/restoration of working capacity, recovery, and/or timely return to work. Case management is intended to reduce duration from the date of injury to diagnosis to planning to implementation of a rehabilitation plan. Case management requires retrospective and prospective review/analysis of cases to support development of resolution strategies. (WCB of Alberta, 1991, p.1)

4.9 Vocational Rehabilitation at the W.C.B. of Manitoba

The vocational rehabilitation program is another component of the service model offered through the Workers Compensation Board of Manitoba. This program provides benefits and services to individuals who are arguably the most severely injured claimants in the system. It represents the principal example of a professional treatment model of administration in operation at the Board.

Vocational rehabilitation services at the Workers Compensation Board of Manitoba are mandated in the program's governing legislation. Section 27(20) of the Workers Compensation Act states that

> 27(20) The Board may make such expenditures from the accident as it considers necessary or advisable to provide academic or vocational training, or rehabilitative or other assistance to a worker for such period of time as the Board determines where, as a result of an accident, the worker:
>
> (a) could, in the opinion of the Board, experience a long-term loss of earnings;
>
> (b) requires assistance to reduce or remove the effect of a handicap resulting from the injury; or
>
> (c) requires assistance in the activities of daily living. (Workers Compensation Act of Manitoba, 1992, p. 70)

Pursuant to this legislative provision, the WCB of Manitoba has established a structure and process to assist in the vocational rehabilitation of injured workers. The structure of the vocational rehabilitation program includes internal vocational rehabilitation and employment services. In addition, the Board contracts with private vocational rehabilitation firms to provide various services. Finally, the program has supporting management and policy components.

The vocational rehabilitation process at the WCB is composed of four major phases. These phases are not mutually exclusive. Further, the process is not completely linear in nature. Finally, the process relies as much on subjective, as on objective, criteria in

decision-making. The four identified phases in the vocational rehabilitation process include assessment, plan development, implementation and evaluation.

The assessment phase of the vocational rehabilitation process is primarily concerned with determining claimant eligibility for assistance through the program. Individual vocational rehabilitation is also pursued during this phase. Consideration is given to such factors as the individual claimant's physical capabilities, educational background, work history, economic situation, and psychosocial functioning. This information is subsequently used to establish claimant eligibility and to plan toward an appropriate vocational goal. (WCB of Manitoba, 1981; Isitt and Kuropatwa, 1992)

The plan development phase of the vocational rehabilitation process begins with an analysis of the individual claimant's profile. This profile is developed using information gathered in the assessment phase and information made available through supporting assessments (for example, a vocational assessment by a psychologist outlining the claimant's academic levels and vocational aptitudes and interests). The vocational rehabilitation professional and the claimant use this information to generate potential vocational options and ultimately a vocational goal. Then, a vocational rehabilitation plan is formulated to assist the claimant in working toward this goal. A formal document requiring signatures from all involved parties, the individual written rehabilitation plan, is developed. This document outlines the vocational goal, the steps to be followed in achieving the goal, and the responsibilities of the involved parties in the process.

Participation by the claimant is crucial during this stage of the process. Claimants need to have an understanding of the steps involved in their vocational rehabilitation. In addition, they must have a commitment to the success of the plan. This is most readily facilitated by involving the claimant in plan development (WCB of Manitoba, 1989; Isitt and Kuropatwa, 1992).

The plan implementation phase of the vocational rehabilitation process should evolve from the written vocational rehabilitation plan. The assigned vocational rehabilitation professional provides support and guidance to the claimant and facilitates provision of any resources required to assist the claimant toward achievement of the vocational goal. In addition, unforeseen obstacles and barriers identified during this phase which mitigate against the potential success of the plan are addressed with a view to ensuring their successful resolution (WCB of Manitoba, 1989; Isitt and Kuropatwa, 1992).

Evaluation represents the final stage in the vocational rehabilitation process. While evaluation occurs throughout the vocational rehabilitation process to facilitate required adjustments, the overall results of intervention must be measured (WCB of Manitoba, 1989; Isitt and Kuropatwa, 1992). Evaluation helps to insure the overall effectiveness of the program. It assists in identifying aspects of the process which may need modification. Finally, it may include analysis of any or all of the following program indicators:

> Evaluation includes the analysis of factors such as stakeholder satisfaction, consistency with the client profile,

> improvement in general functioning, extent of independence, acquisition of skills, employment status, employment retention, and the overall retainment of benefits resulting from the program or plan. (WCB of Manitoba, 1989, p. 6)

The process of vocational rehabilitation at the WCB of Manitoba focuses upon the choice and subsequent pursuit of particular vocational options. The program assists the individual claimant within a structured framework of vocational options. These options are arranged in a hierarchy and are addressed in a sequential manner. The hierarchy consists of the following ordered options:

1. Return to the same work with the same employer.
2. Return to the same work (modified) with the same employer.
3. Return to different work with the same employer.
4. Return to similar work with a different employer.
5. Return to different work with a different employer.
6. Retraining and re-education. (WCB of Manitoba, 1989, p. 18)

The priority of the vocational rehabilitation process is to assist injured workers in a return to work in the workplace in which they were initially injured. The emphasis on return to work with the "accident employer" (the first three options in the hierarchy focus on the accident employer) is based in the belief that this direction leads to the highest

quality resolution of the injured worker's claim from a vocational rehabilitation perspective. The WCB of Manitoba's Vocational Rehabilitation Position Paper (1989) outlines some of the potential benefits accruing to injured workers through a return to work with the accident employer:

> A return to the pre-accident employer benefits the worker as he/she maintains any seniority, pension plans, and other company benefits. Further, the worker returns to a familiar employment and social environment. It is advantageous to minimize the disruption to an individual's work life because it forms a significant portion of their self-image. (WCB of Manitoba, 1989, p. 18)

Injured workers may in some instances not be able to return to work with the accident employer. This may occur for several reasons. For example, the severity of an injured worker's injury may preclude a return to any form of employment w0ith a particular employer.

In those instances where an accident employer is unable to accommodate an injured worker, the other vocational options in the vocational rehabilitation hierarchy of objectives are pursued. The individual injured worker's "entitlement" under the vocational rehabilitation program following a determination that it is necessary to move to non-accident employer options in the hierarchy is considered relative to his/her pre-accident level of income. Those injured workers whose pre-accident levels of

income fail to meet a particular threshold are referred to the WCB of Manitoba's employment branch for assistance in a plan of employment search. The plan may (objective four in the hierarchy) or may not (objective five in the hierarchy) involve pursuit of employment which capitalizes upon the skills learned by injured workers in their previous employment.

The final vocational option in the stated hierarchy, retraining and re-education, is generally pursued with only those injured workers who have a level of pre-accident income (the program's role is to return injured workers to a level of income consistent with their pre-accident level of income) which justifies a plan of retraining. Injured workers who reach a particular threshold level of income are considered for retraining.

An individual vocational rehabilitation plan may include some combination from the hierarchy of objectives. For example, training at the worksite or in a post-secondary institution may be required to facilitate a return to employment with the pre-accident employer (WCB of Manitoba, 1989). The vocational rehabilitation professional will attempt to bring together the range of services required in a particular situation while working within the parameters of the stated hierarchy.

The vocational rehabilitation program's process is designed to assist the injured worker to eventual independence from the compensation system. The individualized written rehabilitation plan states specific time frames for the completion of the various steps of the plan. In addition, it outlines a plan completion date and a corresponding benefit reduction or discontinuation date.

Reduction or discontinuation of vocational rehabilitation benefits and services can take place at any point during the outlined vocational rehabilitation process. Generally, reduction or discontinuation of benefits and services takes place when the injured worker has completed a vocational rehabilitation plan and/or returns to employment. However, a discontinuation or reduction in benefits and services may also occur when

1. The worker has recovered from the effects of the compensable injury or condition
2. The worker is capable of returning to his/her regular employment not withstanding any residual impairment or disability.
3. The worker chooses not to participate in a program of vocational rehabilitation.
4. The worker's pre-accident employment is unavailable for reasons other than the compensable condition and the worker is capable of having returned to that employment.
5. The worker chooses not to accept suitable/appropriate employment for reasons not related to the compensable injury or condition.
6. The worker discontinues suitable/appropriate employment for reasons not related to the compensable injury.
7. The worker is employable to a particular extent upon completion of the vocational rehabilitation plan. (WCB of Manitoba, 1989, p. 21)

The professional treatment model of administration can be identified in all aspects of the vocational rehabilitation program at the WCB of Manitoba. The hiring practises

associated with the employment of individuals in the program emphasize professional credentials and a professional orientation. The program's guiding principles stress a client-centred, treatment orientation. This approach is supplemented by program policies and practises which accentuate the particularity of the individual claimant's situation and which structure discretion into the management of individual claims.

The hiring practises of the program require prospective employees to have university degrees in the humanities or social sciences or an equivalent combination of education and experience. In addition, they demand experience in counselling. Further, the program structures ongoing training for vocational rehabilitation staff in areas such as addiction awareness and grief counselling. Finally, the program's publications and policies stress the professional nature of the vocational rehabilitation role (W.C.B. of Manitoba, 1989).

The guiding principles of the vocational rehabilitation program reflect its adherence to a professional treatment model of administration. Included among these principles is an emphasis on the uniqueness of each worker and the need for the vocational rehabilitation professional to be sensitive to the particular situation of each claimant. Other principles stress a relationship of mutual trust between the vocational rehabilitation professional and the individual injured worker. Finally, the program stresses a personalized approach by stating that the rehabilitation process should focus on the individual claimant's particular strengths and not on his/her limitations (WCB of Manitoba, 1989).

The vocational rehabilitation program provides services and benefits to assist injured workers in adjusting to their compensable injuries. These services include those which assist the worker to address personal, social or emotional difficulties that may result from the compensable injury. These difficulties may need to be resolved in order to minimize their influence upon the worker's vocational rehabilitation. In addition, the injured worker may receive benefits and services through the program while attempting to overcome a non-compensable barrier to his/her vocational rehabilitation. While there are guidelines associated with the provision of these benefits and services, the availability of such resources and the identification of a potential adjustment phase in the vocational rehabilitation process reflect the structured discretion characteristic of a professional treatment orientation to administration (WCB of Manitoba, 1989).

4.10 The Appeal Process at the W.C.B. of Manitoba

The WCB of Manitoba utilizes a two-stage appeal process in dealing with various types of claims appeals. The process includes an initial reconsideration stage through an independent review office situated within the Board's benefits division. A final appeal body, the WCB of Manitoba's Appeal Commission, is an independent commission located both organizationally and physically at arms length from the benefits division.

The Workers Compensation Act of Manitoba provides the Board with general jurisdiction over matters related to workplace injury. Further to this general jurisdictional prerogative, the Act provides the Board with powers of initial determination relative to compensation matters:

> 60.1(1) An application for compensation or other benefits and all matters relating to assessment under this part shall be determined by the Board. (Workers Compensation Act of Manitoba, 1992, p. 150)

Sections 60.1(2), 60.1(3), and 60.1(4) of the Act dictate the process of reconsideration of determinations made under Section 60.1 (1). Section 60.1 (2) provides that initial determinations of the Board shall be subject to reconsideration. It states that "...on the written request of a person who has a direct interest in a decision made under subsection (1), the Board shall reconsider its decision" (Workers Compensation Act of Manitoba, 1992, p. 150).

Section 60.1(3) of the Act empowers the Board to establish the procedures associated with reconsideration of initial determinations of the Board. It declares that "...the procedure for reconsidering a decision shall be determined by the Board" (Workers Compensation Act of Manitoba, 1992, p. 150). This section allows the administration of the WCB to arrange its own structural arrangements and processes of reconsideration.

Section 60.1 (4) of the Act elaborates further on the reconsideration process to be followed by the Board in individual situations. It directs that reasons be provided upon request for decisions made following reconsideration:

> 60.1(4) Following reconsideration, the Board may confirm, vary or reverse its decision and shall, on the written request of a person with a direct interest in the matter, provide a written summary of its reasons. (Workers Compensation Act of Manitoba, 1992, p. 151)

The structure through which the process of appeal outlined in these sections of the Act is pursued is partially embodied in the WCB of Manitoba's Review Office. Claims decisions made at an initial level are appealed to the review office. It is the responsibility of the review office to consider all appeals of decisions made by initial level decision makers.

The review office conducts "paper reviews" of all appeals. Hearings are not conducted at this level. All decisions are made on the individual merits of the particular case with reference to the provisions of the Workers Compensation Act of Manitoba and the policies of the WCB of Manitoba.

The review office's decisions are made by a single review officer who has the authority to overturn decisions that have been made by "primary level" staff within the benefits division. The assigned review officer has the responsibility to gather all information that is relevant to the issue or issues being appealed. This can be done by written solicitation of further information from involved parties and by directing further investigations to ensure the completeness of file documentation. A review officer can also arrange for medical examinations and referrals to independent medical review

panels. Decisions of the review office are communicated in writing. They include a summary stating the decision and outlining the supporting rationale for that decision.

The decisions of the review office are binding upon initial level decision-makers. However, the rationale of such decisions is not binding upon similar future case situations. Direction that decisions of the Board do not equate to any form of strict legal precedent is found in the governing legislation:

> 60(4) The decisions of the Board shall always be given upon the real merits and justice of the case; and it is not bound to follow strict legal precedent. (Workers Compensation Act of Manitoba, 1992, p. 150)

The second stage of the WCB of Manitoba's appeal process is structured through an independent appeal commission. The WCB of Manitoba's appeal commission is generally the final level at which an appeal may be heard. The structure and function of the commission is specifically outlined in the governing legislation.

Section 60.2(1) of the Act establishes the structure of the appeal commission. It states that the commission is to be appointed by the Lieutenant Governor in Council. It is to consist of

> (a) One or more appeal commissioners representative of the public interest, one of whom shall be designated as chief appeal commissioner;

(b) One or more appeal commissioners representative of workers;

(c) One or more appeal commissioners representative of employers. (Workers Compensation Act of Manitoba, 1992, p. 151)

The chief appeal commissioner is empowered to establish one or more appeal panels structured according to the legislation to hear claims appeals. In hearing cases, a panel enjoys the power and authority of the commission (Workers Compensation Act of Manitoba, 1992).

The powers of the appeal commission are subordinated to the authority of the WCB of Manitoba's Board of Directors. Section 60.9 of the Act states that where the appeal commission has not properly applied the Act, regulations, or policies of the WCB's Board of Directors, the Board may stay the decision of the commission. However, in doing so, it must either designate that the matter upon which the decision is based be heard again by a panel of three different commissioners or by a committee of the board of directors (Workers Compensation Act of Manitoba, 1992).

The appeal commission hears both claims and assessment appeals. In addition, it will hear any matter referred to it by the WCB's Board of Directors. Its procedural prerogatives include the power to refer a matter back to the primary decision-making level for further investigation, the power to refer a matter to a medical review panel for professional consideration, and the power to hear representations from all parties who

have a direct interest in a particular matter. Finally, the commission may allow the presentation of new or additional evidence (Workers Compensation Act of Manitoba, 1992).

Appeal commission proceedings generally involve an oral hearing. The appeal commissioners read the file documentation on a particular case and then hear the evidence of claimants (and employers). Involved parties are often represented by third parties such as worker advisors, lawyers, or employer advocates. On hearing an appeal, the involved appeal panel may confirm, vary or reverse the decision appealed. Appeal panels provide a written summary of the rationale for each of their decisions. In addition, the minutes of the commission hearings are transcribed and published for placement on the relevant WCB file.

The two stage appeal process employed by the WCB of Manitoba reflects in its philosophy a moral judgement model of administration. The outlined legislative provisions associated with the appeal structure make it clear that decisions of the Board's appeal bodies shall be made based upon the particular merits of individual cases. This approach to decision-making is consistent with the moral judgment model's emphasis on granting entitlements to parties based upon the individual merits of their situation even where such entitlements may be granted in contradiction to the "facts" associated with those situations.

The influence of the approach to decision-making characteristic of the appeal structures of the WCB of Manitoba is tempered somewhat by the other noted legislation

subordinating its decision-making powers to those of the Board of Directors. Those provisions appear to compromise the decision-making powers for the appeal commission. They suggest a certain discomfort with such decision-making processes and reflect a continuing tension between rational and moral judgment approaches to administration.

In summary, this chapter has described the internal administrative environment of the WCB of Manitoba with reference to three theoretical models of administration. The bureaucratic rationality model of administration emphasizes a decision-making process based in the application of existing policy to collected information. The professional treatment model of administration stresses a model of administrative decision-making which focuses on the uniqueness of each claim situation and on the need to use individualized, professional judgement in making claims decisions. The moral judgement model of administration supports a model of administrative decision-making which is principally based in the collection of facts pertinent to a particular claim but which also considers context as a factor in making claims determinations. These models are all present in somewhat less than the pure theoretical form described by Mashaw. They are associated with specific departments in the Board's Benefits Division. The internal interests identified with each of these distinctive approaches to decision-making create a substantial amount of tension within the organization as they attempt to ensure the dominance of the decision-making approach with which they are associated. However, the success of the current workers compensation program is dependent upon a continuing contribution from all three of these decisionmaking models.

Chapter 5:

Conclusion

The W.C.B. of Manitoba provides one example of the environment, structure, and process of the modern regulatory body. Regulatory bodies vary in terms of the specifics of their development and mandate. However, they possess some elements which are common to all such bodies.

The external groups with which regulatory bodies must contend are numerous. Competing interest groups pressure such bodies to act in a favourable manner toward their positions. These same groups pressure government which, in turn, through its formal and informal powers relative to these agencies, provide direction to, and influence, those bodies. The influence of these groups is often measured by the strength of their political relationships and by their structural position relative to the particular regulatory body.

In addition to the variety of interest groups which act to influence regulatory bodies, there are other identifiable actors which attempt to affect regulatory policy and practise. Legislatures impact upon the activities of regulatory bodies through assigned committees and through the activities of individual members of the legislature. Political parties attempt to influence regulatory output through party platforms which can potentially become the basis for government policy. Government departments, which play a role in overseeing the operations of regulatory bodies affect regulatory activities through the sharing of information and personnel between the departmental structure

and the agency. Finally, various other informed publics, such as the media and consultants, may influence regulatory agency activities although their influence is generally time-limited and sporadic.

The W.C.B. of Manitoba's proximate policy community tends to be dominated by the organized interests of business and labour. A type of systemic patronage exists in which the policy and appeal structures of the Board are chosen from representatives of business and labour. This may not be injurious to the operation of the Board, however, given the historical and current importance of the issue of workplace-related injury to these interests. In addition, the government maintains a dominant presence in the system through its specific powers of appointment through the Workers Compensation Act. The policy direction of the W.C.B. generally reflects the ideology of the governing provincial political party which in the Manitoba context means that it is generally aligned closely with either of those same business or labour interests.

The involvement of the legislature and informed publics in the operation of the W.C.B. of Manitoba is generally sporadic. The legislative committee responsible for the W.C.B. schedules one meeting on an annual basis for discussion of its ongoing operation. This meeting is focused upon the W.C.B. administration's presentation of their statutory annual report and five-year operating plan. Other legislative involvement in the activities of the Board is generally limited to involvement on a case-specific basis. These activities often require response from both the government and the administration of the W.C.B.. However, the effect of this type of intervention on Board policy and practise would appear to be negligible.

Internal administrative structure can also significantly influence the operation of a particular regulatory body. Regulatory bodies are often sufficiently complex that they require individuals from a variety of backgrounds and disciplines to implement the varied goals of the organization. This factor, coupled with the bureaucratic nature of such organizations, can result in sectoral interests competing for dominance in the administrative structure of the organization. The presence of this dynamic can have an independent influence on the outputs of the organization.

The W.C.B. of Manitoba is a modern disability program with administrative elements consistent with those of other disability programs. Primarily, its claims process reflects what has been termed a bureaucratic rational approach to case management. Information is collected and processed according to pre-existing policy and practice. However, consistent with other similar disability programs, the W.C.B. of Manitoba's program includes other subordinate program elements which reflect alternative decision-making processes within the Board's claims process.

A professional treatment approach is often employed in the management of claims of those workers most severely injured in the course of their employment. Decision-making in these claims situations relies upon the individual judgement of professionals. In contrast to the procedural rules and efficiency considerations which tend to dominate the decision-making process associated with the bureaucratic rational model of administrative decision-making, this model allows for a measure of discretion in decision-making processes. In addition to the bureaucratic rationality and professional treatment models of administrative decision-making, the Board also employs what has

been termed a moral judgment model of administrative decision-making in some of its decision-making processes. This model of decision-making is similar to the bureaucratic rationality model in its reliance on the pursuit of the facts relative to a claim and the subsequent application of existing Board policy to those facts. However, it is also comparable to the professional treatment model in its emphasis on context in decision-making. The deservedness of the individual claimant is considered in the context of the particular events, transactions and relationships that gave rise to the claim.

The decision-making models noted above are associated with various structural elements of the Benefits Division of the Workers Compensation Board of Manitoba. Initial adjudication and case management at the W.C.B. reflect the basic tenets of the bureaucratic rational approach. Adjudicators and case managers make claims determinations based upon the application of existing decision-making criteria to information gathered on a particular claim.

Vocational Rehabilitation at the W.C.B. of Manitoba is generally directed toward those most severely injured in the course of employment. The department employs a decision-making approach characteristic of a professional treatment model. Each case is reviewed with respect for its specificity. The involved vocational rehabilitation professional enjoys expanded discretion in order to address the generally more complex nature of those claims referred to the department.

The appeal process available at the W.C.B. of Manitoba reflects a decision-making model similar to that of the moral judgment model of administrative decision-making.

In addition to their role in ensuring the quality and correctness of primary level decisions, the Board's Review Office and Appeal Commission review the decisions made on individual claims within the context of the particular situation of the individual claimant and with reference to overriding principles of natural justice and human rights.

This review of the environment, structure, and process of the W.C.B. of Manitoba yields proof as to the complexity of modern regulatory bodies. Such bodies must administer policy mandates. In doing so, they respond to primary interest groups and other informed publics within their respective policy communities. In addition, they must be accountable to popularly elected governments and legislatures. Finally, these external demands are addressed through an internal administrative structure often characterized by the presence of a variety of approaches to administrative decision-making.

The individual case decisions of the W.C.B. of Manitoba are influenced by all of these factors. A review of these factors as undertaken in this study reveals the complexity associated with a system which attempts to "manage" these factors while pursuing the often contradictory goals of caution and benevolence in the adjudication of injured workers claims for compensation for injuries suffered in the course of their employment.

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