



## Adjudication Update Q and A – Revised September 15, 2020

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## **Updated – Question #1: How are new hearings being scheduled? What is happening with matters scheduled to reconvene as an in-person hearing?**

- Until further notice, all oral hearings will continue to be scheduled to proceed by teleconference or videoconference unless the WSIAT is satisfied that an in-person hearing is appropriate and necessary.
- The WSIAT has continued to take steps to broaden its ability to offer hearings by videoconference. The suitability of this hearing format will depend on a number of factors which are detailed in the [Best Practices: Teleconference and Videoconference Hearing Information for Representatives and Parties](#)
- Hearings that are scheduled to reconvene as an oral hearing will similarly be scheduled to proceed by an alternative hearing format unless it is determined that an in-person hearing is appropriate and necessary. The seized Vice-Chair or Panel will issue revised instructions as necessary and will also address any objections.
- Hearings scheduled to proceed by teleconference pre-COVID-19 will proceed as scheduled unless issues are identified by the WSIAT and/or a party or representative.
- **Once a matter is confirmed to be proceeding in writing and/or as a teleconference or videoconference, parties should be prepared to proceed with the hearing in this format.**
- The procedure for raising concerns about the hearing format is set out in **Question #2.**

## **Question #2: I do not want my hearing to proceed by an alternative hearing method (i.e., teleconference, videoconference, or in writing). How do I raise my concerns with the WSIAT?**

- Parties are encouraged to raise any concerns with a matter proceeding by an alternative hearing method (teleconference, videoconference, or in writing) as early as possible. Whenever possible, these concerns should be set out in writing and sent to the WSIAT (see below for more information).
- Parties should also ensure that other participating parties are copied on these communications and if possible, the view of other parties should be canvassed and confirmed in the written communication.
- It is important that these communications include specific and all necessary information.
- The manner in which these concerns will be addressed will depend on the stage when the concerns are raised:
  - ◇ Concerns about the potential hearing format that are raised before a matter is scheduled will be addressed by the Vice-Chair Registrar. The Vice-Chair Registrar will make a ruling about the hearing format, which will be made part of the record.

- ◇ Concerns about the potential hearing format that are raised after a matter has been scheduled will be addressed by the Manager, Scheduling Administration and will also be noted on the record. In some cases, the Manager, Scheduling Administration may refer the objection to the Vice-Chair Registrar for direction.
- Parties who continue to have concerns about the hearing format may raise their objection with the assigned Vice-Chair or Panel at the hearing. **However, parties and representatives should be prepared to proceed on the scheduled hearing date.**
- The WSIAT's Scheduling Department will continue to contact parties and representatives to discuss and confirm upcoming hearings.

**Question #3: What factors will the WSIAT consider when determining whether an in-person hearing can be converted into an alternative hearing format (either in writing, teleconference or videoconference)?**

- As explained in the [COVID-19 Interim Practice Guideline: Objections to Alternative Hearing Methods \(Interim Practice Guideline\)](#), when considering whether a matter can proceed by teleconference (or in writing or by videoconference), the WSIAT will consider whether the matter can proceed fairly via the alternative hearing method. It is ultimately up to the Vice-Chair or Panel assigned to hear the matter to determine what hearing format is appropriate and necessary.
- More information, including the factors that may be considered in determining whether it is fair and appropriate to proceed via an alternative hearing method, are set out in the Interim Practice Guideline.

**Updated – Question #4: Do I need to provide written consent to participate in a videoconference hearing?**

- For hearings to proceed by videoconference, all participants in the hearing, including all of the parties in the proceeding, their representatives, and witnesses, must agree to participate in a videoconference hearing and must have the necessary technology to ensure their meaningful participation.
- Consistent with other hearing formats, the WSIAT will no longer be asking hearing participants to provide their written consent to participate in a remote videoconference hearing.
- There is always a small risk that confidential information communicated in an electronic hearing may be compromised. Parties are made aware that while the WSIAT cannot guarantee the privacy or confidentiality of information disclosed during an electronic hearing, the WSIAT has made reasonable efforts to protect the privacy of parties and put in place safeguards to provide additional security.
- More information about videoconferences, including the safeguards that the WSIAT has put into place, can be found in the [Best Practices: Teleconference and Videoconference Hearing Information for Representatives and Parties](#) document as well as in the ["Tips for Electronic WSIAT Hearings."](#)

**Question #5: If my matter is scheduled to proceed by teleconference but all participants are able to participate by videoconference, can I request that the hearing be converted to a videoconference?**

- Yes! Parties and representatives are encouraged to advise the WSIAT if they have the technological capability to participate in a videoconference hearing as soon as possible. Calls can be directed to the WSIAT Remote Call Centre at 416-436-8378 (or 1-888-618-8846).
- A decision as to whether a matter can proceed by videoconference will be made by the WSIAT as soon as possible. As set out above, whether a matter can proceed by videoconference will depend on a number of factors, including whether there is sufficient time to undertake all of the additional, necessary steps required for videoconference hearings specifically.

**Question #6: How can I help ensure that a matter proceeding by teleconference or videoconference will proceed as smoothly as possible?**

- For matters with more than one party participating, parties are encouraged to discuss the relative merits of their positions and work to streamline or resolve the matter before the scheduled teleconference or videoconference, whenever possible. This can include arriving at an agreed statement of facts in advance of the hearing and/or proposing a resolution of the appeal or application.
- To assist the parties, the WSIAT has prepared a template [Agreed Statement of Facts form](#) that is available on the WSIAT's website. Parties may also request these templates by contacting the WSIAT. Parties are not required to use these templates and the WSIAT will continue to accept agreed statements of facts prepared by the parties in their own preferred format.
- The WSIAT's ADR Department is also actively reviewing matters to explore possible alternative ways to resolve appeals and applications.

**Updated – Question #7: Can a worker claim expenses in relation to attending a teleconference or videoconference hearing?**

- Yes. Pursuant to s.133 of the *Workplace Safety and Insurance Act, 1997*, the WSIAT will pay injured workers for certain expenses related to attending a hearing. Payment for certain hearing expenses is also available for worker witnesses, survivors of deceased workers and their witnesses – see the WSIAT's [Practice Direction: Fees and Expenses](#).
- For teleconference and videoconference hearings, the WSIAT will reimburse for actual expenses incurred for telephone charges associated with attending the hearing.
- For videoconference hearings, the WSIAT will also reimburse for internet and data costs in a set amount related to participating in the videoconference.

- More information about the reimbursement for telephone, internet and data expenses is set out in the updated [Hearing Expense for Teleconference and Videoconference Claim Form](#) available on the WSIAT's website.

**Updated – Question #8: Will post-hearing work, including obtaining medical information or seeking assistance from a Medical Assessor, be performed during this time?**

- Wherever possible, post-hearing work will be performed as quickly as possible.
- The WSIAT is pleased to announce that in line with the gradual re-opening of its mail room and print shop, effective August 15<sup>th</sup>, the WSIAT has resumed obtaining medical information and seeking assistance from Medical Assessors.
- As part of this resumption, the WSIAT will be sending electronic copies of consents to Medical Assessors.
- Parties and representatives can direct any questions that they have about a specific matter to the WSIAT staff person with carriage.

**Question #9: How are pre-hearing conferences being utilized during COVID-19?**

- The WSIAT continues to utilize pre-hearing conferences to address procedural matters in accordance with the [Practice Direction: Pre-Hearing Conference/Pre-Hearing Telephone Conference Calls](#).
- As set out above, parties may raise objections about the hearing format at the scheduled teleconference hearing or videoconference hearing.
- It is expected that in most cases, the scheduled hearing will proceed by teleconference or videoconference.
- For those matters in which the assigned Vice-Chair or Panel decide that an in-person hearing is necessary, the teleconference or videoconference will be converted into a pre-hearing conference to address any preliminary issues.

**Question #10: Can parties request accommodation, both with respect to hearings and non-hearing related matters?**

- Yes. Requests for accommodation should be made in accordance with the WSIAT's [Accessibility Policy for Customer Service](#), which can be found on the WSIAT's "[Accessibility](#)" webpage and continues to be applicable during this time. More information about requesting accommodation is also set out in the [COVID-19 Interim Practice Guideline](#).
- Requests for accommodation will be considered on an individual basis and every reasonable effort will be made to accommodate requests. It is helpful for requests to be made as early as possible and to include as much specific information as available.

### **Updated – Question #11: How can I communicate with the WSIAT at this time?**

- Parties can communicate with the WSIAT by fax, mail or courier.
- The WSIAT's Call Centre continues to operate remotely and as a result the WSIAT's toll-free number is not being answered at this time. Parties that would like to speak to a staff member but are unable to reach us by the toll-free number are encouraged to write to the WSIAT or send a request for a return phone call by email to the WSIAT's Call Centre at [WSIATCallCentre@wst.gov.on.ca](mailto:WSIATCallCentre@wst.gov.on.ca).

### **Updated – Question #12: Will case materials be sent to parties who are represented during this time?**

- No. In accordance with our usual practice, in circumstances where a party is represented, the WSIAT will only send case materials to the representative.
- As the print-shop and mailroom are now re-opened, the WSIAT has resumed its usual practice of copying parties on correspondence sent to a representative (other than case materials).
- Pursuant to the Law Society of Ontario's *Rules of Professional Conduct* and the WSIAT's [Practice Direction: WSIAT Code of Conduct for Representatives](#), representatives are expected to keep clients appropriately informed about the progress of WSIAT matters and seek instructions as required.
- Representatives in particular are also expected to make diligent efforts to be able to proceed, including obtaining access to their files. Hearings will not necessarily be put on hold if appropriate efforts to proceed are not made.

### **Question #13: Why does the WSIAT not send and receive case-related materials by email?**

- The WSIAT understands the interest that parties and stakeholders have in sending and receiving information and documents by email.
- Unlike many other Ontario administrative tribunals whose adjudicative records are governed by the *Tribunal Adjudicative Records Act, 2019* and subject to the open court principle, the WSIAT is obligated to protect the confidentiality of all personal information contained in WSIAT adjudicative records, and in particular personal health information, pursuant to both the *Freedom of Information and Protection of Privacy Act*, as well as the *Workplace Safety and Insurance Act, 1997*.
- Therefore, before employing a new mode of communication, the WSIAT must ensure that any communication system utilized is reasonably secure and employs appropriate privacy measures that meet the WSIAT's unique privacy obligations, particularly when sensitive personal information is being transmitted.

## **Updated – Question #14: Does the three-week rule still apply? Am I required to submit evidence and witness lists prior to a teleconference or videoconference hearing?**

- On March 20, 2020, the Ontario Government issued an order under s.7.1 of the *Emergency Management and Civil Protection Act*, suspending limitation periods for the duration of the emergency, retroactive to March 16, 2020. Procedural time periods were also suspended, subject to the discretion of the individual court or tribunal.
- As explained in the August 25, 2020 notice on the WSIAT's [website](#) the suspension of limitation periods and procedural timelines at the WSIAT ended on September 14, 2020.
- Effective September 14, 2020, the WSIAT will return to its usual practice of applying the [Practice Direction: Disclosure, Witnesses, and the Three Week Rule](#). This means that beginning with hearings scheduled for the **week of October 5, 2020**, parties are expected to provide evidence and/or notice about witnesses to the WSIAT and other participating parties (if applicable) at least three weeks before the scheduled hearing date.
- As a matter of procedural fairness, parties are encourage to provide notice about evidence and witnesses as far in advance of the scheduled hearing as possible to avoid the need for post-hearing work.
- All materials received three or more weeks before the scheduled hearing will be provided to both the assigned Vice-Chair or Panel and the other participating parties.
- In accordance with the WSIAT's usual procedures, issues related to evidence or witnesses, including evidence and witness lists submitted less than three weeks before a hearing, may be raised at the hearing and will be addressed by the assigned Vice-Chair or Panel, which may include proceeding with the hearing followed by post-hearing work.

## **Question #15: Is ADR available during COVID-19?**

- Yes. Parties can call (416-326-1761) or fax a letter to the WSIAT requesting ADR/mediation. ADR staff will review your case to determine its suitability for ADR/mediation.
- Parties in two-party appeals can reach out to each other and explore their interest in mediation. If both parties are interested, parties can call or fax a letter (as above) requesting mediation. ADR staff will review your case to determine its suitability for mediation.
- In some instances the WSIAT, on its own initiative, may contact a party and invite the party to participate in ADR or mediation.

**Question #16: My hearing will be proceeding in writing – can I submit a statement? Does it need to be in the form of an affidavit?**

- Written statements can be submitted in matters that are proceeding in writing.
- In accordance with the WSIAT’s broad procedural powers, including the ability to accept such oral or written evidence as it considers proper regardless of whether it would be accepted in a court, an affidavit is not required unless specifically requested by the WSIAT.
- Please note that in general, affidavits will not be required in most matters.

**Question #17: Will the WSIAT accept electronic signatures?**

- Yes. The WSIAT will accept electronic signatures unless there are concerns about the authenticity or reliability of the signature. In these circumstances, the WSIAT will follow-up with the party and/or representative to verify the signature.
- For WSIAT purposes, an electronic signature includes:
  - ◇ a faxed or scanned image of a hand-written signature;
  - ◇ a typewritten signature. **When a typewritten signature is utilized, the WSIAT will expect and proceed on the assumption that the signatory understands that their typewritten signature represents their legal signature.**

**Question #18: Will the WSIAT accept affidavits that are remotely commissioned?**

- Yes. Effective August 1, 2020, Ontario legislation, including the *Commissioners for Taking Affidavits Act*, permits remote commissioning as long as certain conditions are met.
- Representatives and parties are encouraged to refer to the resource documents developed by the Law Society of Ontario, including the [Remote Commissioning Checklist](#). More information can be found [here](#).
- As noted above, an affidavit is not required unless specifically requested by the WSIAT.

**Question #19: Is it necessary for forms to be signed by both the party and the party’s representative before it is filed during this time?**

- No. Representatives may file a form without a party signature, for example, a Notice of Appeal Form. The form will be accepted and follow-up to obtain the signature of the representative’s client will be undertaken at an appropriate time in the future.
- Alternatively, as set out above in Question #17, the signature of a party can be provided electronically. Please note that when an electronic signature is utilized, the WSIAT expects and proceeds on the assumption that the signatory understands that their typewritten signature represents their legal signature and that this will be discussed between the party and their representative, particularly when the signature represents consent for confidential personal information to be released.

**Question #20: What are the WSIAT's expectations of representatives during this time?**

- Pursuant to the Law Society of Ontario's *Rules of Professional Conduct*, representatives have professional obligations to communicate in a timely and effective manner with their clients and perform all of their functions conscientiously and diligently.
- Accordingly, the WSIAT continues to expect representatives to communicate as they deem necessary with their clients and respond to communications from the WSIAT in a reasonable time period.
- Representatives who fail to respond to WSIAT communications will be considered to have breached their professional obligations and may be addressed pursuant to the WSIAT's [Practice Direction: WSIAT Code of Conduct for Representatives](#).

**Question #21: Will the audio of teleconference and videoconference hearings be recorded?**

- The audio in both teleconference and videoconference hearings will continue to be recorded in accordance with the WSIAT's existing practices.
- The recording of the hearing will be addressed at the start of each hearing.

**Question #22: Is it necessary to provide full copies of decisions when submitting a casebook?**

- It is not necessary to provide full copies of decisions provided that all parties participating are able to access decisions available on CanLII or the WSIAT's website.
- If all parties are able to access decisions online, a list of case citations can be provided.
- Tribunal Counsel Office lawyers will also provide a list of case citations instead of full copies of decisions when appropriate.

Individuals can make general inquiries about the WSIAT's operations by calling the WSIAT Remote Call Centre at 416-436-8378 or sending an email to [WSIATCallCentre@wst.gov.on.ca](mailto:WSIATCallCentre@wst.gov.on.ca). Please note that this email address is for general inquiries only – **do not submit case-related information to this email address**. To protect private confidential information, the WSIAT **will not** respond to case-related messages sent to this email address and emails with case-related information will be deleted.

**Updates about the WSIAT's operations will continue to be posted – please check our website regularly for the most recent information. It is important to note that procedures in any individual matter may be adjusted as determined necessary.**