



Practice Direction #2

Appeals Involving Deceased Workers

1.0 This Practice Direction explains how the WSIAT processes appeals when a worker dies. This could be either before or after an appeal is started. This could happen in 2 different ways.

- a. The worker's estate brings an appeal that the worker may have been entitled to benefits while alive.
- b. One or more of the survivors of the worker starts an appeal. This is on the basis that the worker's death was caused by their work.

2.0 Requirement to Give Notice

2.1 The WSIAT must give notice to the appropriate parties in all appeals. The WSIAT must be certain that the parties in an appeal are properly authorized to participate.

2.2 The WSIAT has general guidelines to help it process appeals that involve deceased workers. WSIAT staff may refer the issue to a Vice-Chair or Panel if they cannot resolve

- an issue about notice
- an issue about the authority to proceed

3.0 Appeals Brought by the Worker's Estate When There Is a Will

3.1 Appeals brought by the worker's estate are for benefits that the worker may have been entitled to while alive. When the worker dies, the right to any benefits goes to the worker's estate.

3.2 The WSIAT will ask for a copy of the worker's will. This request goes to the party acting on behalf of the worker's estate. The estate trustee named in the will can generally act on behalf of the estate in these proceedings.

- 3.3 In some cases, the party seeking to act on behalf of the worker's estate is not the estate trustee. WSIAT staff will ask the party to get written consent from the estate trustee. This is so the party can act on behalf of the worker's estate in the appeal.
- 3.4 The WSIAT may ask the party to get a Certificate of Appointment of Estate Trustee along with the will. The WSIAT does not normally require the party to get one. But there are circumstances where it is needed. For example, it would be needed if there is an issue with the validity of the will.
- 3.5 There is sometimes doubt about whether the party has the authority to act on behalf of the estate. In these cases, the WSIAT makes inquiries as appropriate. For example, WSIAT staff may contact the estate trustee to confirm consent. This is when the party seeking to act on behalf of the estate is not the estate trustee.
- 3.6 Written authorization must be provided if the party acting for the estate gets a representative to act in the proceedings. This is the same for all appeals. An example is when the estate trustee brings an appeal on behalf of the worker's estate and they hire a representative to act in the proceedings. In this case, written authorization must be provided and signed by the estate trustee.

4.0 Appeals Brought by the Worker's Estate Where There Is No Will

- 4.1 Appeals brought by the worker's estate are for benefits that the worker may have been entitled to while alive. When the worker dies, the right to any benefits goes to the worker's estate.
- 4.2 When the worker dies without a will, the WSIAT asks if a Certificate of Appointment of Estate Trustee without a Will has been obtained. These court documents appoint an administrator for an estate when there is no will. If there is a certificate of appointment, the estate trustee named in that document can generally act on behalf of the worker's estate in proceedings. The process described under section 2.1 applies with any necessary modifications.
- 4.3 If there is not a Certificate of Appointment of Estate Trustee without a Will, the WSIAT does not normally require the party seeking to act for the estate to get one. Instead, the WSIAT asks the party to contact all persons who appear to be the direct beneficiaries of the worker's estate. The party must get their consent to act on behalf of the estate in the proceedings.

- 4.4 The direct beneficiaries are usually the worker's spouse and all children. But this is not always the case. The WSIAT follows the provisions of the *Succession Law Reform Act*. This determines the persons who should provide their consent for the party to act on behalf of the estate in an appeal.
- 4.5 Once the party provides consent in writing from these persons, the WSIAT is generally satisfied that the party can act on behalf of the estate in the appeal proceedings. This is usually done by providing written consent to the WSIAT.
- 4.6 But the WSIAT can investigate further if needed, even when written consent has been submitted. For example, if the case materials suggest that there are other potential beneficiaries who have not been contacted.
- 4.7 In addition to the written consent, the party must also submit a letter. The letter must state that they believe that all the deceased worker's direct beneficiaries have provided written consent. It must be signed, dated and witnessed.
- 4.8 Sometimes it is not possible to get consent from all direct beneficiaries. In these cases, the WSIAT generally refers the matter as a preliminary issue to a Vice-Chair or Panel. The Vice-Chair or Panel decides on a case-by-case basis if the party has sufficient authority to act on behalf of the estate. This decision is guided by several considerations including the following
- a. what attempts have been made to locate the beneficiaries and get their consent
 - b. if consent has been expressly withheld by a beneficiary, the circumstances surrounding the refusal
 - c. if there are any examples of the party having legitimately acted on behalf of the estate in other contexts (including if they have been recognized by any other provincial or federal authorities as representing the estate)
 - d. any prejudice that may result from allowing the party to proceed with the appeal

5.0 Appeals Brought by a Survivor of the Deceased Worker

- 5.1 An appeal for survivor's benefits is brought by a family member of a deceased worker. This is when they claim that the worker's death was from an injury that the worker would otherwise have been entitled to benefits. The applicable legislation lists potential survivors. Usually, the parties claiming survivor's benefits are the deceased worker's spouse and/or child(ren).

- 5.2 The WSIAT always makes reasonable efforts to find potential survivors and provide notice of the appeal to them.
- 5.3 The WSIAT may ask for documentation to confirm a party's status as a survivor under the applicable legislation. This also assists the WSIAT to identify potential survivors who should receive notice. Documentation could include
- a death certificate, any marriage/divorce certificates and any court orders for child support or custody
 - bank or investment account statements, documents pertaining to property (such as real estate or vehicle) ownership, insurance policies, and pension documentation
 - medical documents, if they mention relevant information such as the existence of significant past or current relationships
 - an affidavit, to swear to the truth of facts that are otherwise undocumented
- 5.4 The matter may be referred to a Vice-Chair or Panel if there is still an issue about the party's right to proceed. This could include whether all potential survivors have been given notice. It could also include when a party refuses to provide requested documentation.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 2(1) (definitions of "spouse" and "survivor"), 48 (death benefits), and 131 (the WSIAT can determine its own practice and procedure)

Succession Law Reform Act

6.2 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#28 – Representatives