



Practice Direction #21

Who May Attend a Hearing

1.0 This Practice Direction identifies who

- must attend a hearing at the WSIAT
- may attend a hearing at the WSIAT

2.0 Parties to the Appeal

2.1 The WSIAT expects the appellant to attend the hearing. If the appellant has a representative, the WSIAT expects them to attend as well.

2.2 If a respondent is participating, the WSIAT expects the respondent to attend the hearing. If the respondent has a representative, the WSIAT expects them to attend as well. Some cases may involve more than one respondent.

2.3 If there is an issue in an employer appeal about a worker's entitlement to benefits, the WSIAT will notify the worker of the appeal. The WSIAT will invite the worker to participate in the proceeding. If the worker is not participating and the employer wants to question the worker at the hearing, the employer needs to notify the WSIAT during the disclosure period. This is so arrangements can be made for the worker to attend the hearing.

3.0 Tribunal Counsel Office

3.1 Tribunal Counsel Office (TCO) offers neutral assistance to the WSIAT for appeals and applications. They may provide assistance before, at, and after a hearing. The Vice-Chair or Panel may request TCO assistance.

3.2 TCO does not take a position on the outcome of an appeal or application.

3.3 TCO does not provide representation to parties participating in an appeal or application.

3.4 Review Practice Direction #34 – Role of Tribunal Counsel Office at the WSIAT.

4.0 Standing – Who Else May Participate in a Hearing?

- 4.1 If a person or organization is named in the final Workplace Safety and Insurance Board (WSIB) decision, the WSIAT will typically allow them to attend as a party of record.
- 4.2 If a person or organization has a significant interest in the outcome of the appeal, the WSIAT may allow them to attend the hearing. Their interest is usually monetary. The WSIAT can do this on its own or if a party requests it.
- 4.3 If the WSIAT determines an individual or organization has an interest in the proceeding, it will send them notice of the proceeding.
- 4.4 Review Practice Direction #32 – Procedure When Raising a Human Rights or Charter Question for issues relating to
 - the *Ontario Human Rights Code*
 - the *Canadian Charter of Rights and Freedoms* (Charter)
 - notifying the Attorney General, Ontario, or Attorney General, Canada

5.0 Observers

- 5.1 Family and friends can attend the hearing as a support person for the worker.
- 5.2 WSIAT staff and adjudicators can attend hearings for training purposes.
- 5.3 New representatives or students can attend hearings for training purposes.
- 5.4 All requests to observe a hearing must be sent to the WSIAT's Scheduling Department. This must happen at least **2 weeks** before the hearing date.
- 5.5 The WSIAT may ask the parties if they consent to the observer attending the hearing. If a party objects, the WSIAT will ask for submissions. A Vice-Chair or Panel will consider the submissions of the parties when deciding on a request for an observer. The issues in a hearing may be sensitive with personal or financial information. The WSIAT considers this when reviewing requests to observe a hearing. The WSIAT can refuse a request to observe a hearing.

5.6 Observers must be identified at the beginning of the hearing. Observers are not allowed to participate in the hearing. Any observer who disrupts the hearing will be given a warning. If they continue, they will be required to leave the hearing.

6.0 Witnesses

6.1 A worker and one person from the employer can

- testify
- attend throughout the hearing
- instruct their representative

6.2 Witnesses will be asked to leave the hearing room before and after giving their evidence. This is unless otherwise directed by the Vice-Chair or Panel.

6.3 There must be no communication with an excluded witness about evidence given at the hearing until after the witness testifies. This is unless otherwise ordered by the Vice-Chair or Panel.

7.0 Expert Witnesses

7.1 Oral testimony from an expert witness is extremely rare.

8.0 Workplace Safety and Insurance Board (WSIB)

8.1 As a decision-maker, the WSIB is not a party to proceedings. In exceptional circumstances, the WSIAT can invite submissions from the WSIB if it would be helpful.

9.0 Intervenors

9.1 An “intervenor” is an individual or group the WSIAT may invite to participate in an appeal. An intervenor is not a party to the appeal. In rare circumstances, the WSIAT can use discretion to identify intervenors.

9.2 Intervenor usually come from the worker and employer community. They are asked to participate in rare cases. For example, where there is a general issue of substantial interest to both the worker and employer communities. Intervenor are used to

- provide the Vice-Chair or Panel with information and insights from a broad range of perspectives
- provide the WSIAT with thorough submissions

9.3 Intervenor will have limited participation in a hearing process. The Vice-Chair or Panel will decide how much an intervenor will participate in the hearing process and the issue of intervenor access to materials. They will do this after considering the submissions of or an agreement by the parties.

10.0 References and Resources

10.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), and 132 (the WSIAT's powers regarding proceedings)

10.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#11 – Expert Evidence

#32 – Procedure When Raising a Human Rights or Charter Question

#33 – Role of the Vice-Chair Registrar

#34 – Role of Tribunal Counsel Office at the WSIAT

#36 – Delivery and Filing Documents