



## Practice Direction #38

### Transcripts of Workplace Safety and Insurance Board (WSIB) Hearings

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#### 1.0 This Practice Direction

- explains when a party can use a transcript of a previous WSIB hearing at a WSIAT hearing
- identifies what needs to be done before a hearing to use a WSIB transcript
- gives information about ordering a recording of the WSIB hearing
- lists the requirements for producing a transcript of a WSIB hearing that a party wants to submit to the WSIAT
- explains who pays for a WSIB transcript

#### 2.0 Definition of Transcript

2.1 In this Practice Direction, “transcript” means a typed version of the recorded hearing from a qualified professional (authorized court transcriptionist).

#### 3.0 WSIAT General Practice on the Use of WSIB Transcripts

3.1 The WSIAT reviews the evidence from the WSIB as well as any new evidence. If an oral hearing is scheduled, the WSIAT will hear the testimony of any witnesses it feels have relevant information. This is even if they testified at the WSIB. So the WSIAT typically does not use transcripts of previous hearings.

3.2 The WSIAT also does not typically admit audio recordings of WSIB hearings. Testimony from a WSIB hearing is only admissible as a transcript.

#### 4.0 Witness Unavailable – Exception to the General Practice

4.1 Sometimes there is evidence from a witness who is no longer available to testify. In this case, a party can ask for that portion of the transcript to be added to the case materials.

- 4.2 If a party wants a portion of a WSIB transcript to go before the Vice-Chair or Panel, a copy of the transcript must be given to the WSIAT and all other parties during the disclosure period. This submission must also include the reasons for the request. It must include why the witness is not available.
- 4.3 A preliminary issue at the hearing will be whether the transcript will be admitted as evidence. All parties can make submissions about whether the transcript should be accepted.
- 4.4 In some cases, staff might order a WSIB transcript and add it to the case materials before a hearing. Parties to the appeal are notified that the WSIAT has ordered the WSIB transcript. Parties will receive a copy when it is received.

## **5.0 Inconsistent Testimony – Exception to the General Practice**

- 5.1 If a party thinks the testimony of a witness will be different than the testimony given at the WSIB, they might use the WSIB transcript to show the differences. In this case, it is not necessary to provide a copy of the transcript before the hearing. You should bring copies of the transcript to an in-person hearing for the witness, Vice-Chair or Panel. For videoconference and teleconference hearings, the transcript can be submitted at or after the hearing.
- 5.2 Parties using a WSIB transcript to contradict the testimony of a witness can do it during cross-questioning. This happens after the witness testifies about the specific topic of the statement. The following steps should be followed.
  - 1. Ask the witness to confirm their recent testimony.
  - 2. Ask the witness if they made a previous statement. Quote the WSIB transcript.
  - 3. If the witness does not admit or remember the previous statement, provide more detail. Quote the question that the statement was in answer to and when it was asked.
  - 4. Describe the WSIB hearing – for example, before what person, date, who asked the question.
  - 5. If the witness still does not admit or remember the previous statement, share the entire transcript of the testimony for that witness. Point out the statement.
  - 6. Give the witness an opportunity to respond.

5.3 All parties can make submissions on the transcript and the evidence of the witness.

## **6.0 Other Exceptions are Decided by the Vice-Chair or Panel**

6.1 If a party feels that a transcript of a WSIB hearing should be provided to the Vice-Chair or Panel as evidence, they should send the WSIAT specific reasons in writing.

6.2 A preliminary issue at the hearing will be whether the transcript will be admitted as evidence. All parties can make submissions about whether the transcript should be accepted.

## **7.0 Recordings of WSIB Hearings**

7.1 The party who wants a WSIB transcript created must get the audio recording of the oral hearing. They get this from the WSIB's Appeals Services Division.

7.2 The Appeals Services Division does not arrange for written transcripts of recordings from oral hearings.

## **8.0 WSIB Transcripts**

8.1 The party who wants to use the WSIB transcript must arrange for the recording of the hearing to be transcribed.

8.2 A transcript of a WSIB recording must be produced and certified by a trained professional.

8.3 The transcript must include the certification from the professional transcriber.

## **9.0 Who Pays For a WSIB Transcript?**

9.1 In most cases, the party arranging for the transcript must pay for it. The WSIAT will only reimburse a party for a WSIB transcript in exceptional circumstances. If the WSIAT arranges for a WSIB transcript, it will pay for the transcript. This only happens in rare circumstances.

- 9.2 If a party wants the WSIAT to pay for the WSIB transcript (or a portion of the transcript) due to exceptional circumstances, they must make the request during the disclosure period. The request must be in writing. It must explain the reasons for the request. For example, a party may want the WSIAT to pay for a transcript if it has important evidence from a witness who has died since the WSIB hearing.
- 9.3 If there is a disagreement about whether a transcript of a WSIB hearing should be obtained, or who should pay for it, a Vice-Chair or Panel will decide. It will usually be a preliminary issue to be addressed before or at the hearing. The Vice-Chair or Panel may not decide this issue until after the hearing.

## **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 including the power to accept such oral or written evidence as the WSIAT considers proper, whether or not it would be admissible in a court)

### **10.2 Decisions**

*WSIAT Decision No. 1430/02I* (using a WSIB transcript to challenge credibility)

*WSIAT Decision No. 2614/06* (witness' right to respond to credibility allegations)

### **10.3 Related Practice Directions**

#8 – Disclosure

#9 – Evidence

#25 – Post-Hearing Procedure

#36 – Delivery and Filing Documents