



Practice Direction #5

Hearing Formats

1.0 This Practice Direction

- explains the purpose of hearings at the WSIAT
- identifies the types of hearings conducted
- identifies what the WSIAT considers when determining the hearing format
- explains how to object to the hearing format

2.0 Hearing Objectives

- 2.1 The WSIAT has the power to review all relevant evidence, including new evidence that was not considered by the WSIB. The WSIAT makes a new decision on the merits of the case. This is sometimes called a “de novo” hearing.

This is to

- get evidence and submissions
- ensure the other participating parties can cross-question witnesses and make submissions to reply
- allow a WSIAT Vice-Chair or Panel to ask questions, seek clarification, and get additional information
- be fair with adjudication
- make timely decisions based on the best evidence available

3.0 Hearing Formats

- 3.1 The WSIAT conducts hearings in these formats

- a. oral hearings by videoconference
- b. oral hearings by teleconference (telephone)
- c. oral hearings in person
- d. oral hearings in a mixed format
- e. hearings in writing (written appeals)

- 3.2 Appellants must indicate their preference for the format of their hearing on the Notice of Appeal (NOA) Form. The WSIAT will review the NOA Form and the issue(s) on appeal. The WSIAT will make an initial determination of the hearing format. WSIAT staff will identify the hearing format in the Issues on Appeal Letter. WSIAT staff will confirm it in the Hearing Ready Letter.
- 3.3 The Vice-Chair or Panel assigned to adjudicate the appeal will decide the hearing format. They will let WSIAT staff know if the format should be changed.
- 3.4 WSIAT staff will notify the parties if the Vice-Chair or Panel decides that a different hearing format is needed. The WSIAT may request additional information.

4.0 Oral Hearings

4.1 Oral hearings allow parties to

- present their opening statements
- make submissions
- present testimony
- cross-question witnesses
- make reply submissions
- present closing statements orally to the Vice-Chair or Panel

They also allow Vice-Chairs and Panels to question the parties and witnesses.

4.2 Everyone who testifies must make an affirmation, which is a solemn promise to tell the truth. It is against the law for a witness to lie during their testimony.

4.3 Oral hearings will be held in one of the following formats

- a. by videoconference
- b. on the telephone
- c. in person
- d. in a mixed format

4.4 Hearings by Videoconference

The WSIAT may conduct an oral hearing by videoconference. This requires a device with a working webcam (a desktop computer, laptop, tablet, or smartphone) and enough Internet speed to stream video and sound. The WSIAT will give the parties the information they need to connect to the hearing.

4.5 Hearings by Teleconference

The WSIAT may conduct an oral hearing on the telephone. The WSIAT will give the parties the information they need to connect to the hearing.

4.6 Hearings in Person

WSIAT in-person hearings take place at the main office in Toronto, the WSIAT office in Hamilton, and in other cities in Ontario. The location closest to the appellant's residence or place of business is usually chosen as the hearing location.

5.0 Hearings in Writing (Written Appeals)

5.1 Some appeals will be based on written submissions. They will not have an oral hearing. In these appeals, a Vice-Chair or Panel decides the appeal. They will do this by reviewing the case materials, including written submissions from the parties.

5.2 Written appeals are typically not as complicated as those appeals selected for an oral hearing.

5.3 Your appeal may be selected for a written appeal when

- the issue under appeal is one that is listed in the [Appendix](#) to this Practice Direction (Issues that are Usually Suitable to be Decided by a Hearing in Writing)
- the facts are generally not in dispute
- the medical evidence (if required) is complete
- testimony would not add to the information already in the case materials

6.0 Objections to the Hearing Format

- 6.1 If parties disagree with the hearing format chosen, they must
- write to the WSIAT to identify their preferred format
 - explain the reasons they believe the format should be changed
 - include why they believe oral testimony is or is not required
- 6.2 The WSIAT will review the objection. This may involve a discussion with other parties. It may also involve submissions from the other parties.
- 6.3 If the WSIAT cannot come to an agreement with the parties on the hearing format, the objection will be sent to a Vice-Chair for a preliminary decision.
- 6.4 The Vice-Chair or Panel assigned to adjudicate the appeal will decide on the hearing format. If a party does not agree with the preliminary decision, they can raise it as a preliminary issue for the assigned Vice-Chair or Panel at the hearing.
- 6.5 If the WSIAT processes the appeal for a hearing in writing, the objecting party should include with their written submissions why they believe the appeal should be determined by an oral hearing. The Vice-Chair assigned to the appeal will consider the request for an oral hearing before considering the merits of the appeal.
- 6.6 Where the Vice-Chair agrees that an oral hearing is required, they will direct WSIAT staff to prepare the appeal for an oral hearing. Where the Vice-Chair does not agree that an oral hearing is required, they will decide the appeal based on the case materials. For this reason, the parties' submissions should be complete.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 123 (WSIAT jurisdiction), 124(3) (types of Hearings at the WSIAT) and 131 (the WSIAT can determine its own practice and procedure)

7.2 **Related Practice Directions**

#1 – How to Start an Appeal at the WSIAT

#9 – Evidence

#21 – Who May Attend a Hearing

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

#39 – Fees and Expenses

Appendix

Practice Direction – Issues that are Usually Suitable to be Decided by a Hearing in Writing

- a. time limit appeals under section 120 of the *Workplace Safety and Insurance Act, 1997*
- b. employer requests for Second Injury and Enhancement Fund (SIEF) relief
- c. employer premium rating
- d. loss of earnings or temporary disability under 4 weeks
- e. earnings basis
- f. Canada Pension Plan (CPP) offset – this could be either loss of earnings (LOE) or future economic loss (FEL) benefits
- g. ongoing entitlement to section 147(4) benefits
- h. commutations
- i. hearing loss claims where the issue is the level of impairment
- j. entitlement to health care benefits
- k. quantum (the amount) of a non-economic loss (NEL) award for an organic impairment
- l. quantum of a pension for an organic permanent disability where no claim for loss of earnings is involved.