



Practice Direction #6

Mediation – 2-Party Appeals

1.0 This Practice Direction explains

- the purpose of mediation
- the cases that are suitable for mediation
- the mediation process
- confidentiality in the mediation process
- cooperation in the mediation process

2.0 Purpose of Mediation

2.1 The goal of mediation is to find ways to resolve 2-party appeals without holding a full oral or written hearing.

2.2 Alternative Dispute Resolution (ADR) for single-party appeals is not mediation. The WSIAT has a separate practice direction on ADR for single-party appeals (review Practice Direction #7 – Alternative Dispute Resolution (ADR) – 1-Party Appeals).

3.0 Cases Suitable for Mediation

3.1 Both parties must consent to participate in mediation.

3.2 The WSIAT must also agree that the issue(s) on appeal are suitable for mediation.

3.3 Appeals that are not suitable for mediation are generally

- appeals that are complex or novel
- appeals where credibility is an issue

4.0 Steps in the Mediation Process

4.1 The usual steps in the mediation process are

1. Before a hearing is scheduled, one or both parties ask that the appeal be resolved through mediation and the WSIAT agrees. Or, the WSIAT identifies that mediation may be suitable and the parties agree to participate. (If either of the parties or the WSIAT do not agree to mediation, the case will go to a hearing.)
2. The parties sign a consent form agreeing to participate in mediation. The consent form sets out what information will and will not be kept confidential during mediation.
3. WSIAT staff mediators are called Dispute Resolution Officers (DROs). A DRO will contact the parties to discuss if the appeal can be resolved without a written or oral hearing. If the parties do not agree to a proposed resolution, the case will go to a hearing. If the parties agree to a proposed resolution, the parties will sign a Proposed Resolution (PR) Agreement. This agreement will set out the terms of the resolution. The PR is then referred to a Vice-Chair for approval.
4. If the Vice-Chair agrees with the PR, they will release a decision with the terms of the PR. A PR must address all the issues in the appeal and be consistent with the applicable law and policy. If a Vice-Chair is not satisfied with the PR, the case will go to a hearing in front of a different Vice-Chair or Panel. The PR will not be included in the case materials.

4.2 Some mediations are conducted by designated Vice-Chairs. For mediations conducted by a Vice-Chair, the process described above is essentially the same as mediations conducted by DROs. The only difference is that the PR agreed to and signed by the parties will not be sent to a different Vice-Chair for review. The Proposed Resolution (PR) will be incorporated into a decision by the same Vice-Chair as long as they accept the PR. If the Vice-Chair does not accept the PR, the case will go to a hearing in front of a different Vice/Chair or Panel.

5.0 Confidentiality and Mediation

5.1 The mediation process is confidential. This means that communications

- will only be used for the purpose of resolving an appeal
- are not part of the record
- will not be shared without the consent of the party
- will not be used in any other proceeding

Internal communication about a Proposed Resolution (PR) is confidential and will not be placed on the record.

5.2 There are some exceptions to the confidentiality rule. For example, documentary evidence. This could include medical reports and records, employment records and witness statements.

Exceptions will be added to the appeal record. When the appeal is closed, they will also be added to the Workplace Safety and Insurance Board (WSIB) claim file.

6.0 Cooperation in the Mediation Process

6.1 Parties are expected to cooperate fully with the mediator. Full cooperation means

- providing additional or clarifying information when requested
- returning phone calls and answering letters promptly
- participating willingly and openly in meetings and conference calls
- assisting with drafting and reviewing agreed statements of facts or Proposed Resolutions (PRs)
- communicating in a respectful manner.

6.2 If a party does not cooperate, WSIAT staff may end the mediation process. WSIAT staff will then refer the appeal for a hearing.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 130 (mediation at the WSIAT), and 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#3 – Consent for the WSIAT to Release a Worker’s Information

#7 – Alternative Dispute Resolution (ADR) – 1-Party Appeals

#19 – Hearing Assignments

#22 – Downside Risk

#23 – Adjournments and Withdrawals

#24 – Inactive Appeals

#26 – Closing Appeals by the WSIAT

#31 – Powers of Practice and Procedure