



Practice Direction #8

Disclosure

1.0 This Practice Direction explains

- the purpose of disclosure
- the disclosure requirements at the WSIAT
- what happens if disclosure is late

2.0 Definition and Purpose of Disclosure

2.1 Disclosure is sharing information. In appeals, relevant information must be shared with the WSIAT and participating parties.

2.2 Disclosure gives the parties, WSIAT staff and WSIAT Vice-Chairs or Panels a chance to

- understand what the case is about
- prepare for the hearing
- consider if the WSIAT can resolve the case without a hearing
- put the case materials together including all evidence and submissions
- identify other information that may be needed at the hearing
- schedule and manage the hearing appropriately

3.0 Disclosure of Related Issues

3.1 Parties must keep the WSIAT informed of any related issues or appeals with the Workplace Safety and Insurance Board (WSIB), or other agency. This helps to avoid unnecessary adjournments or delays of appeals.

4.0 Disclosure of Evidence and Witnesses

4.1 The WSIAT will prepare and send the Case Record to the participating parties in an appeal. The Case Record has the WSIB file information that will be considered in the appeal. Parties should send the WSIAT and any other participating party any additional information they want considered.

This additional information might include

- evidence, such as medical reports or other documents
- witness information
- written submissions
- case law

4.2 Parties should not send the WSIAT information that is already in the case materials. Parties should identify key evidence already on file on the Hearing Ready Form.

4.3 Parties should provide electronic evidence or submissions in a way that is easy to read and navigate. For example, bookmark key pages in an electronic file. WSIAT staff may ask you to resubmit electronic documents that are not easy to navigate or are of poor resolution quality.

4.4 Parties must disclose all the evidence to the WSIAT and to the other participating parties. They do this on their Hearing Ready Form.

4.5 Parties can bring witnesses to their oral hearing to testify. If they do, they must disclose witness information on the Hearing Ready Form.

The following witness information must be provided

- a. a witness list – a list of all witnesses the party intends to have at the hearing, other than the worker
- b. a summary of the evidence that each witness is likely give at the hearing (a “will say” statement)
- c. a request for a summons – if a summons is required to get the witness to attend and testify

5.0 Disclosure Period – Oral Hearings

5.1 For oral hearings, appellants must provide their

- Hearing Ready Form
- evidence
- witness information

These must be submitted within **4 weeks** from the date of the appellant's Issues on Appeal Letter.

5.2 Respondents must provide their

- Hearing Ready Form
- evidence
- witnesses

These must be submitted within **4 weeks** from the date of the respondent's Issues on Appeal Letter.

5.3 Both parties are given another **2 weeks** to provide any additional information.

5.4 If either party needs more time to provide their Hearing Ready Form, they must send the WSIAT a complete Not Ready for Hearing Form. Parties must include the reason and how much additional time is needed.

5.5 The WSIAT considers evidence received after the disclosure period to be late.

6.0 Disclosure Period – Hearings in Writing

6.1 For hearings in writing, appellants must provide their

- Hearing Ready Form
- evidence
- written submissions

These must be submitted within **4 weeks** from the date of the appellant's Issues on Appeal Letter.

6.2 Respondents must provide their

- Hearing Ready Form
- evidence
- written submissions

These must be submitted within **4 weeks** from the date of the respondent's Issues on Appeal Letter.

6.3 Appellants have an additional **2 weeks** to provide reply submissions.

6.4 If either party needs more time to provide their Hearing Ready Form, they must send the WSIAT a complete Not Ready for Hearing Form. Parties must include the reason and how much additional time is needed.

6.5 The WSIAT considers evidence received after the disclosure period to be late.

7.0 Exception to the Disclosure Requirements

7.1 The disclosure requirements do not apply to submissions on the law (including copies of decisions) or Workplace Safety and Insurance Board (WSIB) policy. Parties may send the WSIAT these submissions up to 1 business day before the hearing. The party must provide a copy to any other participating party or their representative. The WSIAT will provide a copy to the Vice-Chair or Panel.

7.2 For oral hearings, the WSIAT may get Workplace Safety and Insurance Board (WSIB) claim file updates before the hearing. The WSIAT will send these updates to the parties and the hearing Vice-Chair or Panel.

8.0 Late Evidence – Oral Hearings

8.1 If parties discover evidence after the disclosure period closes and they want it considered at the hearing, they must

1. provide a copy to any other participating parties
2. send a copy to the WSIAT

This needs to be done as soon as the evidence is available.

Also, the party must provide a letter explaining

- why the evidence was not previously available
- why it should be accepted

8.2 WSIAT staff will call the party to advise them that the material was filed late and will provide it to the Vice-Chair or Panel. The party must raise the late material as a preliminary issue at the hearing.

8.3 At the hearing, the Vice-Chair or Panel considers the late evidence as a preliminary issue. They have sole discretion to accept or reject the evidence.

9.0 Late Witnesses – Oral Hearings

9.1 If a party wants to change or add a new witness to their witness list after the disclosure period closes, they must provide

- written notice to any other participating parties
- written notice to the WSIAT

Also, a “will say” statement must be disclosed for each new witness.

The party must provide a letter explaining

- why the new witness(es) was not identified before
- why they should be allowed to testify at the hearing

9.2 WSIAT staff will call the party to advise them that the witness request is late. Staff will advise the party to raise the request as a preliminary issue at the hearing.

9.3 At the hearing, the Vice-Chair or Panel will consider any new witness(es) as a preliminary issue. They have sole discretion to accept testimony from the witness(es).

9.4 A party is responsible for telling their new witness(es) that they may be called to a hearing. The witness should be ready to testify if the Vice-Chair or Panel accepts they can testify.

9.5 If a party needs a summons for a witness to attend a hearing, they must make a written request to the WSIAT. A copy of the request must be sent to other participating parties. It takes time to process and serve a summons. A late request may result in a delay of the hearing date.

10.0 Late Evidence – Hearings in Writing

10.1 If parties discover evidence after the disclosure period closes and they want it considered at the hearing, they must

1. provide copies to any other participating parties
2. send a copy to the WSIAT

This needs to be done as soon as the evidence is available.

Also, the party must provide a letter explaining

- why the evidence was not previously available
- why it should be accepted

10.2 If there is enough time before the scheduled hearing date, WSIAT staff

1. write to the other party, if they are participating
2. give them an opportunity to submit whether the new evidence should be accepted

10.3 A decision about whether the evidence will be added to the record will be made by either

- the Vice-Chair Registrar (or designate) or
- the assigned Vice-Chair or Panel

11.0 Considerations for Late Evidence and Witnesses

11.1 The Vice-Chair Registrar or the Vice-Chair or Panel will consider the following when deciding whether to accept late evidence or witnesses

- a. the reasons for not disclosing the evidence or witness(es) on time
- b. if the information was known to the other party

- c. if the other party opposes the new evidence or testimony
- d. how relevant the documents or testimony is to an issue in dispute
- e. if the other party will be prejudiced by the new information
- f. if there were timely efforts to provide documents to the other parties

11.2 The Vice-Chair Registrar or the Vice-Chair or Panel will decide

- if the material can be used at the hearing
- if the new witness(es) may testify at the hearing
- if the matter requires any other order (this could include a referral under the WSIAT's Code of Conduct for Representatives)

11.3 A request to adjourn a hearing to admit late disclosure or allow a new witness to testify at the hearing is only granted in unusual circumstances.

12.0 References and Resources

12.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

12.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#9 – Evidence

#10 – Surveillance Evidence

#12 – Summonses and the Production of Documents

#29 – WSIAT Code of Conduct for Representatives

#33 – Role of the Vice-Chair Registrar

#36 – Delivery and Filing Documents