# Practice Directions and Other Resources

# Directives de procédure et autres ressources

Ontario

Workplace Safety and Insurance **Appeals Tribunal**

**Tribunal d'appel** de la sécurité professionnelle et de l'assurance contre les accidents du travail

# PRACTICE DIRECTIONS 2014

The Tribunal recently completed a project to review and revise its Practice Directions, which were last published in 2007.

The Tribunal thanks all stakeholders and representatives who took time to review the draft Practice Directions to provide balanced and thoughtful feedback. A number of changes were made to the drafts as a result of these consultations.

These revisions continue the approach of drafting in an accessible and easy to read style. There is one addition to the documents, the Practice Direction: Surveillance Evidence.

The Practice Directions are effective July 1, 2014 and repeal and replace earlier Practice Directions on the same subject. If the adoption of the Practice Directions has occurred during the course of a Tribunal proceeding, the Vice-Chair/Panel may make any rulings necessary to ensure fair process (please see Practice Direction: Powers of Practice and Procedures, item 3.0).

The Practice Directions are organized under the following headings:

- General
- Representatives
- Pre-hearing Appeal Process
- The Hearing
- Post Hearing
- Technical

June 20, 2014

WSIAT

**Reference**

Practice Directions that were revised in 2020:

### Tribunal – General

- The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal

### Pre-hearing Appeal Process

- Medical Information Requested By the Tribunal

### The Hearing

- Post Hearing Procedure

# PRACTICE DIRECTIONS

## Tribunal – General



## Representatives



## The Pre-Hearing Appeal Process

## The Hearing



## Post Hearing



## Technical Practice Directions

# Powers of Practice and Procedure

## 1.0 This Practice Direction:

- sets out the Tribunal's general authority to control its practice and procedure
- sets out the Vice-Chair/Panel's authority to control the proceedings in cases they are hearing.

## 2.0 *Workplace Safety and Insurance Act*, section 131

**2.1** Under section 131 of the *Workplace Safety and Insurance Act* (the Act), the Appeals Tribunal shall determine its own practice and procedure in relation to appeals, applications, proceedings and mediations. The Tribunal has exercised its powers of practice and procedure under section 131 to adopt Practice Directions and Practice Guidelines.

**2.2** In the event of a conflict between a Practice Direction and a Guideline, the Practice Direction prevails.

## 3.0 Effective Date of Practice Directions

**3.1** Current Practice Directions are available on the Tribunal's website: **www.wsiat.on.ca.** Earlier Practice Directions are archived and available from the Tribunal's Library.

**3.2** A Practice Direction takes effect on the date indicated on the Practice Direction. An amendment to a Practice Direction similarly takes effect on the date indicated on the amendment to the Practice Direction.

**3.3** A more recent Practice Direction on the same subject repeals and replaces an earlier Practice Direction.

**3.4** If a Practice Direction is adopted, amended or repealed and replaced during the course of a Tribunal proceeding, the Vice-Chair/Panel may make any rulings necessary to ensure fair process.

## 4.0 Control of Proceedings

**4.1** In appropriate circumstances, the Vice-Chair/Panel may waive or modify any provision included in a Practice Direction.

**4.2** The Vice-Chair/Panel may make any rulings necessary to control the proceedings and prevent abuse of process.

## 5.0 Other

**5.1** The Tribunal may issue Practice Guidelines from time to time. These Guidelines and other information on how to prepare for appeals and applications are found on the Tribunal's website: **www.wsiat.on.ca.**

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Procedure When Raising a Human Rights or Charter Question

## 1.0 This Practice Direction:

- explains the obligations of a party who intends to raise a Human Rights question under the *Ontario Human Rights Code*[1] with respect to the legislation or WSIB Policy applicable to the Tribunal
- explains the obligations of a party who intends to raise a question under the *Canadian Charter of Rights and Freedoms*[2] with respect to the legislation or WSIB Policy applicable to the Tribunal
- explains the Tribunal's procedure where a Human Rights or Charter issue has been raised in accordance with this Practice Direction, and
- sets out the effect of a party failing to follow the procedure set out in this Practice Direction.

## 2.0 Principles

**2.1** The Workplace Safety and Insurance Appeals Tribunal ("Tribunal") can consider a Human Rights question to its legislation under the Ontario *Human Rights Code*, in accordance with the decision of the Supreme Court of Canada in *Tranchemontagne v. Ontario (Director, Disability Support Program)*[3].

**2.2** The Tribunal can consider a Charter question to its legislation under the *Canadian Charter of Rights and Freedoms*, in accordance with the decision of the Supreme Court of Canada in *Nova Scotia (Workers' Compensation Board) v. Martin*[4].

**2.3** The purpose of this Practice Direction is to allow the parties, the Tribunal, the Attorney General of Ontario and the Attorney General of Canada to receive sufficient notice of appeals that raise Human Rights or Charter questions.

## 3.0 Written Notice of Human Rights Question

**3.1** Where a party to an appeal intends to raise a Human Rights question under the Ontario *Human Rights Code* with respect to the legislation or WSIB Policy

---

1 *Ontario Human Rights Code*, R.S.O. 1990, c. H.19

2 *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, R.S.C. 1985, Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11.

3 [2006] 1 S.C.R. 513

4 [2003] 2 S.C.R. 504

applicable to the Tribunal, the party must file a written notice at the Tribunal containing:

- a detailed explanation of the Human Rights question raised consisting of the material facts of the challenge raised
- the section(s) of the Ontario *Human Rights Code* relied upon, or the legal basis for the argument
- the desired remedy
- the name, address, telephone and fax numbers of the party's representative, if any
- the name and WSIAT number of the appeal in which the issue is raised.

**3.2** The party raising the Human Rights question must send written notice of the Human Rights question to the Attorney General of Ontario and to any other parties to the appeal as soon as the circumstances requiring it become known.

**3.3** Notice sent under sections 3.1 and 3.2 must be received as soon as possible, and in any event no later than 60 days before the first scheduled hearing date.

## 4.0 Written Notice of Charter Question

**4.1** Where a party to an appeal intends to raise a question under the *Canadian Charter of Rights and Freedoms* with respect to the legislation or WSIB Policy applicable to the Tribunal, the party must comply with section 109 of the *Courts of Justice Act*. One of the requirements under section 109 is to serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the Tribunal and all parties to the appeal.

**4.2** The notice of constitutional question should be similar to Form 4F provided in the Ontario Rules of Civil Procedure.[5] The notice must contain:

5 See (http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp)

- a detailed explanation of the Charter question raised consisting of the material facts of the challenge raised
- the section(s) of the *Canadian Charter of Rights and Freedoms* relied upon, or the legal basis for the argument, identifying the nature of the constitutional principles to be argued
- the desired remedy
- the name, address, telephone and fax numbers of the party's representative, if any
- the name and WSIAT number of the appeal in which the issue is raised.

## 5.0 Tribunal Procedure Regarding Human Rights or Charter Question

**5.1** A Human Rights or Charter question that is raised in accordance with this Practice Direction will be addressed by the Tribunal only after a decision has been made on the other issues in the appeal under the applicable legislation and Board policy.

**5.2** Where the Tribunal has made a final decision on the other issues to the appeal so that a decision on the Human Rights or Charter question is no longer required, the Tribunal will not decide the Human Rights or Charter question.

**5.3** The Tribunal may consider other procedural methods for dealing with a Human Rights or Charter question, in addition to the procedure set out in this Practice Direction, where circumstances require.

## 6.0 Disclosure of Information: Written Submissions and Evidence

**6.1** Parties to an appeal involving a Human Rights or Charter question must comply with the same disclosure requirements as required for an oral hearing before the Tribunal in the *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*. Written submissions and evidence must be served on the other party or parties to the appeal and filed with the Tribunal in advance of the hearing in accordance with the relevant disclosure provisions in the *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*.

**6.2** Written submissions and evidence from the parties in respect of the Human Rights or Charter question raised on the appeal will not be required until such time as the Tribunal hears the Human Rights/Charter question.

## 7.0 Effect of Failure to Follow Practice Direction

**7.1** Where a party to an appeal before the Tribunal fails to follow the procedure set out in this Practice Direction for raising a Human Rights or Charter question, that party will not be entitled to raise the Human Rights or Charter question in any proceeding before the Tribunal unless otherwise ordered by the Tribunal.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal

**1.0 This Practice Direction:**

- Describes the Tribunal Counsel Office at the Workplace Safety and Insurance Appeals Tribunal ("Tribunal").
- Provides an overview of the role of Tribunal Counsel Office lawyers ("TCO Lawyers") in appeals and applications before the Tribunal.

**2.0 The Tribunal Counsel Office**

**2.1** The Tribunal Counsel Office (TCO) is a centre of legal and medical expertise at the Tribunal.

**2.2** The TCO consists of TCO Lawyers, TCO Administrative Support Staff, and the Medical Liaison Office.

**2.3** For more information about the Medical Liaison Office, see the **WSIAT Guide: *WSIAT-Initiated Assistance for Medical Issues.***

**3.0 The Role of TCO Lawyers in Appeals and Applications before the Tribunal**

**3.1** TCO Lawyers are available to provide neutral assistance to the Tribunal in appeals and applications:

- TCO Lawyers may provide neutral assistance before, at, and after a hearing.
- TCO Lawyers may provide assistance in appeals and applications as requested by a Vice-Chair or Panel.
- TCO Lawyers may also provide assistance by processing the most complex appeals and applications.

**3.2** All requests for TCO Lawyer assistance made by a Vice-Chair or Panel are confirmed in writing and communicated to participating parties, as well as placed on the record.

**3.3** TCO Lawyers do not take a position on the outcome of an appeal or application before the Tribunal.

**3.4** TCO Lawyers do not provide representation to parties participating in an appeal or application before the Tribunal.

**3.5** Examples of the neutral assistance that TCO Lawyers can provide to the Tribunal in an appeal or application include but are not limited to:

- Assisting with the questioning of witnesses at a hearing, or prior to a hearing with a Court Reporter.
- Making oral or written submissions with respect to legal or procedural issues identified by the Vice-Chair or Panel before, at, or after a hearing.
- Processing the most complex appeals and applications, including liaising with parties to streamline processes and clarifying and resolving procedural and legal issues arising during the hearing process.

**3.6** TCO Lawyers also provide general appeal and application-related legal advice to Tribunal staff.

## 4.0 Other Work of TCO Lawyers

**4.1** TCO Lawyers frequently provide corporate legal advice and assistance in relation to non-appeal or application related matters to other departments of the Tribunal with respect to contract and procurement issues, corporate governance, privacy, human resources, and training.

**4.2** TCO Lawyers also represent the Tribunal in litigation matters and related proceedings, including in applications for judicial review.

Effective date: January 1, 2020
Workplace Safety and Insurance Appeals Tribunal

# Representatives

## 1.0 This Practice Direction:

- recognizes that parties have the right to be represented by another person before the Appeals Tribunal
- describes who can represent a party before the Tribunal and how they are to provide notice of representation
- provides for a Code of Conduct for representatives who appear before the Tribunal
- does not apply to friends or family who may be present as "moral support" or to assist in an informal and unpaid manner.

## 2.0 Licence Requirements

**2.1** Parties may represent themselves, or may choose to retain a representative to assist them with their appeal. Representatives who appear before the Tribunal must be licensed by the Law Society of Upper Canada or authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws.

**2.2** The Law Society sets out Rules of Conduct for lawyers and paralegals.

**2.3** If the Law Society status of a representative is unclear, Tribunal staff may request additional information from the representative to confirm that s/he is eligible to represent parties at the Tribunal.

**2.4** If the Law Society status of a representative continues to be unclear at the time of the hearing, the Vice-Chair or Panel may question the representative to determine his/her status for the purposes of the hearing.

## 3.0 Notice of Representation

**3.1** When a party retains a representative for an appeal, the party must notify the Tribunal in writing in the prescribed form at the earliest opportunity.

**3.2** This notification must include the representative's postal address, telephone and fax numbers and licence number issued by the Law Society of Upper Canada (or reason for exemption from the licence requirement).

**3.3** If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Appeals Tribunal and send a written notice to every other party. This written notice must be provided at least two working days before the scheduled hearing date.

**3.4** A representative who has not filed a written notice that he or she has ceased to act for a party within the time specified must attend the hearing to withdraw from representation.

## 4.0 Code of Conduct for Representatives

**4.1** The Tribunal may establish a *Code of Conduct for Representatives* setting out expectations for the conduct of representatives appearing before the Tribunal, whether or not they are required to have a licence under the Law Society Act.

**4.2** If a representative refuses or fails to comply with the requirements of this Practice Direction or the *Code of Conduct for Representatives*, the Tribunal may comment on or take official notice of such behaviour. In noting this behaviour, the Tribunal will remind the representative that such behaviour may result in remedial action, including a temporary or permanent suspension from appearing before the Tribunal or a referral to the Law Society of Upper Canada.

**4.3** If the conduct is serious, or if there is a pattern of behaviour that continues over time without the representative being able to provide a reasonable explanation for his/her behaviour, the Tribunal Chair may take remedial action, including a temporary or permanent suspension from appearing at the Tribunal or a referral to the Law Society of Upper Canada. The representative will be given notice and an opportunity to make submissions to the Tribunal Chair.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# WSIAT Code of Conduct for Representatives

**1.0** This Code recognizes that any person representing a worker or an employer has certain obligations and responsibilities toward their client, the Tribunal, and the opposing party. The Code sets out, broadly, the standards of behaviour that the Tribunal expects from any representative.

**1.1** This Code does not apply to friends or family who may be present as "moral support" or to assist in an informal and unpaid manner. However, all persons who participate in hearings before the Tribunal must be respectful to all participants and to Tribunal members and staff.

## 2.0 Standards of Conduct

**2.1** Representatives, whether or not they are required to have a licence under the *Law Society Act*, are expected to:

- honestly represent their clients; they must not knowingly put forward any information known to be untrue, or assist or encourage a party to mislead or misrepresent the facts
- be knowledgeable concerning the relevant legislation (the *Workers' Compensation Act* and/or the *Workplace Safety and Insurance Act, 1997*)
- be aware of and comply with the Tribunal's practice directions and appeal procedures
- be prepared to present the case at hand; this includes carefully reviewing the case materials and relevant Board policies, and promptly consulting with their clients as to their directions and instructions so that they may comply with the Tribunal's preparation and disclosure requirements
- throughout the appeal process to behave courteously and respectfully to the opposing party (if present), to any witnesses called during the proceedings, to the Vice-Chair or panel hearing the appeal and to Tribunal staff
- respect the confidentiality of information disclosed during the Tribunal's processes and use that information for other purposes only with the consent of the parties and of the Tribunal
- refrain from behaviour that the Tribunal considers to be an abuse of process.

## 3.0 Remedies

**3.1** If a representative refuses or fails to comply with the requirements of this Code, the Tribunal may make comment on or take official notice of such behaviour. In noting this behaviour, the Tribunal will remind the representative that such behaviour may result in remedial action, including a temporary or permanent suspension from acting as a representative at the Tribunal or a referral to the Law Society of Upper Canada.

**3.2** If the conduct is serious, or if there is a pattern of behaviour that continues over time without the representative being able to provide a reasonable explanation for his/her behaviour, the Tribunal Chair may take remedial action, including a temporary or permanent suspension from appearing at the Tribunal or a referral to the Law Society of Upper Canada. The representative will be given notice and an opportunity to make submissions to the Tribunal Chair.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Representatives' Fees and Costs

## 1.0 This Practice Direction:

- discusses the meaning of the word "costs"
- explains that the Tribunal has no authority to award legal costs.

## 2.0 Costs

**2.1** Costs means the money a party spends on a lawyer or a representative to prepare and attend a Tribunal hearing, including charges for expenses such as photocopying.

## 3.0 No Authority to Award Legal Costs

**3.1** Parties who retain a representative, whether a lawyer or consultant, are responsible for paying the fees and expenses of that representative.

**3.2** The Tribunal has no authority to award costs against another party under the *Workplace Safety and Insurance Act*. See: *Decision Nos. 99/91 A, 927/89, 1058/00.*

**3.3** The Tribunal may refund certain expenses related to a worker's attendance at a hearing. See *Practice Direction: Fees and Expenses* on the Tribunal's website for more information.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Starting an Appeal at the Tribunal (Notice of Appeal Process)

## 1.0 General

**1.1** This Practice Direction describes how to start an appeal from a final decision of the Workplace Safety and Insurance Board.

## 2.0 Notice of Appeal Form – Worker's and Employer's Notice of Appeal Form

**2.1** Persons who want to appeal a final decision of the Workplace Safety and Insurance Board must provide notice of their appeal in writing to the Workplace Safety and Insurance Appeals Tribunal, and indicate why the decision is incorrect or should be changed (the *Workplace Safety and Insurance Act*, (the Act) section 125(2)).

**2.2** An appellant must file a Notice of Appeal (NOA) form. There are different forms for workers and employers to use to start an appeal.

**2.3** Appellants must provide a copy of the Board's final decision (usually from an Appeals Resolution Officer) with this form.

**2.4** If the appellant is a worker, the worker or the representative may sign the Worker's NOA form.

**2.5** If the appellant is an employer, the employer must sign the Employer's NOA form and undertaking of confidentiality.

**2.6** The worker-appellant must sign the section about releasing a file to the employer.

**2.7** If the appellant fails to complete the NOA form in a timely manner, the Tribunal may close the appeal file and any further appeal would be subject to the time limits under the Act.

## 3.0 Time Limits

**3.1** An appeal must be filed with the Tribunal within six months after the Board final decision (usually from an Appeals Resolution Officer).

**3.2** If the appeal is filed after six months, see *Practice Direction: Time Extension Applications*.

## 4.0 Related Practice Directions:

- *Closing Appeals by the Tribunal*
- *Time Extension Applications*
- *Access to Workers' Files – WSIB*
- *Access to Workers' Files – Tribunal*
- *Tribunal's Powers to Determine its Practice and Procedure*
- *Code of Conduct for Representatives*
- *Representatives*

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Confirmation of Appeal and Hearing Ready Letter

## 1.0 This Practice Direction:

- explains the purpose of the Confirmation of Appeal (COA) form
- outlines the time expectations for filing the COA form.

## 2.0 Purpose of Confirmation of Appeal Form

- to confirm the issues on appeal
- to identify the length of hearing time needed
- to file evidence in support of the appeal
- to advise the Tribunal and other party about witnesses
- to express interest in ADR services.

## 3.0 Disclosure

**3.1** Parties must send any documents they want to use at the hearing with the COA form.

**3.2** Parties must send copies of the completed form and any attachments to the Tribunal and to any party participating in the appeal.

**3.3** Parties must notify the Tribunal of any related issue or appeals that they are pursuing at the WSIB.

## 4.0 Time to File – Appellant

**4.1** Appellants must file the COA form no later than 24 months from the time they first wrote to the Tribunal.

**4.2** The Tribunal will remind appellants and their representatives to send the form twice during the 24 month period.

**4.3** If the completed COA form is not filed within 24 months, the Tribunal may close the appeal (See *Practice Direction: Closing Appeals by the Tribunal).*

**4.4** Appellants must provide a completed COA form within 24 months even if they do not receive case materials from the Tribunal.

## 5.0 Time to File – Respondent

**5.1** The respondent must complete and file a COA form within two weeks after it receives the appellant's completed COA form.

## 6.0 Hearing Ready Letter

**6.1** In most appeals, Tribunal staff will prepare a hearing ready letter that identifies the issues that will be considered at the hearing, and the witnesses that will testify.

**6.2** When parties receive the letter, they must review it and advise the Tribunal of any concerns (especially if they believe the issues are not correctly identified).

**6.3** Parties must advise the Tribunal promptly of any concerns to avoid delaying the appeal.

## 7.0 Related Practice Directions

- *Disclosure, Witnesses and the Three-Week Rule*
- *Closing Appeals by the Tribunal*

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Time Extension Applications

## 1.0 This Practice Direction:

- identifies the time limit for bringing an appeal to the Tribunal
- outlines how the Tribunal processes time extension applications
- identifies information that parties should include in a time extension application
- identifies Tribunal decisions to review before making a time extension application.

## 2.0 Time Limits for Appealing Decisions to the Tribunal

**2.1** Under the Act, a notice of appeal must be filed with the Tribunal within six months of a final Board decision.[1]

**2.2** For final Board decisions made before January 1, 1998, a notice of appeal must have been filed with the Tribunal by June 30, 1998.[2]

**2.3** If a party wishes to appeal a Board decision to the Tribunal after the time limit has expired, s/he must file a time extension application with the Tribunal.

## 3.0 Tribunal Processing of Time Extension Applications

**3.1** There are five steps in processing a time extension application:

**The Tribunal identifies an appeal that arrives after the time limit has expired.**

**3.2** Tribunal staff identify when an appeal has been received after the time limit has expired. Generally, the Tribunal counts the six months from the date on the Board decision to the date the notice of appeal is received by the Tribunal.

**3.3** Where there is a Board decision and a Board reconsideration of that decision, the date of the original decision is generally used. However, where the Board has considered significant new evidence on a reconsideration or has changed the result of the original decision, the date of the reconsideration decision will be used.

---

1 See section 125(2) of the *Workplace Safety and Insurance Act*.

2 See section 112(3) of the *Workplace Safety and Insurance Act*.

**The Tribunal asks for a time extension application.**

**3.4** If the Tribunal receives a notice of appeal more than six months after the date of the Board decision, it will send a letter stating that the notice was received late, and ask that a time extension application be filed within one month.

**Sending the Tribunal a time extension application**

**3.5** A party who wants a time extension must fill out a time extension application.

**3.6** The application includes:

- the completed Notice of Appeal form
- the applicant's letter explaining why the appeal was not filed on time and why a time extension should be granted.

**3.7** If the party does not file a time extension application within one month after the Tribunal requests it, the Tribunal closes the time extension file and will not consider the appeal. In extraordinary circumstances the Tribunal may extend the time for filing the time extension application.

**The Tribunal asks other parties to respond to the time extension application.**

**3.8** When a time extension application is received, the Tribunal notifies other parties of the application and asks them to respond within one month.

**The Tribunal decides the time extension application.**

**3.9** A Tribunal Vice-Chair decides the time extension application. Normally, there is not an oral hearing. The Vice-Chair bases the decision on the correspondence on file with the Tribunal, including the application and submissions. A copy of this correspondence is provided to the parties prior to inviting their time extension submissions.

## 4.0 Information to Include in a Time Extension Application

**4.1** Parties should attach all relevant information that they want the Tribunal Vice-Chair to consider because only the information sent in will be reviewed. The

Tribunal may identify previously submitted appeal information but does not review its files to see if there is material which is relevant to a time extension. The Tribunal also does not order Board files for time extension applications. Any documents from a Board file or Tribunal file should be attached to the application or response.

**4.2** If any of the following information is available, it should be included in the time extension application:

- an explanation of why the Notice of Appeal was not filed in time
- evidence of earlier filing of the appeal (e.g. a fax receipt or letter)
- evidence that shows the applicant intended to appeal before the time limit ended (e.g. notice of appeal mistakenly sent to the Board rather than the Tribunal)
- unusual circumstances where the applicant was unaware of the time limit or was prevented from meeting the time limits (e.g. very serious illness or family circumstances)
- unusual delays (e.g. a significant delay in receiving the Board decision) or other Board matters that are relevant to the timing of the appeal to the Tribunal
- requests to the Board to reconsider the decision (especially if it was made within six months of the original decision).

**4.3** If any of the following apply, they should be included in the application or submissions:

- whether the issue is so connected to another appeal that the Tribunal cannot reasonably decide the other appeal without considering it (e.g. the “whole person” concept applies, cross appeals)
- whether a refusal to hear the appeal could result in a substantial miscarriage of justice due to defects in prior process or clear and manifest errors
- comments about efforts made to file the appeal on time

- whether there is prejudice to a party (e.g. a witness is no longer available to testify)
- whether the case is so old that it cannot be reasonably decided.

**4.4** The factors the Tribunal considers in determining a time extension application are set out in numerous WSIAT decisions, available on the Tribunal's website (**www.wsiat.on.ca**) or from the Ontario Workplace Tribunals Library.[3]

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

3 See *Decision Nos. 1493/98I, 1522/98I2* and *248/99I*.

# Written Appeals

## 1.0 This Practice Direction:

- explains how the Tribunal decides which appeals can be decided as a written appeal
- identifies the types of appeals that the Tribunal decides as a written appeal
- explains how the Tribunal decides an appeal on the basis of written submissions ("written appeals").

## 2.0 What is a Written Appeal?

**2.1** To ensure that hearing time is used efficiently, the Tribunal has adopted various pre-hearing procedures, including deciding a small group of appeals as written appeals.

**2.2** In a written appeal, a Tribunal Panel or Vice-Chair decides the appeal by reviewing the case materials including written submissions from the parties.

## 3.0 Selecting Appeals for Written Hearings

**3.1** Tribunal staff identify appeals that are appropriately handled as written appeals as early as possible, usually after the Tribunal receives the Notice of Appeal form and a copy of the decision being appealed. This helps to avoid confusion about the steps that the worker or employer must complete to have their appeal decided.

**3.2** Where pre-hearing staff identifies an appeal that can be handled as a written appeal, the Tribunal writes to the worker and employer (if they are both participating) to:

- advise that the appeal will proceed as a written appeal
- explain the steps for providing documents and obtaining written submissions from the parties, and
- provide a copy of the *Practice Direction: Written Appeals*.

**3.3** An appeal may be selected to be decided as a written appeal when:

- there is a discrete issue under appeal
- the facts are generally not in dispute

- the medical evidence (if required) is complete and
- testimony would not add to the information already in the case materials.
- Generally, the law, policy and medical issues in written appeals are not as complicated as those in appeals selected for an oral hearing.

**3.4** Some issues that are often found to be suitable for a written hearing process include:

- employer requests for Second Injury and Enhancement Fund (SIEF) relief
- loss of earnings/temporary disability (for periods of time under 4 weeks)
- commutations
- applications for an increase in an award for permanent impairment (NEL, pension quantum increase or quantum reassessment (for pre-1990 accidents arrears dates) where no claim for loss of earnings benefits is involved
- hearing loss claims where the issue is the level of impairment
- entitlement to health care benefits
- ongoing entitlement to section 147(4) benefits.

## 4.0 First Phase of a Written Appeal

**4.1** After determining that an appeal is suitable for the written process, the Tribunal orders the WSIB file.

**4.2** The Tribunal then writes to the appellant to:

- advise that the appeal will proceed as a written appeal
- explain the steps for providing documents and written submissions and
- provide a copy of the written appeals procedures.

**4.3** The Tribunal then contacts the respondent to:

- send a Response form, together with the Notice of Appeal and a copy of the decision being appealed, to the respondent

- ask the respondent to return the completed Response form within three weeks if s/he wants to participate in the appeal
- advise the respondent that the appeal will proceed as a written appeal
- explain the steps for providing documents and written submissions
- provide a copy of the written appeals procedures.

**4.4** When the Tribunal receives the WSIB claim file, staff review the appeal information in more detail to confirm that the appeal continues to meet the criteria for a written appeal process. If the review indicates that an oral hearing is required, the Tribunal sends a letter to the participating parties explaining that the appeal must be prepared for an oral hearing.

## 5.0 Final Phase of a Written Appeal

### 5.1 Two-Party Appeals

Where both the appellant and the respondent are participating in the appeal, the following steps take place in the final phase of a written appeal:

- the Tribunal prepares the case materials for the appeal. The case materials for a written hearing are usually the Case Record, any addenda and a Casebook (if one has been created for the issue appealed)
- the Tribunal sends the case materials to the parties
- if either party is unrepresented, the Tribunal also sends information about organizations they can contact to obtain help with their written submissions
- the Tribunal asks the worker and employer to provide their written submissions within one month or to confirm that they will not be making submissions. If a party wants to reply to written submissions, they must do so within a further two weeks. If a party does not send any submissions within the one-month period, the Tribunal assumes that they have no submissions to make
- at the end of the six-week period, staff sends all of the case materials and any worker and employer's submissions to the Tribunal's scheduling staff so that they can assign the appeal to a Tribunal Vice-Chair

- the Tribunal Vice-Chair reviews all of the case materials and writes a decision

the Tribunal sends a copy of the decision to the worker and the employer.

### 5.2 One-Party Appeals

Where only the appellant is participating in the appeal, the final phase of a one-party written appeal is the same as for a two party appeal as described above except:

- the Tribunal does not send any information to the other party except the final decision
- the Tribunal asks the appellant to provide their written submissions within one month or to confirm that s/he will not be making submissions. If a party does not send any submissions within the one-month period, the Tribunal assumes that s/he has no submissions to make.

**5.3** If the worker or employer needs more than a month to prepare the written submissions, s/he may write to request additional time. Such requests should identify how much additional time is required and the reasons.

## 6.0 Objections to a Written Hearing

**6.1** If parties disagree that the case meets the criteria for the written process (outlined in 3.3), they must write to explain the reasons they believe that an oral hearing is required for the appeal.

**6.2** Tribunal staff will review the objection and if the reason(s) given confirms that the appeal does not meet the criteria for written hearing (for example, if the medical documents are in dispute), the Tribunal will process the appeal to be scheduled as an oral hearing.

**6.3** In all other cases, the Tribunal continues to process the appeal as a written case, and requests that the party objecting provide written submissions in support of the appeal, as in the ordinary case. These submissions may include further submissions describing why the appeal should be determined by an oral hearing. When the appeal comes before the Vice-Chair to be considered, the Vice-Chair assigned to the appeal considers the request for an oral hearing before considering the merits of the appeal.

**6.4** Where the Vice-Chair agrees that an oral hearing is required, the Vice-Chair directs Tribunal staff to prepare the appeal for an oral hearing.

**6.5** Where the Vice-Chair does not agree an oral hearing is required, s/he decides the appeal based on the case materials. For this reason, the arguments submitted by a party should be complete.

## 7.0 Written Submissions

Written submissions should:

- be easy to read
- clearly identify the issue(s) in the case
- outline the relevant facts in the order they occurred
- explain how the evidence proves the facts are as they are, rather than as others say they are
- identify any relevant law and policy, and connect it to the facts in the case
- state what outcome or benefits are being requested
- clearly identify, describe and number the pages of any documents that are referred to in the submissions refer specifically to the medical reports if the issue is a medical one.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Access to Workers' Information When the Issue in Dispute is at the Tribunal

## 1.0 This Practice Direction:

- discusses the Tribunal's authority to provide access to a worker's information to other parties
- discusses the principles governing access to a worker's information
- describes the process of obtaining worker consent to access and the employer's undertaking regarding access
- describes what occurs when a worker does not consent to access
- identifies other situations where full access may not occur

## 2.0 The Tribunal's Authority to Provide Access

**2.1** The Act does not discuss access to a worker's file at the Tribunal. The Tribunal does have the authority to determine its own practice and procedure.[1] Through this Practice Direction the Tribunal exercises its authority to determine its own practice and procedure on the issue of access to a worker's file when there is an appeal at the Tribunal.

## 3.0 Access Principles

**3.1** The Act sets out when and how the Board provides access to both employers and workers.[2] This Practice Direction incorporates the principles on access found in the Act. In particular, the Tribunal recognizes that both parties need access to relevant information in order to have a fair hearing.

**3.2** This Practice Direction also incorporates the principles found in the *Freedom of Information and Protection of Privacy Act* (FIPPA) where applicable. FIPPA covers access to information and the right of individuals, including workers and individuals mentioned in a worker's file, to protection of their personal information.

---

1 See section 131 of the *Workplace Safety and Insurance Act*

2 See sections 57 to 59 of the *Workplace Safety and Insurance Act*

## 4.0 Consent to Access and Employer Undertakings

**4.1** Workers must indicate on the Notice of Appeal or Response Form if they consent to release to employers who appear to the Tribunal to be interested parties:

- the claim file
- related claim files, and
- any other information sent to the Tribunal.

**4.2** The worker may consent to the release of all or part of these documents. The worker has the right to review the claim files before consenting to release.

**4.3** When an employer participates in an appeal, the employer receives a Notice of Appeal for Employers or Response Form. The employer must sign the Undertaking on the form that:

- the employer and any representative it retains will not disclose any worker information to a non-party, except in a form calculated to prevent the information from being identified with a particular worker or case.[3]
- the information is used for workplace safety and insurance purposes only.

## 5.0 What Happens When the Worker Does Not Consent?

**5.1** Prior to sending an access appeal to a Vice-Chair for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see *Practice Direction: Mediation*).

**5.2** If the worker does not consent to the release of information, both the worker and the employer are asked to provide written submissions to the Tribunal about why access should or should not be granted.

**5.3** Parties can make submissions on the issues of whether the information is:

- relevant to the issue in dispute or
- prejudicial to the worker and if so in what way.

---

3 See section 59(6) of *Workplace Safety and Insurance Act*

**5.4** If the worker does not provide written submissions, the issue of whether the worker's objection has been abandoned will be referred to a Vice-Chair.

**5.4.1** Where the Vice-Chair finds that the objection has been abandoned (see *Practice Direction: Closing Appeals by the Tribunal*), a letter signed by the Vice-Chair will be sent to the parties to confirm the decision. The information is released by the Tribunal 15 days after the date of the letter.

**5.5** Most access appeals are decided by a Vice-Chair by a written process based on the written submissions and review of the documents in question (see *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.

**5.6** The Vice-Chair will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair may impose conditions on access. A written decision will be sent to the parties.

**5.7** If access is granted to the employer, the information is released by the Tribunal 15 days after the decision is released.

## 6.0 Other Situations Where Full Access May Not Be Granted

**6.1** The Tribunal may identify personal information in records such as the items identified in Schedule A (see below) that is not relevant to the issues in dispute and will not be released. Information may also be excluded when the relevance is outweighed by the sensitive or prejudicial nature of the information. The Tribunal may withhold the information and refer the issue to a Vice-Chair for a decision.

**6.2** If the Tribunal is concerned that information may be harmful to a worker if released directly to the worker, the Tribunal will provide copies of the information to the worker's treating physician and advise the worker or the representative that it has done so. The Tribunal will confirm with the worker or representative whether the information has been released by the treating physician.

**6.3** If the worker objects to this procedure, or if the treating physician does not release all or part of the information, the matter will be referred to a Vice-Chair. The Vice-Chair will decide how or whether the information should be released. The process outlined in section five will apply.

## SCHEDULE A[4]

### Information That the Tribunal Will Not Release

The Tribunal will usually not release the following information unless it is relevant to the appeal:

- personal banking account documents (e.g. direct deposit forms, copies of personal cheques);
- personal identity documents (e.g. driver's license, passport, SIN card, OHIP card, certificates of citizenship).

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

4 Schedule A was revised on April 4, 2011

# Access to Workers' Information When the Issue in Dispute is at the Board

## 1.0 This Practice Direction:

- describes the legislation and principles governing access appeals when the issue in dispute is at the Board
- describes the process that occurs for objecting to access.

## 2.0 Legislation and Principles Governing Access

**2.1** The Act and Policy allow both workers and employers to have access to the information in a worker's claim file when there is an issue in dispute.[1]

**2.2** This Practice Direction incorporates the principles on access found in the Act and Policy. In particular, the Tribunal recognizes that both parties need access to relevant information in order to have a fair hearing.

## 3.0 Process for Objecting to Access

**3.1** When there is an issue in dispute at the Board, the employer is entitled to access to a worker's claim file. A worker may object to the release of health care information found in his/her claim file to the employer.

**3.2** If a worker objects, the Board makes a decision on whether the information should be released to the employer.

**3.3** If either party is not satisfied with the Board's decision on the objection, they can appeal to the Tribunal within 21 days of the Board decision.

**3.4** Prior to sending an access appeal to a Vice-Chair for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see *Practice Direction: Mediation*).

**3.5** When the Tribunal receives an objection to the release of documents, both the worker and the employer are asked to provide their submissions to the Tribunal about why access should or should not be granted. The submissions are in written form.

---

1 See sections 57 to 59 of the *Workplace Safety and Insurance Act* and see Board *Operational Policy Manual*, Document No. 21-02-02 "Disclosure of Claim File Information (Issue in Dispute)."

**3.6** The Tribunal only decides if the employer does or does not have access to the information. The Tribunal does not decide the issue in dispute. Parties can make submissions on the issue of whether the information is:

- relevant to an issue in dispute or
- prejudicial to the worker and if so in what way.

**3.7** If the worker does not provide written submissions, the issue of whether the worker's objection has been abandoned will be referred to a Vice-Chair.

**3.7.1** Where the Vice-Chair finds that the objection has been abandoned (see *Practice Direction: Closing Appeals by the Tribunal*), a letter signed by the Vice-Chair will be sent to the parties to confirm the decision. The information is sent back to the Board, who will release the information 15 days after the date of the letter.

**3.8** If the parties provide written submissions, the access appeal is referred to a Vice-Chair for a decision.

**3.9** Most access appeals are decided by a Vice-Chair by a written process based on the written submissions and review of the documents in question (see *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.

**3.10** The Vice-Chair will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair may impose conditions on access. A written decision will be sent to the parties.

**3.11** Once a decision is made, the matter is sent back to the Board to decide the issue in dispute. If access is granted to the employer, the information is released by the Board 15 days after the Tribunal decision is released.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Mediation

## 1.0 This Practice Direction:

- explains the authority for and purposes of mediation
- explains which cases are suitable for mediation
- explains the mediation process
- explains confidentiality in the mediation process
- explains cooperation in the mediation process.

## 2.0 Authority for and Purposes of Mediation

**2.1** Section 130 of the Act allows the Tribunal to "provide mediation services in such circumstances as it considers appropriate."

**2.2** The aim of mediation is to explore ways of resolving appeals at the Tribunal without holding full oral hearings. Mediation can also shorten Tribunal hearings by resolving some issues prior to the hearing or by creating agreed statements of fact.

## 3.0 Cases Suitable for Mediation

**3.1** Mediation is only available if there are two opposing parties and both parties are participating in the appeal at the Tribunal.

**3.2** Cases will qualify only if all parties and representatives consent to mediation.

**3.3** The Tribunal must also agree that the issue(s) are suitable for mediation.

**3.4** Generally, complex or novel appeals or appeals where credibility is an issue are not suitable for mediation.

## 4.0 The Mediation Process

**4.1** The usual steps in the mediation process are:

a) The appellant or respondent asks that the appeal be dealt with by mediation. The appellant or respondent must ask for mediation before a hearing is scheduled for the appeal.

b) The Tribunal agrees that the issue(s) are suitable for the mediation process. If the appeal is not suitable, the case will be referred to a hearing.

c) In certain circumstances, the Tribunal may notice that mediation may be suitable. The Tribunal may ask parties if they want to participate in mediation.

d) Both parties must agree to participate in the mediation process. If a party does not agree to participate in mediation, the case will be referred to a hearing.

e) All parties sign a consent form at the mediation, agreeing to participate in the mediation process.

f) Specially trained Tribunal staff known as mediators will help the parties to settle or clarify issues. Mediators will use techniques such as mediation, negotiation and neutral evaluation to try to resolve the appeal. The mediators may:

- arrange telephone calls and teleconferences
- conduct mediation sessions and caucuses
- seek input from medical authorities, the WSIB and other individuals and institutions
- draft recommendations, agreed statements of fact or statements of issues
- provide a neutral, off the record evaluation of the strengths and weaknesses of the appeal.

g) If an agreement is reached between the parties, a Vice-Chair will review it. If the Vice-Chair is satisfied with the recommendation, they will release a decision incorporating the settlement. All agreements must be consistent with the Act and Board policy. If a Vice-Chair is not satisfied with the recommendation, the case will be referred to a hearing before a different Vice-Chair and the recommendation will not be included in the case materials. Decisions of the Vice-Chair are final and binding decisions of the Tribunal.

h) A hearing may still occur if:

- an agreement cannot be reached between the parties, or

- there are outstanding issues which the mediator and parties agree should be referred to a Vice-Chair for hearing.

## 5.0 Confidentiality and Mediation

**5.1** The mediation process is confidential. This means that:

- all disclosures, admissions and other communications made while the case is in the mediation process will be made "without prejudice" and only for the purposes of resolving an appeal
- such communications do not form part of the record at the Tribunal
- such communications will not be shared with another party or representative involved in this appeal or any other party or institution without the consent of the party making the communication
- such communications will not be used in any other proceeding at the Tribunal or elsewhere.

**5.2** There are some exceptions to the confidentiality rule. The confidentiality rule does not apply to:

- disclosures, admissions or other communications where the party making the communication consents to its inclusion in the record or to its other use
- medical information or medical opinions which are part of or are added to the Tribunal and WSIB records
- disclosures, admissions or other communications that may show criminal activity
- communications between the mediatior and Tribunal staff or OIC appointees.

## 6.0 Cooperation in Mediation

**6.1** All parties and their representatives are expected to cooperate fully with the mediator. Full cooperation means:

- providing additional or clarifying information when requested
- promptly returning telephone calls and answering correspondence

- participating willingly and candidly in meetings and conference calls
- assisting in drafting and reviewing agreed statements of facts or agreements
- being available to attend a hearing on possibly short notice.

**6.2** If a party does not cooperate, the mediator has the authority to:

- recommend that a case be decided in a written or oral hearing process by a Vice-Chair or Panel of the Tribunal
- make the appeal inactive at the Tribunal
- recommend to a Panel or Vice-Chair that restrictions be placed on a party's ability to take part in the appeal process.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Pre-Hearing Conference/Pre-Hearing Telephone Conference Calls

## 1.0 This Practice Direction:

- explains what a pre-hearing conference is
- explains situations where the Tribunal may schedule a pre-hearing conference before the scheduled date of the appeal hearing.

## 2.0 Pre-Hearing Conference

**2.1** A pre-hearing conference is a discussion between a Tribunal Panel or Vice-Chair and the parties to the appeal. The Tribunal Panel or Vice-Chair may provide direction for the further processing of the appeal, or determine the way in which the hearing will proceed on its scheduled hearing date.

**2.2** The Tribunal expects hearings to proceed as scheduled and requires the parties to notify the Tribunal about any evidentiary or procedural issues that need to be resolved before the hearing.

**2.3** Issues that may be resolved at a pre-hearing conference include:

- procedural matters (e.g. whether to give notice to certain parties)
- issue agenda (e.g. what issues will be decided at the hearing) or
- evidence issues (e.g. attendance of witnesses, whether a document is admissible).

**2.4** Either a party to an appeal or Tribunal staff may request a pre-hearing conference. A pre-hearing conference may take place in person or by way of a telephone conference call.

## 3.0 Requests for a Pre-Hearing Conference

**3.1** A party must request a pre-hearing conference in writing and explain the reasons for the request and whether the other parties agree to the request. They must send a copy of the request to any other participating party. The party should make the request as soon as it identifies the issue so that the Tribunal has sufficient time to review the request and schedule it.

**3.2** The Tribunal will consider the request and, depending on the circumstances, may allow or deny the request.

## 4.0 Scheduling of a Pre-Hearing Conference or Telephone Call

**4.1** The Tribunal consults with the parties to the appeal to schedule pre-hearing conferences.

**4.2** The same Panel or Vice-Chair who conducts the pre-hearing conference will **generally** also hear the merits of the appeal.

**4.3** The Tribunal gives the Panel or Vice-Chair a copy of the pre-hearing conference request and any other relevant material prior to the scheduled pre-hearing conference.

**4.4** After completing the pre-hearing conference, the Panel or Vice-Chair will issue instructions for the further processing of the appeal if necessary.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Disclosure, Witnesses and the Three-Week Rule

## 1.0 This Practice Direction:

- explains the purpose of disclosure
- explains the disclosure requirements
- explains what happens if disclosure is late (the three-week rule).

## 2.0 Purpose of Disclosure

**2.1** The purpose of the Tribunal's disclosure practices is to give the parties, the Tribunal and its adjudicators a chance to:

- understand what the case is about
- prepare for the hearing
- consider if they can resolve the case without the need for a hearing
- prepare documents of the evidence so that the parties and the Vice-Chair or Panel all have the same information for the hearing
- identify other information that may be needed at the hearing. This reduces adjournments and inquiries after the hearing, and
- prepare for the hearing (e.g. allow enough time for the witnesses to testify).

## 3.0 Authority for Tribunal Disclosure Rules

**3.1** The *Workplace Safety and Insurance Act* allows the Tribunal to:

- determine its own practice and procedure (s.131)
- summon witnesses (s.132), and,
- require parties to provide documents and things which the Tribunal considers necessary to make its decision (s.132).

**3.2** The Tribunal has adopted a general practice about disclosure.

## 4.0 Disclosure of Documentary Evidence

**4.1** Parties must disclose all other evidence to the Tribunal and to the other parties no later than three weeks before the hearing date. Parties should take particular

care to disclose additional evidence (e.g. medical reports) they intend to use at the hearing that became available *after* filing the Confirmation of Appeal (COA).

## 5.0 Disclosure of Related Issues

**5.1** Parties have a continuing obligation to advise the Tribunal of any related issues or appeals that they are pursuing at the Workplace Safety and Insurance Board to avoid unnecessary adjournments or delays in the processing of appeals.

**5.2** Parties must advise the Tribunal at least three weeks before the scheduled hearing date of a related issue that may prevent the appeal from proceeding as scheduled.

## 6.0 Disclosure of Witnesses

**6.1** Parties must disclose witness information on the COA form. The following information must be provided to the Tribunal:

- a list of all witnesses the party intends to have at the hearing, other than the worker (a witness list), and
- a summary of the evidence that each witness (other than the worker) will give at the hearing (a "will say" statement).

**6.2** Where a party changes, removes, or adds a new witness to the party's witness list after filing a COA, the party must disclose this by providing written notice to the Tribunal and all other participating parties. In addition, a "will say" statement must be disclosed for each new witness.

**6.3** Parties must advise their witnesses that they will be called for a hearing.

**6.4** Parties must provide written notice of any changes to their witness list no later than three weeks before the hearing date.

**6.5** When required, a party must make a written request to the Tribunal for a summons to have a witness attend a hearing. A copy of the request must be sent to other participating parties (See *Practice Direction: Summonses and Production of Documents*).

## 7.0 Exceptions to the Three-Week Rule

**7.1** The three-week rule for disclosure does not apply to:

- submissions on the law (including copies of decisions) or Board policy, or
- Tribunal disclosure of updates from the Board of worker files or employer firm files.

## 8.0 Disclosure that does not Comply with the Three-Week Rule

**8.1** The Tribunal considers evidence provided less than three weeks before the hearing date to be disclosed late.

**8.2** The Tribunal does not place late evidence before the hearing panel but may advise the hearing panel or Vice-Chair that a party has submitted late evidence.

**8.3** The hearing panel or Vice-Chair considers the late evidence as a preliminary issue and has sole discretion to waive compliance with the three-week rule.

**8.4** In considering if it will waive the three-week rule, the hearing panel or Vice-Chair may consider any relevant factor, including:

- the reasons for not meeting the three-week rule
- the extent to which the substance of the information or testimony lies within the knowledge of the other party
- whether the other party opposes the new evidence or testimony
- the relevance of the documents or testimony to an issue in dispute
- whether the other party will be prejudiced by the introduction of the new evidence or documents
- timely efforts to provide documents to the other parties.

**8.5** The hearing panel or Vice-Chair will decide:

- if the material can be used at the hearing
- if the new witness(es) may testify at the hearing, or

- whether the matter requires any other order, including a referral under the Tribunal's Code of Conduct for Representatives.

**8.6** A request for an adjournment to admit late disclosure is only granted in unusual circumstances (See *Practice Direction: Adjournments and Withdrawals*).

## 9.0 Disclosure for a Reconvened Hearing

**9.1** Once a hearing has begun and evidence has been heard, parties may not provide new evidence between the first hearing date and the reconvened hearing date without leave of the Vice-Chair or Panel.[1]

**9.2** On rare occasions, a party may discover new evidence after the first hearing date. In such exceptional circumstances, the party must provide a letter explaining why the evidence was not previously available and why it should be accepted. The letter and the new evidence must be provided to the Tribunal and all other participating parties. The other parties can then provide submissions on whether the new evidence should be accepted. The Vice-Chair or Panel decides if the new evidence will be accepted.

## 10.0 Related Practice Directions

- *Surveillance Evidence*

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

1 For further information on reconvened hearings see *Practice Direction: Post-Hearing Procedure.*

# Surveillance Evidence

## 1.0 This Practice Direction:

- explains what constitutes surveillance evidence
- explains how a party may introduce surveillance evidence
- explains how the Tribunal determines the admissibility of surveillance evidence
- explains what weight is to be given to surveillance evidence.

## 2.0 What Constitutes Surveillance Evidence?

**2.1** Surveillance commonly involves a person discreetly observing another person, situation, or object. Surveillance evidence includes any record of audio or visual observations.

## 3.0 Tribunal's General Practice on How a Party May Introduce Surveillance Evidence

**3.1** The Tribunal has the authority to accept such oral or written evidence as it considers proper, whether or not it would be admissible in a court.[1]

**3.2** Parties are permitted to rely on surveillance evidence in Tribunal proceedings where the evidence is relevant and of sufficient probative value to assist adjudicators without warranting exclusion.

## 4.0 Procedure for Disclosing Surveillance Evidence

**4.1** Parties who wish to rely on surveillance evidence in Tribunal proceedings must provide a copy of the evidence, the surveillance report and an affidavit authenticating the evidence. The affidavit is to be signed by the person that conducted the surveillance ("the Investigator") or prepared the evidence.

**4.2** The party submitting the evidence must be prepared to call the Investigator as a witness (see *Practice Direction: Disclosure, Witnesses and the Three Week Rule*) to authenticate the evidence. The Investigator is expected to attend the hearing, testify about how the evidence was made, and answer questions from the parties and the Vice-Chair or Panel.

---

1 See section 132 of the *Workplace Safety and Insurance Act.*

**4.3** If the Investigator is not called as a witness to authenticate the evidence, a signed affidavit accompanying the evidence may be acceptable. The affidavit must address the creation of the evidence and authenticate it, where possible.

**4.4** If the Investigator is not called as a witness or if the evidence has not been authenticated, the Vice-Chair or Panel may not admit the surveillance evidence or may give it less weight.

**4.5** Surveillance evidence commissioned by the Board is sometimes received by the Tribunal as a part of a worker's claim file. In such instances, the Tribunal does not require the Investigator to attend as a witness at the Tribunal hearing. However, the Tribunal would normally expect the surveillance evidence would be authenticated by affidavit, and section 4.4 would apply.

## 5.0 Admissibility of Surveillance Evidence

**5.1** Tribunal case law sets out three criteria that generally form the basis of the Tribunal's reasoning in deciding the admissibility of surveillance evidence. In considering whether it will admit the surveillance evidence, the Panel or Vice-Chair may consider any relevant factors, including three criteria that have been identified in Tribunal case law as the relevant "categories of inquiry":

- the relevance of the evidence to the issue in dispute
- the authenticity of the evidence
- exclusion due to special circumstances (such as inherent flaws in the evidence).[2]

## 6.0 Weight of Surveillance Evidence

**6.1** In considering how much weight will be given to the surveillance evidence, the Panel or Vice-Chair may consider any relevant factor, including:

- the extent to which surveillance evidence has been properly authenticated
- the extent to which surveillance evidence has been edited or provides a selective snapshot and not a whole picture

2 *Decision No. 688/87*

- the quality and clarity of the surveillance evidence
- the duration of the surveillance
- any strengths and weaknesses in the surveillance procedures
- whether the subject of the surveillance has had an opportunity to explain the activity depicted in the evidence
- whether the investigator attended the hearing.

**6.2** Surveillance evidence will be considered in context and in conjunction with all other evidence on record. See *Practice Direction: Disclosure, Witnesses and the Three Week Rule*.

## 7.0 Related Practice Directions

- *Disclosure, Witnesses and the Three-Week Rule*

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Summonses and Production of Documents

## 1.0 This Practice Direction:

- explains how to request a summons
- identifies the factors the Tribunal reviews when deciding whether to issue a summons
- does not apply to applications to determine the right to sue; see *Practice Direction: Right to Sue Applications*.

## 2.0 The Legislation

**2.1** A summons is a document that requires a person to attend at a hearing to give evidence on a certain date. The summons takes effect when it is served on the witness.

**2.2** The summons will say the time and place at which the witness is required to attend. The summons requires a witness to re-attend until their testimony is no longer required by the Vice-Chair or Panel.

**2.3** Section 132(1) of the *Workplace Safety and Insurance Act* gives the Tribunal the power to summon and enforce the attendance of witnesses at a hearing in the same manner as a court.

## 3.0 The Request

**3.1** A party to an appeal may request a summons.

**3.2** A summons request should be made in writing at least three weeks prior to the hearing. (See *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*.)

**3.3** The party requesting the summons must provide:

- the name, current address and telephone number of the witness
- a brief statement outlining why the testimony is necessary for the appeal
- a brief statement indicating whether the witness is willing to attend
- a brief statement explaining why the summons is required.

**3.4** The party requesting the summons must provide address information for the witness that is specific enough to allow the Tribunal to locate the person to serve the summons. The Tribunal will notify the requestor if the address information is not sufficient. The Tribunal cannot serve a summons to addresses that only contain post office boxes or rural routes. The Tribunal will make no efforts to locate the witness where the information provided is not sufficient (unless directed to do so by a Vice-Chair or Panel).

## 4.0 Reviewing the Request

**4.1** The Tribunal will review all summons requests to determine whether it will issue a summons. All requests are reviewed based on the facts of the particular case. When reviewing a request, the Tribunal will consider the following factors:

- whether the evidence is relevant to the issues in dispute
- whether the evidence is likely to be significant to a determination of the issue in dispute
- whether the evidence is readily obtainable from other sources
- whether the proposed witness can be compelled by law to give evidence in the proceedings
- whether a summons is required to compel attendance; and
- whether the witness requires the summons to get time off work.

**4.2** If the Tribunal agrees to issue the summons, the Tribunal will prepare and serve the summons. The Tribunal will obtain an original affidavit of service from the process server.

**4.3** If the Tribunal declines to issue the summons, the party may raise the request at the hearing.

## 5.0 Documents

**5.1** When documents are in the control of one of the parties, the parties are required to explore the release and exchange of documents.

**5.2** A request for a summons for the production of documents is usually referred to a Vice-Chair or Panel for instructions.

## 6.0 Enforcement

**6.1** If the Tribunal is not able to serve a summons, the Vice-Chair or Panel assigned to the appeal may proceed to hear the case and then decide whether the prospective witness' testimony is necessary.

**6.2** If the witness was served with a summons and does not attend the hearing, the Vice-Chair or Panel may;

- proceed without the evidence or the witness if it is determined that it is not necessary
- proceed with the hearing and at the conclusion of the hearing determine whether the evidence or witness is necessary
- consider whether to take steps against the person who failed to attend in accordance with the summons.

## 7.0 Conduct Money

**7.1** The Tribunal will pay conduct money to the witness in accordance with Tariff A of the *Rules of Civil Procedure*. The conduct money will be provided with the summons.

**7.2** For information about other fees, see *Practice Direction: Fees and Expenses*.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Right to Sue Applications

## 1.0 This Practice Direction:

- governs the right to sue application process
- outlines the format and content for supporting materials and
- addresses summonses, withdrawals and other matters.

## 2.0 The Legislation

**2.1** In an application regarding the right to sue, certain statutory provisions are applied in the Tribunal's determination of whether a right of action is taken away by the Act.

**2.2** For accidents occurring after January 1, 1998, sections 26 through 29 of the *Workplace Safety and Insurance Act* (WSIA) are applied in making this determination.

**2.3** For accidents occurring prior to January 1, 1998, sections 10(9) and 16, and its related sections under the *Workers' Compensation Act* 1990 (pre-1997 Act), as well as the predecessors of these sections under the earlier Acts, are applied in making this determination.

**2.4** Section 126 of the WSIA requires the Tribunal to apply WSIB policy in appeals; it does not specifically refer to right to sue applications. Nevertheless, the Tribunal requests policy for right to sue applications filed with the Tribunal.[1]

## 3.0 Who May Apply?

**3.1** The WSIA, section 31(1) provides that the following may apply to the Appeals Tribunal for certain determinations:

- a party to an action, or
- an insurer from whom statutory accident benefits are claimed under section 268 of the *Insurance Act*.

---

1 See *Decisions No. 755/02* and *No. 117/98.*

## 4.0 Available Determinations, Section 31 of the WSIA

**4.1** A party to an action or an insurer from whom statutory accident benefits are claimed may apply to the Appeals Tribunal to determine:

a) whether because of the Act, the right to commence an action is taken away

b) whether the amount that a person may be liable to pay in an action is limited by the Act or

c) whether the plaintiff is entitled to claim benefits under the insurance plan.

**4.2** Section 31(2) of the WSIA provides that the Tribunal has exclusive jurisdiction to determine an application, as described in section 31(1).

**4.3** Section 31(4) of the WSIA provides that a worker or survivor may file a claim for benefits within six months after the Tribunal's determination under section 31(1).

## 5.0 Interested Parties

**5.1** Interested parties are normally the parties in the civil action and the plaintiff's employer.

a) In applications by insurers from whom statutory accident benefits were claimed under section 268 of the *Insurance Act* there may be other interested parties.

b) Parties who are neither applicants nor respondents but have an interest in the application may contact the Tribunal Counsel Office.

c) Where a party submits that a company, organization or individual is the plaintiff's employer, the Tribunal will generally require that notice of the application is provided.

## 6.0 Materials

**6.1** All Right to Sue Statements and other material to be relied upon in a right to sue application must be served on all interested parties to the application. The party filing the material must provide the Tribunal with an *affidavit of service* to prove notification to all other parties. In addition, three copies of these materials, one of which is not bound, must be filed with the Tribunal.

## 6.2 Applicant's Materials

The applicant shall prepare an "Applicant's Right to Sue Statement" containing the following information:

(1) Table of Contents

(2) A statement of the facts

(3) The issues and arguments to be made

(4) The law and

(5) The determination sought

(6) Documentary evidence to support the facts upon which the applicant intends to rely, including any relevant material from the Board file

(7) Copies of the relevant portions of examinations for discovery, and copies of the relevant portions of transcripts of any previous proceedings, if applicable

(8) A list of all witnesses who will give testimony and an outline of their testimony

(9) All pleadings in the action and in any other matter arising out of the same set of facts.

## 6.3 Co-Applicant or Interested Party's Materials

a) A Co-Applicant or an Interested Party may also file a Right to Sue Statement. The Co-Applicant or Interested Party's Right to Sue Statement shall be in the same form as the Applicant's Statement, but no material need be duplicated.

b) The Co-Applicant or Interested Party's Right to Sue Statement must be served on all interested parties and filed with the Tribunal as soon as possible and no later than twelve weeks before the date of the hearing.

## 6.4 Respondent's Materials

a) The Respondent's Right to Sue Statement shall be in the same form as the Applicant's Statement, but no material need be duplicated.

b) The Respondent's Right to Sue Statement must be served on all interested parties and filed with the Tribunal no later than six weeks before the date of the hearing.

### 6.5 Reply Material

a) The Applicant may prepare a Reply to the Respondent's Right to Sue Statement.

b) The Applicant's Reply must be served on all interested parties and filed with the Tribunal no later than three weeks before the hearing date.

### 6.6 Correspondence

Parties must provide copies of all correspondence with the Tribunal to all interested parties.

### 6.7 Employer and Claim Status Information

Ten weeks before the hearing date, the Tribunal will forward status information regarding employer accounts and claim files to all interested parties.

### 6.8 Late Filing of Materials

a) If a Respondent's Right to Sue Statement or an Applicant's Reply Statement is filed late, copies should be provided to the parties to the application in the manner outlined above.

b) b)The admissibility of these materials will be the subject of a preliminary issue at the hearing; the Panel or Vice-Chair shall decide their admissibility.

## 7.0 Tribunal Process

### 7.1 Scheduling

Once the Applicant's Right to Sue Statement is received by the Tribunal, it will be reviewed by Tribunal Counsel. Tribunal Counsel may request clarification of the issues or request further documentation. The application will be referred to the Scheduling Department by Tribunal Counsel.

### 7.2 Adjournments

A request for adjournment should be made in writing to the Tribunal's Appeals Administrator as soon as possible. The request should set out the reasons for the

request and *include the consent of the parties*. A copy should be sent to the other parties. If an adjournment is granted, it will be several months before the matter can be rescheduled.

## 7.3 Summons to Witness and Production of Documents

a) Any party to a right to sue application may make a request for a summons to the Tribunal.

b) b)A summons request should be made as soon as possible and at least six weeks before the date of the hearing.

c) c)The party requesting the summons must provide the witness's name and address information to the Tribunal.

d) d)All summons requests will be reviewed by the Tribunal. If the Tribunal agrees that the person's testimony is necessary and will be useful to the proceeding, and that a summons is required, the Tribunal will prepare the summons.

e) e)The summons will be delivered to the party making the request. That party will be responsible for serving the summons and paying the expenses according to Tariff A of the *Rules of Civil Procedure*. That party will provide the Tribunal with an original affidavit of service.

f) f) If the Tribunal declines to issue a summons, the party may require that the summons request be placed before a Vice-Chair or Panel of the Tribunal. The Vice-Chair or Panel will decide on this request on the basis of written submissions.

g) g)Where the Tribunal issues a summons on its own initiative, the Tribunal will serve the summons and pay the expenses.

h) h)A request for a summons for the production of documents is usually referred to a Vice-Chair or Panel for instructions. When documents are in the control of one of the parties, the parties are required to explore the release and exchange of documents.

## 7.4 Withdrawals and Orders on Consent

a) If the parties to the application have settled the action, the applicant shall notify the Tribunal in writing, prior to the scheduled hearing date, to indicate that the application has been withdrawn. This letter shall be copied to

all interested parties. Last minute withdrawals waste both Tribunal and parties' resources so parties should provide as much notice as possible of withdrawals.

b) If the parties have settled the action but continue to seek a determination from the Tribunal with respect to issues raised in the application, they must attend on the scheduled hearing date with an agreed statement of fact, which is supported by available documentation.

c) The Tribunal is not bound by the agreed statement of facts of parties to an application. Therefore, parties in the situation described in paragraph 7.4(b), are required to be prepared to speak to the matter on the scheduled hearing date and respond to any questions or concerns raised by a Tribunal Panel or Vice-Chair.

## 7.5 Costs and Expenses

The Tribunal does not award costs. (See *Practice Direction: Representatives' Fees and Costs*.)

The Tribunal does not reimburse expenses of parties to an application.

## 7.6 Reconsiderations

Decisions of the Tribunal are final (WSIA section 123(4)). Nevertheless, the Tribunal has the discretion to reconsider a decision (WSIA section 129). Reconsiderations, however, are rarely granted. (For pre-1998 injuries and decisions, see the pre-1997 Act, sections 92 and 70, and section 123(1) and Part IX of the *Workplace Safety and Insurance Act*.)

A reconsideration involves two steps:

(1) The Tribunal must decide whether it is advisable to reconsider the decision. This is called the threshold test.

(2) If the threshold test is met, the Tribunal must decide whether the previous decision should be changed and, if so, how it should be changed. This is called the decision on the merits.

Additional information about the threshold test is available in the *Practice Direction: Reconsiderations*; however, the process for a request arising from a right to sue application is set out here. Most requests are decided on the basis of

written submissions although the Tribunal may require an oral hearing. The usual process is described below.

## 7.7 Limited Time to Apply for Reconsideration

Unlike most Tribunal proceedings, right to sue applications do not result in a final determination of rights. The party seeking to sue faces further proceedings in court or before the Board. There is a great need for finality, so that all parties can pursue the appropriate proceedings. There is also a significant potential for abuse of process in requests to reconsider section 31 applications. Unlike the courts, the Tribunal cannot award costs. (See *Practice Direction: Representatives' Fees and Costs*.)

The Tribunal has determined that as a matter of general practice, it is not advisable to reconsider Right to Sue Applications, unless a completed request to reconsider, including any supporting materials, is received by the Tribunal and the other parties within 40 days of the date of decision. This timing does not apply to a request for clarification.

The Tribunal Chair may exercise the statutory discretion to assign a late reconsideration request to a Vice-Chair or Panel. In exercising this discretion, the Tribunal Chair will consider any relevant factor, including:

a) Whether the request raises a significant issue which has a reasonable prospect of meeting the threshold test

b) Whether there is a reasonable explanation for the delay, and

c) Whether there is any prejudice to any party.

## 7.8 Reconsideration Process in Applications Regarding the Right to Sue

a) A party who wants a reconsideration (the Applicant) must complete the Reconsideration/Clarification Request form and explain why the decision should be reconsidered or clarified. Additional submissions and any supporting documents should be attached to the form. Forms are available on the Tribunal's website at **www.wsiat.on.ca**.

b) The completed Request for Reconsideration/Clarification form and any additional submissions and supporting documents should be sent to the Tribunal and to the other parties (Respondents) to the original decision.

c) The completed request and any supporting materials should be received by the Tribunal and the Respondents within 40 days of the date of the decision.

d) If the completed request and any supporting materials are not received by the Tribunal and the Respondents within 40 days of the date of the decision, the Applicant should include submissions on why the time should be extended with the request.

e) The Respondents will have three weeks to respond.

f) Respondents must complete the Reconsideration/Clarification Response form, available on the Tribunal's website at www.wsiat.on.ca. Additional submissions and any supporting documents should be attached to the form. If the request to reconsider was not received within 40 days of the date of the decision, Respondents should include submissions on whether the time should be extended with the response. The completed response should be sent to the Tribunal and to any other parties.

g) Submissions are then complete and will be assigned to a Vice-Chair/Panel for decision on the threshold test.

h) If the threshold test is met, the case will be reconsidered and a new decision made on the merits. The Tribunal may give instructions about the procedure to be followed on the decision on the merits.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Medical Information Requested By the Tribunal

## 1.0 This Practice Direction:

- Outlines the process for obtaining medical information requested by the Workplace Safety and Insurance Appeals Tribunal ("Tribunal") before the hearing (pre-hearing).
- Outlines the process for obtaining medical information requested by the Tribunal after the hearing (post-hearing).

## 2.0 Pre-Hearing Medical Information: Parties to Obtain

**2.1** Before the hearing, Tribunal staff may determine that relevant medical information is missing from a worker's case materials. Examples of existing medical information include copies of the worker's hospital records, a doctor's clinical notes, or a physiotherapist's summary of treatment. As long as the worker follows the proper steps and instructions when obtaining the information, the Tribunal will pay for the information it asks the worker to get.

**2.2** Tribunal staff will write to the worker and request that the worker get the missing medical information. The Tribunal's letter will describe the information the worker needs to get, and how to get it. Details about ordering the information are contained in the *Guideline for Obtaining Medical Records*. The Guidelines, along with consent forms, medical releases, and invoice forms setting out the amount the Tribunal will pay for the information, will be enclosed with the Tribunal's letter to the worker.

**2.3** The worker and/or their representative must follow the instructions in the *Guidelines* when they get the medical information requested by the Tribunal. If the worker and/or their representative do not follow the instructions in the *Guidelines*, the worker may be responsible to pay the cost of the medical information obtained.

**2.4** A worker and/or representative may request assistance from the Tribunal if they have difficulty in getting relevant medical evidence.

**2.5** The appeal may be delayed if the missing information is not promptly received by the Tribunal. If there is a long delay without the Tribunal receiving the information, the appeal may be made inactive (see ***Practice Direction: Inactive Appeals***). If a party objects to the Tribunal's request to provide additional medical information they must notify the Tribunal in writing of the reason for their objection. The Tribunal will consider the objection and if necessary the written objection will be placed before a Vice-Chair for a preliminary ruling.

## 3.0 Post-Hearing Medical Information: Tribunal May Obtain

**3.1** After a hearing the Tribunal Vice-Chair or Panel may decide that more medical information is needed before a decision can be made (see ***Practice Direction: Post-Hearing Procedure***). If more information is required, the Tribunal will write to the worker to ask him or her to complete and sign consent forms. After the worker returns the signed consent forms to the Tribunal, the Tribunal will write to the doctor, hospital or other institution to get the medical information. The Tribunal pays for the information it requests in accordance with established fee schedules.

## 4.0 Tribunal-Initiated Assistance for Medical Issues

**4.1** In certain cases, a Tribunal Vice-Chair or Panel may determine it necessary to seek Tribunal-initiated assistance in relation to one or more medical issues arising in an appeal.

**4.2** For more information about the different types of Tribunal-initiated assistance that may be requested by a Tribunal Vice-Chair or Panel, please consult the **WSIAT Guide: *WSIAT-Initiated Assistance for Medical Issues*.** The Guide also describes the Medical Liaison Office and explains the roles of the Tribunal's Medical Counsellors and Medical Assessors.

Effective date: January 1, 2020
Workplace Safety and Insurance Appeals Tribunal

# Appeals Involving Deceased Workers

## 1.0 This Practice Direction:

- explains how the Tribunal processes appeals when a worker dies, either before or after a Tribunal appeal is brought, and the worker's estate brings an appeal for benefits to which the worker may have been entitled while alive; and

- explains how the Tribunal processes appeals when a worker dies and an appeal is brought by one or more survivors of the worker, on the basis that the worker's death was caused by his or her work.

## 2.0 Requirement to Give Notice

**2.1** In all appeals, the Tribunal must give notice to the appropriate parties and must be certain that the parties participating in an appeal are properly authorized to do so.

**2.2** The Tribunal has developed the following general guidelines to assist in processing appeals involving deceased workers. In an appeal involving a deceased worker, if Tribunal staff cannot resolve an issue pertaining to notice and/or authority to proceed, staff may refer the issue to a Tribunal Panel or Vice-Chair.

## 3.0 Appeals Brought by the Worker's Estate Where There is a Will

**3.1** Appeals brought by the worker's estate are for benefits to which the worker may have been entitled while alive. When the worker dies, the right to any such benefits goes to the worker's estate.

**3.2** When an appeal is brought that involves a claim on behalf of the worker's estate, the Tribunal asks the party seeking to act on behalf of the worker's estate for a copy of the worker's will. The estate trustee (formerly known as executor) named in the will can generally act on behalf of the estate in proceedings before the Tribunal.

**3.3** If the party seeking to act on behalf of the worker's estate is not the estate trustee, the Tribunal asks the party to obtain written consent from the estate trustee to act on behalf of the worker's estate in the Tribunal appeal.

**3.4** The Tribunal inquires as to whether a *certificate of appointment of estate trustee with a will* (formerly know as letters probate) has been obtained. Although

the Tribunal does not normally require the party to obtain one, there may be circumstances where it will do so; for example, if there appears to be an issue as to the validity of the will.

**3.5** If the Tribunal is in any doubt as to the authority of the party to act on behalf of the estate, it can make such inquiries as it sees appropriate. For example, the Tribunal may itself contact the estate trustee to establish consent, where the party seeking to act on behalf of the estate is not the estate trustee.

**3.6** As with all appeals before the Tribunal, if the party acting for the estate retains a representative to act in the Tribunal proceedings, written authorization must be provided. For example, if the estate trustee brings an appeal on behalf of the worker's estate, and the estate trustee hires a representative to act in the Tribunal proceedings, written authorization signed by the estate trustee must be provided to the Tribunal.

## 4.0 Appeals Brought by the Worker's Estate Where There is no Will

**4.1** As noted above, appeals brought by the worker's estate are for benefits to which the worker may have been entitled while alive. When the worker dies, the right to any such benefits goes to the worker's estate.

**4.2** Where the worker dies without a will, the Tribunal inquires as to whether a *certificate of appointment of estate trustee without a will* (formerly letters of administration) has been obtained. These court documents appoint an administrator for an estate where there is no will. If a certificate of appointment has been obtained, the estate trustee named in that document can generally act on behalf of the worker's estate in Tribunal proceedings, and the process described under item 2.0 of this Practice Direction applies with any necessary modifications.

**4.3** Where no certificate of appointment has been obtained, the Tribunal does not normally require the party seeking to act for the estate to obtain one. Instead, the Tribunal requests that the party contact all persons who appear to be the direct beneficiaries of the worker's estate, and obtain their consent to act on behalf of the estate in the Tribunal proceedings.

**4.4** Usually, but not always, the direct beneficiaries are the worker's married spouse and all children. The Tribunal has regard to the intestacy provisions of the *Succession Law Reform Act* in determining the persons who should provide their consent for the appellant to act on behalf of the estate in a Tribunal appeal.

**4.5** Once the party seeking to act on the behalf of the estate provides consent in writing from these persons (usually by way of a consent form), the Tribunal is generally satisfied that the party can act on behalf of the estate in the Tribunal appeal proceedings.

**4.6** The Tribunal may undertake further investigation even where a consent form has been submitted, if it seems appropriate to do so. For example, if the case materials suggest that there are other potential beneficiaries who have not been contacted, the Tribunal may make further inquiries.

**4.7** In addition to the consent form, the party seeking to act on behalf of the estate should also submit a signed, dated and witnessed letter stating that he or she honestly believes that all the deceased worker's immediate beneficiaries have signed the consent form.

**4.8** If it is not possible to obtain consent from all immediate beneficiaries, the Tribunal generally refers the matter as a preliminary issue to be determined by a Vice-Chair or Panel. The Vice-Chair or Panel decides on a case-by-case basis whether the party seeking to act on behalf of the worker's estate has sufficient authority to do so, and is guided by several considerations including the following:

- what attempts have been made to locate the beneficiaries and obtain their consent
- if consent has been expressly withheld by a beneficiary, the circumstances surrounding that beneficiary's refusal
- whether there are any examples of the party having legitimately acted on behalf of the estate in other contexts, including whether the party has been recognized by any other provincial or federal authorities as representing the estate
- any prejudice that may result from allowing the party to proceed with the appeal.

## 5.0 Appeals Brought by a Survivor of the Deceased Worker

**5.1** An appeal for survivor's benefits is brought by a family member of a deceased worker who claims that the worker's death results from an injury for which the worker would otherwise have been entitled to benefits. The applicable legislation lists potential survivors. Usually, the parties claiming survivor's benefits are the deceased worker's spouse and/or child(ren).

**5.2** In all cases, the Tribunal undertakes reasonable efforts to inquire into the existence of potential survivors and provides notice of the appeal to those individuals.

**5.3** In order to confirm a party's status as a survivor under the applicable legislation, and to assist the Tribunal in identifying potential survivors who should receive notice, the Tribunal may ask for any documentation it deems appropriate, including the following:

- a death certificate, any marriage/divorce certificates, and any court orders for child support or custody
- bank or investment account statements, documents pertaining to property (such as real estate or vehicle) ownership, insurance policies, and pension documentation
- medical documents, if they mention relevant information such as the existence of significant past or current relationships
- an affidavit, to swear to the truth of facts that are otherwise undocumented.

**5.4** If there remains an issue as to the party's right to proceed, including whether all potential survivors have been given notice; or where a party refuses to provide requested documentation, the matter may be referred to a Vice-Chair or Panel to determine the party's right to proceed with the appeal.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Expert Evidence

## 1.0 This Practice Direction:

- explains what is expert evidence
- explains who pays for an expert report or expert fees
- explains how the Tribunal hears expert evidence
- explains who qualifies as an expert witness
- explains the filing requirements of an expert report.

## 2.0 Who is an Expert?

**2.1** An "expert" is a person who gives an opinion based on education training, qualifications, expertise, or experience on an issue before the Hearing Panel or Vice-Chair. An expert can include a "specialized physician or a scientist or another person with specific skill in a certain area."[1]

**2.2** "Expert evidence" is evidence given by an expert.

## 3.0 Who Qualifies as an Expert Witness?

**3.1** The Hearing Panel or Vice-Chair must recognize a person as an expert before the person is permitted to provide a technical, scientific, or specialized opinion about an issue before the Hearing Panel or Vice-Chair.

**3.2** To determine if a person is an expert, the Hearing Panel or Vice-Chair may consider the person's:

- education
- certification
- knowledge
- skill
- training
- expertise

---

1 *Decision No. 2106/03*

- publications
- affiliations with regulatory or teaching institutions
- peer recognition of expertise, or
- experience in the area that the person will give evidence or testify about.

## 4.0 Filing an Expert Report with the Tribunal

**4.1** Where a party intends to rely on expert evidence that it has obtained for the purposes of a Tribunal hearing, the party must disclose the written report of the expert as soon as possible and no later than three weeks prior to the hearing date.

**4.2** The party's disclosure must contain a copy of:

the expert report, signed by the expert

the letter asking for the expert report, including the questions asked of the expert

the expert's *curriculum vitae* that provides the expert's education, training or expertise.

**4.3** This requirement will not apply to the disclosure of updates on the worker's condition from the family doctor or treating specialists.

**4.4** The parties may make submissions about the expert's qualifications to provide opinion evidence.

## 5.0 Oral Expert Evidence in Tribunal Hearings

**5.1** The Hearing Panel or Vice-Chair receives a complete copy of the Board file, including copies of all medical and expert reports filed with the Board. This includes the clinical notes and records from family doctors and other treating medical professionals such as physiotherapists. Parties do not need to file this type of material which is already contained in the Tribunal record.

**5.2** Oral testimony from an expert witness is extremely rare before the Tribunal. It is not the Tribunal's practice to hear oral expert evidence from an expert witness. A written report is usually sufficient.

**5.3** The Hearing Panel or Vice-Chair decides if it is necessary for an expert witness to give oral evidence. An expert witness will not be permitted to testify unless a

report of the expert's opinion is filed with the Tribunal in the manner described above.

**5.4** The parties may make submissions and elicit evidence from the expert about his or her qualifications based on the *curriculum vitae*.

## 6.0 Who Pays for an Expert Witness?

**6.1** A party who files an expert report pays for the report. A party who calls an expert as a witness pays the full fee of the expert.

**6.2** In exceptional circumstances, the Tribunal may pay for an expert report or expert fee for an expert witness called by a worker where the Hearing Panel or Vice-Chair decides:

- the expert report is significant in the decision making process; or,
- the expert testimony is of exceptional importance to the decision-making process.[2]

**6.3** If the Hearing Panel agrees to pay for an expert report or expert fees, the Tribunal pays based on the approved schedule of rates. See *Practice Direction: Fees and Expenses*.[3]

## 7.0 Related Practice Directions

- *Disclosure, Witnesses and the Three-Week Rule*
- *Starting an Appeal at the Tribunal (Notice of Appeal Process)*
- *Confirmation of Appeal and Hearing Ready Letter*

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

---

2 *Decisions No. 249/96* and *260/94*.

3 *Decision No. 3079/01R*.

# Notice of Hearing and Failure to Attend

## 1.0 This Practice Direction:

- outlines the process for setting hearing dates
- describes the effect of a party failing to attend a hearing.

## 2.0 Responsibility for Address Information

**2.1** Representatives and participating parties are responsible for providing the Tribunal with adequate address and contact information.

**2.2** Representatives and participating parties are responsible for advising the Tribunal as soon as possible about any changes to their address or contact information.

## 3.0 Setting a Hearing Date

**3.1** The Tribunal will contact the appellant, any participating responding parties and their representatives in writing to offer a hearing date.

**3.2** If the parties are unable to agree to a hearing date after two dates are offered, the Tribunal will set a hearing date.

**3.3** The Tribunal will advise of the scheduled hearing date in the Confirmation of Hearing Notice.

**3.4** The Tribunal will assign the length of the hearing based on the information in the file, for instance, the number of witnesses expected to attend.

## 4.0 Confirmation of Hearing Notice

**4.1** The Tribunal will send a Confirmation of Hearing Notice to the appellant and any participating responding parties and their representatives, to the last address provided to the Tribunal by those parties.

**4.2** The Tribunal will usually send a Confirmation of Hearing Notice several months prior to the hearing date.

**4.3** The Confirmation of Hearing Notice contains the following information:

- the statutory authority for the hearing
- the case name and WSIAT Number

- the purpose of the hearing
- the hearing date, time and estimated length
- where the hearing will be held (the hearing location)
- the language and dialect for interpretation, if applicable
- the list of parties and addresses and
- a statement that if a party does not attend, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice.

**4.4** The Tribunal expects parties and their representatives to attend the hearing.

**4.5** The hearing will commence at the time stated on the hearing notice.

**4.6** If a respondent, after participating in the process to set a hearing date, decides not to attend, the respondent shall contact the Tribunal prior to the hearing date to confirm they have reconsidered and decided not to participate.

## 5.0 Failure to Attend – Representative or Respondent

**5.1** If a responding party or a representative of any party does not attend within **30 minutes** of the time stated on the hearing notice, the hearing may start without that party or representative.

**5.2** A party or representative is responsible for contacting the Tribunal on the day of the hearing if any unforeseen emergency prevents them from attending.

**5.3** The Tribunal may make no effort to contact a party on the date of hearing or after the hearing if that party does not attend the hearing within the time provided above.

## 6.0 Failure to Attend – Appellant

**6.1** If the appellant does not attend within **30 minutes** of the time stated on the hearing notice, the Vice-Chair or Panel:

- may decide the case on the basis of the written materials before it

- may direct the case be made inactive for 3 months. If the Tribunal does not hear from the appellant within the time, the case may be deemed withdrawn or abandoned, or
- may make any other order it considers appropriate.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Hearing Assignments

## 1.0 This Practice Direction:

- explains the process for assigning Vice-Chairs and Panels to hearings.

## 2.0 Legislation

**2.1** The Tribunal Chair assigns hearings to Vice-Chairs to decide matters under the Act (*Workplace Safety and Insurance Act*, section 174(2)). Vice-Chairs decide most cases.

**2.2** If the Tribunal Chair considers it appropriate in the circumstances, the Chair may assign a Panel to hear a matter. The Panel shall consist of a Vice-Chair, a Member representing workers and a Member representing employers. (Section 174(3) of the Act)

**2.3** The Tribunal Chair may also hear cases, either sitting alone or as the Chair of a Panel.

## 3.0 Panel Assignments

**3.1** In deciding whether to assign a Panel, the Tribunal Chair gives particular consideration to whether the case involves:

- medical/scientific issues which have important implications for the workplace insurance system
- novel legal interpretations, particularly under new legislation
- significant credibility findings which require a “jury-like” determination
- issues where Tribunal case law is still developing and a need exists for a particularly well-reasoned decision reflecting both employer and worker perspectives
- new hearing techniques or procedures, and/or
- significant financial consequences for the Insurance Fund, particularly where only one party is participating.

## 4.0 Requests for Panel Assignments

**4.1** If an appellant wants to ask for a Panel to hear his or her appeal or application, s/he should make a written request at least eight weeks prior to the hearing date. The request must contain reasons and should consider the factors in 3.1.

**4.2** The appellant must send the request to the Appeals Administrator and send a copy of the request to all parties participating in the hearing.

**4.3** The Tribunal Chair will review the request and make a decision. The Appeals Administrator will advise the parties in writing of the Tribunal Chair's decision.

**4.4** If an appellant has not requested that a Panel hear his or her appeal or application, s/he may learn whether a Panel or Vice-Chair has been assigned by contacting the Tribunal within four weeks of the scheduled hearing. The Tribunal will not disclose the identity of the Panel or Vice-Chair before the hearing unless the Panel or Vice-Chair has made a pre-hearing ruling.

**4.5** Occasionally unforeseen circumstances may prevent a Member from appearing at a hearing. After considering the parties' views, the Tribunal Chair may authorize the Vice-Chair to proceed to hear the matter alone.

**4.6** A request for a Panel should not be made at the hearing. The Act does not give a Vice-Chair the authority to grant such a request.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Interpreters

## 1.0 This Practice Direction:

- explains who can interpret at a Tribunal hearing
- explains how to arrange for an interpreter to be at a Tribunal hearing
- explains the type of information the Tribunal needs about your language
- explains about the services provided by interpreters.

## 2.0 Who can Interpret at a Tribunal Hearing

**2.1** Tribunal hearings are conducted in French or English. When a party or witness does not speak or understand either of these languages, the Tribunal will provide qualified, impartial interpreters for the hearing. Tribunal interpreters swear an oath that they understand the language to be interpreted and the English or French language, and that they will interpret well and accurately to the best of their ability at Tribunal hearings. They undertake to maintain the confidentiality of all personal information they obtain while interpreting.

**2.2** Relatives and friends of parties or witnesses cannot interpret evidence at a hearing.

## 3.0 How to Request an Interpreter at a Hearing

**3.1** Parties should tell the Tribunal if they or their witnesses need an interpreter at their hearing by completing that part of the Confirmation of Appeal Form and Respondent's Confirmation of Appeal Form.

**3.2** Should a party discover the need for an interpreter after filing the Confirmation of Appeal Form, the party must request an interpreter at least six weeks before the hearing so that the Tribunal has enough time to arrange for an interpreter .

## 4.0 Information about the Language to be Interpreted

**4.1** A party who asks for an interpreter must provide the Tribunal with precise information about the language and the dialect of the party or witnesses who will need an interpreter. This will help the Tribunal to arrange for an appropriate interpreter to be at the hearing, and will help to avoid delays and possibly adjournments at hearings.

## 5.0 Tribunal Expectations of Interpreters

**5.1** Interpreters must provide word for word (sometimes called “verbatim”) interpretation services at the hearing unless the hearing Panel or Vice-Chair directs the interpreter to assist in a different way. Interpreters must not paraphrase evidence or attempt to clarify a response given by a witness. Where the interpreter is unable to translate a word or phrase in testimony, or does not understand the testimony, they must inform the Hearing Panel or Vice-Chair to obtain instructions.

**5.2** Where a party or witness can testify in English or French but only needs unfamiliar words to be interpreted, the Panel will consult with the parties and the interpreter before directing a form of interpretation that is not verbatim.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Who May Attend a Hearing

**1.0 This Practice Direction:**

- identifies who must attend a hearing
- describes who may attend a hearing.

**2.0 Parties to the Appeal**

**2.1** The Tribunal expects the appellant and his or her representative, if there is one, to attend the hearing.

**2.2** Some cases may involve more than one respondent. If a respondent has advised the Tribunal that it will participate in the appeal, the Tribunal expects the respondent and his or her representative, if there is one, to attend the hearing.

**2.3** For greater certainty, where the issue in an employer appeal involves a worker's entitlement to benefits, the Tribunal will notify the worker of the appeal in the usual way and invite the worker to participate in the proceeding. However, employers and/or their representatives must consider the need to obtain the evidence of the worker well in advance of the hearing, so that they may make any necessary arrangements to ensure the attendance of the worker at the hearing.

**3.0 Standing**

**3.1** When a person or company is named in the Board's final decision, the Tribunal will generally grant standing to s/he or it as a party of record.

**3.2** Where a person or company has a direct or significant interest, usually monetary, in the outcome of an appeal, the Tribunal may, on its own, or at the request of a party, grant standing for the purposes of a proceeding.

**3.3** Where the Tribunal believes an individual or organization has an interest in the proceeding, it will give notice of the proceeding to that individual or organization.

**3.4** For issues relating to the Human Rights Code and the Charter and notifying the Attorney General, Ontario, or Attorney General, Canada see *Practice Direction: Procedure When Raising a Human Rights or Charter Question.*

**4.0 Observers**

**4.1** Family and friends may attend the hearing in support of the worker, and Tribunal staff and adjudicators may attend hearings for training purposes.

**4.2** Trainee advocates or others may attend hearings for training purposes. Anyone who wishes to observe a hearing must make the request to the Scheduling Department at least one week in advance of the hearing date.

**4.3** When considering a request for an observer, a Vice-Chair or Panel will consider the submissions of the parties. The issues in a hearing may be sensitive due to intimate personal or financial information. Therefore, the Tribunal exercises its discretion in reviewing requests to observe a WSIAT hearing. The Tribunal may refuse a request to observe a hearing.

**4.4** Observers must be identified at the outset of the hearing. Observers are not permitted to participate in the hearing. Any observer who disrupts the hearing may, after appropriate warning, be required to leave the hearing room.

## 5.0 Witnesses

**5.1** Generally, a worker may testify, attend throughout the hearing and instruct counsel. Generally, one person from the employer may testify, attend throughout the hearing and instruct counsel.

**5.2** Unless otherwise directed, witnesses will be excluded from the hearing room before giving their evidence.

**5.3** Unless otherwise ordered there must be no communication with an excluded witness about evidence given at the hearing during their absence until the witness testifies.

## 6.0 Expert Witnesses

**6.1** Oral testimony from an expert witness is extremely rare before the Tribunal. See *Practice Direction: Expert Evidence.*

## 7.0 Workplace Safety and Insurance Board

**7.1** As decision-maker, the WSIB is not a party to Tribunal proceedings. In exceptional circumstances, the Tribunal may invite submissions from the WSIB where it would be helpful.

## 8.0 Intervenors

**8.1** In rare circumstances, the Tribunal may exercise its discretion to invite intervenors to limited participation in a hearing process. The Vice-Chair or Panel will decide the issue of intervenor access to materials after considering the submissions of or an agreement by the parties.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Adjournments and Withdrawals

## 1.0 This Practice Direction:

- explains the difference between an adjournment and a withdrawal
- explains the Tribunal's strict adjournment policy and the reasons for it
- identifies the process to be followed and any necessary information for adjournment or withdrawal requests
- explains what steps need to be taken to pursue a matter after an adjournment or withdrawal.

## 2.0 Adjournment or Withdrawal?

**2.1** An adjournment means that the hearing will not go ahead on the scheduled day but will continue on another day.

**2.2** A withdrawal occurs when the appellant advises the Tribunal that he or she does not wish to proceed with the appeal, and the Tribunal closes the file without making a decision about the merits of the case.

## 3.0 Strict Adjournment Policy

**3.1** The Tribunal must handle several thousand appeals each year with limited adjudicator, staff, and hearing room resources. The Tribunal requires the parties to follow various pre-hearing procedures, including pre-hearing disclosure, so that it can use hearing time efficiently. See *Practice Direction: Disclosure, Witnesses and the Three-Week-Rule*. The Tribunal also provides all parties with information about representatives, so that they can make an informed decision about obtaining a representative before the hearing. The Tribunal is unlikely to grant a request for an adjournment to obtain representation at the hearing without some further reason.

**3.2** The Tribunal schedules hearings in consultation with the parties. The Tribunal expects parties to prepare for the hearing and to be ready to attend once the date is set. Adjournments waste both the Tribunal and parties' resources, and cause significant delay to the parties and to other parties who are waiting for hearing dates. An appeal can take a number of months to reschedule. Delay can cause other prejudice to the parties and the hearing process. For example, witnesses may move. The Tribunal, therefore, focuses on pre-hearing preparation and has a strict adjournment policy.

**3.3** The Tribunal does not expedite a hearing that it has adjourned at the request of the appellant.

## 4.0 Adjournments before a Hearing

**4.1** The sooner a party makes an adjournment request, the fewer resources are wasted and significant prejudice is less likely to occur.

**4.2** The Tribunal's Appeals Administrator generally decides a pre-hearing request for an adjournment. The party should make the request in writing to the Appeals Administrator as soon as possible. The request:

- should set out the reason for the request
- should be sent to the other party or representative, and
- if a representative makes the request, the representative must confirm in writing that the party consents to the adjournment.

If the written request does not include this information, the Tribunal's Appeals Administrator may not provide a decision until all the necessary information is provided in writing.

**4.3** If the Appeals Administrator cannot set a new hearing date because the appellant is not ready to proceed, the Tribunal will handle the case according to the *Practice Direction: Inactive Appeals*.

**4.4** If the respondent requests an adjournment, the Appeals Administrator will take into consideration whether the appellant consents or objects to the adjournment request. The respondent must contact the appellant to request his or her consent, and advise the Appeals Administrator in writing if the appellant consents.

**4.5** If the Appeals Administrator grants the adjournment, the Tribunal will process the appeal in the usual manner once the party is ready to proceed.

## 5.0 Adjournments after the Hearing Begins

**5.1** If the Appeals Administrator refuses the adjournment request, the parties must appear on the hearing date. While the party may make another adjournment request to the Vice-Chair or Panel, the parties must be ready to proceed with the hearing if the adjournment request is refused.

**5.2** Where a Vice-Chair or Panel is seized with a matter, an adjournment request may be referred to the seized Vice-Chair or Panel. For example, a request to adjourn a reconvened hearing will go to the Vice-Chair or Panel.

**5.3** Parties and representatives are expected to attend a hearing at the scheduled time, prepared to proceed with the hearing. Where a party or representative who has been given notice of the hearing fails to appear without explanation, the Vice-Chair or Panel will wait **30 minutes** to allow late parties or representatives to arrive or to contact the Tribunal. If the party or representative has still not appeared, the Vice-Chair or Panel may proceed in the absence of that party or make such other order as it sees fit.

**5.4** In deciding an adjournment request, the Vice-Chair or Panel will consider whether an adjournment is necessary to provide an opportunity for a fair hearing. The Vice-Chair or Panel will refuse an adjournment request where the matter can be addressed by:

- a short break
- post-hearing submissions
- altering the order of proceedings, or
- such other direction as the Vice-Chair/Panel determines is appropriate.

**5.5** The Vice-Chair or Panel may consider any other issue relevant to the adjournment request, including:

- whether the party or representative requesting the adjournment has contributed to the need for the adjournment request or previous adjournments
- whether the party or representative made the request at the earliest opportunity
- whether the party or representative made reasonable efforts to avoid the need for an adjournment, and
- any prejudice that may result from granting or refusing the adjournment that cannot be remedied by conditions.

**5.6** Where the Vice-Chair or Panel grants an adjournment request, they may impose any conditions on the future conduct of the hearing, including a condition that

no further adjournment will be permitted except in the most extraordinary circumstances.

**5.7** If the Vice-Chair or Panel grants an adjournment because an issue is outstanding at the Board, the hearing will be rescheduled when the Board issues its decision. The party should contact the Tribunal when they receive the Board decision.

**5.8** In order to preserve the evidence, the Vice-Chair or Panel will usually hear the testimony of any available witnesses before adjourning a hearing.

**5.9** For adjournments in Right to Sue hearings, see *Practice Direction: Right to Sue Applications*.

**5.10** If a case is adjourned without setting a new date because the appellant is not ready to proceed, the file will be handled in accordance with *Practice Direction: Inactive Appeals*.

## 6.0 Withdrawals

**6.1** Once a hearing is scheduled, a party can withdraw their appeal in writing prior to the scheduled hearing date. Last minute withdrawals waste both Tribunal and parties' resources, so parties should provide as much notice as possible of withdrawals. Where more than one party is appealing, the withdrawal of an appeal by one party will not affect the appeal of the other party.

**6.2** Once a hearing has begun, a request to withdraw will generally be referred to a Vice-Chair or Panel for direction.

**6.3** Where an appellant withdraws the appeal, the Tribunal closes the file and returns it to the Board. If parties want to appeal later, they must file a new appeal. Since the time limit will generally have expired, the party can only appeal if the party satisfies the Tribunal that a time extension should be granted. See *Practice Direction: Time Extension Applications* for information on how to apply for a time extension and the test for obtaining a time extension.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Inactive Appeals

## 1.0 This Practice Direction explains:

- when the Tribunal may make an appeal inactive
- the procedure for making an appeal inactive
- the procedure for reactivating appeals
- the procedure for updating or closing inactive appeals.

## 2.0 Inactive Files

**2.1** If the Tribunal cannot prepare an appeal for hearing or issue a decision, the appeal may be made inactive.

**2.2** The Tribunal may make an appeal inactive at the request of the appellant if they need additional time to:

- retain a representative
- conclude a related issue at the Board
- obtain additional information
- prepare for the hearing.

**2.3** On rare occasions, the Tribunal may make an appeal inactive at the request of the respondent.

**2.4** The party requesting an appeal be made inactive must provide their reasons and an estimate of when they expect to be able to continue.

**2.5** The Tribunal may make an appeal inactive without being requested to do so. For example, the Tribunal may make an appeal inactive if the appellant:

- does not respond on an ongoing basis to Tribunal correspondence or telephone inquiries
- has not provided required information
- needs time to consider whether they wish to continue or abandon the appeal
- is unable to commit to a hearing date.

**2.6** The Tribunal writes to the participating parties to tell them why the appeal is going inactive and what would be required to reactivate it.

**2.7** The Tribunal may decline a request to make an appeal inactive. The Tribunal may also reactivate an appeal without the agreement of the parties.

## 3.0 Objections to an Appeal Being Made Inactive

**3.1** A party may object to:

- his/her appeal being made inactive, or
- the Tribunal declining to make the appeal inactive.

**3.2** A Tribunal Vice-Chair will consider the objection and will either issue a decision or provide direction about the further processing of the appeal.

## 4.0 Communications For Inactive Appeals

**4.1** While an appeal is inactive, parties

- must contact the Tribunal if their contact information changes or if representative information changes.
- Should inform the Tribunal if they decide not to continue with the appeal.

## 5.0 Reactivating Appeals

**5.1** Any participating party may request that their inactive appeal be reactivated.

**5.2** Requests to reactivate an appeal should be made in writing. If the appeal was made inactive because of missing information, the parties must provide all of the missing information or provide an explanation why the information cannot be provided.

**5.3** A request to reactivate will be denied if the appeal still cannot be concluded. In such cases, the Tribunal writes to the participating parties explaining the reason and what needs to be done.

**5.4** Parties requesting that an appeal be reactivated should expect this process to take some time. The Tribunal must retrieve the file information, obtain updates of the Board claim files and review the appeal before it can be reactivated.

**5.5** The Tribunal may reactivate an appeal with or without the agreement of the parties.

## 6.0 Updating and Closing Inactive Appeals

**6.1** The Tribunal's caseload includes many inactive appeals that cannot be concluded. The Tribunal takes steps to update cases that it will be reactivating and to dispose of inactive appeals that have been abandoned. This ensures that increasing numbers of inactive cases do not accumulate in the Tribunal's caseload.

### 6.2 Updating Inactive Appeals

The Tribunal may write to the appellant (or the representative) of an inactive appeal if:

- the respondent requests that an inactive appeal be closed or continued to a hearing or decision
- the appellant (or the representative) has not been in contact with the Tribunal for an extended period of time
- the Tribunal becomes aware that the appeal information is not current, or
- the parties' time estimate to be ready has expired without explanation.

In such instances, the Tribunal will ask the appellant to confirm that s/he intends to continue the appeal. If the appellant is not yet ready to continue, s/he must provide a letter explaining the steps taken and an estimate of when s/he will be ready.

**6.3** When the appellant provides the information requested, the appeal information is updated and the file may remain inactive.

**6.4** If the appellant cannot be located, is unresponsive or does not provide the requested information, the appeal may be closed. (See *Practice Direction: Closing Appeals by the Tribunal*)

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Post-Hearing Procedure

## 1.0 This Practice Direction:

- Explains what a post-hearing request is at the Workplace Safety and Insurance Appeals Tribunal ("Tribunal").
- Provides examples of common post-hearing requests.
- Explains how communications with a Vice-Chair or Panel are handled.
- Sets out the steps that must be completed in order to obtain medical information.
- Identifies what should happen when a party discovers new evidence.
- Describes what happens when more hearing dates are needed.
- Describes the usual method of obtaining written submissions.
- Explains what happens after a post-hearing request is completed.

**1.1** The *Workplace Safety and Insurance Act, 1997* provides the Tribunal with certain investigative powers. Accordingly, Vice-Chairs or Panels may obtain additional information that was not before them at the hearing date if they feel it is necessary to properly adjudicate an appeal. These requests can be made before or after the hearing. When a request for information is made after the hearing, it is referred to as a post-hearing request.

**1.2** The Tribunal's investigative powers do not replace the parties' obligations to prepare and present their case and the Tribunal will only utilize its investigative powers when determined to be necessary.

**1.3** Tribunal staff, including Tribunal Counsel Office Lawyers, are responsible for carrying out the post-hearing requests for additional information made by Vice-Chairs and Panels. These post-hearing requests are made in the form of a memorandum or a formal interim decision. An interim decision is a decision of a Vice-Chair or Panel which does not finally dispose of all issues under appeal. Interim decisions often contain instructions to be carried out on a post-hearing basis.

**1.4** A Vice-Chair or Panel can request any type of information, including testimony from additional witnesses, if they think it will help them make a fair decision. Some common types of information requested are:

- additional medical information such as clinical notes, medical records and reports
- disability claim applications for benefits such as CPP, EI and ODSP
- Medical assessor reports (additional medical information from independent health professionals)
- additional documents from the parties or the Workplace Safety and Insurance Board
- written post-hearing submissions from the parties and Tribunal Counsel.

**1.5** The Vice-Chair or Panel decides an appeal, not Tribunal staff. The post-hearing role of Tribunal staff members is to assist the Vice-Chair or Panel to make a decision by carrying out the instructions of the Vice-Chair or Panel. Although Tribunal staff members can provide information to the parties on an appeal's progress and Tribunal practices, Tribunal staff are not the representative of any party. If parties require advice on how to argue their case, they should obtain professional representation. More information about the role of Tribunal Counsel in appeals and applications specifically can be found in the Tribunal **Practice Direction: The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal.**

## 2.0 Communication

**2.1** Parties cannot communicate directly with a Vice-Chair or Panel concerning an appeal. All communication is done by the assigned Tribunal staff member, who will then communicate with the Vice-Chair or Panel in writing.

**2.2** All communications between a Vice-Chair or Panel and Tribunal staff are shared with the parties, including post-hearing instructions. If a party to an appeal wants to raise an issue with the Vice-Chair or Panel, the party is encouraged to put their concern in writing and forward this document to the appropriate Tribunal staff member.

**2.3** The Tribunal will correspond directly with a party's authorized representative. Parties should copy their correspondence addressed to the Tribunal to all other parties to an appeal. If a party is represented, it is appropriate to copy the representative.

**2.4** Tribunal staff will strive to keep parties informed of what is happening with an appeal and provide them with copies of any information obtained. Parties may

contact the Tribunal staff member assigned to their appeal if they have any questions or concerns.

**2.5** At any time, Tribunal staff may also seek further instructions from the Vice-Chair or Panel hearing an appeal.

## 3.0 Additional Evidence and Unsolicited Information

**3.1** As the Tribunal has investigative powers, Vice-Chairs and Panels may request that Tribunal staff locate additional relevant information they feel they need to make a fair decision. The cooperation of the parties is often necessary to obtain additional information. Prompt response to correspondence and phone calls will help avoid delay.

**3.2** Once the hearing day(s) for an appeal are complete, new evidence submitted to the Tribunal by parties will not be accepted without the permission of the Vice-Chair or Panel.

Parties should make every effort to produce all evidence prior to the three-week deadline before the first hearing date. If, however, new documents or other information is discovered after the first hearing date, parties should submit it under a covering letter explaining why it could not have been obtained prior to the first hearing date.

**3.3** Parties must provide copies of any new evidence to all other parties to an appeal.

The Tribunal may request submissions from all parties as to whether the new evidence should be accepted.

**3.4** The Vice-Chair or Panel may decide if new evidence will be accepted before they direct the Tribunal staff to forward the new evidence to them. Vice-Chairs and Panels may decide not to accept additional evidence sent to the Tribunal after a hearing.

**3.5** In some appeals, it is useful for a Vice-Chair or Panel to understand what is happening with a worker's claim(s) or an employer's assessments at the Board.

The Tribunal will include in the case materials any relevant updates it receives to a Board file. Updates to a Board file can be admitted at any time prior to the completion of post hearing activity.

For more information about submitting evidence, see the Tribunal **Practice Direction: Disclosure, Witnesses and the Three-Week Rule**.

## 4.0 Additional Medical Evidence

**4.1** A Vice-Chair or Panel may request additional medical information. In order for the Tribunal to obtain medical information about a worker, the Tribunal asks that the worker complete a Consent to Disclose Personal Health Information form. This form must be signed, dated and witnessed by another person who sees the worker sign the form. The Tribunal requires the original signed copy.

**4.2** The Tribunal's consent form also asks that the worker state whether they agree to release the medical information to the employer once it is received. If an employer is participating in an appeal, that employer has a right to see and make submissions on information that informs a Vice-Chair's or Panel's decision. A worker's refusal to release any new medical information to an employer may delay an appeal. If a worker feels very strongly about not releasing medical information to the employer, they can identify specific information that is not relevant and that they do not want released. The Vice-Chair or Panel will decide if that medical information will become part of the case materials.

**4.3** The Tribunal will pay fees, according to the Tribunal's fee schedule, to doctors who provide additional medical information that was requested by the Vice-Chair or Panel hearing an appeal.

**4.4** For more information about the Tribunal's processes for obtaining additional medical information see the Tribunal **Practice Direction: Medical Information Requested by the Tribunal.**

## 5.0 WSIAT-Initiated Assistance for Medical Issues

**5.1** In certain cases, a Tribunal Vice-Chair or Panel may determine it necessary to seek Tribunal-initiated assistance in relation to one or more medical issues arising in an appeal.

**5.2** For more information about the different types of Tribunal-initiated assistance that may be requested by a Tribunal Vice-Chair or Panel, please consult the **WSIAT Guide: *WSIAT-Initiated Assistance for Medical Issues*.** The Guide also describes the Medical Liaison Office and explains the roles of the Tribunal's Medical Counsellors and Medical Assessors.

## 6.0 Reconvened Hearing Days

**6.1** Sometimes a Vice-Chair or Panel will decide that additional hearing days are needed to complete a hearing. These added hearing days are called a reconvened hearing. Tribunal staff will ask the Tribunal's Scheduling Department

to arrange for the further hearing day(s) on a date that all parties and the Vice-Chair or Panel hearing the appeal are available.

**6.2** Before the hearing date, Tribunal staff will update the case materials by compiling any further correspondence into an addendum.

For more information about submitting new evidence in a reconvened hearing, see the Tribunal **Practice Direction: Disclosure, Witnesses and the Three-Week Rule.**

**6.3** Parties should bring all case materials to the reconvened hearing.

**6.4** A Vice-Chair or Panel usually stays seized with an appeal after there has been a hearing. If a Vice-Chair or Panel does not stay seized, a new Vice-Chair or Panel will be assigned for the reconvened hearing.

## 7.0 Post-Hearing Submissions

**7.1** Parties will be given an opportunity to make submissions on all post-hearing evidence. According to the Vice-Chair's or Panel's instructions, these submissions may be made at a reconvened hearing, but usually written submissions are requested.

**7.2** Unless otherwise specified by the Vice-Chair or Panel, all parties to an appeal will be asked to provide their initial submissions simultaneously and by a specific deadline date. All parties will then be given additional time to provide submissions in reply to those of the other party (or parties) if they so choose. Written submissions should be provided to Tribunal staff and also copied to all other parties to an appeal.

**7.3** Parties should make every effort to ensure their submissions are received by the deadline date. A Vice-Chair or Panel may choose not to accept written submissions that are received after the deadline date. If an extension is required, the party should contact the Tribunal staff before the deadline date and explain why an extension is needed. In some cases, Tribunal staff may seek instructions regarding the extension request from the Vice-Chair or Panel hearing the appeal.

## 8.0 What Happens When a Post-Hearing Request is Complete?

**8.1** Once all of a Vice-Chair or Panel's post-hearing instructions are complete, Tribunal staff will advise the Vice-Chair or Panel hearing the appeal that the post-hearing stage of an appeal is complete.

**8.2** When the post-hearing stage of the appeal is complete, all of the case materials are with the Vice-Chair or Panel and there is no communication between the parties or the assigned Tribunal staff until a final decision is released. Tribunal staff do not help the Vice-Chair or Panel to write the decision. If a Vice-Chair or Panel decides that still more information is required, they may issue another post-hearing request in the form of a memorandum or an interim decision. Any new post-hearing request will be referred to Tribunal staff.

**8.3** Decisions take time to complete. Once all the post-hearing information and submissions have been received, section 127 of the *Workplace Safety and Insurance Act* provides a guideline of 120 days for a decision to be released. Complex appeals may take additional time. Once the final hearing date or post-hearing instructions have been completed, a party who wants to inquire about the status of a decision may contact the Chair's Office.

Effective date: January 1, 2020
Workplace Safety and Insurance Appeals Tribunal

# Closing Appeals by the Tribunal

## 1.0 This Practice Direction:

- explains when an appeal is considered abandoned by the appellant
- explains the use of the Notice of Intention to Close letter, and when it is sent
- provides the procedure for closing an appeal that has been abandoned.

## 2.0 When is an Appeal Considered Abandoned?

**2.1** The Tribunal may close appeals where it appears that the appellant has abandoned the appeal, such as when the appellant has failed to:

- complete a Notice of Appeal (NOA) in a timely manner
- complete a Confirmation of Appeal (COA) within 24 months
- take action to progress an inactive appeal to a Tribunal hearing
- act pursuant to an interim decision, adjournment memorandum or written ruling, or after an unsuccessful Tribunal mediation or
- respond to Tribunal communications.

## 3.0 Failure to Provide a Completed Notice of Appeal

**3.1** The Notice of Appeal is considered complete only when the appellant has provided the complete Notice of Appeal (NOA) form, including a copy of the decision being appealed. The Tribunal will request any missing information from the appellant.

**3.2** If the appellant does not provide the missing information, within a reasonable timeframe, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed unless the missing information is provided within 60 days. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

**3.3** If the appellant provides a completed Notice of Appeal within the 60 day period, the Tribunal continues preparing the appeal for a hearing.

## 4.0 Failure to Provide a Completed Confirmation of Appeal

**4.1** The Confirmation of Appeal (COA) must be filed no later than 24 months after the appellant first contacted the Tribunal. The Tribunal provides at least two

reminder/warning notices to the appellant before the 24 month time limit expires. The reminder notices provide the 24-month expiration date.

**4.2** When an appellant does not complete the COA within 23 months, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed unless a completed COA is provided within the 24-month deadline. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

**4.3** If a completed COA is provided within the 30 day period, the Tribunal continues preparing the appeal for a hearing.

## 5.0 Failure to Move Forward on an Inactive Appeal

**5.1** The Tribunal makes appeals inactive in order to provide the appellant with additional time to prepare his/her appeal for hearing. The reasons and procedures for making an appeal inactive are outlined in the Tribunal's *Practice Direction: Inactive Appeals*.

**5.2** After a reasonable period of time, the Tribunal will ask the appellant to advise the Tribunal if s/he intends to continue the appeal, and to outline the steps that s/he has taken in order to prepare the appeal to be heard. The letter will provide the appellant with **30 days** to respond.

**5.3** If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by a Tribunal Vice-Chair.

**5.4** If the appellant does not respond, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides the information requested by the Tribunal within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

**5.5** If the appellant responds within the 60 day period, the Tribunal processes the appeal according to the procedures outlined in the Tribunal's *Practice Direction: Inactive Appeals*.

## 6.0 Failure to Respond Following an Unsuccessful Mediation

**6.1** When a Tribunal mediation does not result in a recommendation to a Tribunal Vice-Chair, it is sometimes unclear if the appellant wishes to continue to a hearing.

**6.2** In such instances, the Tribunal writes to the appellant (and the representative) asking that s/he advise the Tribunal within 30 days if s/he intends to continue with the appeal.

**6.3** If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by the Tribunal Vice-Chair.

**6.4** If the appellant does not respond, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides the information requested by the Tribunal within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

**6.5** If the appellant responds within the 60 day period, the Tribunal processes the appeal according to the information provided by the appellant.

## 7.0 Failure to Act Following an Adjournment

**7.1** When a Tribunal hearing for an appeal is adjourned, the Vice-Chair or Panel may issue an interim decision, an adjournment memorandum or a written ruling. In such instances, the Tribunal writes to the appellant (and the representative) to confirm what is required before the appeal can be prepared for a new hearing. The letter will ask the appellant to provide information requested by the Vice-Chair or Panel, or to outline the steps s/he has taken to fulfill the instructions issued by the Vice-Chair or Panel.

**7.2** If the interim decision, adjournment memorandum or written ruling provides neither a timeframe nor specific instructions to the appellant, the Tribunal will write to the appellant (and the representative), after a reasonable period of time, to ask that s/he confirm that s/he intends to proceed with the appeal. The letter will provide the appellant with **30 days** to respond.

**7.3** Any response from the appellant or his/her representative may be referred to the original Vice-Chair or panel or to the appropriate Tribunal department. The appeal may then be made inactive, further processed for an additional hearing, or closed, depending on the nature of the information provided and the circumstances of the appeal.

**7.4** If the appellant does not respond, the Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides confirmation of his/her intentions within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

**7.5** If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by a Tribunal Vice-Chair.

**7.6** If the Vice-Chair or Panel is seized, any response (or lack of response) from the appellant or his/her representative is referred to the seized Vice-Chair or Panel, with a request for instructions.

## 8.0 The Notice of Intention to Close

**8.1** The Notice of Intention to Close is a letter sent by the Tribunal to warn the appellant that the Tribunal may close the appeal as abandoned.

**8.2** In cases where the appellant appears to have abandoned the appeal by providing incomplete information or failing to respond to the Tribunal, the Tribunal issues a Notice of Intention to Close letter. This letter is signed by a Tribunal Vice-Chair and provides instruction on what the appellant is required to do to prevent the Tribunal from deeming the appeal abandoned and closing the appeal. The letter also provides a timeframe within which the appellant must respond, typically 30 or 60 days, depending on the circumstances of the appeal.

**8.3** The letter is sent to the last address on file for all of the parties.

## 9.0 Closing Appeals by the Tribunal

**9.1** If the Notice of Intention to Close letter returns undelivered, the Tribunal will make all reasonable attempts to obtain the appellant's current contact information. If the appellant cannot be located after these efforts, the appeal is closed without further notice.

**9.2** If the appellant does not respond to the Notice of Intention to Close letter, the appeal is closed without further notice.

**9.3** If the appellant responds to the Notice of Intention to Close letter, but the response does not contain the information requested by the Tribunal, the appeal is closed without further notice. In exceptional circumstances, such responses may be referred to a Vice-Chair for further instructions, at the discretion of the Tribunal.

**9.4** If the appellant responds within the timeframe provided in the Notice of Intention to Close letter, the Tribunal responds to the information as appropriate and may:

- continue to prepare the appeal for hearing

- make the appeal inactive (see *Practice Direction: Inactive Appeals*) or
- refer the appeal to a Tribunal Vice-Chair for further instructions.

**9.5** If the appeal is referred to a Vice-Chair, s/he will consider the appeal and may:

- make the appeal inactive (see *Practice Direction: Inactive Appeals*)
- instruct Tribunal staff to close the appeal without issuing a decision
- issue directions to the parties governing the further processing of the appeal
- issue a decision finding that the appeal has been abandoned or withdrawn
- in appropriate circumstances, refer the appeal for a hearing.

**9.6** Where the Vice-Chair instructs that an appeal be closed or issues a decision that an appeal has been abandoned or withdrawn, the appeal is closed. Once closed, any new appeal of the same decision would need to meet the applicable time limits and require a time extension application (see *Practice Direction: Time Extension Applications*).

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Reconsiderations

## 1.0 This Practice Direction:

- explains options when trying to have a Tribunal decision changed
- explains who can request a reconsideration
- provides examples of information parties should include in a reconsideration application
- outlines the threshold test, which must be passed to have a Tribunal decision reconsidered
- explains the reconsideration process
- explains how reconsiderations of interim decisions or rulings are handled
- identifies Tribunal decisions that will be useful to read in preparing a reconsideration application.

## 2.0 The Tribunal's Reconsideration Power

**2.1** The *Workplace Safety and Insurance Act*, section 123(4), states that the Appeals Tribunal's decisions are final. Nevertheless, section 129 gives the Tribunal the discretion to reconsider a decision if the Tribunal considers that it is advisable to do so. Reconsiderations, however, are rarely granted.[1]

**2.2** A reconsideration is different from an appeal. Unlike an appeal of a Board decision, a party must provide a good reason for a Tribunal decision to be reconsidered. A reconsideration will not be granted because a party disagrees with the decision and wants to re-argue the case. Other than a reconsideration, the only other option for having a Tribunal decision changed is to file an application for Judicial Review in the Superior Court of Justice – Divisional Court. Parties should also refer to section 8.0 below which explains the role of the Office of the Ombudsman.

**2.3** A reconsideration involves two steps:

(1) The Tribunal must decide whether it is advisable to reconsider the decision. This is called the threshold test;

---

1 For pre-1998 injuries and decisions, see the pre-1997 Act, sections 92 and 70, and section 123(1) and Part IX of the W*orkplace Safety and Insurance Act*.

(2) If the threshold test is met, the Tribunal must decide whether the previous decision should be changed and, if so, how it should be changed. This is called the decision on the merits.

**2.4** The Tribunal has developed a specific threshold test in its decisions to help Vice-Chairs and Panels weigh the need for finality in decision-making against the particular circumstances favouring reconsideration. The threshold test requires that generally, the Tribunal must find that there is a significant defect in the administrative process or content of the decision which, if corrected, would probably change the result of the original decision. The error and its effects must be significant enough to outweigh the general importance of decisions being final and the prejudice to any party of the decision being re-opened.[2]

**2.5** The power to reconsider is discretionary. The Tribunal might decide that there is a good reason to reconsider a decision when:

- significant new evidence is discovered which was not available at the original hearing and which would likely have changed the outcome
- the decision overlooks an important piece of evidence (as opposed to rejecting the evidence or distinguishing it)
- the decision contains a clear error of law (for example, the decision does not apply the relevant sections of the *Workplace Safety and Insurance Act*)
- the decision contains a jurisdictional error (for example, the Tribunal decided an issue which it did not have the legal authority to decide).

**2.6** The threshold test has been set out in numerous WSIAT decisions.[3] These and other Tribunal decisions are available on the Tribunal's website (**www.wsiat.on.ca**) or from the Ontario Workplace Tribunals Library.

## 3.0 The Reconsideration Request

**3.1** The reconsideration procedure is flexible and can be varied to fit the needs of a particular case. The *Workplace Safety and Insurance Act* states in section 131 that the Appeals Tribunal may set its own practice and procedure.

---

2 See *Decision No. 912/94R.*

3 See *Decision Nos. 303/95R; 762/91R3; 311/92LR; 2232/01R; 65/01R; 1220/00R2* and *1119/04R.*

Most reconsideration requests are decided on the basis of written submissions; however, the Tribunal may require an oral hearing. The usual process is described below under sections 3.0 and 4.0.

**3.2** The Tribunal is the last level of appeal for workplace safety and insurance matters in Ontario. Its decisions affect both workers and employers. Accordingly, finality of the decision-making process is extremely important. Therefore the Tribunal has determined that as a general practice, it is not advisable to reconsider a decision after more than six months has passed since the date of the decision. A delay of more than six months in making a reconsideration request is a factor which may be weighed in deciding whether it is advisable to reconsider the decision.

**3.3** Only a party to a Tribunal decision or the Workplace Safety and Insurance Board can request a reconsideration. If a party has chosen not to participate in the hearing, it is unlikely that this party's reconsideration request will be granted. A reconsideration is not an appeal and consequently it must be argued differently. The issues to be decided are whether the decision should be reopened and whether there is a good reason to change the result of the original decision. As such, it is a good idea for a party making a reconsideration request to have a representative experienced with workplace safety and insurance matters.

**3.4** The Tribunal may begin a reconsideration process on its own initiative. Unless the proposed change is only a clarification, the parties will be given an opportunity to make submissions on the threshold test. See section 7.0 below regarding clarifications.

## 4.0 The Threshold Test

**4.1** A party who wants a reconsideration (the Applicant) must complete the Reconsideration/Clarification Request form and explain why the decision should be reconsidered or clarified. See section 7.0 below on clarifications. Forms are available from the Tribunal and the Tribunal's website at **www.wsiat.on.ca**.

**4.2** Completed forms should be sent to the attention of the Tribunal. Evidence supporting the request (for example, supporting documents or a signed witness statement) should be attached to the completed Reconsideration/Clarification Request form. Requests will not be processed until the Tribunal confirms that submissions are complete.

**4.3** The Tribunal Chair may assign the reconsideration request to the original Vice-Chair or Panel. If a new Vice-Chair or Panel is assigned, the original case materials will be forwarded. If the original Vice-Chair or Panel is assigned, the original case materials will not be forwarded, however, they may be ordered should another copy be required. The Vice-Chair or Panel shall consider the reconsideration request and any previous decisions and may consider any written materials from previous proceedings.

**4.4** If the Vice-Chair or Panel decides that the reconsideration request does not have any prospect of success, it will not seek submissions from other parties. The Tribunal will issue a decision explaining why the threshold test has not been met. The decision will be sent to the Applicant, any party of record and the Board.

**4.5** If the Vice-Chair or Panel decides that the reconsideration request makes an arguable case, the case will be referred for processing. The Tribunal will provide the Reconsideration materials to all parties to the original hearing (including the Respondent) and ask them to complete a Reconsideration/Clarification Response form and make submissions on the threshold test. Note: If a party declined to participate in the original hearing, the Tribunal will not normally ask for submissions from that party.

**4.6** The Respondent will have three weeks to respond in writing to the reconsideration request. The submissions should be sent to the Tribunal and also to the Applicant.

**4.7** The Applicant will have two weeks to make a written reply to the Respondent's submissions. The Applicant's reply should be sent to the Tribunal and to the Respondent. Note: The Applicant's reply is sent to the Respondent for information only. Submissions are complete at this point unless the Tribunal requests additional information.

**4.8** It is very important to raise all possible arguments and issues and provide strong evidence when making a reconsideration request.[4] The Chair or his or her delegate may decide that a further reconsideration request does not raise a new issue or provide new evidence that would warrant an assignment for further review by a Vice-Chair or Panel.

4 *Decision No. 871/02R2.*

## 5.0 Decision On The Merits

**5.1** If the threshold test is not met, the merits of the original Tribunal decision will not be reviewed. If the threshold test is met, the case will be reconsidered and a new decision made on the merits. If the threshold test is met with respect to only part of a decision, only that part of the decision will be reconsidered on the merits.

**5.2** Notice of hearing on the merits will be given only to parties who participated in the original hearing, unless the Vice-Chair or Panel directs that all parties receive notice of the hearing.

**5.3** The Tribunal may give instructions about the procedure to be followed on the decision on the merits. For example, if credibility is not an issue, it may not be necessary to hold an oral hearing on the merits. Unless otherwise ordered, the decision on the merits will be made by the Vice-Chair or Panel who decided the threshold question.

**5.4** In some cases, it may be appropriate to combine the hearings on the threshold test and the merits.

## 6.0 Interim Decisions and Rulings

**6.1** An interim decision or ruling is a declaration from a Vice-Chair or Panel that may be in the form of a memorandum or a formal released decision ending in an “I”. An interim decision or ruling does not finally dispose of an issue under appeal. These types of rulings may be procedural or substantive and are made prior to a final decision in an appeal being released. Most often, interim decisions will provide direction on how to proceed with an appeal. It is advisable that the Tribunal receive a reconsideration request for an interim decision as soon as possible as the appeal would continue to be heard. A decision will be presumed to be received by the parties five days after the date it was mailed unless there is evidence to the contrary.

**6.2** Reconsideration requests of interim decisions will usually be dealt with by the Vice-Chair or Panel who is seized with the appeal. If no Vice-Chair or Panel is seized, one will be assigned to address the reconsideration request.

**6.3** Reconsideration requests of interim decisions must be handled quickly because processing of an appeal cannot continue until the reconsideration request is resolved. Accordingly, the reconsideration form is not usually required and the specific procedure to be followed is at the discretion of the Vice-Chair or Panel assigned.

## 7.0 Technical Errors and Omissions

**7.1** Some reconsideration requests do not question the result in a decision but identify an omission, ambiguity or misstatement. If the problem identified in the Reconsideration/ Clarification Request form does not affect the substance of the original decision, the Tribunal may correct the omission, misstatement or ambiguity without asking for submissions.

**7.2** The Vice-Chair or Panel reviewing the request will decide whether the request involves a clarification required by an omission, misstatement or ambiguity, or a reconsideration.

**7.3** If an omission, misstatement or ambiguity does not affect the substance of a decision, the Tribunal may correct the omission, misstatement or ambiguity on its own motion without asking for submissions.

## 8.0 Requests For Reconsideration From The Board

**8.1** Where the Board has difficulty implementing a decision, it may bring this to the Tribunal's attention. The Tribunal will consider whether there is an ambiguity or misstatement which can be clarified without asking for submissions from the parties.

**8.2** The Tribunal will ask the parties for submissions on the threshold question if the Board raises an issue which may affect the substance of a decision.

## 9.0 Ombudsman Ontario

**9.1** The Office of Ombudsman Ontario investigates complaints about provincial government organizations. The Ombudsman may help you resolve your problem and request changes to how provincial government agencies work. Further information can be found at the website for the Ombudsman Ontario at **www.ombudsman.on.ca.**

**9.2** An Ombudsman investigation may result in new evidence or submissions which are relevant to a party's reconsideration request. Where a party complains to the Ombudsman, the Tribunal will not process any reconsideration request until the Ombudsman's Office indicates that the investigation is complete.

**9.3** Correspondence from the Ombudsman may cause the Tribunal to begin a reconsideration process on its own initiative. Except for clarifications, the parties will be asked for submissions on the threshold test before the Tribunal

decides whether it is advisable to re-open a decision. In a case which involves the Ombudsman, the reconsideration process is flexible and may be varied as appropriate.

## 10.0 Reconsiderations of Section 31 (Right To Sue) Applications

**10.1** See *Practice Direction: Right to Sue Applications*.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Calculation of Time

**1.0 This Practice Direction:**

- explains how days are counted when something is required to be done within a certain number of days
- applies to time periods set out in Practice Directions,Vice-Chair/Panel Decisions and Orders,and letters from Tribunal staff.

**2.0 Holiday**

**2.1** "Holiday" means any Saturday, Sunday, Easter Monday, November 11th or statutory holiday.

**3.0 How Time is Counted**

**3.1** Where there is a reference to a number of days, the days are calendar days and are counted by excluding the first day of the first week and including the last day of the last week.

**3.2** Where an action is to be done within a specified number of weeks, time is counted by excluding the first day of the first week and including the last day of the last week. For example, materials for a Wednesday hearing must be delivered by the Wednesday three weeks before the hearing.

**3.3** Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

**3.4** Where a document is deemed to be received or another act is deemed to have happened on a day that is a holiday, it shall be deemed to have happened on the next day that is not a holiday.

**4.0 Changing Time Periods**

**4.1** The Tribunal may vary the time for performing any act on such conditions as it considers appropriate.

**4.2** Where the time is set in a Practice Direction or decision or ruling, a Vice-Chair or Panel may vary the time.

**4.3** Where the time is set by Tribunal staff in Tribunal correspondence, Tribunal staff may vary the time.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Delivery and Filing of Documents

## 1.0 This Practice Direction:

- explains how to deliver a document to a party or representative
- explains how to file a document with the Tribunal
- explains when delivery or filing will be deemed to have taken place
- applies to Tribunal appeals and applications only.

## 2.0 How to Deliver a Document to a Party or Representative

**2.1** This section deals with the delivery of a document to a party or representative. This is also called “service” of a document.

**2.2** A document may be delivered to a party or representative by:

a) regular, registered or certified mail to the last known address

b) facsimile transmission (fax) to the last known fax number but only if the document is not longer than 15 pages or, if longer, with consent

c) courier to the last known business or home address

d) personal delivery to the party or representative or

e) delivery to an adult person at the last known business or home address.

**2.3** When service noted in section 2.2 is impractical, the Tribunal may direct notice by public advertisement or by other means.

**2.4** Delivery of a document is deemed to have occurred when delivered:

a) by mail, on the 5th day after it was mailed

b) by fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a time after 5 p.m., delivery will be deemed to have occurred the next day

c) by courier, on the second day after it was given to the courier

d) personally, when given to the party or representative or when left with a person at the last known address.

**2.5** A document will not be deemed to have been delivered under sections 2.4(a),(b) and (c) if the party or representative satisfies the Tribunal that the document was received late due to absence, accident, illness or other cause beyond their control.

## 3.0 How to File a Document with the Tribunal

**3.1** "Filing" means the delivery of a document to the Tribunal.

**3.2** Documents may be filed by:

a) fax to the Tribunal's fax number (416-326-5164)

b) courier or regular, registered or certified mail to the Workplace Safety and Insurance Appeals Tribunal, 505 University Avenue, 7th Floor, Toronto ON M5G 2P2.

**3.3** Filing is deemed to take place by:

a) fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a time after 5 p.m., delivery will be deemed to have occurred the next day

b) courier or mail, on the date of receipt stamped on the document by the Tribunal.

## 4.0 Proof of Service and Filing

**4.1** If there is a dispute about service or filing, the Tribunal may require an affidavit or other evidence about the service or filing. Parties and representatives should keep supporting evidence, such as a fax confirmation receipt or courier receipt.

## 5.0 Right to Sue Applications

**5.1** For additional information on delivery and filing in Right to Sue Applications, see *Practice Direction: Right to Sue Applications*.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Tribunal Hearing Recordings and Transcripts

## 1.0 This Practice Direction:

- explains who may record Tribunal hearings
- explains how to obtain and pay for a transcript of a Tribunal hearing
- explains how to obtain and pay for a recording of a Tribunal hearing
- identifies how long the Tribunal keeps a recording of a Tribunal hearing.

## 2.0 Recording Tribunal Hearings

**2.1** Under the *Workplace Safety and Insurance Act*, there is no requirement for the Tribunal to record hearings.[1] The Tribunal usually makes audio recordings of its hearings. The Tribunal uses a court reporter to record hearings only in unusual circumstances. In right to sue cases, parties may arrange at their own expense for a court reporter to record the hearing.

**2.2** Parties are not permitted to record Tribunal hearings. Any device controlled by a party that is capable of making audio or visual recordings is not permitted to be used as a recording device on Tribunal premises.

**2.3** Audio recordings of hearings are kept by the Tribunal for workplace safety and insurance purposes only.

**2.4** The Tribunal cannot guarantee the audio quality of copies of audio recordings, as they are re-recorded from recordings made at hearings.

**2.5** An audio recording is kept for five years from the date of each recorded hearing. After five years, the recording is destroyed.

## 3.0 Transcripts of Tribunal Hearings

**3.1** There is no requirement under the Act that the Tribunal provide transcripts of hearings. The Tribunal generally does not produce or use transcripts of its hearings.

---

1 See sections 57 to 59 of the *Workplace Safety and Insurance Act*

**3.2** A transcript of a Tribunal hearing may be produced:

- upon written request from a party to the hearing or
- upon written request from others.

## 4.0 Requesting a Tribunal Audio Recording or Hearing Transcript Requests from a Party to the Hearing for Workplace Safety and Insurance Purposes

**4.1** Parties to an appeal may request an audio recording or a transcript of their hearing by completing either a WSIAT Request Form for Audio Recording or WSIAT Request Form for Transcripts of Recorded Hearings and sending it to the Tribunal. These forms may be obtained from the Tribunal's website (**www.wsiat.on.ca**) or by request.

**4.2** The requesting party must agree to use the audio recording or transcript for workplace safety and insurance purposes only and to keep it confidential.

**4.3** The Tribunal usually approves audio recording and transcript requests from parties upon receipt of a completed Request form. In unusual circumstances, the Tribunal Vice-Chair or Panel that heard the appeal may issue specific directions about transcripts or recordings.

### Requests from Non-Parties or For Other Purposes

**4.4** Requests for hearing transcripts and audio recordings from:

- a person who is not a party to the appeal (or the authorized representative) or
- anyone wanting to use a transcript for other than workplace safety and insurance purposes
- must be made under the *Freedom of Information and Protection of Privacy Act*, unless otherwise required by law.

## 5.0 The Cost of Audio Recordings and Payment

**5.1** Anyone requesting audio recordings must submit the completed WSIAT Request Form for Audio Recording and include a cheque or money order to cover the cost of the copy. (Please see the form for details).

**5.2** Once the request is approved and payment has cleared, Tribunal staff prepares the copy of the audio recording and sends it.

## 6.0 The Cost of Transcripts and Payment

**6.1** Anyone requesting hearing transcripts must submit the completed WSIAT Request Form for Transcripts of Recorded Hearings.

**6.2** Once the request is approved, the Tribunal will advise whether a transcript has already been prepared or if one would need to be created.

**6.3** If a transcript has already been prepared, a copy will be sent free of charge.

**6.4** When no transcript has been prepared of a **hearing audiotape**, Tribunal staff arrange for a transcript to be prepared and provide a cost estimate if requested.

**6.5** Tribunal staff do not prepare transcripts; a transcript service provider does this. Once the transcript has been prepared and payment has cleared, the transcript is sent.

**6.6** When no transcript has been prepared of a **hearing recorded by a court reporter**, the Tribunal will tell the requesting party(ies) how to contact the court reporter. The court reporter will give a cost estimate and make delivery and payment arrangements.

**6.7** If more than one party requests a transcript, the Tribunal encourages the requesting parties to discuss sharing the cost.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Transcripts of Board Hearings

## 1.0 This Practice Direction:

- explains when a party may use a transcript of a previous Board hearing at a Tribunal hearing
- identifies what needs to be done before a hearing to use a Board transcript
- provides information about ordering a recording of the Board hearing
- identifies the requirements for producing a transcript of a Board hearing that a party wishes to submit to the Tribunal
- explains who pays for a Board transcript.

## 2.0 Definition of transcript

**2.1** In this Practice Direction, the word transcript means a professionally transcribed written document.

## 3.0 Tribunal's General Practice on the Use of Board Transcripts

**3.1** The Tribunal reviews all the evidence that was before the Board as well as any new evidence. If an oral hearing is scheduled, the Tribunal will hear the testimony of any witnesses it feels have relevant information, regardless of whether they testified at the Board. Therefore, it is the general practice of the Tribunal not to make use of transcripts of previous hearings.

**3.2** It is also the general practice of the Tribunal not to admit audio recordings of Board hearings. Testimony from a Board hearing is only admissible at the Tribunal as a transcript.

## 4.0 Witness Unavailable – Exception to the General Practice

**4.1** If there is a Board transcript that includes evidence from a witness who is no longer available to testify, a party may request that this portion of the transcript be added to the case materials.

**4.2** If a party wishes to have a portion of a transcript of a Board hearing placed before the Vice-Chair or Panel, a copy of the transcript and reasons for the request, including why the witness is not available, must be given to the Tribunal and all other parties to the appeal at least three weeks before the hearing date.

**4.3** Whether the transcript will be admitted as evidence in the appeal will usually be addressed as a preliminary issue at the hearing, where all parties can make submissions on whether the transcript should be accepted.

**4.4** In some cases, Tribunal staff may order a Board transcript and add it to the case materials prior to a hearing. Parties to the appeal will be notified that the Tribunal has ordered the Board transcript and will receive a copy once it arrives.

## 5.0 Inconsistent Testimony – Exception to the General Practice

**5.1** If a party wishes to rely on a Board transcript only to show that the testimony of a witness at the Tribunal hearing contradicts testimony given at the Board hearing, it is not necessary to provide a copy of the transcript before the hearing. However, additional copies must be brought to the hearing for the witness, the Vice-Chair or three Panel members and all other parties.

**5.2** The party using a Board transcript to contradict the testimony of a witness may do so during cross-questioning after the witness has testified about the specific topic of the prior statement. The following steps should be followed:

- ask the witness to confirm his or her recent testimony
- ask the witness if he or she made a previous statement – quoting the Board transcript
- if the witness does not admit to or remember the previous statement, quote the question that the statement was in answer to and when it was asked – describe the Board hearing (before what person, date, who asked the question)
- if the witness still does not admit or remember the previous statement, introduce the entire transcript of the testimony of that witness and provide copies to the witness, Vice-Chair or all Panel members and all other parties to the hearing, pointing out the statement
- give the witness an opportunity to respond.

**5.3** All other parties will then be given an opportunity to make oral submissions on the transcript.

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

**6.1** If a party feels strongly that a transcript of a Board hearing should be provided to the Vice-Chair or Panel as evidence, he or she should give the Tribunal specific reasons in writing.

**6.2** Whether the transcript will be admitted as evidence in the appeal will usually be addressed as a preliminary issue at the hearing, where all parties can make submissions on whether the transcript should be accepted.

## 7.0 Recordings of Board Hearings

**7.1** The party who wishes to make arrangements for a Board transcript must obtain the audio recording of the oral hearing from the Board's Appeals Services Division.

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

## 8.0 Board Transcripts

**8.1** The party who wishes to use the Board transcript must arrange for the recording of the hearing to be transcribed.

**8.2** A transcript of a Board 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 Board Transcript?

**9.1** In most cases, the party arranging for the transcript must pay for it. The Tribunal may reimburse a party for a Board transcript only in exceptional circumstances. In the rare instances where the Tribunal arranges for a Board transcript, the Tribunal will pay for the transcript.

**9.2** A party requesting that the Tribunal pay for the Board transcript or a portion of the transcript due to exceptional circumstances should make the request at least three weeks prior to the hearing date and in writing, explaining the reasons for the request. For example, a party may want the Tribunal to pay for a transcript if it contains important evidence from a witness who has since died.

**9.3** Where there is disagreement about whether a transcript of a Board 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 prior to, or at the hearing. Sometimes, a Vice-Chair or Panel may not decide this issue until after the hearing date.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

# Fees and Expenses

**1.0 This Practice Direction:**

- identifies who may be repaid for expenses to attend a hearing
- explains what expenses related to attendance at a hearing will be paid by the Tribunal
- explains when the Tribunal will pay
- identifies who will decide what expenses will be paid by the Tribunal.

**1.1** This Practice Direction does not apply to right to sue applications under section 31 of the Act (See *Practice Direction: Right to Sue Applications*).

**2.0 Who Will Be Reimbursed For Expenses To Attend A Hearing?**

**2.1** The Tribunal pays injured workers and their witnesses, and survivors of deceased workers and their witnesses for certain expenses for their attendance at a hearing.(s.133 of the *Workplace Safety and Insurance Act*)

**2.2** Where the Tribunal directs a worker to be examined by a doctor who prepares a report for the Tribunal, the Tribunal pays certain expenses for the worker's attendance at the medical examination.

**2.3** The Tribunal does not pay expenses for employers or their witnesses as this is not provided for in the *Workplace Safety and Insurance Act*.

**2.4** The Tribunal may publish from time to time Schedules setting out the allowable amounts to be paid for fees and expenses under this Practice Direction.

**3.0 What Expenses will be Paid by the Tribunal?**

**3.1** The Tribunal holds hearings in a number of cities throughout Ontario. Workers/ survivors/and their witnesses who live outside the metropolitan area where the hearing takes place may claim allowable out-of-pocket expenses for their attendance at the hearing.

**3.2** To obtain repayment of expenses, a party must complete and send to the Tribunal a Hearing Expense Claim, attaching all required receipts to the form.

Out-of-pocket expenses may only be claimed by workers/survivors/and their witnesses who live outside the metropolitan area where the hearing takes place.

**3.3** Workers/survivors/and their witnesses may submit a claim for the following expenses:

- meal allowances – up to a daily and per meal maximum. Refer to Hearing Expense Claim form.
- parking – with a receipt, up to a daily maximum. Without a receipt, a minimum flat rate will be repaid. Refer to Hearing Expense Claim form.
- travel – train or inter-city bus fare is paid; a receipt must be submitted to claim this expense. If you drive a car, mileage is paid based on a set rate. Refer to Hearing Expense Claim form.
- witness fees – if the worker/survivor/and their witnesses has lost wages in order to attend on the hearing day or days, the Tribunal will pay for the lost wages on the hearing day(s) only, subject to a daily maximum. If a summons has been served, any money already sent with the summons will be deducted from the amount to be paid for lost wages. Except in extraordinary circumstances, payments for witnesses' lost wages will be limited to the day or days on which they testify.

**3.4** The Tribunal does not reimburse out-of-pocket expenses for workers/survivors/ and their witnesses who live within the metropolitan area where the hearing takes place.

**3.5** In some cases, the Tribunal will pay for reasonable costs for hotel accommodation for workers/survivors/and their witnesses. The Tribunal's Scheduling Department may help workers/survivors/and their witnesses with arrangements for transportation and hotel accommodation. Requests must be made at least six weeks prior to the hearing date. The Tribunal will consider the following factors when it makes a decision about whether to pay these costs:

- whether the worker/survivor/their witness must travel more than 200 kilometers one way to attend the hearing
- the time the hearing starts; and
- weather conditions.

**3.6** The Tribunal may pay for a portion of the travel expense for travel from outside Ontario. It will generally pay expenses for travel from Winnipeg in the west and Montreal in the east and Windsor in the south. For example, if a worker/survivor travels by air from British Columbia, the Tribunal would reimburse the worker/survivor for the cost of a return airline ticket from Winnipeg to the hearing location. The Tribunal does not pay for expenses for travel from an out of province residence to the closest border city.

**3.7** Where the Tribunal has arranged for a doctor to examine a worker, the Tribunal will pay the worker's expenses for travel to the medical appointment. Where a worker has lost wages to attend a medical appointment, the Tribunal will pay lost wages for the day of the Tribunal arranged appointment. The worker should send a request for this payment to the Medical Liaison Office. The Tribunal will apply the same rates as for hearing expenses.

**3.8** A party who files an expert report pays for the report. A party who calls an expert as a witness pays the full fee of the expert. In exceptional circumstances, the Tribunal may pay the costs of an expert witness for a worker (See *Practice Direction: Expert Evidence*).

## 4.0 When the Tribunal will Pay: Getting Approval

**4.1** The Tribunal reimburses workers/survivors for expenses for attending a hearing only after it receives the completed Hearing Expense Form. Workers/survivors must support expense claims with receipts and information as required by the Tribunal.

**4.2** In exceptional circumstances, the Tribunal may issue a travel advance to a worker/survivor prior to the hearing date. A worker/survivor may ask for a travel advance by sending a written request for the advance to the Tribunal's Scheduling Department at least six weeks before the hearing date. After the hearing, the worker/survivor must submit a completed Hearing Expense Claim form with all required receipts and account for the advance provided by the Tribunal.

**4.3** A worker/survivor may ask for assistance with travel, hotel accommodation, and payment of costs for travel from outside Ontario or advance payments by making a written request to the Tribunal's Scheduling Department at least six weeks before the hearing date.

## 5.0 Who Decides what Expenses will be Paid by the Tribunal?

**5.1** Tribunal staff will decide payment issues that are covered by this Practice Direction. Staff may request further information to assist with the decision making process. In exceptional cases, staff may request a Tribunal Vice-Chair or Panel to determine an issue related to expenses.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal