

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 26

Date: August 17, 2020

Subject: *Manual of Rules of Practice and Procedure* (MRPP) Revisions

1. Under section 280 of the *Workers Compensation Act* (WCA) the chair is responsible for the general operation of the Workers' Compensation Appeal Tribunal (WCAT).
2. The chair's authority includes responsibility, among other things, for:
 - establishing any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to WCAT;
 - making accessible to the public any rules, forms, practices and procedures established by the chair; and,
 - establishing administrative practices and procedures for the effective operation of WCAT.
3. Under section 11 of the *Administrative Tribunals Act* (ATA), WCAT has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.
4. Under section 13 of the ATA, WCAT may issue practice directives consistent with the ATA, the WCA, their regulations and any rules of practice and procedure made by WCAT.
5. The Workers Compensation Amendment Act, 2020, amended the WCA. The chair has amended WCAT's practices and procedures to implement the changes necessitated by the amendments to the WCA.
6. Pursuant to the chair's authority, the attached amendments to items 2.7 (Panels), 3.1 (General), 3.4.1 (Constitutional Questions), 3.4.2 (*Human Rights Code*, 20 (Post Decision), and 20.1.2 (Clarifications), in the *Manual of Rules of Practice and Procedure* (MRPP) dated August 17, 2020 (Appendix A) are approved as amendments and replacements of items in the MRPP which were effective August 14, 2020.
7. These rules of practice and procedure remain in effect until their amendment, replacement or revocation by the chair.

Andrew Pendray
Chair, Workers' Compensation Appeal Tribunal

Signed at Kelowna, British Columbia, this 17th day of August, 2020.

APPENDIX A

2.7 Panels

Panels decide appeals to WCAT. The chair must establish the panels. A panel has the power and authority of WCAT in considering an appeal [s. 285(8)].

Appeals will normally be heard by a single member panel consisting of the chair or a vice chair [s. 285(4)].

The chair may [s. 285(3)]:

- a) terminate an appointment to a panel;
- b) fill a vacancy on a panel;
- c) refer an appeal that is before one panel to another panel;
- d) if the member of a single member panel is unable to complete their duties, appoint a new panel to continue the appeal, with the consent of and on terms agreed to by all parties [s. 285(11)].

3.1 General

WCAT has jurisdiction to decide a variety of appeals:

- a) A final decision by a review officer respecting a compensation, assessment or occupational health and safety matter [s. 288(1)]. This includes a decision declining to conduct a review under section 268. The time limit for appealing a review officer's decision is 30 days [s. 293(1)].
- b) A determination, an order, a refusal to make an order or a cancellation of an order by a Board officer under section 50 concerning a prohibited action complaint [s. 289(1)]. The time limit for appealing a Board decision under section 50 to WCAT is 90 days [s. 293(2)].
- c) A decision to reopen or not to reopen a matter on an application under section 96(2) [s. 289(2)]. The Board may reopen a claim on its own initiative, or on application if, since the previous decision by the Board (3.1.4):
 - (i) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable; or,
 - (ii) there has been a recurrence of a worker's injury.Where the Board makes a reopening decision under section 125(1) on application or on its own initiative, the time limit for appealing the Board decision to WCAT is 90 days [s. 293(2)]. Where the Board makes a reopening decision under section 125(1) on its own initiative, a review may be requested from the Review Division within 90 days.
- d) An application under section 293(3) to extend the time for filing a notice of appeal. There is no statutory time limit for initiating such an application.

- e) An application under section 310 for reconsideration of a WCAT decision, or a decision of the former Appeal Division, based on new evidence. There is no statutory time limit for initiating such an application.
- f) An application under section 307(5) for reconsideration of a WCAT decision to cure a jurisdictional error. There is no statutory time limit for initiating such an application.
- g) An application under section 311 for a certificate to the court in a legal action. There is no statutory time limit for initiating such an application (18.3.2).

WCAT does not have general supervisory jurisdiction over the Board or the Review Division.

3.4.1 Constitutional Questions

WCAT has jurisdiction over constitutional questions including application of Canadian Charter of Rights and Freedoms issues [s. 296 WCA].

“Constitutional questions” are defined by the ATA as questions requiring notice to the Attorneys General of Canada and British Columbia under section 8 of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68. That Act requires notice where the constitutional validity or applicability of any law (including a regulation) is challenged, or where an application is made under section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

At any stage of an appeal, on the request of a party or on its own initiative, WCAT may refer a constitutional question raised in the appeal to the court in the form of a stated case. On the request of the Attorney General, WCAT must refer that question to the court in the form of a stated case [s. 45(2) ATA]. A stated case must be brought on for hearing as soon as practicable [s. 45(5) ATA]. Subject to the direction of the court, WCAT must, to the extent it is practicable in light of the stated case, proceed to hear and decide all questions except the questions raised in the stated case, suspend the appeal as it relates to the stated case and reserve its decision until the opinion of the court has been given, and decide the appeal in accordance with the opinion [s. 45(4) ATA].

Suspension of all or part of an appeal under section 45(4)(b) may interrupt the statutory 180 day time frame for decision making.

3.4.2 Human Rights Code

WCAT has jurisdiction to apply the *Human Rights Code*, R.S.B.C. 1996, c. 210 [s. 296 WCA].

3.4.3 Administrative Tribunals Act (ATA)

Section 296 sets out the sections of the ATA that apply to WCAT:

Part 1 – Interpretation and Application

Section 7.1 – Validity of tribunal acts

Part 3 – Clustering

Section 11 – General power to make rules respecting practice and procedure

Section 13 – Practice directives tribunal may make

Section 14 – General power to make orders

Section 15 – Interim orders
Section 28 – Facilitated settlement
Section 29 – Disclosure protection
Section 30 – Tribunal duties
Section 31 – Summary dismissal
Section 32 – Representation of parties to an application
Section 35(1) to (3) – Recording tribunal proceedings
Section 37 – Applications involving similar questions
Section 38 – Examination of witnesses
Section 42 – Discretion to receive evidence in confidence
Section 48 – Maintenance of order at hearings
Section 49 – Contempt proceeding for uncooperative witness or other person
Section 52 – Notice of decision
Part 8 – Immunities
Part 9 – Accountability and Judicial Review, except section 59 Standard of review without privative clause
Section 60(1)(a), (b) and (g) to (i) and (2) – Power to make regulations
Section 61 – Application of FIPPA

20 POST-DECISION

A decision of WCAT is final and conclusive and is not open to question or review in any court [s. 309(1)]. There is no further right of appeal and the Board must comply with a final decision of WCAT [s. 309(3)]. This includes summary decisions (such as those concerning applications for extensions of time to appeal or dismissals or withdrawals of appeals) and decisions on the merits. It does not include referrals back to the Board under section 297(3), and interim decisions such as determinations on whether an appeal will be heard orally or in writing, whether an order will be issued, or findings of fact made prior to a final decision on an appeal.

Given the final and conclusive nature of a decision, WCAT has no authority over the Board's implementation of the decision. Inquiries regarding implementation of a WCAT decision must be directed to the Board.

Functus officio means “a task performed.” In the context of quasi-judicial tribunals like WCAT, this common law doctrine means that, having rendered its decision, a tribunal has no further legal authority or jurisdiction over the matter.

The WCA contains some limited exceptions to the general principle of *functus officio* where it is necessary to correct a clerical error, an inadvertent error or omission, or to clarify an ambiguity in the decision [ss. 307(1), (2), and (4)]. WCAT may complete a decision where a panel has failed to decide an issue.

WCAT has the statutory power to reconsider a decision on the ground of new evidence that meets the requirements of section 310(3). WCAT also has a limited power to cure all or part of a decision if it contains one or more particular types of jurisdictional error. These types of jurisdictional error exist where WCAT had no power to decide a matter, failed to decide a matter that WCAT was required to decide, or was procedurally unfair. [s. 307(5)].

Post-decision communications should be in writing and directed to TCO.

20.1.2 Clarifications

A panel may, on request by a party or on the panel's own initiative, amend a final decision to clarify it [s. 307(2)].

Panels must issue amendments within 90 days of all parties being served with the final decision, unless the panel determines otherwise [s. 307(2)].

As the Board is not a party to an appeal, the Board does not have the authority to request that WCAT clarify a decision.