

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 22

Date: April 26, 2016

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

1. Under section 234 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 *Administrative Tribunals Statutes Amendment Act (2015)*, amended the WCA and ATA. After a period of consultation, the chair has amended WCAT's practices and procedures to implement the changes necessitated by the amendments to the WCA and the ATA, and to clarify WCAT's practices and procedures respecting authorization of representatives.
6. Pursuant to the chair's authority, the attached amendments to the Glossary, and items 2.7.2 (Precedent Panels), 3.1.1 (Compensation Issues), 3.1.3 (Occupational Health and Safety Issues and Monetary Penalties), 3.4.1 (Constitutional Questions), 3.4.3 (*Administrative Tribunals Act* (ATA)), 3.4.4 (Regulations), 6.3.1 (Representative Authorizations), 7.3 (Facilitated Settlement and Alternative Dispute Resolution (ADR)), 8.4 (Suspension of an Appeal), 9.4.4 (Except Precedent Panel Decisions), and 16.1.1 (General) in the *Manual of Rules of Practice and Procedure* (MRPP) dated April 26, 2016 (Appendix A) are approved as amendments and replacements of items in the MRPP which were effective May 8, 2015.

7. These rules of practice and procedure remain in effect until their amendment, replacement or revocation by the chair.

Caroline Berkey
Chair, Workers' Compensation Appeal Tribunal

Signed at Richmond, British Columbia, this 26th day of April, 2016

Appendix A

GLOSSARY

“ADR”	means alternative dispute resolution.
“allow”	means the WCAT panel disagrees with the determination made on an issue covered by a decision or order under appeal, or grants the remedy requested in an application.
“appeal”	includes an application.
“Appeal Division”	means former Appeal Division of the Workers’ Compensation Board (Board).
“Appeal Regulation”	means <i>Workers Compensation Act Appeal Regulation</i> , (Order in Council No. 1039/2002 (B.C. Reg. 321/2002)).
“appellant”	includes applicant.
“application”	includes an application for an extension of time to appeal, an application for reconsideration of a WCAT decision, and an application for a section 257 certificate.
“at least”	when referring to the calculation of time, means that the first and last days are not included.
“ATA”	means <i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45, <u>as amended by the <i>Administrative Tribunals Statutes Amendment Act, 2015</i></u> .
“Amendment Act”	means <i>Workers Compensation Amendment Act, 2002</i> , S.B.C. 2002, c. 56.
“Amendment Act No. 2”	means <i>Workers Compensation Amendment Act (No.2), 2002</i> , S.B.C. 2002, c. 66.
“Board”	means Workers’ Compensation Board, now operating as WorkSafeBC.
“board of directors”	means board of directors of the Board.
“Cabinet”	means Lieutenant Governor in Council.
“cancel”	means that the WCAT panel disagrees with a decision under appeal and determines that the decision should be set aside without a new or changed decision being substituted.

“chair”	means head of WCAT appointed under section 232(2)(a) who has all the powers of the chair set out in Part 4 of the WCA [s. 231].
“Commissioners”	means former governing body of the Board, prior to June 3, 1991.
“confirm”	means that, on every issue addressed in the WCAT decision, the panel agrees with the determinations made by the prior decision-maker in the decision or order under appeal, though not necessarily with the reasons for those determinations.
“decision”	<p>For the purposes of appeals under Part 4 of the <i>Workers Compensation Act</i> (WCA) , a “decision” is a determination of the Board, including the Review Division, to award, deny, reconsider, or limit entitlement to benefits and services, or impose or relieve an obligation pertaining to the WCA or policy. A decision is made, for the purpose of triggering the timelines for appeals and applications, on the date the decision is communicated to the affected person.</p> <p>If the decision is communicated to affected persons on different dates, the statutory timelines commence on the date the decision is first communicated to an affected person.</p>
“deny”	means the WCAT panel agrees with the determination made on an issue covered by a decision or order under appeal, or does not grant the remedy requested in an application.
“FIPPA”	means <i>Freedom of Information and Protection of Privacy Act</i> , R.S.B.C. 1996, c. 165.
“issue”	means each benefit, or each aspect of a benefit or obligation, dealt with in a decision or order where the decision or order includes determinations regarding: different aspects of a benefit or obligation; more than one type of benefit or obligation; or, determinations regarding the same benefit or obligation at different places or times.
“member of family”	<p>means</p> <p>(a) a spouse, parent, grandparent, stepparent, child, grandchild, stepchild, sibling or half sibling, and</p>

(b) a person who stood in the place of a parent to the worker or to whom the worker stood in place of a parent, whether related to the worker by blood or not [s. 1].

“members of WCAT”	means chair, vice chairs, and temporary substitute members appointed under section 232(10) [s. 231].
“minister”	means the Minister Responsible for Labour.
“officer of WCAT”	means senior registry officer, assessment officer, appeal coordinator, or legal counsel.
“party”	means person who may bring or respond to an appeal [s. 241].
“practice directive”	means italicized MRPP item that is consistent with the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, and its regulations, and the <i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45, which provides guidance and is not binding on WCAT.
“presiding member”	means the WCAT member (either the chair or any vice chair) chairing a panel [s. 231].
“procedural fairness”	means procedural fairness and natural justice.
“Review Board”	means former Workers’ Compensation Review Board.
“Review Division”	means Review Division of the Board.
“rule”	means bolded MRPP item respecting practice and procedure that facilitates the just and timely resolution of matters before WCAT. Rules are binding, but WCAT may waive or modify a rule in exceptional circumstances.
“section” (or “s.”)	means section of the WCA, unless context otherwise indicates.
“senior vice chair”	means the tribunal counsel and the registrar. Reference to “a senior vice chair” means either of these two positions. Otherwise, references to senior vice chair will be abbreviated to refer specifically to the tribunal counsel or the registrar.
“Supreme Court Rules”	means <i>Supreme Court Civil Rules</i> , B.C. Reg. 168/2009.
“TCO”	means tribunal counsel office.

“vary”	means that, on one or more issues addressed in the WCAT decision, the panel reaches a conclusion which differs in whole or in part from the conclusion or outcome provided by the prior decision-maker and provides a changed decision.
“vice chair”	means a WCAT decision maker (not an officer), appointed by the chair, after consultation with the minister, under section 232(2)(b) to make decisions on appeals to WCAT, and whose position is not representative of employers’ or workers’ interests.
“WCA”	means <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492.

2.7.2 Precedent Panels

The chair may appoint a precedent panel where the chair determines that the matters in an appeal are of special interest or significance to the workers’ compensation system as a whole [s. 238(6)].

A precedent panel will consist of three to seven members. A precedent panel will consist of the chair or a vice chair as the presiding member, plus two to six vice chairs. If the chair is a member of a precedent panel, the chair is the presiding member. Where the chair is not a member of a precedent panel, the chair will designate one of the vice chairs to be the presiding member.

If a member of a precedent panel is unable to complete the appeal, the chair may direct the remaining members of the panel to complete the appeal and make the precedent decision [s. 238(10)].

A decision by a panel appointed under section 238(6) sets a precedent which is binding on future WCAT panels, unless [ss. 250(3) and (3.1)]:

- a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances in the panel’s decision~~;~~,
- b) subsequent to the panel’s decision, a policy of the board of directors relied upon in the panel’s decision is repealed, replaced or revised~~;~~ or
- c) the prior decision has been overruled under section 250(3.1).

A panel appointed under section 238(6) may overrule a prior decision of another panel appointed under that section [s.250(3.1)].

Where a precedent panel makes findings on issues that are not within the scope of its appointment under section 238(6), those findings are not binding. The precedent panel will clearly highlight those portions of its decision which are not intended to be binding.

3.1.1 Compensation Issues

The compensation issues affecting workers for which a review officer's decision is appealable include, but are not limited to:

- a) status as a worker under the WCA [s. 1];
- b) a decision to accept or deny a claim for personal injury [s. 5] or occupational disease [s. 6];
- c) duration of wage loss benefits (temporary total disability benefits [s. 29] and temporary partial disability benefits [s. 30]);
- d) duration of permanent partial disability benefits and permanent total disability benefits [s. 23.1];
- ~~e~~e) average earnings for short and long term wage loss purposes [ss. 33 - 33.91];
- ~~f~~f) health care, including clothing allowances, personal care expenses or allowances, independence and home maintenance allowances, transportation allowances, subsistence allowances, and homemakers' services (except where such services relate to a vocational rehabilitation program), eyeglasses, prostheses, wheelchairs, hearing aids, crutches [s. 21];
- ~~g~~g) a decision concerning the percentage of a permanent partial disability award based on the application of the Board's rating schedule [s. 23(2)], where the specified percentage of impairment in the schedule has a range that exceeds 5% [s. 239(2)(c)];
- ~~g~~h) the effective date and average earnings calculation of any permanent disability award assessed under the WCA as it read before it was amended by the Amendment Act, 2002;
- ~~h~~i) the effective date of a permanent disability award assessed under the WCA as amended by the Amendment Act, 2002;
- ii) permanent disability awards which are not based on the application of the Board's rating schedule (non-scheduled awards);
- ~~j~~k) loss of earnings assessments and awards [s. 23(3)];
- ~~k~~l) disfigurement awards [s. 23(5)];
- ~~l~~m) dependants' benefits [s. 17];
- ~~m~~n) diversion, cancellation, withholding, or suspension of compensation [s. 98].

3.1.3 Occupational Health and Safety Issues and Monetary Penalties

The occupational health and safety issues or monetary penalties for which a review officer's decision is appealable include:

- a) a decision to confirm, vary or cancel a decision regarding an administrative penalty under section 196 (see s. 96.2(1)(c));
- b) an order which imposed, or was relied upon to impose, an administrative penalty under section 196(1) [s. 239(2)(e)(i) and (ii)];
- c) an order by a review officer under section 195 to cancel or suspend a certificate under Part 3 – that is, of an occupational first aid attendant or instructor [s. 159], or a medical certificate of a worker's fitness for a specific type of work such as diving [s. 162, s. 24.10 of the *Occupational Health and Safety Regulation*], or a certificate of a blaster or blasting instructor [s. 163].

3.4.1 Constitutional Questions

WCAT has jurisdiction over constitutional questions with the exception of Canadian Charter of Rights and Freedoms issues ~~WCAT does not have jurisdiction over constitutional questions Canadian Charter of Rights and Freedoms issues~~ [s. 245.1 WCA, s. ~~44(1)~~ 45(1) ATA].

“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.

3.4.3 Administrative Tribunals Act (ATA)

Section 245.1 sets out the sections of the ATA that apply to WCAT:

~~Section 1 – Definitions~~

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 – ~~Appointment of person to conduct dispute resolution process~~ 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 ~~44~~ 45 – Tribunal without jurisdiction over ~~constitutional questions~~ Canadian Charter of Rights and Freedoms issues
Section 46.3 – Tribunal without jurisdiction to apply the *Human Rights Code*
Section 48 – Maintenance of order at hearings
Section 49 – Contempt proceeding for uncooperative witness or other person
Section 52 – Notice of decision
~~Section 55 – Compulsion protection~~
~~Section 56 – Immunity protection for tribunal and members~~
~~Section 57 – Time limit for judicial review~~
~~Section 58 – Standard of review if tribunal's enabling Act has privative clause~~
Part 8 – Immunities
Part 9 – Accountability and Judicial Review, except section 59 Standard of review without privative clause
Section ~~60(1)(a), and (b)~~ 60(1)(a), (b) and (g) to (i) and (2) – Power to make regulations
Section 61 – Application of FIPPA

3.4.4 Regulations

The Cabinet may make regulations:

- a) prescribing any decisions or orders under the WCA or the regulations that may be appealed to WCAT, prescribing who may appeal those decisions or orders, and prescribing classes of decisions concerned with the conduct of a review which are not appealable [s. 224(2)(j)];
- b) respecting the awarding of costs in an appeal to be paid by one party to another party [s. 224(2)(k.1)];
- c) prescribing qualifications of health professionals to provide independent assistance or advice [s. 224(2)(k.2), s. 249];
- d) prescribing the circumstances under which WCAT may order the Board to reimburse the expenses incurred by a party to an appeal [s. 224(2)(k.3)];
- e) prescribing an oath of office to be taken by WCAT members before beginning their duties [s. 232(8)];
- f) prescribing any procedures or requirements governing the chair's appointments of vice chairs [s. 234(2)(a)];
- g) prescribing rules of practice and procedure for WCAT [s. 60(1)(a) ATA];
- h) repealing or amending a rule made by WCAT [s. 60(1)(b) ATA].
- i) prescribing the form, manner and timing of reports to the minister responsible for the tribunal [s. 60(1)(g) ATA];
- j) prescribing information that must be included in reports to the minister responsible for the tribunal [s. 60(1)(h) ATA];
- k) prescribing information the tribunal must make public [s. 60(1)(i)].

6.3.1 Representative Authorizations

The Rule and Practice Directive in this section are intended to protect the confidentiality of personal information as required by sections 95 and 260 of the WCA. The Rule and Practice Directive do not apply to the workers' and employers' advisers and their staff (see section 94).

RULE: Appellants or their representatives may initiate an appeal. The WCAT notice of appeal form includes authorization for the representative to act.

If the appeal is initiated by a representative, the representative must provide the appellant's signed authorization for the representative to act unless there is an authorization on the Board file that is less than two years old and has not been revoked. If more than two years has elapsed since the party authorized the representative but the authorization has not been revoked, or the appellant's authorization for the representative to act is in a Request For Review or Notice of Participation filed with the Review Division of the Board in relation to the decision being appealed, and:

- a) the representative continued to represent the party at the Review Division with respect to the decision being appealed, and received a copy of the Review Division decision;
- b) the representative continues to represent the party in a post-decision application before WCAT ~~or,~~ a judicial review, or the continuation of an appeal following reconsideration or judicial review; or,
- c) the two years expires during the course of an appeal, including the continuation of an appeal following reconsideration or judicial review,

the representative may be considered authorized until the end of the appeal, post-decision matter before WCAT, ~~or~~ judicial review proceeding, or continuation of the appeal following reconsideration or judicial review unless the party advises otherwise.

Practice Directive

Where a party had an authorized representative acting for them in connection with the decision being appealed, WCAT will normally assume that the representative continues to act for them unless the party indicates otherwise. If the Review Division decision is copied to a representative, WCAT will provide copies of correspondence to the same representative.

WCAT may require a current authorization if significantly longer than two years has elapsed since the party authorized the representative to act.

Where a party has a new representative, the party must provide a current authorization in a form satisfactory to WCAT, such as a notice of appeal signed by the appellant naming the representative, or notice of participation signed by the respondent naming

the representative, or the form of authorization accepted by the Board and the Review Division.

The WCAT authorization of representative form is accessible on the WCAT website at: www.wcat.bc.ca.

7.3 Facilitated Settlement and Alternative Dispute Resolution (ADR)

The chair may appoint a member or staff of the tribunal or another person to conduct a facilitated settlement process to resolve one or more issues in dispute. WCAT may require 2 or more parties to participate in the facilitated settlement process, in accordance with the MRPP. WCAT may make the consent of one, all or none of the parties a condition of a facilitated settlement process [s. 28 ATA].

The chair may establish any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to WCAT, including employing voluntary ADR processes [s. 234(2)(d)(iii) WCA; s. 28(1) ATA].

WCAT uses ADR on a limited basis. WCAT will determine when ADR will be appropriate based on the particular circumstances of the appeal, and the willingness of the parties to attempt to achieve a consensual resolution. A party may request ADR or WCAT may recommend it.

8.4 Suspension of an Appeal

The WCA authorizes the chair to suspend appeals in four situations. In three of the situations, a suspension results in the matter automatically being returned to WCAT for further action. In the fourth, unless the appellant asks WCAT to proceed within 30 days of a further Board decision, WCAT will close the appeal and take no further action.

A suspension under the WCA interrupts the statutory 180-day time frame for decision making. A suspension is an interim decision that is not final and conclusive.

See 3.4.1 with respect to suspension under s. 45(4) ATA.

9.4.4 Except Precedent Panel Decisions

The panel is bound by a prior precedent panel decision (under section 238(6)) unless the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the precedent panel's decision or, subsequent to the precedent panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised, or the prior decision has been overruled under section 250(3.1) [s. 250(3)] (item 2.7.2).

WCAT precedent panel decisions are accessible on the WCAT website at: www.wcat.bc.ca.

16.1.1 General

A party should make any request for reimbursement of expenses in their submissions to the panel. WCAT may address this question even in the absence of a request. In an oral hearing, the panel will normally ask the appellant and any respondent present whether they are seeking reimbursement of expenses. Parties should also exercise diligence in bringing forward any request for reimbursement.

In considering a party's claim for reimbursement of expenses, WCAT may order reimbursement where the party or the party's representative has actually paid the account or where the party or the party's representative has incurred liability for the account but it remains outstanding. WCAT may order reimbursement of expenses for a witness, to be paid directly to the witness, even where the party has not yet paid this expense. Parties and their representatives should submit receipts to WCAT for amounts for which they are seeking direct reimbursement.

WCAT's authority to reimburse a party's appeal expenses is derived from section 7 of the Appeal Regulation. Although there is no board of directors' policy on reimbursement of appeal expenses WCAT will generally be guided by Board policy at item #100.14 of the RSCM regarding the amount and type of expenses the Board will pay. These are calculated in accordance with the rules set out in the RSCM, items #C10-83.00 (transportation) and #C10-83.10 (subsistence allowances). For more information about appeal expenses, click [here](#).

WCAT will not automatically reimburse a party for an amount that exceeds Board policy or a fee schedule. Parties tendering an account for an expense that exceeds a fee schedule must provide a detailed breakdown of the expense requested and explain why an amount greater than the fee schedule amount is requested. If a panel is asked to reimburse an amount that exceeds a Board policy or fee schedule amount, the panel will consider the request. See [item 16.1.3.1](#) for criteria a panel will consider in deciding to reimburse expenses at a different rate or on a different basis than set out in Board policy or in a Board fee schedule.

Where a panel determines that appeal expenses will be reimbursed at a different rate or on a different basis than set out in Board policy or in a Board fee schedule, the panel will provide reasons in its decision.