

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 1
Date: March 3, 2003
Subject: Delegation by the Chair

A. GENERAL

1. In this decision, the following definitions apply:

“Act” means the *Workers Compensation Act*;

“deputy registrar” means a vice chair/deputy registrar;

“member” means all vice chairs, including any senior vice chair, specialized vice chair, and deputy registrar;

“officer” means appeal assessor, appeal coordinator, and legal counsel;

“quality assurance” means the specialized vice chair/quality assurance;

“senior vice chair” means the tribunal counsel, the registrar, and the chief operating officer;

“specialized vice chair” means a vice chair/team leader, the vice chair/inventory strategist, and the vice chair/quality assurance;

“WCAT” means the Workers' Compensation Appeal Tribunal (or “appeal tribunal”) established under section 232 of the Act.

2. The delegations in this decision do not include the power to further delegate.

3. I retain the powers, duties and authority delegated by me in this decision and will exercise these concurrently with the delegate(s).

4. These delegations are effective from March 3, 2003 until February 28, 2005, so long as the delegate continues in office, subject to my replacing this decision with a new delegation decision or otherwise amending or revoking this decision.

5. Pursuant to section 234(5) of the Act, in the event I cease to hold office, this delegation continues in effect so long as the delegate continues in office, subject to the term specified in paragraph 30 or the delegation being earlier revoked by a new chair.

B. STATUTES

6. Section 234 of the Act provides:

- (4) Subject to section 251 (9), the chair may delegate in writing to another member of the appeal tribunal or to an officer of the appeal tribunal a power or duty of the chair and may impose limitations or conditions on the exercise of that power or performance of that duty.
- (5) If the chair has delegated a power or duty of the chair and subsequently ceases to hold office, the delegation continues in effect
 - (a) so long as the delegate continues in office, or until
 - (b) the delegation is revoked by a new chair.
- (6) The chair may designate another member of the appeal tribunal to act in the chair's place during the chair's temporary absence, and while acting in the chair's place the designated member has the power and authority of the chair.

7. Section 232 of the Act provides:

- (10) Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated,
 - (a) the Lieutenant Governor in Council, if the member is the chair, or
 - (b) the chair, if the member is a vice chair or extraordinary member,may appoint a temporary substitute member to act during the absence or incapacity.

8. Section 66 of the *Freedom of Information and Protection of Privacy Act* provides:

- (1) The head of a public body may delegate to any person any duty, power or function of the head of the public body under this Act, except the power to delegate under this section.
- (2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.
- (3) This section does not apply to a local public body.

C. CONFLICT / ABSENCE OF THE CHAIR

9. In the event of my determining that I am or would be exposed to a possible or actual conflict of interest or appearance of bias with respect to a given case, pursuant to section 234(4) of the Act, I delegate to Herb Morton, senior vice chair/tribunal counsel (“tribunal counsel”), all necessary powers to act in my place, except the authority of the chair under section 251. Pursuant to section 234(6) of the Act, I also delegate to Morton the authority to exercise all power and authority of the chair in my temporary absence, except the authority of the chair under section 251. These delegations are subject to a temporary substitute chair being appointed by the Lieutenant Governor in Council pursuant to section 232(10) of the Act.
10. I delegate to Cassandra Kobayashi, senior vice chair/registrars (“registrars”), the same powers and duties as delegated in paragraph 9 to Morton, but limited to situations where Morton is absent, or has determined he is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
11. I delegate to Leigh Sheardown, senior vice chair/chief operating officer, the same powers and duties as delegated in paragraph 9 to Kobayashi, but limited to situations where Kobayashi is absent, or has determined she is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
12. I delegate to Dale Reid, specialized vice chair/inventory strategist (“inventory strategist”), the same powers and duties as delegated in paragraph 9 to Sheardown, but limited to situations where Sheardown is absent, or has determined she is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
13. I delegate to Michelle Gelfand, specialized vice chair/quality assurance (“quality assurance”), the same powers and duties as delegated in paragraph 9 to Reid, but limited to situations where Reid is absent, or has determined he is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
14. I delegate to Susan Polsky Shamash, vice chair, the same powers and duties as delegated in paragraph 9 to Gelfand, but limited to situations where Gelfand is absent, or has determined she is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
15. I delegate to Lorne Newton, vice chair, the same powers and duties as delegated in paragraph 9 to Polsky Shamash, but limited to situations where Polsky Shamash is absent, or has determined she is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.

D. DELEGATIONS BY AUTHORITY / POSITION

Delegations under this Part to positions means any incumbent of such a position, as they may exist from time to time, but only so long as the member or officer holds the position.

16. Consolidation of related matters in one hearing – section 234(2)(k)

I delegate the authority of the chair under section 234(2)(k), to order the consideration of related matters in one hearing before WCAT, to the following positions and person:

senior vice chair, specialized vice chair, deputy registrar, appeal assessor,
Doug Strongitharm.

17. Certificate of WCAT record for judicial proceedings – section 234(2)(o)

I delegate the authority of the chair under section 234(2)(o), for the purpose of judicial proceedings, to prepare a certificate attaching the WCAT record in the matter of a particular appeal or decision of WCAT, including any practices and procedures applied by WCAT, to the following positions:

tribunal counsel, registrar, quality assurance, legal counsel.

18. Change in panel – section 238(3)

I delegate the authority of the chair under section 238(3), to terminate an appointment to a panel, fill a vacancy on a panel, and refer an appeal that is before one panel to another panel, to the following positions:

senior vice chair, specialized vice chair, deputy registrar.

19. Appointment of three member panel – section 238(5)

I delegate the authority of the chair under section 238(5), to determine that a matter under appeal requires consideration by a 3 member panel, and to appoint a panel with either of the following memberships:

- (a) a vice chair, acting as presiding member, plus 2 additional vice chairs,
- (b) a vice chair, acting as presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests,

to the following positions:

senior vice chair, quality assurance.

20. Extension of time to appeal — section 243(3), and Transitional Review and Appeal Regulation 2(2)

I delegate the authority of the chair under section 243(3), on application of the appellant, to determine whether:

- (a) special circumstances existed which precluded the filing of a notice of appeal within the time period required in section 243(1) or (2), and
- (b) an injustice would otherwise result,

and to extend the time to file a notice of appeal, to the following position:
member.

21. Stay of appealed decision — section 244

I delegate the authority of the chair under section 244, on application of the appellant, to direct a stay or otherwise affect the operation of the decision or order under appeal, to the following position:
member.

22. Suspension pending Board decision — section 252(1)

I delegate the authority of the chair under section 252(1), on application of the appellant or on the delegate's own initiative, to suspend appeal proceedings if a Board's decision is pending respecting a matter that is related to the appeal, to the following positions:
member, appeal assessor, appeal coordinator.

23. Early continuation of suspended appeal proceedings — section 252(3)

I delegate the authority of the chair under section 252(3), if the appellant requests WCAT to continue the appeal proceedings before the Board's decision referred to in section 252(1) is made, to:

- (a) direct the appeal tribunal to continue the proceedings, or
- (b) continue the suspension until the Board's decision is made,

to the following position:
member.

24. Extension of time to continue suspended appeal proceeding — section 252(4)

I delegate the authority of the chair under section 252(4), on application of the appellant, to determine whether:

- (a) special circumstances existed which precluded the making of a request within the time required in section 252(2), and

(b) an injustice would otherwise result,
and to extend the time to make a request under section 252(2) that WCAT
continue the appeal proceedings, to the following position:
member.

25. Extension of 180 day time frame due to complexity – section 253(5)(a)

I delegate the authority of the chair under section 253(5)(a) to extend the 180 day
time frame for the making of the WCAT decision under section 253(4)(a), if the
complexity:

(a) of the proceedings in the appeal, or
(b) of the matter under appeal,
makes the time period impractical, to the following positions:
senior vice chair, quality assurance.

**26. Extension of 180 day time frame at appellant's request – section 253(5)(b) and
253(6)**

I delegate the authority of the chair under section 253(6), if the appellant requests
a delay in the proceedings under section 253(5)(b) to:

(a) submit new evidence, or
(b) make additional submissions,
to extend the time for not more than 45 days, to the following positions:
member, appeal assessor, appeal coordinator.

27. Extension of 180 day time frame at respondent's request – section 253(7)

I delegate the authority of the chair under section 253(7), on application of a
respondent(s), to extend the time for an additional period not exceeding that
granted to the appellant under section 253(6), to allow the respondent(s) to:

(a) submit new evidence, or
(b) make additional submissions,
to the following positions:
member, appeal assessor, appeal coordinator.

28. Reconsideration of appeal decision – section 256 and common law

I delegate the authority of the chair:

(a) under section 256, to refer a WCAT or Appeal Division decision to
WCAT for reconsideration, and,
(b) where such authority exists at common law, the authority to set aside
a decision as void or to find that a decision is incomplete, and to return
the matter to WCAT for completion of the decision,
to the following position (upon assignment by the chair):
member.

E. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

29. Pursuant to section 66 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), I delegate the duty, power and function of the chair under the FIPPA to Herb Morton, senior vice chair/tribunal counsel.

30. I delegate to Michelle Gelfand, specialized vice chair/quality assurance, the same powers and duties as delegated in paragraph 24 to Morton, but limited to situations where Morton is absent, or has determined he is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.

31. I delegate to legal counsel, the same powers and duties as delegated in paragraph 24 to Gelfand, but limited to situations where Gelfand is absent, or has determined she is exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.

Jill Callan
Chair, Workers' Compensation Appeal Tribunal

Signed at Richmond, British Columbia, this 3rd day of March, 2003.