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GLOSSARY

"AA"	means appeal assessor.
"AC"	means appeal coordinator.
"ADR"	means alternative dispute resolution.
"AL"	means appeal liaison.
"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 Appeal Division of the Workers' Compensation Board.
"Appeal Regulation"	means <i>Workers Compensation Act Appeal Regulation</i> , B.C. Reg. 321/02.
"ATA"	means <i>Administrative Tribunals Act</i> .
"Bill 49"	means <i>Workers Compensation Amendment Act, 2002</i> .
"Bill 63"	means <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
"cancel"	means that the WCAT panel disagreed with the determinations made on every issue covered by a decision under appeal and determined that the decision should be set aside without a new or changed decision being provided in its place. Cancellations are normally only ordered with respect to prevention decisions.
"chair"	means the 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].
"confirm"	means that, on every issue addressed in the WCAT decision, the WCAT panel agreed 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.

"DR"	means deputy registrar.
"extraordinary member"	means a member of WCAT appointed by the chair, after consultation with the minister, under section 232(2)(c), with experience in either employers' interests or workers' interests [s. 231].
"FIPPA"	means the <i>Freedom of Information and Protection of Privacy Act</i> .
"former Commissioners"	means the governing body of the Workers' Compensation Board prior to June 3, 1991.
"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: (a) different aspects of a benefit or obligation; (b) more than one type of benefit or obligation; or, (c) determinations regarding the same benefit or obligation at different places or times.
"member of family"	means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister and a person who stood <i>in loco parentis</i> to the worker, or to whom the worker stood <i>in loco parentis</i> , whether related to the worker by consanguinity or not [s. 1].
"members of WCAT"	means the chair, vice chairs, and extraordinary members appointed under section 232 (2) and temporary substitute members appointed under section 232 (10) [s. 231].
"presiding member"	means the WCAT member (either the chair or any vice chair) chairing a WCAT panel [s. 231].
"RO"	means registrar's office.
"Review Board"	means Workers' Compensation Review Board.
"section" (or "s.")	means section of the WCA, unless context otherwise indicates.
"senior vice chair"	means the chief operating officer, tribunal counsel, and the registrar. These three positions are all senior vice chair positions in WCAT. Reference to "a senior vice

chair” means any of these three positions. Otherwise, references to the senior vice chair positions will be abbreviated to refer specifically to the chief operating officer, tribunal counsel, or the registrar.

"Transition Regulation" means *Workers Compensation Act Transitional Review and Appeal Regulation*, B.C. Reg. 322/02.

"vary" means that, on one or more issues addressed in the WCAT decision, the WCAT panel reached 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 minister or chair under section 232(2)(b), or section 35(1) of the transitional provisions of Bill 63, to make decisions on appeals or applications to WCAT, and whose position is not representative of employers' or workers' interests.

"WCA" means the *Workers Compensation Act*.

1.00 THE WORKERS' COMPENSATION APPEAL TRIBUNAL

1.10 Introduction

The *Workers Compensation Act* (WCA) establishes two levels for review or appeal of decisions by officers of the Workers' Compensation Board (Board). The first level is internal, involving a review by a review officer of the Review Division. The second level is external, involving an appeal to the Workers' Compensation Appeal Tribunal (WCAT). WCAT is headed by a chair appointed by the Lieutenant Governor in Council (the Cabinet). The Review Division and WCAT were established effective March 3, 2003.

The WCAT chair is responsible for the general operation of WCAT [s. 234(1)]. The chair's responsibilities include [s. 234(2)(d) to (f)]:

- (d) establishing any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to the appeal tribunal, including
 - (i) the time periods within which steps must be taken,
 - (ii) requiring pre-hearing conferences, and
 - (iii) employing voluntary alternate dispute resolution processes;
- (e) making accessible to the public any rules, forms, practices and procedures established under paragraph (d);
- (f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;

Section 11 of the *Administrative Tribunals Act* (ATA) allows WCAT to control its own processes, and to make rules respecting practice and procedure "to facilitate the just and timely resolution of the matters before it." WCAT may waive or modify its rules in exceptional circumstances. Section 13 of the ATA allows WCAT to issue non-binding practice directives. Rules of practice and procedure, and practice directives, must be consistent with the WCA and the ATA and must be accessible to the public.

In order to facilitate the just and timely resolution of appeals, WCAT may make orders related to rules under section 11 or for any matter it considers necessary to control its own proceedings. WCAT may make orders on its own initiative or on application by a party or an intervener [s. 14, ATA].

This *Manual of Rules of Practice and Procedure* (MRPP) sets out legislation relevant to WCAT's operation, as well as rules of practice and procedure and practice directives established by the chair. Rules are identified in **bold** while practice directives are in *italics*. Both are included in Appendices 1 and 2, respectively, at the end of this MRPP.

References to the chair generally mean the chair or delegate. References to an appeal may include other proceedings, such as an application for reconsideration, or an application for a certificate in a court action. Unless indicated otherwise, references to statutory provisions are to the WCA. References to numbered items are to other items in the MRPP. A glossary of defined terms is provided following the table of contents.

The MRPP is accessible on WCAT's internet website at: www.wcat.bc.ca. WCAT will generally post proposed revisions on the "what's new" page of the website and will provide an opportunity for input from the community.

1.20 Role of WCAT

Section 232(1) of the WCA establishes WCAT as an external appeal body, independent of the Board. While independent, WCAT is part of the workers' compensation system and must apply policies of the board of directors subject to the process set out in section 251 for determining the lawfulness of a policy.

1.30 Guiding Principles

WCAT will strive to provide:

- (a) predictable, consistent, and efficient decision making;
- (b) independent and impartial decision making;
- (c) succinct, understandable, and high quality decisions;
- (d) consistency with the WCA, policy, and WCAT precedent decisions;
- (e) transparent and accountable management;
- (f) integration and communication within the workers' compensation system;
- (g) accountability through performance management;
- (h) appropriate balance between efficiency (timeliness and stewardship of scarce resources) and effectiveness (quality decision making);
- (i) prompt, knowledgeable and responsive client service;
- (j) interpretive guidance for the workers' compensation system.

1.40 Composition of WCAT

WCAT consists of the chair, appointed by the Cabinet, together with vice chairs and extraordinary members (and any temporary substitute members) [s. 231]. The chair of WCAT holds office for an initial term of three to five years and may be reappointed for one or more successive terms of up to five years each [s. 232(3)].

If the chair is absent or incapacitated, the Cabinet may appoint a temporary substitute member to act during the absence or incapacity. If a vice chair or extraordinary member of WCAT is absent or incapacitated, the chair may appoint a temporary substitute member [s. 232(10)]. A temporary substitute member must be a person who would otherwise be qualified for appointment as a member.

The chair may designate another member of WCAT to act in the chair's place during a temporary absence [s. 234(6)].

The first vice chairs were appointed by the Minister of Skills Development and Labour (the minister), after consultation with the first chair of WCAT. The chair is responsible for reappointments after consultation with the minister.

The chair is responsible for new appointments after consultation with the minister, and using a merit-based selection process established or approved by the chair [s. 232(6)].

The chair may only appoint a person as a vice chair if the person demonstrates the following [*Workers Compensation Act Appeal Regulation*, B.C. Reg. 321/02 (Appeal Regulation), s. 2(a) to (i)] (see Appendix 8):

- (a) a knowledge of the workers' compensation system;
- (b) a knowledge of the principles and practice of administrative law;
- (c) the capacity to apply the knowledge under subsection (b) so as to be able to work effectively as a vice chair of the appeal tribunal;
- (d) the ability to analyze relevant information;
- (e) the ability to make difficult decisions within an established framework of law and policy, including good judgment and decisiveness;
- (f) effective communication skills;
- (g) the ability to work with others;
- (h) the ability to work effectively;
- (i) good character and proven integrity.

Vice chairs hold office for an initial term of two to four years and may be reappointed for additional terms of up to five years.

WCAT appointments may be terminated without notice on payment of the lesser of 12 months' compensation or remuneration owing to the end of a member's term. This change is deemed to be included in all contracts of employment related to appointments that are commenced, changed or renewed on or after May 28, 2003 [*Public Sector Employers Act*, s. 14.9].

The chair may appoint extraordinary members after consultation with the minister. Extraordinary members are appointed with representation from individuals with experience in workers' interests and from individuals with experience in employers' interests [s. 232(2)(c)]. An extraordinary member holds office for the period of time required to discharge his or her duties as a member of a panel appointed by the chair under sections 238(5)(b) or (6)(b) [s. 232(5)].

WCAT members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of their duties, disclose to any person any information they have obtained as members [s. 30, ATA]. Members must take the following oath of office [Appeal Regulation, s. 3]:

I swear (solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, carry out my duties as a member of the Workers' Compensation Appeal Tribunal; I will conduct myself with integrity, and I will discharge my duties in accordance with the laws of the Province.

The chair may appoint officers of WCAT [s. 234(2)(n)]. The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to members or officers of WCAT [s. 232(9)].

The chair may delegate in writing to another member or officer of WCAT a power or duty of the chair, with or without limitations or conditions [s. 234(4)] (see Decision #6, Appendix 3) .

Tribunal counsel office (TCO) operates under the direction of the senior vice chair and tribunal counsel. TCO is responsible for providing legal support to the chair and the vice chairs, continuing education, the MRPP, responding to inquiries under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and from the Ombudsman, requests for reconsideration. It consists of tribunal counsel, vice chair, quality assurance, legal counsels, legal researchers, physician consultant, library technician, co-op law student, and support staff.

The registrar's office (RO) operates under the direction of the senior vice chair and registrar. The RO is responsible for determining that all appeals meet the requirements of the WCA, including WCAT jurisdiction, the method of hearing and assigning appeals to WCAT panels. It consists of deputy registrars (DR), appeal assessors (AA), appeal coordinators (AC), appeal liaisons (AL), registration and scheduling clerks and support staff.

1.50 A Short History of the Workers' Compensation Appeal System

From the time the workers' compensation system was introduced in the province of British Columbia in 1917 it was governed by three Commissioners. Prior to 1968 there was no statutory mention of an appeal although there was an internal, informal appeal mechanism. In 1968 the Boards of Review were statutorily created. They remained internal to the Board until 1974 and were renamed the Workers' Compensation Review Board (Review Board) in 1986.

The first medical appeal provision was enacted in 1954. In 1959 the three-person Medical Review Panel (MRP) process was established. Their certificate was conclusive and binding on the Board.

Throughout this time, the final level of appeal on non-medical questions was the Commissioners. On June 3, 1991 the appellate and administrative functions of the Commissioners were divided and the Appeal Division of the Workers' Compensation Board (Appeal Division) and Board of Governors were established.

The *Workers Compensation Amendment Act (No.2), 2002* (Bill 63) restructured the appeal system. The provisions with respect to the MRP were repealed effective November 30, 2002, although proceedings that were before the MRP repeal date will be completed. As of March 3, 2003 the Review Board and the Appeal Division were replaced by WCAT. WCAT inherited 22,446 appeals from the Review Board and the Appeal Division. As of October 31, 2004 WCAT had reduced this backlog to 6,918 appeals, a 69% reduction.

2.00 JURISDICTION

2.10 WCB Review Division

NOTE: This limited material concerning the Review Division is provided for information purposes only. Detailed information on the Practices and Procedures of the Review Division is accessible at: www.worksafefbc.com

Most decisions by Board officers are subject to review by a review officer in the Review Division. There is a 90-day time limit for requesting a review [s. 96.2(3)]. The chief review officer may extend the time to request a review based on special circumstances which precluded the filing of a request for review within 90 days and where an injustice would otherwise result.

In general, the Review Division has jurisdiction to review a Board decision in a specific case concerning [s. 96.2(1)]:

- (a) compensation (including a decision, on the Board's own initiative, to reopen or not to reopen a claim under section 96(2), (see *Review Decision #2523*));
- (b) vocational rehabilitation;
- (c) an assessment or classification matter, including an employer's assessment classification unit;
- (d) a monetary levy on an employer of costs of compensation involving:
 - (i) an unregistered employer at time of injury [s. 47(2)]
 - (ii) compensation paid pending employer's late notification to WCB [s. 54(8)]
 - (iii) an injury, death or disablement due to gross negligence of employer [s. 73(1)];
- (e) a Board order concerning an occupational health and safety matter, including an administrative penalty (or a refusal to make a variation, or a cancellation, of an order);
- (f) a transfer of claim costs to an employer in another class or subclass [s. 10(8), s. 96.2(2)(e)(i)];
- (g) relief of claim costs for a disaster [s. 39(1)(d), s. 96.2(2)(e)(i)];
- (h) relief of claim costs for a pre-existing disease, condition or disability [s. 39(1)(e), s. 96.2(2)(e)(i)];
- (i) the reserve in aid of industries or classes which may become depleted or extinguished [s. 39(1)(b), s. 96.2(2)(e)(i)];
- (j) an employer's experience rating [s. 42, s. 96.2(2)(f)].

A request for a review of a decision or order does not operate as a stay or suspension of the decision or order under review. However, the chief review officer may grant a stay or suspension [s. 96.2(5)].

No review can be requested respecting the following [s. 96.2(2)]:

- (a) collection of an amount owed to the Board under Part 3 (Occupational Health and Safety) of the WCA [s. 223(1)(a)];
- (b) the Board's action or decision on a discriminatory action complaint [s. 153];
- (c) an employer's rate group or industry group (for assessment classification purposes) [s. 96.2(2)(c) and (d)];
- (d) the allocation of amounts to or from classes, subclasses or reserves, except as specified above [s. 96.2(2)(e)];
- (e) a decision to reopen, or not to reopen, a matter on an "application" under section 96(2) [s. 96.2(2)(g)].

If the employer has ceased to be an employer within the meaning of Part 1 of the WCA, the chief review officer may deem an employers' adviser or an organized group of employers to be the employer [s. 96.2(7) and (8)]. The deemed employer is also deemed to be the employer for the purpose of appealing the review officer's decision to WCAT and for participating in an appeal before WCAT [s. 248(3)].

As soon as practicable after a request for a review has been filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review [s. 96.2(6)].

The review officer must make a decision within 150 days after the Board receives the request for review [s. 96.4(6)(a)]. This is subject to any suspension, extension, or shortening of this time frame, as set out below:

- (a) on application or on the chief review officer's own initiative, the chief review officer may suspend a review in a specific case in order to allow a review officer to deal with related matters at the same time [s. 96.4(5)].
- (b) the chief review officer may extend the time for the review officer's decision, if:
 - (i) the complexity of the proceedings in a review, or
 - (ii) the complexity of the matter under review,makes the time period impractical [s. 96.4(7)].
- (c) the board of directors may by policy shorten the 150-day time frame for decision making by a review officer [s. 96.4(6)(b)].

The review officer may make a decision [s. 96.4(8)]:

- (a) confirming, varying or cancelling the decision or order under review, or
- (b) referring the matter or order under review back to the Board, with or without directions.

Subject to reconsideration, or appeal to WCAT within 30 days, the review officer's decision is final [s. 96.4(9)]. The chief review officer may direct reconsideration of a review officer's decision on his or her own initiative [s. 96.5(1)(a)]. However, the review officer's authority to reconsider on this basis ends with the earlier of [s. 96.5(3)]:

- (a) the passage of 23 days following the review officer's decision, or
- (b) the filing of an appeal to WCAT.

A party may apply to the chief review officer for reconsideration of the review officer's decision on the basis of new evidence. This remedy is only available if the review officer's decision is one which may not be appealed to WCAT under section 239 [s. 96.5(1)(b)]. The chief review officer may direct reconsideration if he or she is satisfied that new evidence has become available or been discovered that [s. 96.5(1)(b)(i) and (ii)]:

- (a) is substantial and material to the decision, and,
- (b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

Each party to a completed review may apply for reconsideration on the basis of new evidence on one occasion only [s. 96.5(2)].

2.20 WCAT Jurisdiction

2.21 General

- (a) A final decision by a review officer respecting a compensation, assessment or occupational health and safety matter is appealable to WCAT within 30 days [s. 239(1), s. 243(1)]. This includes a decision declining to conduct a review under section 96.2.
- (b) A determination, an order, a refusal to make an order or a cancellation of an order by a Board officer under section 153 concerning a discriminatory action complaint is appealable directly to WCAT [s. 240(1)]. The time limit for appealing a Board decision under section 153 to WCAT is 90 days [s. 243(2)].
- (c) A decision to reopen or not to reopen a matter on an application under section 96(2) is appealable directly to WCAT [s. 240(2)]. The Board may reopen a claim on its own initiative, or on application if, since the previous decision by the Board (see item 2.26):
 - (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.The time limit for appealing a Board decision under section 96(2) to WCAT is 90 days [s. 243(2)]. Where the Board makes a reopening decision under section 96(2) on its own initiative, a review may be requested from the Review Division within 90 days (see item 2.10).
- (d) An application under section 257 for a certificate to the court in a legal action is made directly to WCAT. There is no statutory time limit for initiating such an application (see item 20.21).

2.22 Regulations

The Cabinet may make regulations:

- (a) prescribing any decisions or orders under the WCA or the regulations that may be appealed to WCAT under Part 4, prescribing who may appeal those decisions or orders, and prescribing classes of decisions for purposes of section 239(2)(a) as being decisions concerned with the conduct of a review which are not appealable [s. 224(2)(j)];
- (b) respecting the awarding of costs by WCAT in an appeal under Part 4 [s. 224(2)(k.1)] to be paid by one party to another party;
- (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 under Part 4 [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 and extraordinary members [s. 234(2)(a)];
- (g) respecting any matters that are insufficiently provided for, or not provided for, in the transitional provisions (Part 2 of Bill 63) and that are necessary
 - (i) for the orderly transition to WCAT of proceedings before the Review Board and the Appeal Division; and
 - (ii) for the orderly completion of proceedings before the MRP on November 30, 2002, including the delegation to WCAT of all or any of the functions or responsibilities of the Board under sections 58 to 64 of the WCA;
- (h) prescribing rules of practice and procedure for WCAT [s. 60(a), ATA];
- (i) repealing or amending a rule made by WCAT [s. 60(b), ATA].

Regulations were approved and ordered on November 28, 2002 (Orders in Council Nos. 1038 to 1041). Order in Council No. 1150 replaced No. 1041 to provide an effective date of March 3, 2003 (see Appendix 8).

2.23 Compensation issues affecting workers on which a review officer's decision is appealable to WCAT include:

- (a) coverage as a worker under the WCA;
- (b) a decision to accept or deny a claim for a personal injury or occupational disease;
- (c) wage loss;
- (d) 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;

- (e) 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)];
- (f) 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 *Workers Compensation Amendment Act, 2002* (Bill 49);
- (g) the effective date of a permanent disability award assessed under the WCA as amended by Bill 49;
- (h) permanent disability awards which are not based on the application of the Board's rating schedule (non-scheduled awards);
- (i) loss of earnings assessments and awards [s. 23(3)];
- (j) disfigurement awards [s. 23(5)];
- (k) dependants' benefits [s. 17];
- (l) average earnings for short- and long-term wage loss purposes;
- (m) diversion, cancellation, withholding, or suspension of compensation under section 98.
- (n) directions provided by a review officer on referral back of a decision or order to the Board, under section 96.4(8)(b) (see *WCAT Decision #2004-03138*).

2.24 Employer issues concerning assessments or monetary penalties on which a review officer's decision is appealable to WCAT include:

- (a) relief of costs under section 39(1)(d) - disaster fund;
- (b) relief of costs under section 39(1)(e) - pre-existing disease, condition or disability;
- (c) relief of costs for experience rating purposes - section 42;
- (d) charging of costs to an unregistered employer - section 47(2);
- (e) charging of costs to an employer due to delayed notification of injury - section 54(8);
- (f) transfer of claim costs - section 10(8);
- (g) assessment premiums;
- (h) personal optional protection premiums;
- (i) employer classification unit;
- (j) allocations to or from the reserve in aid of industries or classes which may become depleted or extinguished - section 39(1)(b);
- (k) a decision to levy an employer all or part of the compensation (to a statutory maximum set out in section 73(1)(b)) payable to a worker for an injury, death, or disablement from occupational disease, where the Board considers this was due substantially to [s. 73(1), s. 96.2(1)(b), s. 239(1), s. 241(2)]:
 - (i) the gross negligence of an employer;
 - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases; or
 - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of the WCA.

2.25 Occupational health and safety issues or monetary penalties on which a review officer's decision or order is appealable to WCAT include:

- (a) a decision to confirm, vary or cancel a decision regarding an administrative penalty;
- (b) an order [s. 239(2)(e)(i) and (ii)] which imposed, or was relied upon to impose, an administrative penalty under s. 196(1);
- (c) an order by a review officer under section 195 to cancel or suspend a certificate under Part 3 - i.e. 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].

2.26 Direct Appeals to WCAT

There are only two types of decisions by Board officers which are appealable directly to WCAT (with a 90-day time limit). These concern:

- (a) a discriminatory action complaint under section 153, and
- (b) an "application" for reopening of a claim under section 96(2) (see item 2.21(c)).

The right of direct appeal to WCAT from a decision under section 96(2) is limited to situations where the decision follows an "application" by the party rather than a decision on the Board's own initiative. In order to be considered an "application", the party must refer specifically to section 96(2) or must use language substantially similar to that section (see *WCAT Decision #2003-04322*). In considering reopening appeals, WCAT determines whether the matter must be reopened or may not be reopened [s. 253(2)(a) and (b)]. Once a claim has been reopened, an ensuing decision by a Board officer on entitlement is subject to review by the Review Division.

2.30 Other Matters within WCAT's Jurisdiction:

2.31 Certification to Court (see items 20.00 to 20.70)

Section 257 obliges WCAT to make determinations and provide a certificate to the court in certain matters which are relevant to a legal action.

2.32 Extension of Time to Appeal (see item 5.30)

On application, the chair may grant an extension of the time limit for appealing to WCAT where the chair is satisfied that [s. 243(3)]:

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

2.33 Application for Reconsideration (see items 15.23 and 15.24)

Parties may apply for reconsideration of a completed Appeal Division or WCAT decision on the basis of new evidence under section 256. They may also apply to void a WCAT decision on the basis of common law grounds.

WCAT has no authority to reconsider a decision by the former commissioners of the Board (i.e. issued before June 3, 1991).

RULE: A request for reconsideration of a Review Board finding will be treated as a request for an extension of time to appeal. The chair has authority to grant an extension of time to appeal a Review Board finding where the chair is satisfied that [s. 243(3), *Workers Compensation Act Transitional Review and Appeal Regulation*, B.C. Reg. 322/02 (Transition Regulation), s. 2(2) (see Appendix 8)]:

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

2.40 Matters which are Not Appealable to WCAT

2.41 Preliminary or Procedural Decisions by a Review Officer Not Appealable to WCAT

The following classes of decisions respecting the conduct of a review by the Review Division are not appealable to WCAT [s. 224(2)(j), s. 239(2)(a), Appeal Regulation, s. 4(a) to (e)(Appendix 8)]:

- (a) a decision applying a time period specified by the Board under section 96(8) (under which the Board may establish practices and procedures for carrying out its responsibilities, including specifying time periods within which certain steps must be taken and the consequences for failing to comply with those time periods);
- (b) an extension of time decision by the chief review officer under section 96.2(4);
- (c) a decision by the chief review officer to deem an employers' adviser or an organized group of employers to be the employer, where the employer has ceased to be an employer, under section 96.2(7);
- (d) a decision concerning the conduct of a review under section 96.4(2) (subject to any Board practices and procedures for the conduct of a review, a review officer may conduct a review as the officer considers appropriate to the nature and circumstances of the decision or order being reviewed);
- (e) a decision under section 96.4(3) to complete a review based on information before the review officer, or to determine that the request for review is abandoned, where

- a party to the review does not make a submission within the time required by any Board practices and procedures for the conduct of the review;
- (f) a decision under section 96.4(4) to require an employer who is a party to a review respecting a Board order, a refusal to make an order, a variation of a Board order, or a cancellation of a Board order respecting an occupational health or safety matter under Part 3, to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer;
 - (g) a decision by the chief review officer under section 96.4(5), on application or on his or her own initiative, to suspend a review in a specific case in order to allow a review officer to deal with related matters at the same time;
 - (h) a decision by the chief review officer under section 96.4(7) to extend the time period for the making of the Review Division decision, on the basis that the complexity of the proceedings, or of the matter under review, makes the time period impractical;
 - (i) an order by the chief review officer under section 96.2(5) concerning a request for a stay or suspension of the operation of the decision or order under review;
 - (j) a decision by a review officer under section 96.4(8)(b) to refer a decision or order under review back to the Board, with or without directions;
 - (k) a decision respecting the conduct of a review if the review is in respect of any matter that is not appealable to WCAT under sections 239(2)(b) to (e) of the WCA (i.e. vocational rehabilitation issues, commutations, certain permanent disability awards involving no range or a range that does not exceed 5%, and certain prevention orders) (see item 2.23(f)).

2.42 Orders under Part 3 (Occupational Health and Safety) Not Appealable to WCAT

Decisions by review officers concerning the following types of orders are appealable to WCAT [s. 239(2)(e)]:

- (a) an order relied upon to impose an administrative penalty under section 196(1);
- (b) an order imposing an administrative penalty under section 196(1); or
- (c) an order made under section 195 to cancel or suspend a certificate.

Any other decision respecting an order under Part 3 of the WCA is not appealable to WCAT. (A decision to levy claim costs on an employer under s. 73(1) of the WCA is a decision under Part 1 which is appealable to WCAT).

An order concerning the placement of a condition on the use of a certificate under section 195(1)(b) of Part 3 is not appealable to WCAT.

2.43 Other Substantive or Merit Decisions of a Review Officer which are Not Appealable to WCAT

Other substantive or merit decisions of a review officer which are not appealable to WCAT are:

- (a) decisions respecting vocational rehabilitation, [s. 16, s. 239(2)(b)];
- (b) in connection with a permanent disability award, the amount of the percentage award where this involves the application of a rating schedule compiled by the Board where the specified percentage of impairment in the schedule has no range or has a range that does not exceed 5% [s. 239(2)(c)];
- (c) decisions respecting commutations [s. 35, s. 239(2)(d)].

A review officer has authority to review an employer's classification unit, but not the rate group or industry group. The review officer's decision concerning the employer's classification unit may be appealed to WCAT. As the rate group or industry group is not addressed by a review officer, it follows that these may not be appealed to WCAT.

2.44 Constitutional Questions

WCAT does not have jurisdiction over constitutional questions [s. 44(1), ATA]. "Constitutional questions" are defined by the ATA as questions requiring notice under section 8 of the *Constitutional Question Act*. 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*.

3.00 INITIATING THE APPEAL OR APPLICATION

3.10 Who May Appeal

Only persons directly affected by a decision have standing to appeal [s. 241].

A decision by a review officer concerning compensation may be appealed by [s. 241(1)]:

- (a) a worker;
- (b) a deceased worker's dependant;
- (c) an employer (see items 4.31 and 4.38).

An employer or an independent operator who is directly affected by a decision of the review officer may appeal a decision respecting [s. 241(2)]:

- (a) an assessment or classification matter (including personal optional protection coverage),
- (b) a monetary penalty or order to make a payment to the Board concerning the costs of a claim where:
 - (i) the employer was not registered with the Board at the time of a worker's injury or disease [s. 47(2)];
 - (ii) the employer was late in reporting the injury or disease to the Board [s. 54(8)]; or
 - (iii) the injury, death or disablement was due substantially to the fault of the employer as defined in section 73(1).

A decision by a review officer respecting an occupational health and safety matter under Part 3 may be appealed by [s. 241(3)]:

- (a) a worker;
- (b) an employer (see items 4.31 and 4.38);
- (c) an owner [s. 106];
- (d) a supplier [s. 106];
- (e) a union [s. 106];
- (f) a member of a deceased worker's family.

A Board determination, order, refusal to make an order, or cancellation of an order made under section 153 on a discriminatory action complaint may be appealed to WCAT by [s. 241(4)]:

- (a) a worker;
- (b) an employer (see items 4.31 and 4.38);
- (c) a union [s. 106].

A decision to reopen or not to reopen a claim on an application under section 96(2) may be appealed by a worker or an employer [s. 241(5)] (see item 2.26).

If the employer has ceased to be an employer within the meaning of Part 1, WCAT may deem an employers' adviser or an organized group of employers to be the employer. If the Review Division deemed an employers' adviser or an organized group of employers to be the employer, WCAT will deem them to be the employer [s. 248] (see items 2.10 and 4.38).

3.20 Deceased Worker - Standing of Estate

RULE: The estate of a deceased worker has the right both to initiate an appeal to WCAT and to continue an appeal on behalf of a deceased worker concerning a claim for arrears of compensation up to the date of the worker's death. Documentation is required to establish the identity of the estate's representative. This may include:

- (a) the Letters of Administration or Letters Probate; or
- (b) a copy of the will if the estate is small and probate is not required; or
- (c) a statutory declaration or other form of evidence where there is no will and the estate is small or substantially held in joint tenancy.

3.30 Federally Regulated Workers

The *Government Employees Compensation Act* (GECA) does not contain an appeal provision. However, section 4(2) of the GECA provides that federally regulated workers are entitled to receive compensation under the same provisions as are provided by provincial law. Accordingly, federally regulated workers and their employers have the same appeal rights as provincially regulated workers and employers.

3.40 How to Appeal

An appeal may be initiated by filing a notice of appeal with WCAT. A notice of appeal must [s. 242(2)]:

- (a) be made in writing or in another form authorized by the appeal tribunal's rules,
- (b) identify the decision or order that is being appealed,
- (c) state why the decision or order is incorrect or why it should be changed,
- (d) state the outcome requested,
- (e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
- (f) include an address for delivery of any notices in respect of the appeal, and
- (g) be signed by the appellant or the appellant's agent.
(also see items 9.60 and 14.30 concerning issues identified in the appeal).

If the notice of appeal is deficient, WCAT will allow a reasonable time for it to be corrected [s. 242(3)].

3.41 Rule for Initiating Appeals

Appellants or their representatives may initiate an appeal by completing a notice of appeal form which includes an authorization for WCAT to obtain additional medical records or other evidence. If the appeal is initiated by a representative, the appellant must provide authorization for the representative to act (see item 4.20).

WCAT may at any time require an appellant to provide a current authorization to obtain additional medical records or other evidence. Where an appellant fails to comply with such a requirement within the time specified, WCAT may dismiss the appeal, after giving the appellant an opportunity to make submissions.

An appeal may be initiated in any form which produces a written record of the appeal. This may be done by delivering, mailing or sending by facsimile transmission (fax) a completed notice of appeal to WCAT, or by providing the required information in a letter. WCAT notice of appeal forms may be printed from the WCAT website at: www.wcat.bc.ca WCAT will treat receipt of a written intention to appeal by the Review Division or by any Board office as receipt by WCAT.

A brief explanation as to why the decision or order is incorrect is sufficient for compliance with section 242(2)(c).

WCAT will accept telephone notice of intent to appeal for the purpose of meeting the 30- or 90-day time limit. In those circumstances, a registration clerk will provide the appellant with the WCAT appeal number and will promptly write to the appellant to confirm receipt of the telephone notification and advise that a written notice of appeal must be submitted within 21 days. If an appellant does not receive confirmation of the telephone notification, they should contact WCAT promptly to verify that the appeal was received

Where the appeal is initiated by telephone or by letter, WCAT will require the appellant or authorized representative to submit a notice of appeal within a further 21 days or the appeal will be dismissed, after giving the appellant an opportunity to make a submission [s. 31, ATA].

3.50 Rule for Incomplete Notice of Appeal

Where the notice, letter or other method of initiating the appeal does not contain all the necessary information, the appellant will be required to complete a notice of appeal within 21 days. The appeal will be dismissed if WCAT does not receive the completed form within 21 days, after giving the appellant an opportunity to

make a submission [s. 31(2), ATA]. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 243(3) and item 5.30).

4.00 REGISTRATION OF APPEALS OR APPLICATIONS: SCREENING AND STREAMING

4.10 Registration

The registrar's office will register appeals and other applications and screen them for compliance with preliminary requirements. The registrar's office will determine whether:

- (a) additional information is required;
- (b) to dismiss the appeal for lack of jurisdiction [s. 31(1)(a), ATA];
- (c) to dismiss the appeal for failure to comply with a WCAT order, e.g. failure to provide information within the time ordered [s. 31(1)(e), ATA];
- (d) an extension of time to appeal is required;
- (e) a valid authorization has been provided by the appellant;
- (f) there is a respondent, other person or representative group, or deemed employer to be notified of the appeal;
- (g) the appeal or other matter should be handled in the "fast track", "regular", or "specialty" stream. For appeals in the regular stream, the registrar's office will decide whether the appeal should proceed by way of written submissions or an oral hearing (see item 4.40).

Before dismissing an appeal for lack of jurisdiction or failure to comply with a WCAT order, WCAT will give the appellant an opportunity to make a submission [s. 31(2) ATA].

As soon as practicable, WCAT must notify the Board of an appeal [s. 245(2)]. The registrar's office will notify the Board of the appeal once it has determined that there is a valid appeal and has identified any participating respondents (including deemed employer or other persons). The Board must then, as soon as practicable, provide WCAT and the participating parties with a copy of relevant records [s. 245(3)]. WCAT's 180-day time frame for issuing its decision starts once WCAT receives the Board's records.

4.20 Representatives

Section 32 of the ATA allows a party to be represented by counsel or an agent. "Lay" representatives are not considered in breach of the *Legal Profession Act* when acting on behalf of a person on a WCAT matter [s. 94.1].

Practice Directive on Representative Authorizations

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

If more than two years has elapsed since the party authorized the representative to act, WCAT will require a current authorization.

Where a party is represented by a new representative, the party must provide a current authorization, such as a notice of appeal signed by the appellant naming the representative, or notice of participation signed by the respondent naming the representative. Parties may instead provide separate authorizations. WCAT will also accept the same form of authorization accepted by the Board and the Review Division.

This Practice Directive does not apply to appeals transferred to WCAT from the Review Board on March 3, 2003 where the representative was named prior to that date. For those appeals, WCAT will not require formal representative authorizations.

4.30 Respondents and Other Participants

WCAT will notify respondents of the appeal or other application, and ask them to complete and return a notice of participation if they wish to participate. WCAT will also advise respondents of their right to disclosure (or updated disclosure) of the related Board records and will ask them to select whether they wish the Board's records to be sent to them or to their representative. Respondents may expressly waive their right to disclosure. Respondents who do not complete the waiver will receive disclosure of the Board records [s. 245(3)] if they submit the notice of participation.

Participating respondents are entitled to the following:

- (a) copies of all written documentation provided or obtained during the appeal process, apart from memoranda which are protected by solicitor-client privilege;
- (b) notice of an oral hearing (if one is held);
- (c) an opportunity to file new evidence and written submissions.

If the respondent does not submit a notice of participation, WCAT will provide no further information or notices concerning the appeal, apart from a copy of the final decision. However, where the panel is considering a new decision issued by the Board following a referral back under section 246(3), WCAT will re-notify a non-participating respondent of the new decision.

Failure to complete a notice of participation would not preclude a panel from hearing from the respondent. For example, if the respondent appeared at an oral hearing, they would have the right to be heard. More than one employer may be entitled to participate in a worker's appeal. This might occur where the worker's disability may be due to work injuries under two or more different claims with different employers. It might also occur where the worker is suffering from an occupational disease which may be due to work exposures in multiple places of employment with different employers. Deemed employers may also participate as respondents in such situations.

Practice Directive on Disclosure of Board Records to Respondents

Sections 245(2) and (3) provide that, as soon as practicable, WCAT must notify the Board of an appeal and the Board must provide the parties to the appeal with a copy of its records respecting the matter under appeal. WCAT has concurrent obligations under section 260 of the WCA and FIPPA to respect the confidentiality of records. Accordingly, prior to providing formal notification to the Board of an appeal, WCAT will review the notice of appeal to ensure that the basic requirements for initiating an appeal have been met, and invite the respondent(s) to complete a notice of participation.

4.31 Successor Employers

Where the employer is no longer registered with the Board, and the review officer has identified a successor employer, WCAT will treat the successor employer as the employer for the purposes of the appeal.

4.32 Participants in Assessment Appeals

Where another employer or group of employers may be directly and substantially affected by the outcome of an assessment classification appeal, WCAT may invite those persons to participate in the appeal.

Similarly, where an assessment appeal concerns whether a putative employer is liable for assessments for its “workers”, or whether the alleged workers are independent operators, WCAT may invite the workers/independent operators to participate. WCAT may determine the appropriate means to invite participation (such as by letter, posting of a notice in the workplace, or other public notice) and the extent of their participation (such as written submission only, or selection of one representative to speak on their behalf at an oral hearing).

4.33 Participants in Employer Cost Transfer Appeals - Section 10(8)

Where an employer appeals a review officer’s decision under section 10(8), the other employer will be a respondent. The injured worker will also be invited to participate as an interested person, as the worker may have relevant information to provide.

4.34 Participants in Employer Relief of Costs Appeals

On employer appeals concerning relief of claim costs under section 39(1)(e), on the basis of a worker’s pre-existing disease, condition or disability, the worker will be invited to participate as an interested person. The worker’s evidence as to their prior medical and employment history may be relevant.

If the employer has also appealed a decision concerning a worker’s entitlement to compensation, these appeals may be considered together by the panel. The worker will be invited to participate as a respondent if the appeal concerns the application of section 5(5) of the WCA, dealing with proportionate entitlement.

4.35 Unregistered Employer Charged with Claim Costs - Section 47(2)

WCAT will not normally notify any respondent of an employer's appeal concerning the charging of claim costs due to lack of registration at the time of a worker's injury or disease.

If the employer has also appealed a decision concerning a worker's entitlement to compensation, these appeals may be considered together by the panel. The worker will be invited to participate as a respondent.

4.36 Participants in Prevention Appeals

On an appeal concerning an administrative penalty under section 196, the joint committee or worker health and safety representative, and the worker representative indicated on the initiating inspection report (if any), will be invited to participate as they may have relevant information to provide.

4.37 Other Participants

Section 246(2)(i) provides that WCAT may request any person or representative group to participate in an appeal if WCAT considers that this participation will assist WCAT to fully consider the merits of the appeal.

WCAT may notify an organized group of workers or employers where a case involves an important issue of policy or significant financial value or the input of the organized group of workers or employers would be of assistance to the panel.

On an appeal or section 257 application which raises the question as to whether an organization's representatives are workers or independent operators, WCAT may invite participation by the putative employer and all the workers/independent operators as the decision could affect their status (see item 4.32).

WCAT may determine the extent to which such persons may be permitted to participate in a proceeding.

4.38 Deemed Employers

Where the employer has ceased to be an employer within the meaning of Part 1 of the WCA, WCAT may deem an employers' adviser [s. 94] or an organized group of employers to be the employer [s. 248(1)]. In the latter case, the organized group of employers must include employers in the subclass of industry to which the employer who has ceased to be an employer belonged [s. 248(2)].

Where the chief review officer deemed an organized group of employers or the employers' adviser to be the employer for the purposes of a review, that person is deemed to be the employer for the purposes of appealing the review officer's decision

to WCAT and participating in the appeal. Accordingly, an employer's right of appeal to WCAT may be exercised by a "deemed employer" [s. 248(3)].

Where the employer has ceased to be an employer, but the chief review officer did not deem any person to be the employer, WCAT will consider deeming an employers' adviser or an organized group of employers to be the employer in the following situations:

- (a) an employers' adviser or an organized group of employers seeks to appeal a decision to WCAT;
- (b) there are issues which could be best resolved with the addition of an employer submission;
- (c) there is evidence which is best tested with the participation of a representative of the employer;
- (d) an employer representative could provide helpful factual information about circumstances affecting the issue in a case;
- (e) the appeal or application involves a significant issue concerning the interpretation of law or policy; or,
- (f) the appeal or application may involve an issue having a significant financial value.

Organized groups of employers (industry associations) who wish to participate in claims appeals where the employer has ceased to be an employer within the meaning of Part 1 of the WCA, should apply to WCAT, in writing, and identify:

- (a) the employer classifications or sectors for which they would like to participate;
- (b) the individual authorized to represent the organized group of employers;
- (c) their commitment to comply with sections 95 and 260 of the WCA concerning the privacy of information on claim files.

Where the employers' adviser, or an organized group of employers, is deemed to be the employer under section 248, they have the same standing to participate in the appeal as an employer. A deemed employer may initiate an appeal, obtain disclosure, and provide evidence and submissions as either an appellant or respondent.

4.40 Streaming: Regular, Complex, or Specialty

The registrar's office will designate each appeal to the regular, complex, or specialty stream. An appeal is considered to be complex when it is procedurally, rather than substantively, complex.

- (a) In the regular stream, an appeal liaison will provide ongoing contact with the parties. An appeal assessor will make a preliminary determination as to whether the matter should proceed on the basis of written submissions or an oral hearing. A panel will be assigned once written submissions are complete or an oral hearing is scheduled.

- (b) In the complex stream, an appeal coordinator will provide ongoing contact with the parties. An appeal assessor will normally make a preliminary determination as to whether the matter should proceed on the basis of written submissions or an oral hearing. A panel will be assigned once written submissions are complete or an oral hearing is scheduled.
- (c) In the specialty stream, the appeal will be assigned to a panel at the outset, and the panel will determine whether the appeal should be by way of written submissions or an oral hearing. Prevention appeals, including a discriminatory action matter under section 153 and assessment appeals will normally be designated to the specialty stream. The registrar's office will designate other appeals to the specialty stream based on procedural complexity.

Practice Directive on Streaming

In determining whether a case should be assigned to the complex and specialty streams, the registrar's office may consider:

- (a) the nature of the dispute;*
- (b) whether the issues are new or unusual;*
- (c) the complexity of the issues, facts and evidence;*
- (d) the number of participants involved (parties and witnesses);*
- (e) whether a pre-hearing conference may be appropriate;*
- (f) the estimated duration of the hearing;*
- (g) the remedies being sought;*
- (h) the potential for a jurisdictional challenge;*
- (i) whether there are multiple appeals with common or similar subject matter;*
- (j) whether the appeal raises an issue of special interest or significance to the workers' compensation system as a whole;*
- (k) whether the appeal raises a significant issue concerning the interpretation of the WCA or policy,*
- (l) whether the appeal raises a significant issue as to the lawfulness of policy under the WCA;*
- (m) the likelihood of settlement by means of alternative dispute resolution;*
- (n) whether the appeal concerns occupational disease causation;*
- (o) whether the appeal involves an administrative penalty;*
- (p) whether the appeal concerns an employer's assessment classification unit;*
- (q) whether the appeal involves a sexual assault of a worker;*
- (r) whether the appeal concerns a claim for compensation for mental stress under section 5.1 of the WCA;*
- (s) whether the application concerns a request for a certificate to the court under section 257 in a legal action.*

4.50 Panel's Authority

Panels have the authority, in any appeal, to consider:

- (a) whether the appeal should proceed by written submissions or an oral hearing, by teleconference, videoconference, or other electronic means;
- (b) whether to convene a pre-hearing conference [s. 246(2)(e)];
- (c) whether to request medical advice under section 249 and if so, whether findings of non-medical fact are required;
- (d) whether to require pre-hearing disclosure of evidence [s. 246(2)(f)];
- (e) who should participate [s. 246(2)(i)];
- (f) the requirements for any oral hearing (date, location, duration, interpreter);
- (g) whether other evidence should be requested [s. 246(2)(a), (b) and (c), s. 247];
- (h) whether the Board should be requested to investigate a matter further and report in writing to WCAT [s. 246(2)(d)];
- (i) whether there should be a pre-hearing examination of a party on oath or affirmation or by affidavit [s. 246(2)(f)];
- (j) whether alternative dispute resolution (ADR) is appropriate;
- (k) whether to require an employer to post a notice to bring a prevention appeal to the attention of the employees [s. 246(2)(h)];
- (l) whether to deem the employers' adviser or an organized group of employers to be the employer [s. 248];
- (m) whether a matter should be referred back to the Board for determination of a matter that should have been determined with suspension of the appeal pending the Board's determination [s. 246(3)];
- (n) whether an appeal should be suspended pending the Board's decision on a related matter [s. 252];
- (o) whether a request should be made to the Board as to the policy of the board of directors that is applicable to the matter under appeal [s. 245(4)];
- (p) any other preliminary matters which would normally be addressed by the registrar's office.

5.00 PROCEDURAL OR SUMMARY DECISIONS

5.10 General

WCAT decisions are of two types. “Merit” decisions involve the weighing of evidence and argument, and provide a final outcome. “Procedural” or “summary” decisions are concerned with the steps or processes in the appeal, including the dismissal of an appeal without a decision on its merits.

Procedural or summary decisions may be provided by a formal numbered WCAT decision (to be posted on the internet as part of the body of WCAT decisions without identifiers), or by a letter. They may be issued by the registrar’s office or by a WCAT panel. They may concern:

- (a) an application for an extension of time to appeal to WCAT;
- (b) a request for a stay of a Board decision pending the outcome of the appeal;
- (c) jurisdictional issues, such as whether a party has standing to initiate the appeal, or whether the issue is one within WCAT’s jurisdiction;
- (d) a dismissal of an appeal;
- (e) a suspension of an appeal;
- (f) a request by a party for additional time for submissions;
- (g) a request by a WCAT panel for additional time to make its decision; or,
- (h) an appellant’s request to withdraw an appeal.

5.11 Dismissal of Appeals or Applications

Section 31(1) of the ATA allows WCAT to dismiss all or part of an appeal or application if any of the following apply:

- (a) the appeal is not within WCAT’s jurisdiction;
- (b) the appeal was filed out of time;
- (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the appeal was made in bad faith or filed for an improper purpose or motive;
- (e) the appellant failed to diligently pursue the appeal or failed to comply with a WCAT order;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding.

Section 31(2) of the ATA requires WCAT to give the appellant an opportunity to file a written submission or otherwise be heard before dismissing an appeal. Section 31(3) of the ATA requires WCAT to issue a written decision, with reasons, for dismissing an appeal.

5.20 Service of Decisions and Other Documents

Under section 221 of the WCA

- (1) a document that must be served on or sent to a person under this Act may be
 - (a) personally served on the person,
 - (b) sent by mail to the person's last known address, or
 - (c) transmitted electronically, by facsimile transmission or otherwise, to the address or number requested by the person.
- (2) If a document is sent by mail, the document is deemed to have been received on the 8th day after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

Service by fax transmission or by e-mail is only used where requested and at WCAT's discretion [s. 221(1)(c)]. The page produced by the fax machine that shows the number dialed and that the fax was successfully sent, or a printout of an e-mail which was sent, will suffice for this purpose.

The presumption of service set out in sections 221(2) and (3) does not apply if the party receives the document late due to absence, accident, illness or other cause beyond their control, so long as they act in good faith [s. 221(4)].

Proceedings are not invalidated due to irregular service if the party to be served knew about the content of the document within the time allowed for service, the party consents, or the failure to serve does not prejudice the person or the prejudice can be cured by other means [s. 221(5)].

Where service under section 221(1) is impractical, WCAT may notify parties of a hearing by public advertisement or other means [s. 221(6)].

RULE: Parties must inform the Board and WCAT of any change of address. Where a party fails to do so, evidence that they did not receive a document because it was mailed to their prior address will not rebut the presumption of deemed delivery under section 221(2). (See also items 9.24 and 10.10 re failure to attend a hearing or provide written submissions.)

If a decision is served or sent by personal service (delivery to the affected person), or by electronic transmission, the time period runs from the date of service and the eight days for mailing does not apply.

If the last day for filing an appeal falls on a weekend or public holiday, the time for filing is extended to the first business day when WCAT's offices are open [s. 25, *Interpretation Act*].

Practice Directive on Returned Mail

If mail to the appellant is returned as undeliverable, WCAT will try to contact the appellant. Where WCAT is unable to locate the appellant, WCAT will consider that the appellant has failed to comply with the above rule and the following will apply:

- (a) *If the matter has been scheduled for an oral hearing, the oral hearing will be cancelled;*
- (b) *WCAT will send a final notice to the appellant's last known address, advising that in the absence of a response within 21 days WCAT will:*
 - (i) *continue with the proceedings and make a decision based upon the notice of appeal, any submissions received and the evidence on file; or,*
 - (ii) *dismiss the appeal.*

5.30 Extension of Time

There is a 30-day time limit for appealing a decision by a review officer to WCAT. There is a 90-day time limit for appealing a decision by a Board officer concerning a discriminatory action complaint (under s. 153), or concerning a reopening application (under s. 96(2)) to WCAT (see item 2.26).

The chair has discretion to extend the time to appeal under section 243(3). There are three requirements for an application under section 243(3) to be successful:

- (a) the chair must be satisfied that special circumstances precluded the filing of the appeal on time;
- (b) the chair must be satisfied that an injustice would result if the extension were not granted; and
- (c) the chair must exercise the discretion to extend time in favour of the applicant.

Practice Directive on Extension of Time

An application for an extension of time to appeal will normally be considered on the basis of written submissions. WCAT will invite the respondent to participate. Applicants must provide reasons for not appealing within the statutory time period, and also reasons for any further delay after the expiry of that period. If the applicant fails to provide reasons, WCAT may dismiss the extension of time application.

5.31 Special Circumstances Precluded

Special circumstances must preclude the filing of the appeal on time. The definition of “special” includes “unusual”, “uncommon”, “exceptional” and “extraordinary”. In the context of section 243(3), “preclude” does not mean “absolutely prevent”. It may include “prevent”, “hinder”, “impede”, or “delay” (see *WCAT Decision #2003-01810*). In the context of an extension of time application, panels will not consider the merits of the appeal.

The following factors may be considered in deciding whether special circumstances precluded the filing of an appeal on time:

- (a) the date on which the applicant actually received the decision under appeal;
- (b) if there was a delay in receipt of the decision, the reason for the delay (e.g. inaccurately addressed mail, applicant out of town);
- (c) whether the applicant was aware of the right of appeal and the time limit for initiating the appeal;
- (d) whether the applicant has obtained significant evidence which, at the time the decision was issued, either did not exist or existed but was not discovered and could not through the exercise of reasonable diligence have been discovered (see *WCAT Decision #2004-00433*); and,
- (e) whether the applicant took all reasonable steps to ensure a timely appeal.

Additionally, in considering whether acts and omissions of representatives constitute special circumstances that precluded the filing of the appeal on time, WCAT will take into account the following factors (see *WCAT Decision #2003-04175*):

- (a) whether, within the relevant appeal period, the party instructed a representative to appeal;
- (b) whether the party gave appeal instructions promptly (early in the appeal period);
- (c) whether the party followed up with the representative within the appeal period to ensure that the representative initiated the appeal;
- (d) whether the party was in any way responsible for the delay;
- (e) whether the representative acted as quickly as possible to appeal as soon as the delay was brought to their attention;
- (f) if the party is no longer represented, whether the party acted as quickly as possible to appeal as soon as they became aware of the delay; and
- (g) any other relevant circumstances particular to the case.

5.32 Injustice

In order to extend the time to appeal, an injustice must result from the refusal to grant the extension. “Injustice” means “unfairness”, “lack of justice”, “wrong”. In determining whether “an injustice would otherwise result”, the chair will consider the significance of the matter under appeal (i.e. the magnitude or importance of the issues under appeal). The chair will consider other factors which may be relevant to this requirement,

including whether a refusal to extend the time where there is a clear error of law on the face of the decision would constitute an injustice.

5.33 Exercise of Discretion

If the two criteria in section 243(3) are met, the chair must then decide whether to exercise the discretion to extend the time to appeal. The following factors will be considered in this context:

- (a) the length of the delay;
- (b) the reasons for any delay beyond the expiry of the appeal period;
- (c) whether the applicant acted promptly to initiate an appeal when they became aware of the decision, the time limit for appealing, or the significant new evidence that would support the appeal;
- (d) whether there is prejudice to the respondent resulting from the delay.

5.40 Stay of Decision under Section 244

Unless WCAT orders otherwise, an appeal to WCAT does not operate as a stay or affect the operation of that decision or order [s. 244]. Panels will consider the following factors in determining whether to issue a stay:

- (a) whether the appeal, on its face, appears to have merit;
- (b) whether the applicant would suffer serious irreparable harm if the stay were not granted (for example, loss of a business);
- (c) which party would suffer greater harm or prejudice from granting or denying a stay; and,
- (d) in the context of occupational health and safety, whether granting a stay would endanger worker safety.

This list is not exhaustive, and other factors may be taken into account. An application for a stay will generally be dealt with as a preliminary matter on the basis of written submissions. If no particulars or reasons are provided with the request, the request for a stay will not be considered.

Practice Directive on Stay of Decision

The applicant will normally be required to provide written submissions in support of a stay application together with the notice of appeal or within a further seven days. If the applicant fails to provide written submissions, WCAT may dismiss the stay of decision application.

WCAT will send the submissions to the other parties who will be given seven days to respond. The requesting party will then have five days to provide rebuttal. The chair will issue a written decision on the stay request as soon as practicable once submissions are complete.

5.50 Suspension of an Appeal

5.51 General

The WCA authorizes the chair to suspend appeals in four situations, thereby interrupting the statutory time frame for decision making. Suspensions in the first three situations result in the matter being automatically returned to WCAT for further action. However, in the fourth situation, WCAT will dismiss the appeal unless the appellant asks WCAT to proceed within 30 days of the further Board decision.

5.52 Suspension for WCAT Referral of an Undetermined Matter Back to the Board

If WCAT considers there to be a matter that should have been determined but that was not determined by the Board, WCAT may refer that matter back to the Board for determination and suspend the appeal until the Board makes that determination [s. 246(3)]. Before referring the matter back, the WCAT panel may make findings of fact or resolve other issues. These will be included in the referral which will be issued in a numbered WCAT decision.

If WCAT refers a matter back to the Board under section 246(3), WCAT must take the Board's determination into account in deciding the original appeal and no review may be requested of that determination by a review officer [s. 246(4)]. If the Board makes other new decisions which result from the referral but do not directly address the matter referred, they are reviewable by a review officer.

When WCAT receives the Board's determination requested under section 246(3), the suspended appeal will be reactivated. A non-participating respondent will be notified of the Board's new decision and the parties will be provided with the opportunity to make submissions. The WCAT panel then has jurisdiction to deal with the whole matter, including the Board's further determination.

5.53 Suspension re Independent Health Professional Advice

Where WCAT retains an independent health professional to provide advice in respect of a specific appeal under section 249, the appeal will be suspended from the provision of the terms of reference to the health professional, until the health professional provides the report to WCAT [s. 249(12)] (see items 11.00 to 11.60).

5.54 Suspension re Lawfulness of Policy

If a panel considers that a policy of the board of directors should not be applied on the ground that the policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations [s. 251(1)], that issue must be referred to the chair and the appeal must be suspended until the chair or the board of directors, as the case may be, makes a determination. If the chair refers the issue to the board of directors, the chair must also suspend any other pending appeals that are affected by

the same policy until the board of directors makes a determination [s. 251(5)(b)] (see item 12.40).

5.55 Suspension Pending a Board Decision on a Related Matter

On application by the appellant, or on the chair's own initiative, the chair may suspend an appeal if a Board's decision respecting a related matter is pending [s. 252(1)]. That may involve a matter pending before the Board or a review officer.

WCAT vice chairs, AA's and AC's have delegated authority to suspend an appeal. WCAT vice chairs have delegated authority to continue a suspended appeal early and to extend the time to continue the suspended appeal proceeding (see Decision #6, Appendix 3).

Practice Directive on Suspensions Pending a Board Decision on a Related Matter

An appeal may be suspended under section 252(1) at any time during the appeal proceedings.

If a vice chair, AA or AC is considering suspending an appeal under section 252(1), further submissions from the parties may be sought. Prior to suspending the appeal, the vice chair, AA or AC should be satisfied that:

- (a) there is a "pending" decision of the Board or of a review officer;*
- (b) the pending decision involves a determination of a matter that is "related" to the matter under appeal.*

Once a suspension is granted, the RO will notify all participating parties and clearly identify the pending decision of the Board or a review officer.

When an appeal is suspended, a deferral of compensation payable due to a review officer's decision continues under section 258.

When the Board or review officer renders their determination on the "related matter", the appellant may request WCAT to continue the appeal proceedings within 30 days [s. 252(2)]. WCAT must then continue the appeal.

If the appellant fails to request a continuation of the proceedings within the specified time period, the appeal will be dismissed after giving the appellant the opportunity to make submissions. On application, the vice chair may extend the time to continue the appeal using the criteria for extensions of time [s. 252(4) and item 5.30].

At any time before the further Board decision is issued, the appellant may ask WCAT to continue the appeal proceedings without waiting for the Board decision. The vice chair may grant the request or may continue the suspension [s. 252(3)].

If the pending matter involved a determination by the Review Division and a new appeal is received from that determination, WCAT may consolidate the two proceedings.

5.60 Withdrawals

RULE: An appellant may withdraw an appeal by right at any time before the appeal has been assigned to a WCAT panel. After assignment, the panel decides whether to allow a request for withdrawal. The request for withdrawal will normally be granted. A panel could refuse the withdrawal request where, for example, there is evidence of fraud or misrepresentation by the appellant. Similarly, where there is evidence of an error of law or policy in favour of the appellant, the WCAT panel may refuse the request for withdrawal.

6.00 ALTERNATIVE DISPUTE RESOLUTION

As of December 3, 2004 ADR at WCAT has been limited to discriminatory action appeals under section 240(1) and appeals from classification decisions under section 37(2). It is unlikely that WCAT will utilize ADR to address compensation entitlement issues.

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

A WCAT panel may recommend to the parties to the appeal that an alternate dispute resolution process be used to assist in the resolution of an appeal [s. 246(2)(g)].

The purpose of ADR is to seek a consensual resolution to a dispute, between or among the parties to an appeal. Representatives from the Board may also be involved in the ADR process where appropriate.

ADR is used by WCAT on a limited basis. When ADR will be appropriate will be determined by WCAT based on the particular circumstances of the issue under appeal, and the willingness of the parties of interest to attempt to achieve a consensual resolution. ADR may be requested by a party or recommended by a WCAT panel.

If ADR is undertaken but does not result in a consensual resolution WCAT will proceed to adjudicate the appeal. Unless the parties otherwise agree, evidence or records from an ADR process which does not produce a consensual resolution will be destroyed and will not be placed on file. The appeal will be assigned to a WCAT panel which did not have any involvement in the ADR process in the particular case.

Where a consensual resolution is achieved by the parties, a settlement agreement will be drafted by the parties' representatives, or the mediator may assist in preparing the written agreement after the parties have reached settlement.

The settlement agreement will be reviewed by a WCAT panel, to ensure it is not inconsistent with the WCA. The panel will dispose of the case through a final order, confirming that a consensual settlement was reached which is lawful under the Act. The terms of the settlement will be recorded on the Board file, but need not be contained in the WCAT decision to be published on the internet.

The final consensual settlement and the WCAT decision will both be placed on the Board file. Unless the parties otherwise agree, records concerning the process used to reach the agreement will be destroyed and will not be placed on file.

Where ADR is attempted but is unsuccessful the chair may, where necessary, extend the time for the making of a WCAT decision on the basis of the complexity of the proceedings in the appeal [s. 253(5)(a)].

7.00 TIME FRAME FOR DECISION MAKING

7.10 General

On receipt of an appeal, WCAT must, as soon as practicable, notify the Board of the appeal [s. 245(2)]. Upon receipt of this notice, the Board must, as soon as practicable, provide WCAT and the parties to the appeal with a copy of its records respecting the matter under appeal [s. 245(3)]. WCAT must make its decision within 180 days after receiving a copy of these records from the Board [s. 253(4)(a)]. The 180-day time frame is subject to:

- (a) a shorter time period being prescribed by the Cabinet [s. 253(4)(b), (Note: No regulation has been provided to shorten this time.)];
- (b) a suspension of the appeal on statutory grounds;
- (c) an extension of time by the chair if the complexity of the proceedings or the matter under appeal makes the time period impracticable [s. 253(5)(a)];
- (d) an extension where the appellant requests a delay to submit new evidence or make additional submissions [s. 253(5)(b)].

The chair may extend the time under section 253 even if the applicable time period has expired [s. 253(8)].

The 180-day time frame for decision making applies to all appeals brought under section 239. It does not apply to applications for an extension of time to appeal, for reconsideration, or for certification to the court under section 257.

7.20 Extension of Time for Complexity

The chair may extend the time period, where the complexity of:

- (a) the proceedings in the appeal; or
- (b) the matter under appeal,

makes the time period impractical. The first ground concerns the procedural steps in the appeal, and the second ground concerns the issues or subject matter of the appeal.

The chair will normally consider an extension on the ground of complexity after the panel has reviewed written submissions or after an oral hearing.

7.30 Extension of Time – Request by Parties (see also item 10.10)

The chair may extend time to the appellant for submission of new evidence or to make further submissions for not more than 45 days [s. 253(6)]. On application by the respondent or other parties, the chair must also extend the respondent's time to submit new evidence or make further submissions for an additional period not exceeding that granted to the appellant [s. 253(7)].

A respondent cannot be granted additional time unless the appellant requested and was granted additional time [s. 253(6)]. A respondent does not have to provide reasons for requesting more time under section 253(7).

Extensions of time under sections 253(6) and (7) are provided by the RO on appeals that are proceeding by written submissions. They will not occur where an oral hearing is being held except where there has been a section 246(3) referral of an undetermined matter to the Board (see item 5.52).

7.40 Time Periods for Steps in an Appeal

New documentary evidence must be submitted at least 21 days in advance of the oral hearing so that it may be disclosed to other participating parties. Any expert's report, or other documentary evidence, must be provided to WCAT a minimum of 21 days in advance of an oral hearing.

In order to apply the 180-day time frame effectively, the chair or delegate may establish time periods for steps in the appeal process [s. 234(2)(d)(i)]. If a party fails to comply with a WCAT order or rule of practice and procedure, including time limits specified for taking any actions, WCAT may, after giving notice to that party [s. 246(5)]:

- (a) schedule a written, electronic or oral hearing;
- (b) continue with the appeal and make a decision based upon the evidence before it, with or without providing an opportunity for further submissions or,
- (c) dismiss the application.

In order to allow panels adequate time for decision writing, all written submissions should be complete, or the oral hearing held, within the first 90 days of the 180-day period.

7.50 120-Day Fast Track

Practice Directive regarding Fast Track Appeals

Appellants may request an expedited or "fast track" appeal where:

- (a) *the appellant is not requesting an oral hearing; and,*
- (b) *the appellant provides their written evidence and submissions together with the notice of appeal.*

WCAT will allow respondents on fast track appeals 21 days to file their submissions and new evidence. The appellant will then be granted seven days for rebuttal.

Panels on fast track appeals will try to issue their decisions within 120 days or less. However, panels may require additional time for complexity or for additional inquiry

(either in writing or by way of an oral hearing). Panels may still request the chair to extend the time period for complexity.

8.00 DECISION-MAKING PROCESS

8.10 Panels

Panels decide appeals or applications to WCAT. The chair must establish the panels. A panel has the power and authority of WCAT in considering an appeal [s. 238(8)].

Appeals will normally be heard by a single member panel, consisting of the chair or a vice chair sitting alone [s. 238(4)].

The chair may also appoint a three-member panel under section 238(5). There are two types of three-member panels:

- (a) a non-representational panel, consisting of the chair or a vice chair acting as the presiding member, plus two vice chairs [s. 238(5)(a)];
- (b) a representational panel, consisting of the chair or a vice chair acting as the presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests [s. 238(5)(b)].

As most appeals will be heard by single member panels, the parties will not be asked to express a preference as to the composition of the panel. The chair will appoint three-member panels under section 238(5) based on the complexity and significance of the issues raised in an appeal.

The chair may [s. 238(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. 238(11)].

8.20 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 which does not include an extraordinary member will consist of the chair or a vice chair as the presiding member, plus two to six vice chairs.

A precedent panel may also consist of the chair or a vice chair acting as the presiding member, plus one extraordinary member with experience in employers' interests and

one extraordinary member with experience in workers' interests, plus two to four vice chairs. The extraordinary members must not constitute a majority of the membership of the panel [s. 238(7)(b)]. When extraordinary members are included on the panel, the precedent panel will consist of five to seven members in total.

If a member of a precedent panel is unable to complete the appeal, the chair may direct the remaining members of the panel (a "quorum") 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 [s. 250(3)]:

- (a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances in the panel's decision, or
- (b) subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised.

8.30 Consolidation or Joining of Appeals

The chair may order that related matters be considered in one hearing [s. 234(2)(k)]. Section 37(1) of the ATA also gives WCAT the authority to combine appeals or applications, hear them at the same time, or one immediately after the other, or stay one or more appeals or applications until another of them has been determined.

8.31 Combining Appeals from Different Appellants

Where multiple appeals (from different appellants) involve the same general issue, the chair may assign a group of appeals to one panel to be considered in one hearing. The panel will consider what steps, if any, are required to protect the privacy of the parties.

Depending on the circumstances, the panel may issue:

- (a) a "generic" decision, addressing all of the joined appeals;
- (b) a "generic" decision dealing with a common issue raised by the joined appeals, together with individualized decisions on each appeal; or,
- (c) an individual decision on each appeal which takes into account the common evidence or submissions.

8.32 Joining Appeals from the Same Appellant

Where there are multiple appeals from the same appellant, the chair may assign all of the appeals to one panel to be considered in one hearing. Where more than one claim is involved, the panel will consider what steps, if any, are required to protect the privacy of the parties.

8.40 Pre-Hearing Conferences

WCAT may require the parties to attend or participate in a pre-hearing conference to discuss procedural and substantive issues relating to the conduct of an appeal [s. 246(2)(e)]. A pre-hearing conference may assist the panel to:

- (a) identify the issues;
- (b) determine what additional evidence, including any new medical or other expert evidence, will be required, and the time frame for the production of that evidence;
- (c) resolve any procedural issues such as whether an oral hearing will be convened and if so, when and for how long the hearing would be scheduled;
- (d) determine whether an issue should be referred for ADR;
- (e) consider whether the panel should seek advice from a health professional under section 249.

The panel will decide whether a pre-hearing conference should be held. Pre-hearing conferences will generally not be recorded.

8.50 Evidence

8.51 Admissibility of Evidence

WCAT may accept information it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law [s. 246.1]. The following exceptions apply to this general rule:

- (a) panels may exclude any information that is unduly repetitious [s. 246.1(2)];
- (b) notes or records kept by a person appointed by WCAT to conduct a dispute resolution process are inadmissible in WCAT proceedings [s. 246.1(5)];
- (c) the general rule regarding admissibility is subject to the provisions of any other act expressly limiting the extent to which or purpose for which any evidence may be admitted or used. [s. 246.1(4)];
- (d) panels cannot admit anything that would be inadmissible in court based on privilege under the law of evidence [s. 246.1(3)].

8.52 Categories of Privilege

The recognized categories of privilege are solicitor-client privilege, litigation privilege, matrimonial privilege, public interest immunity, settlement negotiation privilege (see item 6.00), privilege against self incrimination, and police informer privilege. Certain communications may also be found to be privileged on a case-by-case basis if the following conditions are met:

- (a) the communications originate in a confidence that they will not be disclosed;
- (b) this element of confidentiality is essential to the full and satisfactory maintenance of the relationship between the parties;

- (c) the relationship must be one which, in the opinion of the community, ought to be diligently fostered; and,
- (d) the injury to the relationship resulting from the disclosure must be greater than the benefit to be gained related to the correct disposition of the appeal.

8.53 Evidence Received in Confidence

Panels may direct that all or part of the evidence, either oral or written, be received in confidence to the exclusion of parties, on terms the panel considers necessary, in the interests of the proper administration of justice [s. 42, ATA].

8.60 Expert Evidence

"Expert evidence" is opinion evidence given by any person whom the panel finds to be an expert, based on the person's qualifications. This could include a physician, vocational rehabilitation consultant, occupational therapist, engineer, accountant, physiotherapist, or occupational hygienist. Evidence by lay or non-expert witnesses, who simply report what they saw or heard, is not "expert evidence".

Sections 10 and 11 of the *Evidence Act*, Revised Statutes of British Columbia (R.S.B.C.) 1996, c. 124, set out the court rules for admitting expert evidence. Section 10(2) states:

This section and section 11 do not apply where a tribunal, commission, board or other similar body enacts or makes its own rules for the introduction of expert evidence and the testimony of experts, and where there is a conflict between any such rules and this section or section 11, those rules apply.

WCAT has made its own rules for the introduction of expert evidence and the testimony of experts.

These rules apply to the provision of expert evidence where an oral hearing will be held. The same principles apply generally to the provision of expert evidence where no oral hearing is being held. In particular, rules (a) to (d) apply to a matter being considered without an oral hearing, subject to WCAT's procedures regarding time frames for filing evidence and submissions, and giving notice to other parties (see item 10.10).

8.61 Rules for Expert Evidence (see item 13.23 concerning expenses)

- (a) Opinion evidence will generally only be accepted from a person the panel recognizes as being qualified by education, training or experience as an expert.**
- (b) The qualifications of the expert should be stated in or with their report. The statement of qualifications in that manner will generally be accepted as evidence of those qualifications. A job title (such as WCB medical advisor, or vocational rehabilitation consultant) or professional designation will**

generally be accepted as evidence of the person's qualifications to hold the position.

- (c) Objections to a person's qualifications as an expert will not generally cause a panel to exclude evidence, but may affect the weight given to the evidence.**
- (d) Written reports prepared by an expert are admissible without the need for the expert to attend an oral hearing. The correspondence requesting the written report of the expert must also be submitted. An expert's oral evidence will be admissible in a hearing, however, even if no written report has been provided. At least 21 days' advance notice must be given to WCAT of any expert who will be attending the oral hearing.**
- (e) Where an oral hearing is to be held, the parties should provide written reports to WCAT promptly after receipt so that they may be disclosed to all participants. Any expert's report must be provided to WCAT a minimum of 21 days prior to an oral hearing.**
- (f) Panels have the discretion to receive a previously undisclosed expert's report at an oral hearing, in which case the panel will determine what steps are necessary to ensure the other party is given an adequate opportunity to respond. In deciding whether to receive the report, the panel will consider the reasons for the failure to submit the report at least 21 days in advance of the hearing, as well as the impact of late evidence on the time limit for issuing the decision. Where the other party would be prejudiced by not having had enough time to respond to the new expert evidence, the panel may:
 - (i) allow an extension of time after the oral hearing for submission of a response;**
 - (ii) postpone the oral hearing; or,**
 - (iii) provide any other relief the panel considers appropriate.****
- (g) WCAT will not require an expert to attend an oral hearing unless the panel believes the attendance is necessary to a fair hearing of the issues or a failure to do so would prejudice a party to the proceeding.**
- (h) In exceptional circumstances, the panel may waive or modify these rules [s. 11(3), ATA].**

8.70 Orders for the Production of Existing Evidence

Section 247(1) provides that, at any time before or during a hearing, WCAT may order a person:

- (a) to attend an oral or electronic hearing to give admissible, relevant evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or;**

- (b) to produce an admissible, relevant document or other thing in a person's possession or control.

Panels may issue an order under section 247(1) on their own initiative, or at the request of a party. Parties requesting an order under section 247(1) will be asked to provide the following information in writing:

- (a) the name and address of the witness or person in possession of the documents or things, and the exact documents or things requested;
- (b) the relevance of the evidence to the issue under appeal;
- (c) whether the witness is willing to attend, or the person is willing to produce the documents or things and, if not, why not.

In deciding whether to issue an order under section 247(1), the panel will consider whether there are other means for obtaining the same evidence, the relevance of the evidence, and, if applicable, the reason for the unwillingness of a witness to attend or to provide evidence voluntarily. An order under section 247(1) in a form approved by WCAT will be signed by the panel (see Appendix 4).

A person served with an order compelling their attendance at a hearing is entitled to conduct money payable by the requesting party at the time of service (*British Columbia Supreme Court Rule 40(38)*). A witness is not obligated to attend if the conduct money is not paid.

A person served with an order compelling the production of documents is entitled to payment of the reasonable costs of copying and delivery payable in advance by the requesting party.

The panel will decide whether the requesting party or WCAT will be responsible for service and payment of conduct money. A party who incurs expenses related to the service of an order under section 247(1) may request reimbursement of those expenses under section 7(1)(b) of the Appeal Regulation.

If a person fails to comply with an order issued under section 247(1), WCAT may apply to the Supreme Court for an order directing compliance [s. 247(1.1)]. The panel may adjourn the hearing to allow for this.

If a person summoned as a witness fails to attend a hearing, take an oath or affirmation, answer questions or produce the records or things in their possession, WCAT may apply to court for committal of that person for contempt [s. 49(1), ATA].

WCAT may order depositions of witnesses (in or out of province) in accordance with the Supreme Court Rules [s. 247(2)].

8.80 Production of Evidence by the Board

An officer, employee, or contractor of the Board may only be compelled to give evidence or produce books, papers, documents and things that [s. 247(3)]:

- (a) relate to the issues in a specific appeal; and
- (b) are necessary for the appeal tribunal to address those issues and to make a decision in the appeal.

A member of the board of directors or an officer, an employee, or a contractor of the Board may not be compelled to give evidence or produce books, papers, documents and things respecting the development or adoption of the policies of the board of directors [s. 247(4)]. This prohibition against compulsion does not prevent voluntary production of these documents.

8.81 Investigation or Adjudication by the Board

To request further investigation or adjudication by the Board, WCAT may:

- (a) ask the Board to investigate further into a matter relating to a specific appeal and report back in writing [s. 246(2)(d)];
- (b) refer a matter back to the Board if the Board should have, but did not, adjudicate the matter initially [s. 246(3)] (see item 5.52);
- (c) on an appeal transferred from the Review Board or Appeal Division, refer a matter back to the Board, with or without directions [s. 38(2) and 39(3), Bill 63].

8.82 Participation by the Board

WCAT may invite the Board to participate in an appeal under its general authority to request participation by “any person” [s.246(2)(i)] (see item 4.37).

8.90 Method of Hearing

WCAT may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally. Oral hearings may be conducted in person, by teleconference, videoconference, or any other electronic means [s. 246(1)].

RULE: WCAT will normally grant a request for an oral hearing where the appeal involves a significant issue of credibility. An oral hearing may also be granted where there are:

- (a) significant factual issues to be determined;
- (b) multiple appeals of a complex nature;
- (c) complex issues with important implications for the compensation system;
- (d) other compelling reasons for convening an oral hearing (e.g. where an unrepresented appellant has difficulty communicating in writing).

WCAT will normally conduct an appeal on a read and review basis where the issues are largely medical, legal, or policy based and credibility is not at issue.

For appeals in the regular and complex streams, the registrar's office will determine at the outset whether the case will proceed by way of written submissions or an oral hearing. For appeals in the specialty stream, the panel will determine the method of hearing (see item 4.40).

Panels have the discretion to change the method of hearing. A panel may decide to convene an oral hearing if the panel considers this necessary or helpful to its decision. If an oral hearing has been scheduled, the panel may conclude that an oral hearing is not necessary to its decision and proceed by way of written submissions.

9.00 ORAL HEARINGS

9.10 General

WCAT holds oral hearings at its Richmond office and in various locations throughout British Columbia. One hour is generally scheduled for a hearing in the regular stream, although more time may be scheduled if considered necessary by WCAT. For cases in the specialty stream, the panel will determine the length of time to be scheduled for the hearing (see item 4.40).

9.20 Scheduling

Practice Directive on Scheduling

If an appellant requests an oral hearing, the appellant must be prepared to proceed with the hearing within one to three months of the request being granted. The parties will normally be given at least four weeks' notice of the hearing date. Due to the large volume of appeals, the registry will schedule oral hearings (regular and complex streams (see item 4.40)) without consultation with the parties. If parties request a change of date within 14 days, it will automatically be granted. Oral hearings in the specialty stream (where the appeal is assigned to the panel at the outset) will normally be scheduled on an individual basis and may involve consultation with the parties.

Where the oral hearing is rescheduled at the request of the parties (regular or complex streams), or where the parties were consulted in the initial scheduling of the hearing (specialty stream), further date changes will be made only for exceptional circumstances (see item 9.21).

9.21 Postponements

RULE: After the 14-day period for automatic date changes expires, postponements will be allowed only for exceptional circumstances. Parties should provide documentation in support of their requests.

Up to 21 days before the hearing, the Registrar's office will decide postponement requests. After that, the panel decides the requests. Where the registrar's office has previously denied a request, a panel will generally not grant a postponement without new and exceptional reasons, and will consult with the registrar's office before granting the postponement.

In considering a postponement request, WCAT may consider a variety of factors including:

- (a) whether the request is made far enough in advance (i.e. at least three weeks in advance of the hearing date) that the hearing can be rescheduled with a minimum of cost and disruption of schedules and/or the hearing date may be made available for another appeal;**

- (b) whether the oral hearing was scheduled in consultation with the parties;
- (c) whether a prior postponement was granted (further requests will generally not be granted);
- (d) the effect of the adjournment on the statutory time period for completing the appeal;
- (e) any prejudice to the other parties balanced against the prejudice to the appellant if the postponement is not granted;
- (f) personal emergencies such as serious medical problems or hospitalization, family crisis, bereavement, and motor vehicle accidents (recognizing that such events may not permit timely notice to WCAT);
- (g) the unforeseeable unavailability of an essential witness.

WCAT may take other factors into account on a discretionary basis. Factors such as a representative's schedule, vacation dates, and convenience to the parties will normally only be considered in the initial rescheduling, and will generally not be grounds for granting a postponement.

Where a hearing is postponed, WCAT will reschedule the hearing having regard to the statutory time frame for decision making. An open-ended postponement of an oral hearing will not be granted.

9.22 Communication of the Postponement Decision

If the postponement request is granted, all parties will be notified by telephone or other means.

If a postponement request is granted directly by a panel (particularly out of town), the panel is responsible for ensuring all participating parties are notified of the postponement.

If the request is denied, the registrar's office (or, if necessary, the panel) will inform the party making the request of the following options:

- (a) attend the hearing, possibly with time for post-hearing submissions;
- (b) participate by telephone, videoconference, or other electronic means;
- (c) proceed by way of written appeal (read and review); or
- (d) in the case of an appellant, withdraw the appeal.

9.23 Late Appearance

An oral hearing will generally not proceed in the absence of the appellant unless the panel agreed to do so in advance of the hearing. If the appellant's representative appears at the hearing, with instructions from the appellant to proceed in the appellant's absence, the panel has the discretion to proceed or not proceed with the hearing.

If the appellant appears within 15 minutes of the scheduled hearing time, the panel will proceed with the hearing. If the appellant appears after 15 minutes, the panel may proceed with the hearing depending on availability, whether other hearings will be delayed, and whether any respondent or witnesses have left.

Where a respondent has filed a notice of participation but is not present at the scheduled time, the panel will wait five minutes before proceeding. A respondent (or the respondent's representative) will be allowed to participate if he or she arrives late. The panel will determine the nature and extent of that participation depending on the lateness of the respondent as well as their reasons.

9.24 Failure to Appear for a Hearing

9.24.1 Respondent

If a respondent fails to attend an oral hearing, they will be deemed to have waived their right to participate further in the appeal. However, this may be rebutted by evidence that the respondent was unavoidably delayed or otherwise prevented from attending the hearing. In that case, WCAT will consider whether the respondent's right to participation may be met by means of disclosure of the voice recording of the hearing and new documentary evidence, together with an opportunity to file a written submission and new evidence, or whether the hearing needs to be rescheduled.

9.24.2 Appellant

Section 246(5) states that, if a party fails to comply with an order or rule of practice and procedure, WCAT may, after giving notice to that party, either:

- (a) schedule a written, electronic or oral hearing;
- (b) continue with the appeal and make a decision based on the evidence before it, with or without providing an opportunity for submissions;
- (c) dismiss the application.

If an appellant fails to appear for an oral hearing, the registrar's office will order the appellant to provide written reasons, within 14 days, for the failure to appear. If a response is received from the appellant, WCAT will invite comments from any participating respondent who appeared at the hearing. Any submission by the respondent will be disclosed to the appellant for rebuttal.

The panel may investigate the appellant's reasons by reviewing relevant records (e.g. when did the appellant first contact WCAT to explain why they could not attend the hearing; was a postponement requested for the same reason and refused), or by requesting documentary verification (e.g. medical letter, towing bill, letter from employer).

If the appellant does not respond to the order of the registrar's office to explain why they did not attend the oral hearing, the appeal will be dismissed.

9.24.3 Valid Reasons

Failure to appear at an oral hearing without prior notice to WCAT would normally only be justified by a personal emergency or other serious and unforeseen circumstance which prevented the appellant both:

- (a) from attending the hearing; and
- (b) from notifying WCAT, in advance, of the situation.

Acceptable reasons would include a personal or family emergency that could not have been predicted, or other compelling, unpredictable situations, which made it difficult or impossible for the appellant to notify WCAT in advance. Examples could include:

- (a) a motor vehicle accident on the way to the hearing;
- (b) admission to hospital for emergency health care;
- (c) acute physical or mental disability;
- (d) death of a family member on or immediately before the day of the hearing; or,
- (e) failure to receive notice of the hearing where the appellant had previously provided WCAT with their current address.

9.24.4 Inadequate Reasons

Panels will generally not consider the following as adequate reasons for failing to attend an oral hearing without notice:

- (a) concern about jeopardizing current employment by taking time off for the hearing;
- (b) a non-emergency medical situation, such as a cold or flu;
- (c) misunderstanding the hearing notice;
- (d) forgetting about the hearing, or oversleeping on the day of hearing;
- (e) failure to receive the hearing notice, where this resulted from the appellant's failure to notify WCAT of their change of address;
- (f) important personal activities (preparations for a wedding, divorce or funeral, care of sick family members, administering an estate, etc.); or
- (g) vacation.

9.24.5 Panel Discretion

Despite the inadequacy of the reasons for not appearing or not notifying WCAT in advance, panels have the discretion to reschedule the hearing where the panel considers that:

- (a) the appeal should be addressed on the merits despite the failure to appear; and
- (b) an oral hearing is essential to consideration of the appeal.

A panel may exercise this discretion where, for example, the issue under appeal is very significant and credibility is a central issue. In that case, the appellant will be notified

that a failure to attend the rescheduled hearing would likely result in the appeal being dismissed.

9.24.6 No Show Decision

Once submissions are complete, or the due date has passed, the panel will decide whether a party has failed to comply with the order to attend the hearing, or the order to provide written reasons for not attending, and will decide to:

- (a) reschedule the oral hearing;
- (b) proceed by telephone, videoconference, or other electronic hearing;
- (c) proceed by read and review, with or without further submissions; or
- (d) dismiss the appeal.

The panel may issue a “no show” decision in letter or other form where there is no apparent dispute about the outcome (e.g. the parties have not taken any position on the disposition of the appeal). In all other cases, panels will issue a numbered decision, which may or may not also include a decision on the merits of the appeal.

9.25 Continuations

Where a panel finds that the time scheduled for an oral hearing is insufficient, and it is not possible to complete the hearing, the panel may adjourn the hearing to a later date.

9.30 Who May Attend

Oral hearings are not open to the public, as WCAT must maintain confidentiality [s. 260]. The following persons have a right to attend a hearing: the appellant (and the appellant’s representative) and the respondent and respondent’s representative. Some cases may involve more than one respondent. The panel has the discretion to permit members of the public, including the media, to attend an oral hearing with the consent of all participating parties. The panel will generally exclude witnesses from the hearing room until the panel is ready to hear their evidence.

Panels will generally allow the following persons to observe hearings, if the parties consent: family members, friends, trainee advocates, WCAT or Board staff wishing to observe for training purposes. Any observers must be identified at the outset of the hearing.

Observers are not permitted to participate in the hearing. Observers or participants who disrupt the hearing may, after appropriate warning, be expelled from the hearing room.

9.31 Representatives

A party has a right to be represented by counsel or an agent [s. 32, ATA]. A representative may be a lay representative, union representative, human resources representative, lawyer, workers’ adviser, employers’ adviser, etc.

Where there is more than one person attending the hearing on behalf of a party to the appeal, panels should ascertain who is acting as the representative. Where the employer is a limited company, one person may be designated as the representative and one as the employer. Other persons would normally be witnesses (in which case they may be excluded during part of the hearing) or observers (who are not permitted to participate).

9.32 Witnesses

Panels can place greater weight on the evidence of a witness if they did not hear the evidence of other witnesses. If a person was present in a hearing while another witness gave evidence, the panel may give less weight to their evidence.

Panels will normally exclude witnesses in order to prevent them from being influenced by the evidence of other witnesses. In deciding whether to exclude witnesses, the panel may consider whether there is an actual risk of this occurring, whether the evidence is relevant to a contentious issue, and whether there are good grounds for allowing the witness to remain in attendance (i.e. moral support for the appellant).

Panels have the discretion to hear evidence from persons who were originally identified as observers or representatives.

A party may ask the panel to issue an order compelling the attendance of another party who is not participating in the hearing. Where the employer is a limited company, an officer or employee of the company may be required to give evidence on behalf of the company.

If any person (including the worker or an employer officer/employee) attends an oral hearing as an observer, the panel may require them to answer questions if the panel considers this necessary or helpful to the panel's inquiry.

9.33 Affirmation or Oath

Witnesses, including the parties to an appeal, will usually be required to give evidence under affirmation or oath. This involves a solemn promise, in a form binding on the conscience of the witness, to tell the truth (see Appendix 5).

9.34 Interpreters

WCAT provides independent interpreters when required. WCAT should be notified of the need for an interpreter when the oral hearing is requested. Friends or relatives are generally not permitted to act as interpreters, although the panel may allow this in appropriate circumstances such as where the party needs assistance with only a few words. Where the panel believes that an interpreter is necessary and none is present, the hearing should be rescheduled.

Interpreters are normally affirmed or sworn in at the start of the hearing (see Appendix 6).

9.35 Security

Where there are security concerns relating to a hearing, WCAT may arrange for the attendance of security personnel at the oral hearing. If a party or their representative has a security concern, they should contact the registrar's office who will decide whether to arrange for security at the hearing in consultation with the panel.

9.36 Written Pre-Hearing Submissions

Where WCAT receives a submission or evidence before the date of hearing, WCAT will provide this to all participating parties.

9.40 Record of the Hearing

WCAT is authorized to tape record or transcribe its hearings [s. 35(1), ATA]. Where practical, WCAT will record oral hearings. The recording constitutes part of the record of the proceeding. After the decision has been issued, WCAT will forward the recording to the Board for storage as part of the Board's file. If a recording is destroyed, interrupted, or incomplete the validity of the proceeding is not affected [s. 35(3), ATA].

Where an oral hearing is adjourned for a lengthy time, WCAT will, on request, ask the Board to provide a copy of the recording to the parties. Written transcripts are not provided, except where the panel determines that a transcript of specific evidence is necessary. In that case, WCAT will provide transcripts to all parties.

9.50 Responsibilities of the Presiding Member

Where the panel has three or more members, the chair or a vice chair will be the presiding member. It is the responsibility of the presiding member to maintain order during the hearing. The presiding member marks and lists new pieces of evidence as exhibits and ensures that other parties at the hearing are provided with copies.

9.51 Procedure at the Hearing (see also item 23.40, Code of Conduct for Oral Hearings)

Section 38 of the ATA provides that a party may call and examine witnesses, present evidence and submissions and cross examine witnesses as reasonably required by WCAT for a full and fair disclosure of all matters relevant to the issues on the appeal. The panel has the right to control this examination for relevance. The panel may also question any witness who gives oral evidence.

Oral hearing procedures may vary depending on the circumstances of a particular case. The panel (or presiding member of a multi-member panel) will usually swear in or affirm each witness immediately before the witness gives their evidence. The following

sequence will generally be followed in an appeal involving an appellant and a respondent:

- (a) the presiding member will introduce the panel, explain the role of WCAT, and ask other persons in attendance to introduce themselves and explain their role in the hearing;
- (b) the parties' addresses will be confirmed, and the worker and other witnesses will be asked whether they are seeking reimbursement of lost wages for attending the hearing and/or any other expenses;
- (c) the panel will exclude witnesses, where appropriate, until they are called upon to give evidence;
- (d) the panel will identify the decision under appeal, and, where necessary, clarify the issues under appeal. Where there is disagreement, the parties will be given an opportunity to comment before the panel decides what issues they will consider;
- (e) the appellant or appellant's representative will present their case, including a brief statement of the remedy sought (including expenses) and grounds for the appeal, followed by the evidence;
- (f) the respondent may question the appellant's witnesses on any relevant matter;
- (g) the panel may question the appellant's witnesses on any relevant matter;
- (h) the respondent or the respondent's representative may present evidence;
- (i) the appellant may question the respondent's witnesses on any relevant matter;
- (j) the panel may question the respondent's witnesses on any relevant matter;
- (k) the appellant may be given the opportunity to present additional evidence to respond to new evidence introduced by the respondent;
- (l) the appellant will make submissions based on the evidence before the panel. Submissions may include reference to relevant Board policies or to prior WCAT decisions;
- (m) the respondent will make submissions;
- (n) the appellant may respond to the respondent's submissions;
- (o) the panel will close the hearing and state that a written decision will be sent to the parties. The panel will confirm the statutory due date for the decision, subject to an extension of time being granted by the chair due to complexity.

The panel may make orders or give directions to maintain order at the hearing, and may [s. 48(1) and (3), ATA]:

- (a) impose restrictions on a person's continued participation in or attendance at a hearing;
- (b) exclude a person from further participation in or attendance at a hearing until the order is reversed.

If any person refuses or fails to comply with an order or direction under section 48 of the ATA, WCAT may:

- (a) call on a peace officer to enforce the order or direction [s. 48(2), ATA];

- (b) apply to the court to commit the person for contempt of the order or direction [s. 49(2), ATA].

9.52 Site Visit

Where the panel concludes that a site visit is necessary, participating parties and their representatives must be invited to attend. The panel may receive comments and submissions from the parties during the site visit, or may reconvene to a hearing room for submissions on the relevance or significance of the matters observed during the site visit. No voice recording will be made of the site visit nor of any comments or submissions made by the parties during the site visit.

9.60 New Appeals/Issues Raised at Hearing (see items 3.40 and 14.30)

Occasionally an appellant will attempt to raise issues at an oral hearing relating to a decision that has not been appealed. Panels do not have authority to consider issues that are not addressed in the decision under appeal. If the appellant raises concerns about an unappealed decision, including one for which the appeal or review period has expired, the panel will advise the appellant of the right to review or appeal and extension of time processes (either to WCAT or the Review Division).

9.70 New Documentary Evidence

Despite item 7.40 concerning submission of evidence, panels may accept new documentary evidence at an oral hearing, in which case the panel will decide how to ensure the other party is given an adequate opportunity to respond. The panel will consider the impact of late evidence on the time limit for issuing the decision.

A respondent who fails to attend an oral hearing is deemed to have waived the right to receive and respond to any evidence or argument presented at the hearing or obtained by the panel after the hearing (see item 9.24.1). Panels may invite the respondent's comments if the panel considers this to be necessary or helpful to its consideration.

9.71 Post-Hearing Submissions

Where an oral hearing is held, panels will generally not accept additional evidence or written submissions after the hearing unless the late submission or evidence was requested or agreed to by the panel.

At the hearing, panels may set a due date for submission of new material, or may consider the request after the hearing. In deciding the request, the panel will consider why the evidence was not available earlier, its relevance to the appeal, and the impact of the delay on the time limit for issuing the decision.

9.72 Disclosure of Post-Hearing Submissions

If a panel accepts submissions following a hearing, the new material must be disclosed to all participating parties who attended the oral hearing. The other party will generally have an opportunity to respond. However, submissions received from the parties that do not include new and relevant evidence may be disclosed for information purposes only.

9.73 Late or Unsolicited Submissions

Where a party submits material after the due date has passed, or where the panel has not granted time for submissions after an oral hearing, the panel may decide not to consider the material. In that case, the material will be marked as excluded and kept separate from the appeal documents until after the decision is issued. The panel will advise the parties, either by letter or in the decision, if late evidence or submissions have been excluded from consideration.

Alternatively, a panel may accept the late material, depending on the reasons for the late submission and the impact of the delay on the time limit for issuing the decision. If late material is accepted, the panel will decide the procedure for disclosure of the material to the other party, and their response.

9.74 Disclosure of Post-Hearing Evidence Obtained by the Panel

Where the panel obtains further evidence, that evidence will be disclosed to the parties for comment. The panel will decide the procedure and due dates to be set for obtaining comments. Normally the evidence will first be disclosed to the appellant and their representative with time to respond. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative with time to respond. The respondent's submission will then be forwarded to the appellant for final response. Alternatively, the panel may disclose the new evidence to both parties, and invite responses from both parties at the same time, followed by an opportunity for each party to respond to the other.

10.00 APPEALS PROCEEDING BY WRITTEN SUBMISSIONS

10.10 Time Frames for Written Submissions

Practice Directive for Filing Written Submissions

In order for WCAT to issue its decision within 180 days of receipt of the Board's records,

- (a) The appellant will be granted 21 days to provide a submission in addition to the information contained in their notice of appeal.*
- (b) Within the 21-day period appellants may make a request with reasons for additional time [s. 253(5)]. If they neither file a submission nor request more time within the 21-day period, they will lose the right to provide a submission and their notice of appeal will be considered as their submission, subject to the panel's discretion to accept late material (see item 10.20).*
- (c) The maximum further time for submissions that may be granted in response to an appellant's request is 45 days [s. 253(6)]. Any additional time granted will run from the initial 21-day period for submissions.*
- (d) If the appellant's request for additional time is granted, the respondent will be advised that they can request an equivalent period of additional time.*
- (e) The respondent will be granted 21 days to provide a submission. However, if the appellant was granted additional time, the respondent is entitled, upon request, to additional time up to the amount granted to the appellant, and need not provide reasons. The respondent must specify the length of time being requested. A respondent cannot be granted additional time unless the appellant was granted additional time [s. 253(6)].*
- (f) Parties may request up to 14 days' additional time by telephone or in writing to the appeal liaison or appeal coordinator. Requests for more than 14 days' additional time must be in writing.*
- (g) Whether or not the appellant provided a submission, any submission from the respondent will be disclosed to the appellant with 14 days for rebuttal argument. (Note: No additional time at the rebuttal stage is contemplated by s. 253(6) and (7)).*
- (h) If an appellant submits new evidence with their rebuttal, the file will be referred to the panel to decide whether to accept the new evidence (see item 10.20).*
- (i) Submissions will be considered complete where:
 - (i) no submission is received from the appellant by the most recent due date and there is no respondent participating;**

- (ii) *whether or not the appellant provided a submission, no submission was received from the respondent by the due date;*
 - (iii) *the appellant's rebuttal to the respondent's submission has been received or the appellant did not file a submission by the due date.*
- (j) *Where no submissions are provided by either party, the panel will consider the appeal based on the notice of appeal.*

These guidelines are intended to be applied in a consistent fashion. However, WCAT may vary their application if this will not affect the 180-day time frame and it makes sense to do so.

AC's have delegated authority from the chair to make decisions concerning requests for additional time of up to 45 days, within the guidelines set out above as (a) to (h). An AL will complete an additional time request form for consideration by a DR.

Reasons for which additional time (up to 45 days) may be granted to an appellant include:

- (a) *complexity of the issues under appeal;*
- (b) *appellant is seeking additional medical or other evidence;*
- (c) *appellant needs to interview witnesses and provides adequate reasons for requiring more time to do so;*
- (d) *need to seek representation;*
- (e) *personal or family health problems, bereavement, or other emergencies;*
- (f) *pre-arranged vacation; or*
- (g) *current labour relations dispute which severely limits opportunity of a person to participate.*

10.20 Late Submissions or New Evidence Submitted with Rebuttal

Where a party submits material after the due date has passed, or the appellant submits new evidence along with their rebuttal, the panel may decide not to consider the material. In that case, the material will be marked as excluded and kept separate from the appeal documents until after the decision is issued. The panel will advise the parties, either by letter or in the decision, if late evidence or submissions have been excluded from consideration.

Alternatively, a panel may accept the late material, depending on the reasons for the delay and the impact of the delay on the time limit for issuing the decision. In that case, the panel will decide the procedure for disclosure of the material to the other party, and their response. The party who submitted late material will normally not be given a final opportunity to respond.

A panel which has accepted late material may, if necessary, request additional time for its decision due to the complexity of the proceedings in the appeal.

11.00 INDEPENDENT MEDICAL ASSISTANCE OR ADVICE

11.10 General

If a panel determines that independent medical assistance or advice would assist in reaching a decision, the panel may seek that assistance or advice from one or more health professionals from a list established by the chair [s. 249(1) and (2)]. This is the process which will normally be used.

11.11 Other Medical Advice or Clarification

The statutory authority for seeking independent medical assistance or advice does not prevent a panel from asking other health professionals for medical evidence or to clarify or interpret medical evidence previously provided by the health professional. That evidence or clarification may be requested, for example, from a treating physician, a physician employed by the Board, or a physician who is not on the list established by the chair under section 249(2) [s.249(13) and (14)].

11.12 Suspension Pending Health Professional's Report

WCAT will normally suspend an appeal until a health professional's report is received by WCAT [s. 249(12)].

11.20 Who May Serve

The term "health professional" means a medical practitioner, a person entitled to practice medicine under the laws of another jurisdiction or any other person with prescribed qualifications [s. 249(1)].

Cabinet may prescribe the qualifications of health professionals by regulation [s. 224(2)(k.2)]. The Appeal Regulation, section 5, defines health professionals to include:

- (a) a person who is entitled to practise dentistry or dental surgery under the *Dentists Act*;
- (b) a person who is entitled to practise dentistry under the laws of another province;
- (c) a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the *Health Professions Act*, R.S.B.C. 1996, c.183;
- (d) a person who is entitled to practise as a psychologist under the laws of another province.

The list of health professionals must be established by the chair [s. 249(2)]. The list cannot include any person employed by the Board [s. 249(3)]. The presiding member of the panel may retain a health professional from this list [s. 249(6)].

11.21 Remuneration

The chair may determine the terms and conditions, including remuneration and reimbursement of expenses, under which a health professional may be retained under section 249. In so doing, the chair will take into account any fee schedule established by the Board for services provided by health professionals [s. 249(4)].

11.22 Form of Panel

The panel may seek independent medical assistance or advice from one or more health professionals, whether individually or as a panel of health professionals, and whether from the same or different medical specialties. Where different specialties are used, the advice may be requested concurrently or sequentially.

11.23 Exclusions

Health professionals will normally be disqualified from providing assistance or advice if they [s. 249(5)(a) to (f)]:

- (a) has previously examined the worker whose claim is the subject of the appeal;
- (b) is treating or has previously treated the worker;
- (c) has been consulted in the treatment of the worker;
- (d) has acted as a consultant to the employer;
- (e) are a partner of or practises with a health professional described in this subsection, or
- (f) is otherwise in circumstances that could result in a reasonable apprehension of bias.

With the written consent of the parties, the panel may seek assistance or advice from a health professional who would otherwise be disqualified on the grounds set out above, WCAT will generally avoid retaining a health professional who falls within the terms of these exclusions.

11.30 Terms of Reference

The presiding member of the WCAT panel must set the terms of reference for the health professional, including [s. 249(7)]:

- (a) requiring a written report;
- (b) setting any time periods for providing the report; and
- (c) specifying any questions to be answered in the report. For example, the panel may seek a medical opinion or explanation as to the cause of a worker's condition on either an organic or psychological basis, or on one basis only.

The terms of reference provided by the panel for the health professional will include determinations of non-medical facts. The WCAT panel may invite submissions from the parties before making its determinations of non-medical facts. These will generally involve concise factual details of the incident or accident giving rise to the claim for personal injury, or factual details with respect to the nature of the worker's employment activities and exposure(s). They may also include any other points relevant to the independent health professional's (IHP) medical opinion, such as incidents, accidents, activities or exposures outside the worker's employment.

11.40 Medical Examination

A medical examination is not legally required in order for a health professional to provide independent assistance or advice under section 249.

If the health professional considers it necessary to examine the worker in order to provide the assistance or advice, the health professional may give written notice to the worker to attend for an examination [s. 249(8)] (see item 13.26 concerning expenses).

11.41 Failure to Attend the Examination, or Obstruction of the Examination

Where a medical examination is conducted, the health professional may determine the form and nature of the examination.

If a worker fails to attend the examination, or obstructs that examination without reasonable cause, the health professional will return the matter to the WCAT panel for direction. The panel may, after giving notice to the worker, do one or more of the following [s. 249(9)]:

- (a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;
- (b) direct the health professional to provide a report without examining the worker;
- (c) make a determination that the worker has abandoned the appeal.

11.50 Written Report

A health professional retained to provide independent medical assistance or advice must provide the panel with a written report consistent with the terms of reference.

WCAT will disclose the report to the parties and invite submissions in respect of the report [s. 249(10) and (11)].

The panel may seek clarification of the report from the health professional without advance notice to the parties. Where the panel seeks clarification, both the question(s) and the response(s) must be provided in writing and disclosed to the parties for submissions.

11.60 Decision

After receiving any submissions by the parties concerning the report, the appeal will be reactivated and the panel will decide the appeal. The panel is not bound by the report of the health professional.

12.00 WCAT DECISION MAKING

12.10 Prior Decisions

Panels may refer to past Review Board, Appeal Division (www.worksafebc.com), WCAT (www.wcat.bc.ca), or former commissioners' decisions accessible on an internet website or published in the *Workers' Compensation Reporter* (www.worksafebc.com) without first disclosing those decisions to the parties and inviting further submissions. If a WCAT panel wishes to cite a decision which was not publicly accessible at the time of the oral hearing, or when the parties were providing their written submissions, the panel will normally disclose the prior decision (without identifiers) for comment. Panels may also invite comments concerning a publicly accessible decision.

12.20 WCAT Precedent Decisions

The following statutory provisions apply to the deliberations of a WCAT panel [s. 250]:

- (a) the panel may consider all questions of fact and law arising in the appeal [s. 250(1)];
- (b) the panel is not bound by legal precedent (decisions of the courts, or prior WCAT decisions unless provided by a precedent panel under section 238(6)) [s. 250(1)];
- (c) the panel must make its decision based on the merits and justice of the case, but in so doing must apply a policy of the board of directors that is applicable in that case (subject to s. 251) [s. 250(2)];
- (d) the panel is bound by a prior precedent panel decision (under section 238(6) unless [s. 250(3)]:
 - (i) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the panel's decision; or
 - (ii) 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.
- (e) If the panel is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the panel must resolve that issue in a manner that favours the worker [s. 250(4)].

12.30 Application of Policy

Under section 82(1), the board of directors sets and revises policies respecting compensation, assessment, rehabilitation and occupational health and safety.

Section 250(2) states that WCAT must apply a policy of the board of directors that is applicable in that case. It is up to the panel to determine if the policy is applicable in that case.

Panels may ask the Board to advise of a policy of the board of directors that is applicable to the matter under appeal [s. 245(4)]. A request of this nature will be sent to the Policy and Research Division of the Board. WCAT must advise the parties of the Board's response [s. 245(5)].

12.40 Lawfulness of Policy

Section 251 of the WCA states that WCAT may refuse to apply an applicable policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations.

If a panel considers that an applicable policy of the board of directors should not be applied on this basis, that issue must be referred to the chair and the appeal must be suspended until the chair or the board of directors, as the case may be, decides whether the policy should be applied [s. 251(2)].

As soon as practicable after the referral, the chair will decide whether the policy should be applied [s. 251(3)]. If the chair decides that the policy should be applied, the chair will refer the matter back to the panel and the panel is bound by the chair's determination [s. 251(4)]. If the chair decides that the policy should not be applied, the chair will [s. 251(5)]:

- (a) send a notice of this determination, including the chair's written reasons, to the board of directors, and
- (b) suspend any other appeal proceedings that are pending before the appeal tribunal and that the chair considers to be affected by the same policy until the board of directors makes a determination under subsection (6).

Where the chair believes there may be a reasonable apprehension of bias, the chair's authority under sections 251(3),(4), and (5) may be delegated to a vice chair or to a panel for the purposes of a specific appeal [s. 251(9)]. The chair cannot make a general delegation of his or her authority under sections 251(3), (4) and (5).

A referral by a panel to the chair under section 251 suspends the particular appeal or application [s. 251(2)]. When the chair refers the matter to the board of directors, the chair must suspend any other proceedings before WCAT that the chair considers to be affected by the same policy, until the board of directors makes a determination [s. 251(5)(b)].

Practice Directive on Referrals to the Chair for Unlawful Policy

The following practice directive applies to referrals under section 251:

- (a) *a panel must provide written reasons in a memorandum to explain its belief that a policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations;*

- (b) *the panel's memorandum will be disclosed to the parties for submissions;*
- (c) *if there is no respondent or the respondent is not participating, the chair may invite a worker or employers' adviser to participate [s. 246(2)(i)];*
- (d) *as a courtesy, the panel's memorandum will be disclosed to the Policy and Research Division of the Board at the same time it is disclosed to the parties;*
- (e) *when submissions from the parties are complete, the chair may invite submissions from representative groups [s. 246(2)(i)]. The parties will be provided the opportunity to respond to any submissions received;*
- (f) *the chair will then decide whether the policy should or should not be applied;*
- (g) *if the chair decides that a policy should not be applied, the chair will make reasonable efforts to identify other cases affected by the same policy. The following steps may be taken to identify other affected appeals:*
 - (i) *sending a notice to all WCAT members, officers and staff;*
 - (ii) *conducting a computer search using the WCAT case management system of the issues under appeal;*
 - (iii) *posting a notice on the WCAT website for a period of time, such as 30 days;*
- (h) *the chair's decision, with written reasons, will be provided to the parties in all suspended appeal proceedings pending before WCAT which the chair considers to be affected by the same policy;*
- (i) *the chair will notify the board of directors of that determination along with written reasons;*
- (j) *when WCAT sends the notice to the board of directors, a list of all suspended cases, with names and addresses of the parties, will be provided to the board of directors. A copy of the notice will be provided to the Board's Policy and Research Division and Legal Services Division at the same time;*
- (k) *if the chair decides that a policy should be applied, the appeal will be returned to the WCAT panel for completion.*

Within 90 days after notice from the chair, the board of directors must review the policy and determine whether WCAT may refuse to apply it [s. 251(6)].

The board of directors must provide the parties to the appeal, and the parties to any other suspended appeal affected by the same policy, with the opportunity to make written submissions on this review [s. 251(7)].

After the board of directors makes its determination, the board of directors must refer the matter back to WCAT and WCAT is bound by that determination. The suspended appeals will be reactivated.

13.00 COSTS AND EXPENSES

13.10 Costs

The Cabinet may make regulations respecting the awarding of costs by WCAT in an appeal under Part 4 of the WCA [s. 224(2)(k.1)]. Section 6 of the Appeal Regulation provides that WCAT may only order one party to pay the costs of another party if:

- (a) another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault,
- (b) the conduct of another party has been vexatious, frivolous or abusive, or
- (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.

The provisions in items 13.20 to 13.25 below relate to WCAT's authority to order the Board to reimburse the expenses incurred by a party to an appeal. An order for the payment of costs by one party to another under section 6 of the Appeal Regulation will only be made in an unusual case.

13.20 Expenses

The Cabinet may make regulations 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)]. Section 7(1) of the Appeal Regulation provides that WCAT may order the Board to reimburse a party to an appeal for any of the following kinds of expenses incurred by that party:

- (a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the appeal tribunal to travel to the hearing or other proceeding;
- (b) the expenses associated with obtaining or producing evidence submitted to the appeal tribunal;
- (c) the expenses associated with attending an examination required by an independent health professional under section 249(8) of the WCA.

13.21 General

Any request for reimbursement of expenses should be made in the party's submissions to the panel. However, WCAT will normally address this question, even in the absence of a request. In an oral hearing, the appellant and any respondent present at the hearing will normally be asked whether they are seeking reimbursement of expenses.

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 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 this expense has not yet been paid by the party. Parties should submit receipts for amounts for which they are seeking direct reimbursement.

Consistent with Board policy at #100.14 of the *Rehabilitation Services and Claims Manual, Volumes I and II* (RSCM), the amount of expenses to be paid by the Board is calculated in accordance with the rules set out in RSCM #82.20 (transportation), #83.20 (meals and accommodation) and #83.13 (lost time from work where the worker is not already in receipt of temporary disability or vocational rehabilitation benefits from the Board).

13.22 Party's Attendance at an Oral Hearing (Section 7(1)(a))

Where a party has requested an oral hearing, WCAT will generally order reimbursement of expenses for a party's own attendance at a hearing if that party was successful on the appeal. This is consistent with Board policy at #100.12 of the RSCM. If the appellant does not request an oral hearing, but WCAT decides that an oral hearing is necessary, WCAT will generally order reimbursement of expenses regardless of the outcome of the appeal (unless the party is found to have engaged in fraud or misrepresentation). This reimbursement may be limited if the appellant requests the hearing in another location to accommodate a representative.

Oral hearings will normally be held in British Columbia locations closest to the community where the appellant resides. If WCAT chooses (i.e. not at the request of the appellant) to schedule a hearing at a location that is not the nearest hearing location to the appellant, WCAT will order reimbursement of the appellant's expenses regardless of the outcome of the appeal (unless the party is found to have engaged in fraud or misrepresentation). Similarly, WCAT will normally grant a respondent's request for reimbursement of travel expenses where the hearing location is not in the area in which the respondent is located.

WCAT will normally award reimbursement of expenses to a party or witness who incurred expenses to attend an oral hearing that did not proceed due to an administrative error. For example, where a party had not been informed of a postponement and incurs travel expenses to attend the hearing, expenses will generally be awarded regardless of the outcome of the appeal. A respondent's expenses for attending a hearing will generally be awarded where the appellant fails to attend the hearing without adequate notice.

Where the appellant has moved without notifying WCAT and the oral hearing was scheduled in the location closest to the community where they formerly lived, WCAT will not normally award reimbursement of the appellant's travel expenses. Where the appellant notified WCAT of a new address but there was insufficient time to reschedule the oral hearing, WCAT will normally award reimbursement of their travel expenses.

Reimbursement of a party's travel expenses from outside the province will generally be limited to the portion of travel within British Columbia. However, if WCAT specifically asks the party or witness to attend a hearing, WCAT will order reimbursement for the full amount of the trip. This is consistent with Board policy at #100.15 of the RSCM.

Where WCAT has decided that travel expenses should be ordered, they are not normally paid for the portion of the journey which takes place within a distance of 24 kilometres of the oral hearing location. This is consistent with Board policy at #82.10 of the RSCM. Where WCAT determines that travel expenses are otherwise payable on the basis of the guidelines set out above, the party is deemed to have been required by WCAT to travel to the hearing or other proceeding for the purposes of section 7(1)(a) of the Appeal Regulation.

13.23 Expense of Obtaining or Producing Evidence (Section 7(1)(b))

WCAT will generally order reimbursement of expenses for attendance of witnesses or obtaining written evidence, regardless of the result in the appeal, where:

- (a) the evidence was useful or helpful to the consideration of the appeal; or
- (b) it was reasonable for the party to have sought such evidence in connection with the appeal.

As the workers' compensation system functions on an inquiry basis (rather than on an adversarial basis as in the court system), reimbursement of expenses is not dependent upon the result in the appeal. However, WCAT will generally limit the amount of reimbursement of expenses to the rates or tariff established by the Board for this purpose.

WCAT may direct reimbursement for different types of expert evidence (see items 8.50 and 8.51). Most commonly, this involves additional medical evidence obtained for an appeal. Current tariff items for medical legal matters include (effective until March 31, 2006):

Fee Code	Description	Rate
19932	Medical-Legal Report: a report which will recite symptoms, history and records and give diagnosis, treatment, results and present condition. This is a factual summary of all the information about when the injured worker will be able to return to work and might mention whether there will be a permanent disability.	765.00
19933	Medical-Legal Opinion: an opinion will usually include the information contained in the Medical-Legal Report and will differ from it primarily in the field of expert opinion. This may be an opinion as to the course of events when these cannot be known for sure. It can include an opinion as to long-term consequences and possible complications in the further development of the condition. All the known facts will probably be mentioned, but in addition there will be the extensive exercise of expert knowledge and judgment with respect to those facts with a detailed prognosis.	1275.00

The requirements for reimbursement based on fee items 19932 and 19933 are as follows:

- (a) medical-legal report is applicable to all medical physicians;
- (b) medical-legal opinion is applicable only to specialists with relevant qualifications, or other physicians with recognized expert knowledge; and
- (c) these fees include examination, review of records, and other processes leading to completion of the written opinion/report.

WCAT may authorize reimbursement of expenses associated with obtaining or producing evidence submitted to WCAT, even if the evidence was previously submitted to the Board. If, for example, reimbursement is denied by the Review Division, but the WCAT panel finds that the report was useful or helpful to consideration of the appeal, or that it was reasonable for the party to have sought the evidence in connection with the review and appeal proceedings, WCAT may order reimbursement (if not previously provided by the Board).

Other tariff items which may apply include the following:

Fee Code	Description	Rate
19904	WCB request for copy of a consultation, operative, chart notes or other existing report – first five (5) pages, received within three (3) business days of request. Not to be paid in addition to other Fee Codes except 19906.	22.36
19905	WCB requested copy of consultation, operative, or other existing report – first five (5) pages or less sent by mail.	21.36
19906	Continuation of 19904 – over five (5) pages additional per page.	1.15
19907	A factual written summary or reasoned medical opinion upon written request from WCB (19904 may not be billed in addition). If extractions included over five (5) pages – may bill 19906.	255.00
19953	WCB Request For Existing Report or Chart Notes - ISOLATING SPECIFIC INFORMATION When the WCB requests a copy of an existing report or chart notes and where complying with that request requires the Physician to review the chart or report for the purpose of severing identified personal information not relevant to the claim prior to submission of photocopied material, or identifying previous injury or illness relevant to the current claim, or area of injury in question from prior records and separating that information from other clinical information prior to submission to the WCB, the Physician may bill Fee Code 19953. Fee Codes 19904, 19905 or 19906 may not be billed in addition to this Fee Code. Must be received within ten (10) business days of request of service and includes all courier charges.	115.00

13.24 Representatives' Fees

If a party retains a representative, they do so at their own expense. Section 7(2) of the Appeal Regulation provides that WCAT may not order the Board to reimburse a party's expenses arising from a person representing the party, or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

If the appellant requests that the oral hearing be held at a location near the representative, rather than in the appellant's community, the appellant's travel expenses will generally not be reimbursed.

13.25 Employers' Expenses

The information set out above concerning reimbursement of expenses applies to both workers and employers.

As set out at item 9.31, where the employer is a limited company and they are unrepresented, one person may be designated as the employer and one as the representative. Other persons would normally be witnesses or observers. The expenses of the employer and employer's witnesses may be reimbursed. Consistent with the policy at #100.20 of the RSCM, panels may order reimbursement of expenses on the same basis as for a worker except that benefits for lost time from work are not payable. Panels may order reimbursement of lost time from work for an employer's witnesses. WCAT may not order the Board to reimburse any expenses arising from a person representing the employer (i.e. the expenses of the advocate for the employer) (see item 13.24).

13.26 Independent Health Professional Examination

Where a worker is examined by an independent health professional [s. 249(8)], WCAT will direct the Board to reimburse the worker's expenses for attending the examination unless the worker was attempting to mislead the Board or WCAT. A direction for reimbursement of expenses will be automatically provided on an administrative basis, subject to any specific direction by the WCAT panel. This reimbursement is consistent with items #100.13, #100.14 and #100.15 of the RSCM. Where a worker resides outside of British Columbia, WCAT has the authority to retain a health professional where they reside. If the worker is required to attend an examination in British Columbia, reimbursement of travel expenses is not limited to the portion attributable to travel in this province.

14.00 THE WRITTEN DECISION

14.10 Hallmarks of Quality Decision Making

A good decision:

- (a) clearly identifies the issues at the outset;
- (b) identifies a clear set of relevant findings of fact fairly drawn from the evidence;
- (c) where there is conflicting relevant evidence, explicitly identifies the findings of fact on which the conclusion is based and the reasons for the findings of fact;
- (d) responds to the relevant submissions and arguments;
- (e) identifies and applies relevant law, policy, and WCAT precedent panel decisions;
- (f) is consistent with previous (non-precedent) WCAT decisions published in the *Workers' Compensation Reporter* unless the inconsistency is identified and the reasons for the departure clearly articulated;
- (g) uses plain language where possible and uses technical and legal terminology in a manner consistent with other decisions;
- (h) makes the panel's reasoning clear and understandable and leads to a logical conclusion that resolves the issues; and,
- (i) supports established positions on law, medicine, science, and the interpretation of legislation, regulations and policy unless the inconsistency is identified and the reasons for the departure clearly articulated.

WCAT seeks to provide a decision-making process which is demonstrably fair, efficient, and accessible. WCAT aims to provide well-reasoned and high quality decisions which clearly explain the basis for the conclusion reached. Clarity, consistency, and predictability are key values of WCAT.

It is important that both the procedures followed by a WCAT panel in hearing a case, and the reasons provided by the panel to explain its decision, are seen to be fair and independent. Even where a party does not obtain the result they sought, it should be evident to the party that, in reaching its decision, the panel followed a fair process in which the parties were heard, and provided reasons which explain the basis on which the decision was made (including reasons for any dissent).

WCAT decisions will be written in clear terms, using plain, direct language where possible. Short and concise decisions will be provided when possible. A decision will focus on the issue(s) under appeal, and need not recite the background evidence in detail.

WCAT must not fetter a discretion conferred on it under the WCA and policy. However, taking into account individual circumstances and providing a decision according to the merits and justice of the case under section 250 does not mean that the panel's focus is solely on the individual case. A decision must also be consistent with the Act, policy, and WCAT precedent decisions. As well, a good decision should be consistent with previous (non-precedent) WCAT decisions published in the *Workers' Compensation*

Reporter unless the conflict is identified and the reasons for the departure articulated in a coherent manner.

An important component of “the merits and justice of the case” [s. 99(2), s. 250(2)] involves ensuring that like cases are decided in a like manner. If different panels render inconsistent decisions, without drawing meaningful distinctions or adequately explaining why the cases are being decided differently, it creates a sense that the decision-making process is arbitrary or unfair. This undermines the credibility of the tribunal. If appellate decision making is viewed as unpredictable, this also makes more difficult the task of a representative attempting to advise a client as to whether an appeal is warranted.

In the absence of a binding policy or WCAT precedent decision, panels may, on occasion, have good reasons which lead them to different conclusions on similar issues. These different approaches may both be viable under the WCA. However, the reasons for such differences must be clearly articulated in a meaningful fashion. It must be made clear whether the circumstances are so different as to be distinguishable, or a different outcome was found to be otherwise warranted. Such tensions may be necessary and helpful in the initial development of the understanding of an issue, but cannot be left unresolved indefinitely. Although conflicts may occur during periods of development, over the long term WCAT decisions will support established positions on law, medicine, science, and the interpretation of legislation, regulations, and policy.

The legislature has taken specific measures to promote consistency and predictability. These include sections 250(2) and 251 concerning the binding nature of policies of the board of directors, and section 250(3) concerning the binding nature of WCAT precedent panel decisions. Having regard to this legislative intent, WCAT will recognize consistency and predictability as important values in adjudication.

In sum, WCAT will make its decisions based on the merits and justice of the case pursuant to section 250(2). Consistency and predictability, respect for the policy of the board of directors, and for WCAT precedent panel decisions are key to WCAT decision making.

14.20 Standardized Format

WCAT decisions will generally follow a standardized format using the following headings:

- Introduction
- Issue(s)
- Background and Evidence
- Reasons and Findings
- Conclusion

Additional headings may also be used, such as “Submissions” and “Law and Policy”. Where applicable, the decision may also include headings such as “Dissent”, “Minority

Opinion”, or “Concurring Opinion”. There is flexibility in the use of headings and their sequence to meet specific appeal requirements. For example, where an appeal involves multiple issues, the panel may choose to review the evidence and provide a conclusion on each issue separately, with a concluding summary of findings at the end of the decision.

14.30 Scope of Decision (also see items 3.40, 5.52 and 9.60)

Where a decision of the Review Division is appealed to WCAT, WCAT has jurisdiction to address any issue determined in either the Review Division decision or the Board decision which was under review, subject to the statutory limits on WCAT’s jurisdiction described in item 2.00.

WCAT will generally restrict its decision to the issues raised by the appellant in the notice of appeal and the appellant’s submissions to WCAT. The appellant is entitled by right to a decision on the issues expressly raised in the appeal.

Panels may address an issue raised by the respondent in relation to the decision under appeal. To ensure that the panel will address a particular issue which may not be raised by the appellant, the respondent should file a cross-appeal. This may require an extension of time to appeal (see item 5.30).

The panel will normally not address issues not expressly raised by the parties, but has the discretion to do so. For example, where the panel considers there may have been a contravention of law or policy in the lower decision, the panel may proceed to address that issue whether or not it was expressly raised by the appellant. However, panels will ensure that notice is given to the parties of the panel’s intention to address any issue which was not raised in the notice of appeal or in the parties’ submissions to WCAT.

An exception is where the subject of an appeal is a permanent disability award. Panels may address any aspect of the permanent disability award decision (i.e. which was addressed in the Board decision letter, the subject of review by the Review Division, or which was addressed in the Review Division decision) without notice to the parties.

WCAT decisions may, on occasion, adversely affect the appellant. For example, where a worker appeals a permanent disability award decision, the panel may increase, decrease, or confirm the award. If the adverse decision relates to an issue not raised by a party, the panel will ensure the parties are given an opportunity to make submissions on that issue.

WCAT considers that entitlement to interest is an ancillary issue over which a panel has jurisdiction regardless of whether it was addressed in the decision below. Where the issue has not been raised by the appellant, if the panel intends to address it, the panel must first give the parties an opportunity to make submissions on the issue.

Where a decision terminating a worker's short-term disability (wage loss) benefits is appealed to WCAT, the panel may address any aspect of that decision including whether the worker can return to work. This does not fall within any of the statutory limits on WCAT's authority. Specifically, it is not a decision respecting matters referred to in section 16 (vocational rehabilitation benefits).

Where a decision denying acceptance of a claim adjudicated under section 6 (occupational diseases) is appealed to WCAT and the panel concludes that it should have been adjudicated under section 5 (personal injury), or vice versa, the panel may address the issue if no further evidence is required and there are no natural justice concerns.

Where a WCAT panel considers there to be a matter that should have been determined but that was not determined by the Board, the panel may refer the matter back to the Board for determination and suspend the appeal proceedings until the Board provides WCAT with that determination [s. 246(3)] (see item 5.52).

WCAT will apply a similar approach in considering appeals of decisions by Board officers which are appealable directly to WCAT (concerning discriminatory action matters and applications for reopening (see item 2.26)).

14.40 Outcome

With respect to each issue addressed in a decision, the panel will normally state whether the appeal is allowed (in whole or in part) or denied. In the conclusion (at the end of the decision), the panel will also state whether the decision under appeal was confirmed, varied, or cancelled and provide a summary of its decision on each issue.

In deciding an appeal, the panel may confirm, vary, or cancel the appealed decision or order [s. 253(1)]. The meaning of these terms is as follows:

- Confirm: On every issue addressed in the decision, the panel agrees with the determinations made by the prior decision-maker in the decision or order under appeal, though not necessarily for the same reasons;
- Vary: On one or more issues addressed in the WCAT decision, the WCAT panel reached 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.
- Cancel: The panel disagrees with the determinations made on every issue covered by a decision under appeal and determines that the decision should be set aside without providing a new or changed decision. Cancellations will normally only be ordered on prevention decisions.

On an appeal concerning a reopening application [s. 240(2)], the panel will determine that the matter that was the subject of the application under section 96(2) [s. 253(2)] (see item 2.26): (a) must be reopened; or (b) may not be reopened.

A final decision on an appeal must be made in writing with reasons [s. 253(3)]. All members of the panel that made the decision will sign the decision. Written reasons will be provided for any dissent, signed by the panel member.

A panel member may authorize another WCAT member to sign on their behalf where the panel member has approved the decision but will be absent when the decision is mailed.

If a panel consists of more than one member, the decision of the majority is the panel's decision but, if there is no majority, the decision of the presiding member is the panel's decision [s. 238(9)].

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

Any decision or action of the chair or of a panel under Part 4 is final and conclusive and is not open to question or review in any court [s. 255(1)]. The Board must comply with a final WCAT decision on an appeal [s. 255(3)].

Given the final and conclusive nature of a WCAT decision, a panel cannot retain jurisdiction over the Board's implementation of the panel's decision.

WCAT decisions should clearly distinguish between the provision of a binding and conclusive finding on an issue under appeal, and a recommendation which is intended as a gratuitous comment with no legal status. Due to legislative changes in the Board's authority to revisit previous decisions, panels should exercise caution in making recommendations.

14.50 Notice of Decision

WCAT will send each party a copy of its final decision [s. 52(1), ATA] as well as any amendments or addenda to the final decision. If there are so many parties to an appeal that sending a copy to each party is impractical, WCAT may give notice of its decision and advise where copies may be obtained by public advertisement or as WCAT directs [s. 52(2) and (3), ATA].

A party who has been successful in a final decision, or a party designated in the final decision, may file a certified copy of the final decision with the Supreme Court [s. 255(4)]. A filed decision has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court [s. 255(5)].

15.00 POST-DECISION

15.10 Publication of WCAT Decisions

WCAT precedent panel decisions will be submitted for publication in the *Workers' Compensation Reporter*. The WCAT internet site (www.wcat.bc.ca) will also permit searching of all WCAT precedent panel decisions.

Accordingly, WCAT decisions will be written without names or other information which could identify the parties [s. 234(2)(g)]. WCAT decisions, along with any amendments or addenda, will be posted on its internet site in a searchable form (see items 21.00 to 21.32).

15.11 Noteworthy Decisions

Noteworthy decisions have been selected by WCAT staff because they provide significant commentary or interpretation of workers' compensation law or policy, or they comment on important issues related to WCAT procedure. Noteworthy decisions are not binding on WCAT. They are listed on WCAT's internet site (www.wcat.bc.ca) for general information and guidance only. As there are thousands of WCAT decisions, WCAT cannot guarantee that all significant decisions have been listed.

15.20 Amendments to Final Decisions

15.21 Corrections

A panel may, on request by a party or on the panel's own initiative, amend a final decision to correct any of the following [s. 253.1(1)]:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission, or other similar mistake;
- (c) an arithmetical error made in a computation.

Panels must issue amendments within 90 days of all parties being served with the final decision, unless the panel determines otherwise [s. 253.1(2)].

15.22 Clarifications

Within 90 days after being served with a final decision, a party may apply to the panel for clarification of the decision. The panel may amend the decision if it considers that the amendment will clarify its decision [s. 253.1(3)]. WCAT has no ability to extend the 90-day time limit for applications for clarification.

15.23 Reconsideration Based on New Evidence (Section 256)

Any WCAT action or decision, whether a summary decision (such as one concerning an application for an extension of time to appeal or a dismissal of the appeal) or a decision

on the merits, is final and conclusive and is not open to question or review in any court [s. 255(1)]. There are two grounds on which a WCAT decision may be further considered or reconsidered.

A party to a completed appeal may apply to the chair for reconsideration of a decision if new evidence has become available or been discovered. The chair may refer the decision for reconsideration if the chair is satisfied that the new evidence [s. 256(3)(a) and (b)]:

- (a) is substantial and material to the decision, and
- (b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

A party to a completed appeal may apply for reconsideration of a decision on the basis of new evidence on one occasion only [s. 256(4)].

Where a party appealed more than one decision, and WCAT administratively joined the appeals such that WCAT only issued one decision, the party may bring separate reconsideration applications pertaining to each appeal on the basis of new evidence on separate occasions. However, where the new evidence is relevant to more than one of the joined appeals, the party must bring the reconsideration applications at the same time.*

15.24 Reconsideration on Common Law Grounds

WCAT may set aside one of its decisions on the basis of certain common law grounds or principles. These consist of fraud or an error of law "going to jurisdiction" (including a breach of the rules of natural justice). ~~WCAT also has jurisdiction to consider an application to set aside an Appeal Division decision on common law grounds (see WCAT 2004-04928).~~[†] Where an applicant is successful in impugning a WCAT decision, WCAT has a responsibility to complete its task of providing a valid decision.

Section 253.1(5) states that provisions regarding amendment of errors or for clarification do not limit WCAT's ability to cure a jurisdictional defect on the request of a party.

A tribunal's authority at common law to set aside its own decision (and to then address the matter anew) on the basis of an error of law going to jurisdiction, was confirmed in a decision of the British Columbia Supreme Court in *Atchison v. WCB*, 2001 BCSC 1661. The Court rejected the argument that the Appeal Division's authority to review its own decisions was limited to the new evidence grounds of section 96.1. Mr. Justice Vickers reasoned:

[18] There is no doubt the courts have the power of review. However, this does not mean that administrative tribunals lack the power to

* Amended effective November 13, 2008.

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reconsider a decision, particularly where the decision is made without jurisdiction. The doctrine of *functus officio* applies to administrative tribunals based, however, "on the policy ground which favours finality of proceedings, rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal." *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848 at 849. The application of the principle is more flexible and tribunals are able to reopen decisions in order to discharge the function committed to them by the enabling legislation. **In particular, where a tribunal has made an error of jurisdiction, it is entitled to correct such an error:** *Chandler, supra*; *Right to Rediscover [sic] Appeal Division Decisions* (1993), 10 W.C.[R]. 127 (A.D.); *Re Trizak Equities Ltd. v. Area Assessor Burnaby New Westminster* (1983) 147 D.L.R. (3d) 637 (B.C.S.C.).

[emphasis added]

An appeal from this decision was denied by the British Columbia Court of Appeal on August 27, 2003 (*Powell Estate v. Workers' Compensation Board*, 2003 BCCA 470). The BCCA reasoned:

[17] The first question is whether a panel of the Appeal Division has jurisdiction to determine that a decision of another panel of the Appeal Division was a nullity as being made beyond its jurisdiction: *Chandler v. Alta. Assoc. of Architects*, [1989] 2 S.C.R. 848, citing with approval *Re Trizec Equities Ltd. and Area Assessor Burnaby-New Westminster* (1983), 147 D.L.R. (3d) 637 (B.C.S.C.).

[18] On those authorities, the answer must be, in my view, as found by Mr. Justice Vickers. The Appeal Division was able to reconsider the matter and correct its own jurisdictional error.

An application for reconsideration should be made in writing and addressed to the tribunal counsel office.

The authority to consider an application on common law grounds is discretionary in nature. WCAT will hear an application for reconsideration on the basis of common law grounds on one occasion only regardless of the number of appeals that were administratively joined.[‡] WCAT will not hear a further application for reconsideration of a WCAT decision provided in response to an application for reconsideration on common law grounds, unless a new breach of natural justice is alleged in relation to the second decision.

An application on the basis of common law grounds concerns the validity of the initial decision. Accordingly, such applications are often made soon after the decision. However, new evidence to support an application under section 256 may not arise until a few years after the decision. For that reason, separate applications may be made on the basis of common law grounds, or on the basis of new evidence under section 256,

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but each type of application is limited to one occasion only. Parties may seek reconsideration on both grounds at the same time.

WCAT will apply the same standards of review to reconsiderations on common law grounds as will be applied by the court on judicial review (see item 15.32).

15.25 Incomplete Decision

Once a tribunal has issued its decision, it is considered “*functus*” and it has no further jurisdiction to address the matter. However, if a panel fails to address an issue which was before it, its decision is not complete and the panel may complete its adjudicative function by issuing an addendum to the original decision. WCAT will treat a party's request that a panel complete its decision as an application for reconsideration. It will not, however, affect a party's right to apply for reconsideration on common law grounds.

15.30 Judicial Review

15.31 Time Limit

An application for judicial review of a final decision of WCAT must be commenced within 60 days of the date the decision is issued [s. 57(1), ATA]. The court may extend this time if it is satisfied there are serious grounds for relief, there is a reasonable explanation for the delay, and no substantial prejudice or hardship will result to a person affected by the delay.

15.32 Standards of Review

The court will not interfere in a final WCAT decision unless threshold grounds are met. There are three possible standards of review [s. 58(2), ATA]:

- (a) patently unreasonable for a finding of fact or law or an exercise of discretion in respect of a matter over which WCAT has exclusive jurisdiction under the privative clause (see section 254, WCA);
- (b) whether WCAT acted fairly in all of the circumstances for questions about the application of common law rules of natural justice and procedural fairness; and
- (c) correctness for all other matters.

A discretionary decision will be considered to be patently unreasonably if the discretion is exercised arbitrarily or in bad faith, is exercised for an improper purpose, is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account [s. 58.3, ATA].

16.00 PREVENTION APPEALS

Except as stated below, where a party appeals an occupational health or safety matter under Part 3, WCAT will order a participating employer (whether the appellant or the respondent) to post a notice to bring the appeal to the attention of its employees [s. 246(2)(h)]. A copy of the posted notice must be provided to WCAT. Where the employer, as an appellant, fails to comply with the posting order, WCAT may dismiss the appeal after giving notice to the employer [s. 246(5)].

No posting is required for appeals concerning a discriminatory action matter under section 153, or concerning an order under section 195 to cancel or suspend a certificate under Part 3 (i.e. of an occupational first aid attendant or instructor [s. 159], 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]).

Potential respondents in an appeal of a review officer's decision on an occupational health and safety issue include all those with standing to appeal such a decision:

- (a) a worker;
- (b) an employer;
- (c) a supplier, union or owner, as defined in section 106;
- (d) a member of the deceased worker's family.

A panel may invite participation by the Board as set out in item 8.82 (see also item 4.36).

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WCAT will apply the same standards of review to reconsiderations on common law grounds as will be applied by the court on judicial review (see item 15.32).

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Once a tribunal has issued its decision, it is considered “*functus*” and it has no further jurisdiction to address the matter. However, if a panel fails to address an issue which was before it, its decision is not complete and the panel may complete its adjudicative function by issuing an addendum to the original decision. WCAT will treat a party's request that a panel complete its decision as an application for reconsideration. It will not, however, affect a party's right to apply for reconsideration on common law grounds.

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An application for judicial review of a final decision of WCAT must be commenced within 60 days of the date the decision is issued [s. 57(1), ATA]. The court may extend this time if it is satisfied there are serious grounds for relief, there is a reasonable explanation for the delay, and no substantial prejudice or hardship will result to a person affected by the delay.

15.32 Standards of Review

The court will not interfere in a final WCAT decision unless threshold grounds are met. There are three possible standards of review [s. 58(2), ATA]:

- (a) patently unreasonable for a finding of fact or law or an exercise of discretion in respect of a matter over which WCAT has exclusive jurisdiction under the privative clause (see section 254, WCA);
- (b) whether WCAT acted fairly in all of the circumstances for questions about the application of common law rules of natural justice and procedural fairness; and
- (c) correctness for all other matters.

A discretionary decision will be considered to be patently unreasonable if the discretion is exercised arbitrarily or in bad faith, is exercised for an improper purpose, is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account [s. 58.3, ATA].

17.00 DISCRIMINATORY ACTION APPEALS (Section 153)

A determination, an order, a refusal to make an order, or a cancellation of an order by a Board officer under section 153 concerning a discriminatory action complaint is appealable directly to WCAT [s. 240(1)]. These issues are outside the jurisdiction of the Review Division.

The time limit for appealing a Board decision under section 153 to WCAT is 90 days. The following persons may appeal [s. 241(4)]:

- (a) a worker;
- (b) an employer;
- (c) a union as defined in section 106.

The same parties may participate as respondents.

There is no requirement for posting notice of these appeals in the workplace.

18.00 CERTIFICATE APPEALS

These appeals concern an order under section 195 to cancel or suspend a certificate under Part 3 of the WCA of:

- an occupational first aid attendant or instructor [s. 159];
- 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].

There is no respondent to a certificate appeal, although WCAT may invite the employer to participate as an interested person. No posting in the workplace is required.

19.00 ASSESSMENT APPEALS

An employer or an independent operator who is directly affected by a decision of the review officer may appeal a decision respecting an assessment or classification matter, including personal optional protection coverage [s. 241(2)].

An employer may request review by a review officer of their classification unit, but not their rate group or industry group [s. 96.2(2)(c) and (d)]. (The complex wording of s. 96.2(2)(c) stems from the different terminology used in the current assessment classification structure, as it relates to the framework in the WCA involving classes and subclasses.) The decision by a review officer concerning an employer's classification unit is appealable to WCAT.

A panel may invite participation by the Board as set out in item 8.82 (see also items 4.32 to 4.35).

20.00 CERTIFICATION TO COURT – SECTION 257

20.10 General

Section 257 authorizes WCAT to provide a certificate in a legal action.

Certification to court

257 (1) Where an action is commenced based on

- (a) a disability caused by occupational disease,
- (b) a personal injury, or
- (c) death,

the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.

(2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this WCA, including determining whether

- (a) a person was, at the time the cause of action arose, a worker within the meaning of Part 1,
- (b) the injury, disability or death of a worker arose out of, and in the course of, the worker's employment,
- (c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or
- (d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of Part 1.

(3) This Part, except section 253(3), applies to a proceeding under this section as if the proceedings were an appeal under this Part.

20.20 Standing to Make Application

The court or any party to a legal action may, any time after a legal action has been commenced, request a certificate under section 257.

WCAT may provide a certificate even though the plaintiff has not applied for workers' compensation benefits and there has been no decision by a Board officer (or review officer). WCAT will consider all of the evidence and argument afresh regardless of a prior decision by a Board officer or by the Review Division.

Where the Board (or Boards of other jurisdictions) is subrogated to the rights of the worker or the dependent under section 10(6), the worker or dependent should provide evidence of the Board's authorization to proceed with the legal action.

20.21 Standing of Other Persons Affected by the Decision

Other persons who might be adversely affected by the section 257 determination may be given standing to participate even though they are not a party in the legal action. This would include, for example, the putative employer of a party who is alleged to have been a worker at the time of their injury. Natural justice requires that the alleged employer have the opportunity to participate because the section 257 proceeding may lead to the establishment of a claim for workers' compensation benefits.

20.22 Timing of Application

There is no time limit for requesting a determination under section 257. WCAT will accept an application for a section 257 determination any time after a legal action has been commenced and is continuing.

WCAT will process applications on a first-come, first-served basis. No priority will be given to applications with impending trial dates. The onus is on the parties to make their application sufficiently well in advance of the trial date to leave adequate time for submissions by the parties and consideration by WCAT.

WCAT may make exception to this and process and decide an application on a priority basis where exceptional circumstances are demonstrated and the parties are ready to proceed and able to provide their submissions with all of the factual evidence and argument necessary for WCAT's consideration.

20.23 Pleading a Defence under Section 10

WCAT will consider an application for a certificate under section 257, without requiring a defence under section 10 of the WCA to be pleaded in the Statement of Defence. (Pleading such a defence may still be necessary for the purposes of the legal action.) The application must come within the terms of section 257(1) as involving an action based on a disability caused by occupational disease, personal injury, or death, and that the matter sought to be determined be relevant to the action and within the Board's jurisdiction [s. 257(2)].

20.24 Application for Compensation (Form 6)

Plaintiffs/claimants should file a Form 6 *Application for Compensation & Report of Injury or Occupational Disease* on a provisional basis pending the outcome of any section 257 application. This protects the plaintiff's/claimant's right to proceed with a workers' compensation claim should the legal action ultimately be barred. The general requirement of section 55 of the WCA is that an application for compensation be filed

within one year of the date of injury. (See section 10 regarding subrogation and election.)

20.30 Rule for Initiating the Application for Certification

A request for a section 257 certificate must be made in writing to WCAT. The request must be accompanied by a copy of the Writ of Summons/Notice of Claim (and any other pleadings) filed in the legal action. The applicant must also identify the persons for whom section 257 determinations are sought. Failure to meet these requirements may result in WCAT dismissing the application.

20.31 Other Necessary Information

The following information should also be provided in order for WCAT to process the application:

- (a) the birth date(s), current address(es) and social insurance number(s) of the parties to the legal action;
- (b) any claim numbers for related Board claims;
- (c) names of the employer(s) of all plaintiffs, defendants and third parties at the time the cause of action arose and their current addresses;
- (d) current or past Board registration numbers of any employer or person with personal optional protection coverage;
- (e) copies of the following documents:
 - any statements made to I.C.B.C. (in motor vehicle accident cases);
 - transcripts of Examinations for Discovery, if held;
 - any third party pleadings;
 - any relevant affidavits and motions filed in the legal action; and,
 - Notice of Trial (if scheduled).

20.40 Submissions

WCAT will notify all parties to the legal action and any affected parties of the section 257 application and give them an opportunity to provide submissions. The applications will generally be considered on the basis of written submissions although a party may request an oral hearing (see item 20.50). An AC coordinates the submissions process.

20.41 Requesting Party Provides First Submission

The party bringing the section 257 application is asked to provide the first submission. The party should identify the determinations requested, set out the factual background, and provide all the evidence and argument necessary to WCAT's consideration of the issues. Parties should not assume that WCAT will carry out any further investigations and should not omit any evidence, although the panel may undertake further inquiries if the panel considers this necessary.

20.42 Exchange of Submissions

The first submission is provided to the participating parties who are asked to provide their submissions in reply. Submissions in reply should also identify any additional determinations sought. Replies are provided to the first party who is given an opportunity to respond. 21-days are normally granted for each submission. This may be extended upon request. A shorter time frame may be required if a trial date is pending.

Counsel must provide a copy of their submissions to opposing counsel and to any other interested party at the same time as they send their submissions to WCAT.

20.43 Evidence

Evidence may be submitted in any form including handwritten statements of witnesses, business records, sworn affidavits, transcripts of evidence given under oath at an Examination for Discovery, or *viva voce* evidence at an oral hearing before WCAT. While the strict rules of evidence do not apply, the form of the evidence may affect the weight given to it.

20.44 Legal Argument

Part 4 of the WCA (except the 180-day time frame for decision making) applies to proceedings under section 257.

Legal argument should include reference to the policies of the board of directors. Under sections 250(2) and 251(1), WCAT must apply a policy of the board of directors that is applicable in a case, unless the policy is so patently unreasonable that it is not capable of being supported by the WCA and regulations.

Legal argument should also include reference to any applicable WCAT precedent panel decisions (see section 238(6)). Such precedent decisions are binding on future WCAT panels unless [s. 250(3)]:

- (a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the panel's decision, or
- (b) subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised.

WCAT is not otherwise bound to follow legal precedent [s. 250(1)], but does strive for consistency in decision making. If WCAT is hearing an appeal respecting the compensation of a worker, and the evidence supporting different findings on an issue is evenly weighted, the panel must resolve that issue in a manner that favours the worker [s. 250(4)].

All Appeal Division decisions since January 1, 2000, including section 11 determinations since November 1992 which were filed in a British Columbia court registry, are available on the Board's internet web site located at <http://www.worksafebc.com>.

All WCAT decisions since March 3, 2003 are publicly accessible at www.wcat.bc.ca. Precedent panel decisions are published in the *Workers' Compensation Reporter* and are searchable on the WCAT website.

20.50 Oral Hearing

The matter may proceed by way of oral hearing. A preliminary request for an oral hearing should be made in writing with reasons. The WCAT panel will determine if an oral hearing is necessary taking into consideration a number of factors, including whether a significant issue of credibility is involved. A WCAT panel may convene an oral hearing whether or not one is requested.

20.60 Use of Existing WCB Files

If a WCB claim file has been established, or if an employer assessment file or prevention file exists, it will be accessible to the WCAT panel. The Board will provide disclosure of relevant files to the parties.

Disclosure of a file for the purposes of the legal action may be obtained by writing to the legal disclosures clerk at the Board. A Court Order under Rule 26(11) of the British Columbia *Rules of Court* or the written consent of the "worker" or "employer", as the case may be, is required.

20.70 Scope of Authority under Section 257

The parties should clearly identify the issues on which determinations are requested, and ensure that evidence and submissions are provided in connection with each issue.

WCAT can determine any matter that is relevant to the action and within its competence under the WCA, including whether:

- (a) a plaintiff, defendant, or third party was, at the time the cause of action arose, a worker or employer within the meaning of Part 1;
- (b) injury, disability, or death of a plaintiff arose out of and in the course of the plaintiff's employment;
- (c) any action or conduct of a defendant, third party, employer, the employer's servant or agent, which caused the alleged breach of duty of care arose out of and in the course of employment;
- (d) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer; and

- (e) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of Part 1.

20.80 Decision

The panel will issue both a certificate and written reasons for its decision. Both documents will be signed by the WCAT member(s) who made the decision. Unfiled copies will be provided to each party, followed by filed copies after they have been entered in the legal action with the court registry.

Although section 253(4) (time limit for making decision) does not apply to a section 257 application, the 180 day time frame is the minimum required.

WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact and law arising or required to be determined under Part 4, including all matters that WCAT is requested to determine under section 257 [s. 254(c)]. The WCAT decision is final and conclusive and is not open to question or review in any court [s. 255].

20.81 Effect on the Legal Action

WCAT does not determine the effect of the certificate on the legal action. WCAT does not address whether a legal action is barred pursuant to section 10. Following a section 257 certificate, a party may apply to the court in accordance with the *Rules of Court* to determine whether the action should be dismissed based on section 10 and the findings contained in the certificate.

20.82 Other Matters

WCAT will deal only with the request for a certificate under section 257. Inquiries concerning filing a claim for compensation should be made to the Board.

Inquiries about the Board's subrogated interest in a legal action under section 10 on claims made to the Board should be directed to the Legal Services Division of the Board.

21.00 PUBLIC ACCESS TO WCAT DECISIONS

21.10 General

Section 234(2)(g) provides that the chair is responsible for providing for public access to WCAT decisions in a manner that protects the privacy of the parties to the appeal. WCAT must also comply with the confidentiality and privacy provisions of both the WCA (s. 260) and FIPPA.

WCAT has an internet web site (www.wcat.bc.ca) with a search engine, which permits public access to its decisions without identifiers, and to unedited section 257 certificates which have been filed in British Columbia court registries. As section 257 certificates are publicly accessible after being filed in the legal action at a British Columbia court registry, identifiers are not removed from that category of decision.

In general, panels write decisions without parties' personal identifiers so that no severing of identifying information is required apart from removal of the header and covering page(s). Covering pages (to be removed before publication) include the front page of the decision which identifies the parties, the distribution list, and any listing of coded identifiers used in the decision. Panels are primarily responsible for ensuring that their decisions do not contain identifiers and may be posted to the internet without violating privacy.

21.20 *Practice Directive for Writing Decisions without Identifiers*

21.21 *Confidentiality and Privacy*

Information which in and of itself would not need to be protected (such as geographic locations) will be protected to the extent necessary to safeguard confidentiality and privacy of the parties. Where there is doubt as to whether particular data would tend to identify a party and as to whether a descriptive term or coded initial should be used, the doubt should generally be resolved to protect confidentiality and privacy.

21.22 *Names*

The following types of names will not be used in WCAT decisions: names of parties (such as the worker and employer), names of lay witnesses, names of Board officers and other Board staff (including Board medical advisors).

Panels will generally use names of expert witnesses, such as physicians, and names taken from a public source (such as a published medical article or textbook, a court judgment, or Hansard). If use of an expert's name is likely to identify the worker, the panel may refer to the expert by title (e.g. the worker's attending physician) or by an actual initial. The panel may use a coded initial if using the actual initial might identify a party or lay witness.

The highest level of protection of privacy is afforded to parties and lay witnesses. Panels may identify parties and lay witnesses by role (the worker, employer, manager, etc.) or by a coded initial which does not correspond to their name (Mr. Smith would be Mr. A rather than Mr. S).

Names of treating facilities will be dealt with in a similar fashion - they may be referred to by their name, or by title (e.g. a local hospital or physiotherapy clinic) or by an actual initial. A coded initial may be used where the name of the facility might identify a party or lay witness.

Other decision makers will normally be referred to by title (e.g. case manager, review officer, etc.). An actual name or initial may be used at the panel's discretion.

21.23 File Copy of Decision and Covering Pages

The file copy of a decision will include a "header" at the top of each page with identifying information (name and file number) to ensure the accuracy and integrity of file records. The parties to the appeal or other matter will be provided with a copy of the decision with the identifying "header" and any "covering" pages (the front page of the decision which identifies the parties and the distribution list). If coded initials are used (e.g. witnesses A, B, and C), the panel may include a list of identities associated with each coded initial. A complete copy of the decision, including the "header" and covering pages, will also be placed on the Board's file, but will not be publicly accessible on the internet.

The "header" and covering pages will be removed from the decision before it is made publicly accessible. The decision placed on the internet will include the WCAT decision number for citation purposes.

21.24 Names of Representatives

Panels may use names of representatives, or may refer to them by role (e.g. the worker's union representative, the worker's lawyer, counsel for the employer, etc.).

21.25 File or Appeal Numbers

Board file numbers (worker's claim file number, or employer's registration number) will not be included in the body of a decision. Similarly, WCAT, Appeal Division or Review Board appeal numbers will not be used in the body of a decision. WCAT, Appeal Division or Review Division decision numbers may be cited in decisions.

21.26 Payroll, Revenue Data, and Salary Information

Employers' payroll and revenue data will be protected in decisions. In some cases, protecting the identity of the employer will be sufficient as the payroll or revenue data would not be identifiable by itself. Where the reasons and analysis in a WCAT decision

might tend to identify the employer, it may be necessary to refer to the payroll or revenue data in general or approximate terms.

If the decision cannot be written in a meaningful fashion without providing specific figures in the body of the decision, it may be necessary to use a second level of editing (see item 21.30).

Similarly, in addressing issues concerning a worker's employability, care must be taken to avoid disclosing the salaries paid by particular identifiable employers. This might arise, for example, in connection with a worker's job search efforts and contacts with various employers.

21.27 Geographic Locations

Geographic locations may be used where these refer to a country, province, or large city such as Vancouver or Victoria. If reference to particular geographic locations might lead to the identification of a party or lay witness, panels should use a general description (e.g. a northern community) instead.

Names of treating facilities, such as a local physiotherapy clinic or hospital, may be used in the same fashion as physicians' names. Descriptive references may be used in place of names where the name would tend to identify the worker.

21.28 Quotations

Quotations must, for obvious reasons, also be edited to protect privacy. This will normally be accomplished by substituting a descriptive term for a name, and using square brackets to show the change, e.g. [the worker].

21.29 Corrections or Revisions — Inadvertent Error

If identifying information is inadvertently posted to the WCAT website, WCAT will edit the decision to comply with these guidelines.

21.30 Section 257 Certification to Court

WCAT files a section 257 certificate in a legal action in the appropriate British Columbia court registry. Accordingly, after filing, WCAT will make its decisions under section 257 publicly available without removing names and other identifying information.

However, a section 257 certificate provided for filing in a court registry outside of British Columbia will be edited for privacy, as it is provided to the parties and not filed in the legal action by WCAT.

21.31 Second Level of Editing in Exceptional Circumstances

In limited and exceptional circumstances, it may be appropriate for a WCAT panel to issue a decision to the parties which is further edited for privacy considerations before the decision is made accessible to the public. This will occur rarely, such as in cases where the ability of parties to understand the facts, evidence, or reasoning will be made unduly difficult by complying with the above guidelines. In this event, it will be the responsibility of the WCAT panel issuing the decision to provide the two versions of the decision.

21.32 Exception

The chair may direct that a WCAT decision not be made publicly accessible. This may be done where a secondary edit fails to protect the privacy of a party or renders the decision unintelligible.

WCAT may consider a request by a party not to place a decision on the website where the case is of a particularly identifiable nature and contains sensitive personal information. In general, however, privacy will be protected based on the other guidelines set out above.

22.00 CODE OF CONDUCT FOR WCAT EMPLOYEES

Section 235 provides that employees necessary to exercise the powers and perform the duties of WCAT may be appointed under the *Public Service Act*. WCAT may also engage or retain consultants or contractors that WCAT considers necessary. All employees, officers, consultants or contractors engaged or retained by WCAT are bound by, and must agree to be bound by, the Province of British Columbia *Standards of Conduct for Public Service Employees*. This is accessible on the internet at:

<http://www.bcpublicservice.ca/policies/Directives/5-8/05-4soc.htm>

23.00 CODE OF CONDUCT FOR WCAT MEMBERS

23.10 General

The requirement to comply with the Code of Conduct is a condition of appointment. Members who fail to comply with these standards may be subject to disciplinary action up to and including dismissal.

This Code establishes rules of conduct governing the professional and ethical responsibilities of members to enhance public confidence in their integrity and fairness. The Code establishes reasonable, minimum expectations governing the conduct of all WCAT members (including the chair, vice chairs, extraordinary members, and temporary substitute members appointed under section 232(10)). Each member must ensure his or her own compliance with this Code. Members also have an obligation to bring to the attention of another WCAT member any circumstance which raises a reasonable apprehension of a possible contravention of this Code by the member.

23.20 Confidentiality

As a result of their duties, members acquire confidential information. In accordance with section 260 of the WCA and section 30 of the ATA, members must not disclose to anyone such confidential information except as may be necessary to discharge their obligations under Part 4 of the WCA or when required by law or authorized under FIPPA. Members will comply with guidelines established by WCAT to protect the privacy and security of confidential records (see item 27.30).

Section 55(1) of the ATA provides that members must not be required to give evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of their duties under the WCA or the ATA.

All inquiries from the media will be referred to the chair or tribunal counsel (apart from requests to observe a hearing).

23.30 Decision-Making Responsibilities

Members must make their decisions based on the merits and justice of the case, and must apply the law and policy to the evidence in good faith and to the best of their ability. Members must approach the hearing and determination of every appeal or application with a mind that is genuinely open with respect to every issue, and open to persuasion by convincing evidence and argument. WCAT members must avoid doing or saying anything that would cause a reasonable, well-informed individual to think otherwise.

A member will not decline to follow an applicable policy on the basis that it is unlawful, except in accordance with section 251 of the WCA.

A member will not decline to follow an applicable decision of a precedent panel appointed under section 238(6), except in accordance with section 250(3).

At any stage of a proceeding, members must not communicate about the proceeding, directly or indirectly, with any party, representative, or witness, except in the presence of all parties and/or their representatives, or unless the correspondence is copied to all the parties and/or their representatives.

Members will respect and apply the provisions of sections 250(3) and 251 of the WCA, just as a court would consider a decision of a higher court as binding. Even if the member would have decided the issue differently, the member will respect and apply binding authority as provided in the WCA.

After discussion and careful consideration, where a member of a panel is unable to agree with the proposed decision of a majority of the panel, that member should not abandon strongly held views on an issue of substance, either for the sake of panel unanimity, or in exchange for agreement on any other point. Instead, the member should prepare a reasoned dissent in a timely fashion.

Members are responsible for ensuring that decisions are rendered within the statutory time frames, subject to suspensions or extensions as permitted under the WCA. Written reasons should be prepared without undue delay, and draft decisions prepared by other members should be addressed at the earliest opportunity.

23.40 Code of Conduct for Oral Hearings

- (a) Members will approach every hearing with an open mind on every issue, and will avoid doing or saying anything that could cause any person to think otherwise.
- (b) Members will treat all participants in the hearing process with courtesy and respect.
- (c) Members will make every effort to ensure that all participants treat each other with courtesy and respect.
- (d) Members will allow parties reasonable latitude to present their case without interruption, subject to the presiding member's obligation to control the hearing for relevance and to ensure that the procedure is fair.
- (e) Members will explain the hearing procedure and the issues to be decided. The explanation will be consistent with the expertise of the participants.

23.50 Conflict of Interest/Reasonable Apprehension of Bias

Members must exercise their duties and responsibilities in a neutral, impartial manner. Members must avoid all real or apparent conflicts of interest and must arrange their private affairs in a manner intended to avoid the possibility of a real or apparent conflict of interest arising in their role with WCAT. A conflict of interest arises when a member's relationships, financial interests, or activities inhibit, or may reasonably be thought to inhibit, the impartial discharge of his or her obligations as a member.

A member must not participate in a proceeding where the member has (or has had within the last 12 months) a significant or close personal, professional, or business relationship with a party, a party's representative, or witness to a proceeding.

For greater certainty:

- (a) a "real conflict of interest" occurs when a member has a personal interest (either pecuniary or non-pecuniary) relationship or association (past or present) that impairs the member's ability to discharge her/his duties fairly and impartially;
- (b) an "apparent conflict of interest" exists when a reasonable, well-informed person could have a reasonable perception or apprehension that the existence of a personal attitude, interest (either pecuniary or non-pecuniary) relationship or association (past or present) could impair the member's ability to discharge their duties fairly and impartially;
- (c) the fact that an extraordinary member has been appointed as having experience in employers' or workers' interests, and maintains active contact with the respective constituency, does not, by itself, place that member in a real or apparent conflict of interest;
- (d) a "proceeding" includes any matter before WCAT, including an appeal, application, or request for reconsideration, and includes all preliminary and post-decision actions in relation to a matter.

It is the responsibility of each member to actively inquire into and consider any circumstance which might suggest a possible conflict of interest or raise a perception of bias regarding any of the member's responsibilities. On recognizing a possible conflict or an issue of bias, the member should consider whether it would be appropriate to withdraw. This may involve discussion with other panel members, if any, or the tribunal counsel, chair, chief operating officer, or registrar.

As well, members have a duty to report any situation that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Members can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law.

23.51 Procedure

A member who believes they have a real or apparent conflict of interest related to a proceeding must advise their team leader or the registrar as soon as possible. If a member is in doubt as to whether or not they have a real or apparent conflict of interest, they should seek the advice of the tribunal counsel, chair, chief operating officer, or registrar.

If a member reasonably believes another member has a real or apparent conflict of interest related to a proceeding, the member holding the reasonable belief should bring the matter to the attention of the latter member. If this does not resolve the matter, the

member holding the reasonable belief must bring the matter to the attention of the tribunal counsel, chair, chief operating office, or registrar.

It is expected that parties will make any such allegations at the earliest opportunity after learning the circumstances that give rise to the allegation. The party making the allegation will be required to provide details in writing to the panel of the evidence and argument it relies upon to establish the allegation. At the panel's option, the details may be presented orally. If, after considering that evidence and argument and any evidence and argument the other parties present on the issue, the panel determines a real or apparent conflict of interest exists, the panel will be reconstituted. If the panel concludes neither a real nor apparent conflict of interest exists, the panel must inform the parties in writing and provide reasons. This may be by way of a preliminary decision dealing only with the conflict allegation, or as a preliminary determination made as part of a decision on the appeal or other proceeding.

If a party raises an allegation of a reasonable apprehension of bias, or otherwise challenges the neutrality of a member in an oral hearing after hearing the submissions of the parties, that member may adjourn the hearing to consider the matter and consult with the tribunal counsel, chair, chief operating officer, or registrar. Alternatively, the member may proceed with the hearing, note the objection for the record, and provide a written determination concerning the objection as a preliminary decision or as part of the decision on the appeal or other proceeding.

If the panel elects to provide a separate preliminary decision concerning a possible apprehension of bias, a party has the right to seek reconsideration by the chair of the preliminary decision on the basis of an error of law going to jurisdiction (including a breach of natural justice). Similarly, where such an allegation is addressed as part of the decision, a party has the right to seek reconsideration by the chair of the decision on the basis of an error of law going to jurisdiction (including a breach of natural justice).

Where the possibility of a conflict of interest or bias becomes apparent to a member during a hearing, the member must identify the potential problem to all the parties and invite oral submissions on the matter. The panel may adjourn to reach an oral or written decision on the matter, or the member may withdraw from the proceeding if the member considers it appropriate. Alternatively, the parties may consent to the member proceeding with the oral hearing.

If a member withdraws from a proceeding on the basis of a real or apparent conflict of interest, the member must not participate in any manner in the proceeding.

Following a WCAT decision, if a party to the decision raises an allegation of a real or apparent conflict of interest against a member of the panel, the chair will review the allegation and, if a *prima facie* case is established, will treat the allegation as a request to set aside the decision based on an alleged breach of the principles of natural justice. If the chair was a member of the panel which issued the decision, the tribunal counsel, chief operating officer, or registrar will address the allegation.

23.60 General Conduct

Members will not engage in discriminatory behaviour contrary to the *British Columbia Human Rights Code*.

Members will not engage in harassment of a personal, sexual, or racial nature. Members will not engage in retaliation against anyone raising a concern or making a complaint in good faith under the *Human Rights Code*.

23.61 Collegial Responsibilities

The conduct and language of members in the workplace must meet acceptable social standards and must contribute to a positive work environment. A member's conduct must not compromise the integrity of WCAT or the public service.

Members will foster a collegial approach in performing their adjudicative functions and exchange views, information, and opinions in a spirit of respect for the independence of each other as decision makers. A member will not publicly comment, orally or in writing, on any matter before WCAT, or on a colleague's conduct, and shall not divulge confidential information unless legally required or appropriately authorized to do so.

Members will be available for consultation or discussions on any policy, legal, or practice or procedural issue, and will treat the views and opinions of colleagues with respect.

23.62 Involvement in Legal Proceedings

Members must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for WCAT in that proceeding or unless it has been approved by a ministry solicitor in the Legal Services Branch, Ministry of the Attorney General. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch, PSERC, will obtain any necessary approvals. Members are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings.

Members, or anyone conducting a dispute resolution process for WCAT, must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of their duties [s. 55(1), ATA].

A court may require WCAT to produce the record of a proceeding that is the subject of an application for judicial review [s. 55(2), ATA]. On request, WCAT may voluntarily produce the record without the necessity of a court order.

Neither WCAT nor its decision makers may be sued for damages because of anything done or omitted in the performance or intended performance of any statutory duty or exercise or intended exercise of any statutory power [s. 56(2), ATA]. The immunity conferred in section 56(2) does not apply in relation to anything done or omitted in bad faith [s. 56(3)].

23.63 Personal Relationships between Members

Members and employees who are direct relatives or who permanently reside together may not be employed in situations where:

- (a) a reporting relationship exists where one member/employee has influence, input or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work and similar matters; or
- (b) the working relationship affords an opportunity for collusion between the two individuals that would have a detrimental effect on WCAT's interest.

The above restriction on working relationships may be waived provided that the chair is satisfied that sufficient safeguards are in place to ensure that WCAT's interests are not compromised.

Members are to disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason, or a benefit or perceived benefit could accrue to them.

23.64 Skills and Training

A member will endeavour to develop and enhance their knowledge of both substantive and procedural matters related to WCAT appeals and proceedings, and will participate in ongoing training and professional development.

Members will make themselves available to participate, as assigned, in other functions and activities such as training new members, participating in committees, or developing practices and procedures.

23.65 Use of WCAT Assets

Members must not use WCAT assets, internet facilities, space or time for any non-WCAT purpose without the prior authorization of the chair or a senior vice chair. The member must comply with all applicable laws and regulations and must respect the legal protection provided by copyright and licenses with respect to both programs and data. Internet users are responsible for ensuring that their use of Internet access is appropriate and consistent with ethical conduct under the Internet Usage Policy (GMOP Section 8.3.3.5). This policy does not prohibit members from making or receiving occasional brief electronic messages or private telephone calls.

23.66 Accepting Gifts

Members must not directly or indirectly ask for or accept a gift, favour, service, or promise of future benefit from any individual or organization which appears before WCAT. This provision is not intended to prohibit the normal presentation of gifts to persons participating in public functions, or the normal exchange of gifts between friends that does not amount to a real or apparent conflict of interest, or does not otherwise call into question the member's objectivity and impartiality. This provision is also not intended to prohibit infrequent attendance at lunches, dinners, or public events of a common and reasonable nature in the company of an individual or representative of an organization which regularly appears before WCAT. If there is any doubt regarding the propriety of accepting a gift or accepting an invitation to attend an event, the member should consult with the chair.

23.70 Outside Activities

Members must ensure that their outside activities do not interfere with the impartial, effective, and timely performance of their responsibilities. Members must not engage in activities that bring WCAT into disrepute. Unless so authorized by the chair, members must not perform outside activities in a manner that appears to be officially supported by or connected to WCAT, or appears to represent WCAT opinion or policy. Members must not use their position in WCAT to lend weight to the public expression of a personal opinion. A member must not use WCAT letterhead for personal correspondence or non-WCAT related matters.

Members are free to engage in political activities so long as they are able to maintain their impartiality and the perception of impartiality in relation to their duties and responsibilities. Members' political activities must be clearly separated from activities related to their role as members. Members must not engage in political activities during working hours or use WCAT facilities, equipment, or resources in support of such activities.

Partisan politics at the local, provincial, or national levels are not to be introduced into the workplace. This does not apply to informal private discussions among co-workers.

23.71 Outside Remunerative and Volunteer Work

Members may engage in remunerative employment with another employer, carry on a business, receive remuneration from public funds for activities outside their position, or engage in volunteer activities, provided it does not:

- (a) interfere with the performance of their duties as a member of WCAT;
- (b) bring WCAT or the government into disrepute;
- (c) represent a conflict of interest or create the reasonable perception of a conflict of interest;
- (d) appear to be an official act or to represent WCAT or government opinion or policy;

- (e) involve the unauthorized use of work time or government premises, services, equipment, or supplies to which they have access by virtue of their employment;
- (f) gain an advantage that is derived from their employment as a member of WCAT; or
- (g) result in payment while the member is in receipt of short-term and/or long-term disability plan payments.

23.80 Reporting and Consequences

Members who are concerned that the conduct of another member may threaten the integrity of WCAT have a duty to discuss the issue with the chair, tribunal counsel, chief operating officer, or registrar (and the member in question) as soon as practicable.

Any member who in good faith believes there has been a breach of this Code, and reports the matter to the chair, tribunal counsel, chief operating officer, or registrar, is protected from any reprisal.

The chair shall, if the allegation is not considered frivolous or vexatious, make whatever inquiries or investigations he/she determines necessary and may, if appropriate, report the results and any steps consequently taken to the person who made the report. If the chair considers the allegation is substantive, the chair will notify the member whose conduct has been reported and give the member an opportunity to respond, both to the allegation and to any proposed disciplinary action.

Breach of a provision of this Code by a member may constitute grounds for discipline, up to and including dismissal by the chair. If the breach occurs in good faith, or through inadvertence, such factors will be taken into account in determining if discipline is imposed and the disciplinary sanction warranted.

23.90 Obligations after Ceasing to be a Member

Members who cease to hold office continue to be bound by the obligations of confidentiality in respect of any matter arising while they were a member. During the member's appointment, and following, they are also prohibited from appearing or making written submissions in a proceeding or matter before WCAT as counsel, advocate, or representative on behalf of a party to the proceeding or matter until six months after the member's appointment ends.

The same obligation and prohibition extends to the legal staff of the tribunal counsel office who cease to be employed by WCAT.

24.00 CODE OF CONDUCT FOR REPRESENTATIVES

24.10 General

Parties appearing before WCAT are not required to have representation. However, many are represented by agents such as friends or family members, union representatives, human resources managers, advisers from the Workers' or Employers' Advisers' Offices, private consultants, or lawyers.

This Code is intended to guide representatives by setting out minimum standards of behaviour. Representatives are expected to know and abide by this Code. WCAT will investigate breaches of this Code which are brought to tribunal counsel's attention.

24.20 Duties of a Representative

- (a) A representative must honestly represent the client. The representative will not put forward any information known to be untrue, nor will they knowingly assist or encourage a party to be dishonest or misrepresent facts.
- (b) A representative must be prepared and must have proper instructions from their client before proceeding. Being prepared includes being familiar with their client's evidence and position on the appeal, as well as the relevant Board file(s) and the relevant law, policy, and precedent decisions. A representative must meet deadlines for written submissions and be prepared for oral hearings. A representative must obtain instructions from their client before initiating or withdrawing an appeal.
- (c) A representative must observe WCAT's rules of practice and procedure and practice directives. In particular, a representative must be familiar with the timelines permitted for providing written submissions and for scheduling oral hearings. Representatives should not undertake to represent clients unless they will be able to provide such representation within the statutory time frames, as required by section 253 of the WCA.
- (d) A representative must behave courteously and respectfully to the opposing party and their representative (if present), to any witnesses called during an oral hearing, to the panel hearing the appeal, and to WCAT support staff. If there are ill feelings between a worker and an employer, or between the client and the Board, these should not influence the representative in their conduct and demeanour toward any other representative in the case, or toward the WCAT panel.
- (e) A representative should instruct their client and witnesses as to appropriate conduct in a hearing, and the requirement for courtesy and civility to the panel as well as any opposing representative and their client. A representative is expected

to take whatever steps are necessary to dissuade clients and witnesses from disrupting a hearing.

- (f) The panel assigned to a hearing or pre-hearing process may make orders or give directions necessary for the maintenance of order. If a representative disobeys or fails to comply with the panel's order or direction, the panel may:
 - (i) call upon a peace officer to enforce the order or direction [s. 48(1), ATA];
 - (ii) impose restrictions on a representative's continued participation in or attendance at a proceeding [s. 48(3)(a), ATA]
 - (iii) exclude a representative from further participation in or attendance at a proceeding pending another order [s. 48(3)(b), ATA];
 - (iv) apply to court for committal of the representative for contempt [s. 49(2)), ATA].
- (g) A representative has a duty to bring forward, at the earliest opportunity, any information which may give rise to a reasonable apprehension of bias or conflict of interest on the part of a WCAT member. However, such allegations should not be made frivolously or in a fashion which diminishes confidence in the integrity of WCAT decision making. Accordingly, if the allegation has been addressed by WCAT and rejected, the representative should not continue to raise similar allegations in other cases. Examples of the types of allegations that will not, on their own, raise a reasonable apprehension of bias include instances where a panel previously decided a similar issue or worked for the Board in the past.
- (h) A representative, in their public statements, should not engage in personal attacks on members or unfairly criticize WCAT decisions.
- (i) A representative must respect the confidentiality of information disclosed during WCAT proceedings and not use that information for other purposes without the consent of the parties and the Board.
- (j) A representative should not attempt to contact a panel directly outside the normal hearing process, unless invited or instructed to do so. A representative who wishes to communicate with a panel should do so through the RO.
- (k) Following a WCAT decision, a representative must not write to or otherwise contact the panel concerning the decision. Any request for clarification or reconsideration must be sent to tribunal counsel office where it will be vetted and channeled appropriately.

25.00 DELEGATION BY THE WCAT CHAIR

The chair may delegate his/her powers, in writing, to:

- (a) a member; or
- (b) an officer appointed by the chair [s. 234(2)(n)];

and may impose limitations or conditions on the exercise of that power or performance of that duty [s. 234(4)].

If the chair has delegated a power or duty and subsequently ceases to hold office, the delegation continues in effect [s. 234(5)]:

- (a) so long as the delegate holds office; or
- (b) until the delegation is revoked by a new chair.

The chair must not make a general delegation of his or her authority under sections 251(3), (4) or (5) concerning the chair's review of policies for lawfulness under the WCA, but may delegate this authority to a vice chair or a panel for the purposes of a specific appeal if the chair believes there may be a reasonable apprehension of bias [s. 251(9)].

See Decision #6 of the chair for the most recent delegation decision (Appendix 3).

26.00 TRANSITIONAL PROVISIONS

26.10 General

Transitional provisions were set out in Part 2 of Bill 63 (sections 34 to 44).

The chair may establish any rules, forms, practices and procedures required for the efficient and cost effective conduct of transitional matters [s.234(2)(d)].

Sections 38(3) and 39(4) of Bill 63 create a “dividing line” concerning cases before the Review Board and the Appeal Division with respect to those appeals in which the tribunal had already completed an oral hearing, or had received final written submissions and commenced its deliberations as of March 3, 2003. Appeals which had reached either of these stages by February 28, 2003 remained with the Review Board or Appeal Division panel for completion. Appeals which had not reached either of these stages were transferred to WCAT on March 3, 2003 for completion as WCAT decisions (to which no time frame applies).

26.20 Review Board Proceedings

All proceedings before the Review Board on March 3, 2003 will continue to completion. WCAT’s 180-day time frame for decision making does not apply to these appeals.

If, by March 3, 2003, the Review Board:

- (a) had already completed an oral hearing; or
- (b) had received final written submissions and commenced its deliberations;

the following apply:

- (a) the appointments of the members of the Review Board who are sitting on pending proceedings are continued until those proceedings are completed;
- (b) the Review Board panel will continue and complete the proceeding;
- (c) the panel will have the same power and authority which the Review Board had under the former WCA;
- (d) the new WCAT provisions do not apply (re binding policy, binding precedent decisions, section 251 process for considering lawfulness of policy, medical referrals under section 249);
- (e) the panel will issue a Review Board finding;
- (f) the Review Board finding will be appealable to WCAT within 30 days after the Review Board finding is sent out; and
- (g) the WCAT chair has authority to extend the time for an appeal to WCAT of a Review Board finding issued after March 3, 2003 (where special circumstances existed which precluded the filing of a notice of appeal within the 30-day appeal period, and an injustice would otherwise result).

If, by March 3, 2003, the Review Board had not:

- (a) completed an oral hearing; or
- (b) commenced its deliberations following completion of final written submissions;

the following apply:

- (a) the proceeding will be continued and completed as a WCAT matter;
- (b) WCAT has authority to refer a matter back to the Board with or without directions, and the Board's decision on that referral may be the subject of an application for review to the Review Division;
- (c) the WCAT panel must apply the new provisions set out in sections 250(2) and (3), and section 251, concerning the binding effect of policy and WCAT precedent decisions, and the process for addressing an issue as to the lawfulness of policy (if necessary, published policies of the governors are to be treated as policies of the board of directors for this purpose [Bill 63, s. 42]);
- (d) the WCAT panel may request an independent medical opinion under section 249;
- (e) in considering an appeal which was initially brought to the Review Board, WCAT has jurisdiction to address issues which would not be appealable to WCAT (such as vocational rehabilitation, or commutation requests). The limitations as to what will be appealable to WCAT do not restrict WCAT's jurisdiction to deal with appeals which were previously filed to the Review Board;
- (f) there is no further avenue of appeal following the WCAT decision; and,
- (g) a party may apply to the WCAT chair for reconsideration of the WCAT decision on one occasion only on the basis of new evidence (substantial and material, did not exist, or was not discovered and could not through the exercise of reasonable diligence have been discovered).

26.25 Unexercised Appeal Rights to Review Board

Where a party had an unexercised right of appeal to the Review Board on March 3, 2003 and the 90-day appeal period had not expired, the party could have requested a review of the decision by the Review Division. For appeals in this category, the chief review officer also had authority to extend the time period for requesting a review of a decision by a Board officer (where special circumstances existed which precluded the filing of a notice of appeal within the 90-day time period and an injustice would otherwise result).

This extension of time authority includes situations where the time for appealing to the Review Board expired before March 3, 2003 [s. 2(1), Transition Regulation].

26.30 Part 3 - Division 13 - Prevention Reviews

If a review of a prevention decision had been requested before March 3, 2003, it will be completed by Prevention. If that decision would have been appealable to the Appeal Division, it would have been appealable to WCAT within 30 days.

Where a party had an unexercised right of review on March 3, 2003, and the 60-day review period had not expired, the party could have requested a review of the decision by a review officer. No extension of time is available. The review officer's final decision is appealable to WCAT on the basis set out in section 239.

26.40 Appeal Division Proceedings

All proceedings before the Appeal Division on March 3, 2003 will continue to completion. This includes appeals, reconsiderations, section 11 applications, and criminal injury matters. WCAT's 180-day time frame for decision making does not apply to these matters.

If, by March 3, 2003, the Appeal Division:

- (a) had already completed an oral hearing; or
- (b) had received final written submissions and commenced its deliberations;

the following apply:

- (a) the appointments of the appeal commissioners who are sitting on pending proceedings are continued until those proceedings are completed;
- (b) the Appeal Division panel will continue and complete the proceeding;
- (c) the 90-day time frame for making an Appeal Division decision will continue to apply (as defined by section 91(3) of the former WCA);
- (d) the panel will have the same power and authority which the Appeal Division had under the former WCA (but not including the authority to refer the worker for examination by a MRP section 58(5));
- (e) the panel will issue an Appeal Division decision;
- (f) the new WCAT provisions do not apply (re binding policy, binding precedent decisions, section 251 process for considering lawfulness of policy, independent medical advice requests under section 249);
- (g) there is no further avenue of appeal following the Appeal Division decision; and,
- (h) a party may apply to the WCAT chair for reconsideration of the Appeal Division decision on one occasion only on the basis of new evidence (substantial and material, did not exist, or was not discovered and could not through the exercise of reasonable diligence have been discovered).

If, by March 3, 2003, the Appeal Division had not:

- (a) completed an oral hearing; or
- (b) commenced its deliberations following completion of final written submissions;

the following apply:

- (a) the proceeding will be continued and completed as a WCAT matter;
- (b) there is no statutory time frame for decision making;

- (c) WCAT has authority to refer a matter back to the Board with or without directions, and the Board's decision on that referral may be the subject of an application for review by the Review Division;
- (d) the WCAT panel must apply the new provisions set out in sections 250(2), 250(3), and 251 concerning the binding effect of policy and WCAT precedent decisions and the process for addressing an issue as to the lawfulness of policy; (if necessary, published policies of the governors are to be treated as policies of the board of directors for this purpose [Bill 63, s. 42];
- (e) the WCAT panel may request an independent medical opinion under section 249;
- (f) there is no further avenue of appeal following the WCAT decision; and
- (g) a party may apply to the WCAT chair for reconsideration of the WCAT decision on one occasion only on the basis of new evidence (substantial and material, did not exist, or was not discovered and could not through the exercise of reasonable diligence have been discovered).

26.45 Prior Appeal Division Decisions

A party may also apply to the WCAT chair for reconsideration of a decision of the former Appeal Division (i.e. issued between June 3, 1991 and March 3, 2003) on the basis of new evidence which is substantial and material and did not exist, or did exist but was not discovered and could not through the exercise of reasonable diligence have been discovered. A party may apply for reconsideration of an Appeal Division decision on this basis on one occasion only.

WCAT does not have jurisdiction to address an application for reconsideration of a decision of the former commissioners (pre-June 3, 1991).

26.48 Unexercised Appeal Rights to Appeal Division

Where, on March 3, 2003, a party had an unexercised right of appeal to the Appeal Division from:

- (a) a Board officer's decision (under s. 96(6) or (6.1) or Part 3);
- (b) a Review Board finding;

and the 30-day appeal period had not expired, the party had a right to file an appeal to WCAT within 30 days of the Board officer's decision or the Review Board finding. For appeals in this category, the WCAT chair has authority to grant an extension of time to appeal a Review Board finding to WCAT (where special circumstances existed which precluded the filing of a notice of appeal within the 30-day appeal period and an injustice would otherwise result).

This extension of time authority also includes situations where the time for appealing a Review Board finding or decision by a Board officer to the Appeal Division expired before March 3, 2003 [s. 2(2), Transition Regulation].

Where the Review Board issues a finding on or after March 3, 2003, the Review Board finding may be appealed to WCAT within 30 days. Such appeals will be treated as WCAT appeals for all other purposes except that the 180-day time frame for making a decision does not apply.

26.50 Medical Review Panel Proceedings (MRP)

There is a distinction between the “repeal” date and the “transition” date. The repeal date is November 30, 2002 when section 7 of Bill 63 came into force and repealed sections 58(3), (4) and (5), and 63(1). Those sections allowed for a request for an MRP. The transition date is March 3, 2003, when the remainder of Bill 63 came into force establishing the Review Division and WCAT.

All MRP proceedings pending under sections 58(3), (4) and (5) and section 63(1) of the WCA on November 30, 2002 are being continued and completed. The provisions of the WCA which existed at the time of the request or referral for an MRP examination of a worker, or inquiry into the cause of death of a worker, continue to apply.

If, before November 30, 2002, a party had not exercised a right under sections 58(3) or (4) to request examination of a worker in relation to a decision dated prior to November 30, 2002, the party could still exercise that right within 90 days of the decision.

The authority of the Board (including the Appeal Division) to refer a worker for examination by a MRP under section 58(5) was repealed on November 30, 2002. The right of a dependant of a deceased worker to request an MRP inquiry into the cause of death of a worker under section 63(1) also ended on November 30, 2002.

26.60 Backlog Cases

26.61 Introduction

More than 22,000 cases were transferred to WCAT from the Review Board and the Appeal Division on March 3, 2003. There were also transitional appeals involving unexercised appeal rights to the Appeal Division. No statutory time frame applies to the making of the WCAT decision on these appeals. WCAT’s goal is to decide all of these cases within three years (by February 28, 2006). As of October 31, 2004 there were 6,918 appeals remaining in the backlog

Some appellants wish to proceed with their appeals as soon as possible while others wish to defer their appeals. An orderly process is required to provide timely decisions to appellants who wish to proceed and for bringing those remaining forward so that all these appeals may be addressed within three years (by February 28, 2006).

To the extent that this is consistent with the objective of eliminating the backlog within three years, WCAT will allow appellants with backlog appeals to choose to proceed with their appeals or to temporarily “park” their appeals.

26.62 Backlog Strategy

- (a) WCAT will initially focus its attention on appeals where the appellant wishes to proceed.
- (b) In general, WCAT will deal with the oldest appeals first, based on the date the Review Board Part 2 was filed. Appeal Division appeals involving Review Board findings will also be given priority on the basis that they have generally been in the appeal system for the longest period.
- (c) WCAT will apply other strategies such as grouping appeals involving the same issues, parties, or representatives where this will facilitate the timely hearing of these appeals.
- (d) The position of an appeal in the hearing queue will generally be based on the date the completed Part 2 was received by WCAT. When a “parked” appeal is reactivated, it rejoins the “queue” with appeals with Part 2’s of a similar age (but will be behind those appeals of similar age which have never been “parked”). If appeals with more recent Part 2’s are currently being scheduled, the reactivated appeal will move to the front of the queue.
- (e) Where a representative is representing large numbers of appellants, and the representative is limiting the number of appeals on which they wish to proceed, WCAT may require the representative to proceed with the appeals as soon as WCAT is ready to proceed, in a manner which will allow all of the appeals to be heard within three years (by February 28, 2006). For this purpose, WCAT may deny a request that an appeal be “parked”, or may reactivate the appeal at an earlier date.

26.63 Voluntary “Parking Lot”

- (a) WCAT may allow appellants to temporarily “park” an appeal on a voluntary basis. Where an appeal has been “parked” by the appellant, WCAT will defer scheduling an oral hearing or requesting written submissions concerning the appeal.
- (b) A form may be utilized for requesting that an appeal be “parked”. The form, or other written request, must be signed by the appellant. A request by a representative will not be accepted as sufficient authority for “parking” an appeal unless accompanied by a request signed by the appellant.

- (c) A request to “park” an appeal which was initiated by a *Notice of Appeal - Part 1* to the Review Board will not be granted unless a completed Part 2 has been provided to WCAT.
- (d) The appellant need not provide reasons for “parking” an appeal. Situations where an appellant may wish to “park” an appeal include:
 - (i) the appellant is in the process of seeking additional evidence;
 - (ii) the appellant (or representative) wishes additional time before attending an oral hearing or making written submissions;
 - (iii) the appellant will be out of the province for a period of time; or
 - (iv) the appellant is uncertain whether they wish to proceed with the appeal.
- (e) When WCAT is ready to proceed with scheduling an oral hearing or inviting written submissions, an appellant will be required to attend for the oral hearing or provide written submissions on a timely basis (i.e. normally within three months). If an appellant does not do so, and has not elected to “park” their appeal, WCAT may:
 - (i) change the method of hearing from an oral hearing to a read and review;
 - (ii) treat the appellant’s notice of appeal as their submission; or
 - (iii) dismiss the appeal.
- (f) If an appellant accepts an oral hearing date (i.e. does not object within 14 days to the initial oral hearing date proposed by WCAT or, following consultation with WCAT, agrees to an oral hearing date), the appellant cannot subsequently request that the appeal be “parked”.

26.64 Respondents

- (a) A respondent cannot request that an appeal be “parked”.
- (b) A respondent may exercise their right (within 14 days of receiving notice of an oral hearing date) to request rescheduling, but rescheduling will not be unduly delayed due to the unavailability of the respondent or the respondent’s representative. Nor will WCAT extend time unduly for a respondent’s written submissions.

Where the respondent is unable or unwilling to agree to an oral hearing date within a reasonable time frame, they may be deemed to have forfeited the right to participate in the oral hearing. A reasonable time frame normally means within three months of the first scheduled date, so long as WCAT has dates available within this further period. Where the respondent (or the respondent’s representative) advises that they will be unable to attend the oral hearing, they will be offered the opportunity to participate by providing a written submission. In general, a submission (containing argument but not new evidence) must be provided in advance of the oral hearing date or submitted at the hearing. Any new evidence must be submitted at least 21 days in advance of an oral hearing (see items 9.70 and 9.73). In such circumstances, WCAT will normally not

invite comments from the respondent concerning any evidence or submissions provided by the appellant at the oral hearing.

26.65 Reactivation of “Parked” Appeals

- (a) Where an appeal has been “parked”, the appellant may ask to reactivate the appeal at any time prior to receiving notice that WCAT is ready to proceed with the appeal.
- (b) When a “parked” appeal is reactivated, it rejoins those appeals with Part 2’s of a similar age (but subsequent to those appeals of similar age which have never been “parked”). If appeals with more recent Part 2’s are currently being scheduled, the reactivated appeal will move to the front of the queue.
- (c) As the backlog diminishes, WCAT will begin notifying appellants with “parked” appeals (and all participating parties) that WCAT will soon be ready to proceed with the appeal. At the same time, WCAT will arrange for all participating parties to be automatically provided with updated file disclosure. A minimum period of six months will be provided between the date of the notice and the oral hearing date, or the date the appellant’s written submissions are due, so that the parties may complete their preparations for the appeal. This is subject to the appellant advising that he or she wishes to proceed at an earlier date.
- (d) As set out in item 26.62(e), where a representative is acting for a large number of appellants, WCAT may require the representative to proceed with the appeals as soon as WCAT is ready to proceed so that all of the appeals will be heard by February 28, 2006. WCAT may select appeals for activation on a regular basis to meet this goal. WCAT may consult with the representative in establishing the order in which the appeals will be heard.
- (e) Once WCAT has notified an appellant with a “parked” appeal that WCAT is ready to proceed, or the appellant asks to reactivate the appeal, the deferral of the appeal ends. The appeal cannot be “parked” a second time. The appellant will be required to attend an oral hearing or provide written submissions on a timely basis. If an appellant does not do so, WCAT may:
 - (i) change the method of hearing from an oral hearing to a read and review;
 - (ii) treat the appellant’s notice of appeal as their submission; or
 - (iii) dismiss the appeal.
- (f) It is the appellant’s responsibility to keep WCAT informed of any change of address or change of representative. Failure to notify WCAT of a change of address may result in an appeal being considered on the basis of the materials on file without further input from the appellant, or the appeal being dismissed.

26.66 Time Frames for Written Submissions for Backlog Appeals (see item 10.10)

- (a) Parties will initially be asked to provide written submissions or schedule an oral hearing within the same time frames applicable to new appeals. However, as no statutory time frame applies for decision making on backlog appeals, WCAT will adopt a more flexible approach to time frames on backlog cases.
- (b) Where an appeal is proceeding on the basis of written submissions without an oral hearing, the appellant's Part 2 normally constitutes their initial submission. Where it was anticipated that an oral hearing would be scheduled but the appeal is to be heard on the basis of written submissions, or where the Part 2 is incomplete, the appellant will be given time to provide or complete their initial written submission.
- (c) The maximum time frame which will be granted to an appellant on a backlog appeal for their initial written submission will be three months from the date WCAT first requested it. If the appellant requires more than three months to prepare their submission, the appellant may request the appeal be "parked".
- (d) On request, a respondent may be granted up to three months to provide a written submission, but the respondent does not have the option of requesting that the appeal be "parked".
- (e) Rebuttal from the appellant will be requested within two weeks, but an additional two weeks may be granted for this purpose (on request). If no rebuttal is received by the initial deadline, or within the further two weeks where additional time has been requested, the appeal will be forwarded to a WCAT panel for decision.

26.67 Time for Filing a Part 2 and Suspensions

- (a) WCAT will not approve any request for a suspension or a further period of suspension, or for a further extension to file a Part 2, except as set out in item 26.63 (voluntary "parking lot") or on the basis of the new statutory grounds for requesting a suspension (see items 5.50 to 5.55).
- (b) Where an appeal was suspended by the Review Board, the appellant may ask WCAT to reactivate the appeal at any time during the period of suspension.
- (c) Where an appeal was suspended by the Review Board and the appellant does not ask WCAT to reactivate the appeal before the deadline set by the Review Board for this purpose, the appeal will be dismissed after giving the appellant an opportunity to make submissions.

26.68 Dismissal of Appeal

- (a) **Where an appellant fails to contact WCAT in writing on or before any deadline set by the Review Board or WCAT for the filing of a Part 2, or for reactivating a suspended appeal, the appeal will be dismissed, after giving notice to the appellant.**
- (b) **Where written submissions are requested and the appellant does not provide these within the time frame set out in item 26.66 or request that the appeal be “parked”, WCAT will treat the appellant’s notice of appeal as their submission. Submissions will be invited from the respondent and the appellant will be granted the opportunity to respond.**
- (c) **Where an oral hearing is being scheduled, and the appellant is unable to agree to a hearing date within a reasonable period and has not “parked” the appeal, WCAT may, pursuant to section 246(5), after giving notice to the appellant:**
 - (i) **change the method of hearing from an oral hearing to a read and review;**
 - (ii) **treat the appellant’s notice of appeal as their submission; or,**
 - (iii) **dismiss the appeal.**

26.69 Scope of Decision

In considering an appeal which was transferred to WCAT from the Review Board on March 3, 2003, WCAT will apply the same approach to the “scope of decision” as is set out at item 14.30 (with any necessary changes relating to the fact that the subject of the appeal is a decision by a Board officer with no intervening decision by the Review Division).

27.00 DISCLOSURE OF RECORDS/CONFIDENTIALITY

27.10 Confidentiality Obligation

Section 260 provides:

260 (1) Members of the appeal tribunal and officers, employees and contractors of the appeal tribunal must not disclose any information obtained by them or of which they have been informed while performing their duties and functions under this Part, except as may be necessary to discharge their obligations under this Part.

(2) If information in a claim file or in any other material pertaining to the claim of an injured or a disabled worker is disclosed for purposes of this Part to a person other than the worker, that person must not disclose the information except as permitted in circumstances described in section 95 (1.1).

(3) Every person who violates subsections (1) or (2) commits an offence.

WCAT members must not, except in the proper performance of their duties, disclose any information obtained as a member [s. 30, ATA].

27.20 Natural Justice

Natural justice requires that the parties to a proceeding be provided with a copy of the file. The appellant will be deemed to have requested disclosure or updated disclosure. If a respondent indicates that they wish to participate in the appeal, the Board will provide them with disclosure. Disclosure for the purpose of complying with the requirements of natural justice is authorized under section 260(1) of the WCA as being necessary to the discharge of WCAT's obligations under Part 4 of the WCA.

27.30 *Freedom of Information and Protection of Privacy Act (FIPPA)*

The *Freedom of Information and Protection of Privacy Act* (FIPPA) prohibits a public body from using personal information in its custody and control other than for the performance of that body's statutory duties [ss. 32 and 34, FIPPA]. This means that WCAT adjudicative and support staff are prohibited from accessing or using personal information except as required in the performance of their work duties.

Under FIPPA, an applicant may apply in writing to a public body for access to any record within the custody and control of that body. WCAT is a public body within the meaning of FIPPA.

WCAT is obliged by section 6 of FIPPA to respond to requests within 30 days and to make every effort to respond openly, accurately, and completely. If access is denied,

WCAT's response will include reasons for the refusal and explain the applicant's right to request a review of the decision by the Information and Privacy Commissioner.

Section 66 provides that the head of a public body may delegate any person to carry out their duties under FIPPA. Tribunal counsel has the delegated authority to respond to applications. Inquiries regarding disclosure under FIPPA should be directed to tribunal counsel.

Section 20 of FIPPA provides that a public body need not disclose information which is to be published or released to the public within 60 days. As WCAT decisions are publicly accessible on the internet, WCAT will refer persons with inquiries concerning WCAT decisions to the internet site.

WCAT places all documentation and correspondence pertaining to an appeal, including evidence and submissions, on the Board file. There is also an electronic record of appeal activity. All information is for the purpose of adjudicating appeals or other proceedings. Once a decision is issued, WCAT forwards to the Board all new evidence and submissions received on that proceeding for placement on the Board file. All that WCAT maintains, in electronic format, is the decision and the computerized appeal activity information.

There are certain categories of records that are exempt from disclosure that do not fall within the scope of FIPPA or to which FIPPA does not apply [s. 61, ATA]. These include:

- (a) personal notes, communications, or draft decisions of a decision maker (This means that panel members' hearing notes, draft findings, and other communications among panel members or registry decision makers for the purpose of preliminary or final decisions are not disclosable. These records do not become part of the Board file, and are normally destroyed.);
- (b) personal information, the disclosure of which would be an unreasonable invasion of a third party's personal privacy (For example, WCAT will not disclose copies of decisions with identifiers attached to third parties. Nor will WCAT disclose its personnel records concerning WCAT staff to third parties.);
- (c) information that would reveal advice or recommendations developed by or for a public body or a minister;
- (d) information that is subject to solicitor-client privilege;
- (e) information relating to the exercise of the Ombudsman's function;
- (f) notes or records kept by a person appointed to conduct a dispute resolution process;
- (g) any information received by WCAT in a hearing from which the public, a party, or an intervener was excluded;
- (h) a transcription or tape recording of a proceeding;
- (i) a WCAT decision which is publicly accessible.

Practice Directive on Protection of Privacy

The following practice directive applies to WCAT members' handling of documents, files, and electronic files and information where these are taken outside the WCAT offices (for attending hearings or work at home):

- (a) log in and log out files using procedures outlined by WCAT;*
- (b) transport files in a locked carrying case and, if possible, keep them with the member at all times;*
- (c) if it is necessary to review the files while travelling, ensure that they are not in open view;*
- (d) always store files in a locked carrying case, locked filing cabinet, or locked room, to ensure they cannot be viewed by visitors or family members;*
- (e) do not leave files unattended in unlocked premises (whether at home or in a hotel);*
- (f) do not leave files in a vehicle, even if it is locked. If absolutely necessary, files may be locked in a trunk if the vehicle is parked in a secure location;*
- (g) do not leave electronic information, database materials, and related electronic file information unattended or in an area where they can be viewed by visitors, family members and other unauthorized individuals;*
- (h) follow all security policies and practices established for computerized systems;*
- (i) return files to the WCAT offices as soon as possible.*

If, despite the above precautions, a theft occurs and files and/or electronic systems containing personal information are stolen:

- (a) notify the chair or a senior vice chair immediately;*
- (b) file a police report immediately;*
- (c) tribunal counsel will notify the Office of the Information and Privacy Commissioner of the theft;*
- (d) tribunal counsel will notify individuals whose personal information was stolen of the theft and what information about them was taken.*

27.31 Avoidance of Third Party Identifiers

Practice Directive on Submissions with Identifiers

To protect workers' privacy, submissions should not contain identifying information such as names or file numbers concerning the workers' compensation claims of other workers (unless written consents from those other workers are attached). Instead, parties should cite decision numbers which are accessible on the internet.

If a submission is provided with identifiers, the appeal liaison or appeal coordinator may accept the submission but remove the identifiers and advise the parties this has been done. The edited copy would be disclosed to the parties. Alternatively, the appeal liaison or appeal coordinator may ask the party to provide written consents from the other workers, or provide an edited copy of the submission which does not contain

personal identifiers concerning other workers. In that event, the submission will be marked as having been excluded and kept separate from the appeal documentation pending receipt of any necessary consents or an edited copy. Upon receipt of an edited copy, the original submission will be destroyed or returned to the party.

If consents or an edited copy are not provided, the panel will determine the appropriate disposition of the submission containing identifiers (which was marked as excluded). Whether or not an excluded submission is accepted by the WCAT panel, the identifiers must be removed before the submission is added to the Board file. If the submission is not accepted by the panel and it is not practicable to remove the identifying information, the submission will be returned to the party.

27.40 Disclosure to Third Parties

WCAT may receive requests for information regarding appeals from third parties such as private disability insurance carriers and provincial government agencies. To protect workers' privacy, such information will not be disclosed without a signed authorization form from the worker specifically giving WCAT permission to provide such information, or under requirement of law.

APPENDIX 1

Rules

2.33 Application for Reconsideration (see items 15.23 and 15.24)

A request for reconsideration of a Review Board finding will be treated as a request for an extension of time to appeal.

3.20 Deceased Worker - Standing of Estate

The estate of a deceased worker has the right both to initiate an appeal to WCAT, and to continue an appeal on behalf of a deceased worker, concerning a claim for arrears of compensation up to the date of the worker's death. Documentation is required to establish the identity of the estate's representative. This may include:

- (a) the Letters of Administration or Letters Probate; or**
- (b) a copy of the will if the estate is small and probate is not required; or**
- (c) a statutory declaration or other form of evidence where there is no will and the estate is small or substantially held in joint tenancy**

3.41 Initiating Appeals

Appellants or their representatives may initiate an appeal by completing a notice of appeal form which includes an authorization for WCAT to obtain additional medical records or other evidence. If the appeal is initiated by a representative, the appellant must provide authorization for the representative to act (see item 4.20).

WCAT may at any time require an appellant to provide a current authorization to obtain additional medical records or other evidence. Where an appellant fails to comply with such a requirement within the time specified, WCAT may dismiss the appeal, after giving the appellant an opportunity to make submissions.

An appeal may be initiated in any form which produces a written record of the appeal. This may be done by delivering, mailing or sending by facsimile transmission (fax) a completed notice of appeal to WCAT, or by providing the required information in a letter. WCAT notice of appeal forms may be printed from the WCAT website at: www.wcat.bc.ca WCAT will treat receipt of a written intention to appeal by the Review Division or by any Board office as receipt by WCAT.

A brief explanation as to why the decision or order is incorrect is sufficient for compliance with section 242(2)(c).

WCAT will accept telephone notice of intent to appeal for the purpose of meeting the 30- or 90-day time limit. In those circumstances, a registration clerk will provide the appellant with the WCAT appeal number and will promptly write to the appellant to confirm receipt of the telephone notification and advise that a written notice of appeal must be submitted within 21 days. If an appellant does not receive confirmation of the telephone notification, they should contact WCAT promptly to verify that the appeal was received

Where the appeal is initiated by telephone or by letter, WCAT will require the appellant or authorized representative to submit a notice of appeal within a further 21 days or the appeal will be dismissed, after giving the appellant an opportunity to make a submission [s. 31, ATA].

3.50 Incomplete Notice of Appeal

Where the notice, letter or other method of initiating the appeal does not contain all the necessary information, the appellant will be required to complete a notice of appeal within 21 days. The appeal will be dismissed if WCAT does not receive the completed form within 21 days, after giving the appellant an opportunity to make a submission [s. 31(2), ATA]. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 243(3) and item 5.30).

5.20 Service of Decisions and Other Documents

Parties must inform the Board and WCAT of any change of address. Where a party fails to do so, evidence that they did not receive a document because it was mailed to their prior address will not rebut the presumption of deemed delivery under section 221(2). (See also items 9.24 and 10.10 re failure to attend a hearing or provide written submissions.)

5.60 Withdrawals

An appellant may withdraw an appeal by right at any time before the appeal has been assigned to a WCAT panel. After assignment, the panel decides whether to allow a request for withdrawal. The request for withdrawal will normally be granted. A panel could refuse the withdrawal request where, for example, there is evidence of fraud or misrepresentation by the appellant. Similarly, where there is evidence of an error of law or policy in favour of the appellant, the WCAT panel may refuse the request for withdrawal.

8.61 Expert Evidence (see item 13.23 concerning expenses)

- (a) **Opinion evidence will generally only be accepted from a person the panel recognizes as being qualified by education, training or experience as an expert.**
- (b) **The qualifications of the expert should be stated in or with their report. The statement of qualifications in that manner will generally be accepted as evidence of those qualifications. A job title (such as WCB medical advisor, or vocational rehabilitation consultant) or professional designation will generally be accepted as evidence of the person's qualifications to hold the position.**
- (c) **Objections to a person's qualifications as an expert will not generally cause a panel to exclude evidence, but may affect the weight given to the evidence.**
- (d) **Written reports prepared by an expert are admissible without the need for the expert to attend an oral hearing. The correspondence requesting the written report of the expert must also be submitted. An expert's oral evidence will be admissible in a hearing, however, even if no written report has been provided. At least 21 days' advance notice must be given to WCAT of any expert who will be attending the oral hearing.**
- (e) **Where an oral hearing is to be held, the parties should provide written reports to WCAT promptly after receipt so that they may be disclosed to all participants. Any expert's report must be provided to WCAT a minimum of 21 days prior to an oral hearing.**
- (f) **Panels have the discretion to receive a previously undisclosed expert's report at an oral hearing, in which case the panel will determine what steps are necessary to ensure the other party is given an adequate opportunity to respond. In deciding whether to receive the report, the panel will consider the reasons for the failure to submit the report at least 21 days in advance of the hearing, as well as the impact of late evidence on the time limit for issuing the decision. Where the other party would be prejudiced by not having had enough time to respond to the new expert evidence, the panel may:**
 - (i) **allow an extension of time after the oral hearing for submission of a response;**
 - (ii) **postpone the oral hearing; or,**
 - (iii) **provide any other relief the panel considers appropriate.**
- (g) **WCAT will not require an expert to attend an oral hearing unless the panel believes the attendance is necessary to a fair hearing of the issues or a failure to do so would prejudice a party to the proceeding.**

- (h) **In exceptional circumstances, the panel may waive or modify these rules [s. 11(3), ATA].**

8.90 Method of Hearing

WCAT will normally grant a request for an oral hearing where the appeal involves a significant issue of credibility. An oral hearing may also be granted where there are:

- (a) significant factual issues to be determined;**
- (b) multiple appeals of a complex nature;**
- (c) complex issues with important implications for the compensation system;**
- (d) other compelling reasons for convening an oral hearing (e.g. where an unrepresented appellant has difficulty communicating in writing).**

WCAT will normally conduct an appeal on a read and review basis where the issues are largely medical, legal, or policy based and credibility is not at issue.

9.21 Postponements

After the 14-day period for automatic date changes expires, postponements will be allowed only for exceptional circumstances. Parties should provide documentation in support of their requests.

Up to 21 days before the hearing, the Registrar's office will decide postponement requests. After that, the panel decides the requests. Where the registrar's office has previously denied a request, a panel will generally not grant a postponement without new and exceptional reasons, and will consult with the registrar's office before granting the postponement.

In considering a postponement request, WCAT may consider a variety of factors including:

- (a) whether the request is made far enough in advance (i.e. at least three weeks in advance of the hearing date) that the hearing can be rescheduled with a minimum of cost and disruption of schedules and/or the hearing date may be made available for another appeal;**
- (b) whether the oral hearing was scheduled in consultation with the parties;**
- (c) whether a prior postponement was granted (further requests will generally not be granted);**
- (d) the effect of the adjournment on the statutory time period for completing the appeal;**
- (e) any prejudice to the other parties balanced against the prejudice to the appellant if the postponement is not granted;**

- (f) **personal emergencies such as serious medical problems or hospitalization, family crisis, bereavement, and motor vehicle accidents (recognizing that such events may not permit timely notice to WCAT);**
- (g) **the unforeseeable unavailability of an essential witness.**

WCAT may take other factors into account on a discretionary basis. Factors such as a representative's schedule, vacation dates, and convenience to the parties will normally only be considered in the initial rescheduling, and will generally not be grounds for granting a postponement.

Where a hearing is postponed, WCAT will reschedule the hearing having regard to the statutory time frame for decision making. An open-ended postponement of an oral hearing will not be granted.

20.30 Initiating the Application for Certification

A request for a section 257 certificate must be made in writing to WCAT. The request must be accompanied by a copy of the Writ of Summons/Notice of Claim (and any other pleadings) filed in the legal action. The applicant must also identify the persons for whom section 257 determinations are sought. Failure to meet these requirements may result in WCAT dismissing the application.

26.68 Dismissal of Appeal

- (a) **Where an appellant fails to contact WCAT in writing on or before any deadline set by the Review Board or WCAT for the filing of a Part 2, or for reactivating a suspended appeal, the appeal will be dismissed, after giving notice to the appellant.**
- (b) **Where written submissions are requested and the appellant does not provide these within the time frame set out in item 26.66 or request that the appeal be "parked", WCAT will treat the appellant's notice of appeal as their submission. Submissions will be invited from the respondent and the appellant will be granted the opportunity to respond.**
- (c) **Where an oral hearing is being scheduled, and the appellant is unable to agree to a hearing date within a reasonable period and has not "parked" the appeal, WCAT may, pursuant to section 246(5), after giving notice to the appellant:**
 - (i) **change the method of hearing from an oral hearing to a read and review;**
 - (ii) **treat the appellant's notice of appeal as their submission; or,**
 - (iii) **dismiss the appeal.**

APPENDIX 2

Practice Directives

4.20 Representatives

Representative Authorizations

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

If more than two years has elapsed since the party authorized the representative to act, WCAT will require a current authorization.

Where a party is represented by a new representative, the party must provide a current authorization, such as a notice of appeal signed by the appellant naming the representative, or notice of participation signed by the respondent naming the representative. Parties may instead provide separate authorizations. WCAT will also accept the same form of authorization accepted by the Board and the Review Division.

This Practice Directive does not apply to appeals transferred to WCAT from the Review Board on March 3, 2003 where the representative was named prior to that date. For those appeals, WCAT will not require formal representative authorizations.

4.30 Respondents and Other Participants

Disclosure of Board Records to Respondents

Sections 245(2) and (3) provide that, as soon as practicable, WCAT must notify the Board of an appeal and the Board must provide the parties to the appeal with a copy of its records respecting the matter under appeal. WCAT has concurrent obligations under section 260 of the WCA and FIPPA to respect the confidentiality of records. Accordingly, prior to providing formal notification to the Board of an appeal, WCAT will review the notice of appeal to ensure that the basic requirements for initiating an appeal have been met, and invite the respondent(s) to complete a notice of participation.

4.40 Streaming: Regular, Complex, or Specialty

Streaming

In determining whether a case should be assigned to the complex and specialty streams, the registrar's office may consider:

- (a) the nature of the dispute;*
- (b) whether the issues are new or unusual;*
- (c) the complexity of the issues, facts and evidence;*
- (d) the number of participants involved (parties and witnesses);*
- (e) whether a pre-hearing conference may be appropriate;*
- (f) the estimated duration of the hearing;*
- (g) the remedies being sought;*
- (h) the potential for a jurisdictional challenge;*
- (i) whether there are multiple appeals with common or similar subject matter;*
- (j) whether the appeal raises an issue of special interest or significance to the workers' compensation system as a whole;*
- (k) whether the appeal raises a significant issue concerning the interpretation of the WCA or policy,*
- (l) whether the appeal raises a significant issue as to the lawfulness of policy under the WCA;*
- (m) the likelihood of settlement by means of alternative dispute resolution;*
- (n) whether the appeal concerns occupational disease causation;*
- (o) whether the appeal involves an administrative penalty;*
- (p) whether the appeal concerns an employer's assessment classification unit;*
- (q) whether the appeal involves a sexual assault of a worker;*
- (r) whether the appeal concerns a claim for compensation for mental stress under section 5.1 of the WCA;*
- (s) whether the application concerns a request for a certificate to the court under section 257 in a legal action.*

5.20 Service of Decisions and Other Documents

Returned Mail

If mail to the appellant is returned as undeliverable, WCAT will try to contact the appellant. Where WCAT is unable to locate the appellant, WCAT will consider that the appellant has failed to comply with the above rule and the following will apply:

- (a) If the matter has been scheduled for an oral hearing, the oral hearing will be cancelled;*
- (b) WCAT will send a final notice to the appellant's last known address, advising that in the absence of a response within 21 days WCAT will:
 - (i) continue with the proceedings and make a decision based upon the notice**

*of appeal, any submissions received and the evidence on file; or,
(ii) dismiss the appeal.*

5.30 Extension of Time

Extension of Time

An application for an extension of time to appeal will normally be considered on the basis of written submissions. WCAT will invite the respondent to participate. Applicants must provide reasons for not appealing within the statutory time period, and also reasons for any further delay after the expiry of that period. If the applicant fails to provide reasons, WCAT may dismiss the extension of time application.

5.40 Stay of Decision under Section 244

Stay of Decision

The applicant will normally be required to provide written submissions in support of a stay application together with the notice of appeal or within a further seven days. If the applicant fails to provide written submissions, WCAT may dismiss the stay of decision application.

WCAT will send the submissions to the other parties who will be given seven days to respond. The requesting party will then have five days to provide rebuttal. The chair will issue a written decision on the stay request as soon as practicable once submissions are complete.

5.55 Suspension Pending a Board Decision on a Related Matter

Suspensions Pending a Board Decision on a Related Matter

An appeal may be suspended under section 252(1) at any time during the appeal proceedings.

If a vice chair, AA or AC is considering suspending an appeal under section 252(1), further submissions from the parties may be sought. Prior to suspending the appeal, the vice chair, AA or AC should be satisfied that:

- (a) there is a “pending” decision of the Board or of a review officer;*
- (b) the pending decision involves a determination of a matter that is “related” to the matter under appeal.*

Once a suspension is granted, the RO will notify all participating parties and clearly identify the pending decision of the Board or a review officer.

When an appeal is suspended, a deferral of compensation payable due to a review officer's decision continues under section 258.

When the Board or review officer renders their determination on the "related matter", the appellant may request WCAT to continue the appeal proceedings within 30 days [s. 252(2)]. WCAT must then continue the appeal.

If the appellant fails to request a continuation of the proceedings within the specified time period, the appeal will be dismissed after giving the appellant the opportunity to make submissions. On application, the vice chair may extend the time to continue the appeal using the criteria for extensions of time [s. 252(4) and item 5.30].

At any time before the further Board decision is issued, the appellant may ask WCAT to continue the appeal proceedings without waiting for the Board decision. The vice chair may grant the request or may continue the suspension [s. 252(3)].

If the pending matter involved a determination by the Review Division and a new appeal is received from that determination, WCAT may consolidate the two proceedings.

7.50 120-Day "Fast-Track"

Fast Track Appeals

Appellants may request an expedited or "fast track" appeal where:

- (a) the appellant is not requesting an oral hearing; and,*
- (b) the appellant provides their written evidence and submissions together with the notice of appeal.*

WCAT will allow respondents on fast track appeals 21 days to file their submissions and new evidence. The appellant will then be granted seven days for rebuttal.

Panels on fast track appeals will try to issue their decisions within 120 days or less. However, panels may require additional time for complexity or for additional inquiry (either in writing or by way of an oral hearing). Panels may still request the chair to extend the time period for complexity.

9.20 Scheduling

Scheduling

If an appellant requests an oral hearing, the appellant must be prepared to proceed with the hearing within one to three months of the request being granted. The parties will normally be given at least four weeks' notice of the hearing date. Due to the large volume of appeals, the registry will schedule oral hearings (regular and complex streams (see item 4.40)) without consultation with the parties. If parties request a change of date within 14 days, it will automatically be granted. Oral hearings in the specialty stream (where the appeal is assigned to the panel at the outset) will normally be scheduled on an individual basis and may involve consultation with the parties.

Where the oral hearing is rescheduled at the request of the parties (regular or complex streams), or where the parties were consulted in the initial scheduling of the hearing (specialty stream), further date changes will be made only for exceptional circumstances (see item 9.21).

10.10 Time Frames for Written Submissions

Filing Written Submissions

In order for WCAT to issue its decision within 180 days of receipt of the Board's records,

- (a) The appellant will be granted 21 days to provide a submission in addition to the information contained in their notice of appeal.*
- (b) Within the 21-day period appellants may make a request with reasons for additional time [s. 253(5)]. If they neither file a submission nor request more time within the 21-day period, they will lose the right to provide a submission and their notice of appeal will be considered as their submission, subject to the panel's discretion to accept late material (see item 10.20).*
- (c) The maximum further time for submissions that may be granted in response to an appellant's request is 45 days [s. 253(6)]. Any additional time granted will run from the initial 21-day period for submissions.*
- (d) If the appellant's request for additional time is granted, the respondent will be advised that they can request an equivalent period of additional time.*
- (e) The respondent will be granted 21 days to provide a submission. However, if the appellant was granted additional time, the respondent is entitled, upon request, to additional time up to the amount granted to the appellant, and need not provide reasons. The respondent must specify the length of time being requested. A*

respondent cannot be granted additional time unless the appellant was granted additional time [s. 253(6)].

- (f) *Parties may request up to 14 days' additional time by telephone or in writing to the appeal liaison or appeal coordinator. Requests for more than 14 days' additional time must be in writing.*
- (g) *Whether or not the appellant provided a submission, any submission from the respondent will be disclosed to the appellant with 14 days for rebuttal argument. (Note: No additional time at the rebuttal stage is contemplated by s. 253(6) and (7)).*
- (h) *If an appellant submits new evidence with their rebuttal, the file will be referred to the panel to decide whether to accept the new evidence (see item 10.20).*
- (i) *Submissions will be considered complete where:*
 - (i) *no submission is received from the appellant by the most recent due date and there is no respondent participating;*
 - (ii) *whether or not the appellant provided a submission, no submission was received from the respondent by the due date;*
 - (iii) *the appellant's rebuttal to the respondent's submission has been received or the appellant did not file a submission by the due date.*
- (k) *Where no submissions are provided by either party, the panel will consider the appeal based on the notice of appeal.*

These guidelines are intended to be applied in a consistent fashion. However, WCAT may vary their application if this will not affect the 180-day time frame and it makes sense to do so.

AC's have delegated authority from the chair to make decisions concerning requests for additional time of up to 45 days, within the guidelines set out above as (a) to (h). An AL will complete an additional time request form for consideration by a DR.

Reasons for which additional time (up to 45 days) may be granted to an appellant include:

- (a) *complexity of the issues under appeal;*
- (b) *appellant is seeking additional medical or other evidence;*
- (c) *appellant needs to interview witnesses and provides adequate reasons for requiring more time to do so;*
- (d) *need to seek representation;*
- (e) *personal or family health problems, bereavement, or other emergencies;*
- (f) *pre-arranged vacation; or*

- (g) *current labour relations dispute which severely limits opportunity of a person to participate.*

12.40 Lawfulness of Policy

Referrals to the Chair for Unlawful Policy

The following practice directive applies to referrals under section 251:

- (a) *a panel must provide written reasons in a memorandum to explain its belief that a policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations;*
- (b) *the panel's memorandum will be disclosed to the parties for submissions;*
- (c) *if there is no respondent or the respondent is not participating, the chair may invite a worker or employers' adviser to participate [s. 246(2)(i)];*
- (d) *as a courtesy, the panel's memorandum will be disclosed to the Policy and Research Division of the Board at the same time it is disclosed to the parties;*
- (e) *when submissions from the parties are complete, the chair may invite submissions from representative groups [s. 246(2)(i)]. The parties will be provided the opportunity to respond to any submissions received;*
- (f) *the chair will then decide whether the policy should or should not be applied;*
- (g) *if the chair decides that a policy should not be applied, the chair will make reasonable efforts to identify other cases affected by the same policy. The following steps may be taken to identify other affected appeals:*
 - (i) *sending a notice to all WCAT members, officers and staff;*
 - (ii) *conducting a computer search using the WCAT case management system of the issues under appeal;*
 - (iii) *posting a notice on the WCAT website for a period of time, such as 30 days;*
- (h) *the chair's decision, with written reasons, will be provided to the parties in all suspended appeal proceedings pending before WCAT which the chair considers to be affected by the same policy;*
- (i) *the chair will notify the board of directors of that determination along with written reasons;*
- (j) *when WCAT sends the notice to the board of directors, a list of all suspended cases, with names and addresses of the parties, will be provided to the board of*

directors. A copy of the notice will be provided to the Board's Policy and Research Division and Legal Services Division at the same time;

- (k) *if the chair decides that a policy should be applied, the appeal will be returned to the WCAT panel for completion.*

21.20 Writing Decisions without Identifiers

21.21 Confidentiality and Privacy

Information which in and of itself would not need to be protected (such as geographic locations) will be protected to the extent necessary to safeguard confidentiality and privacy of the parties. Where there is doubt as to whether particular data would tend to identify a party and as to whether a descriptive term or coded initial should be used, the doubt should generally be resolved to protect confidentiality and privacy.

21.22 Names

The following types of names will not be used in WCAT decisions: names of parties (such as the worker and employer), names of lay witnesses, names of Board officers and other Board staff (including Board medical advisors).

Panels will generally use names of expert witnesses, such as physicians, and names taken from a public source (such as a published medical article or textbook, a court judgment, or Hansard). If use of an expert's name is likely to identify the worker, the panel may refer to the expert by title (e.g. the worker's attending physician) or by an actual initial. The panel may use a coded initial if using the actual initial might identify a party or lay witness.

The highest level of protection of privacy is afforded to parties and lay witnesses. Panels may identify parties and lay witnesses by role (the worker, employer, manager, etc.) or by a coded initial which does not correspond to their name (Mr. Smith would be Mr. A rather than Mr. S).

Names of treating facilities will be dealt with in a similar fashion - they may be referred to by their name, or by title (e.g. a local hospital or physiotherapy clinic) or by an actual initial. A coded initial may be used where the name of the facility might identify a party or lay witness.

Other decision makers will normally be referred to by title (e.g. case manager, review officer, etc.). An actual name or initial may be used at the panel's discretion.

21.23 File Copy of Decision and Covering Pages

The file copy of a decision will include a “header” at the top of each page with identifying information (name and file number) to ensure the accuracy and integrity of file records. The parties to the appeal or other matter will be provided with a copy of the decision with the identifying “header” and any “covering” pages (the front page of the decision which identifies the parties and the distribution list). If coded initials are used (e.g. witnesses A, B, and C), the panel may include a list of identities associated with each coded initial. A complete copy of the decision, including the “header” and covering pages, will also be placed on the Board’s file, but will not be publicly accessible on the internet.

The “header” and covering pages will be removed from the decision before it is made publicly accessible. The decision placed on the internet will include the WCAT decision number for citation purposes.

21.24 Names of Representatives

Panels may use names of representatives, or may refer to them by role (e.g. the worker’s union representative, the worker’s lawyer, counsel for the employer, etc.).

21.25 File or Appeal Numbers

Board file numbers (worker’s claim file number, or employer’s registration number) will not be included in the body of a decision. Similarly, WCAT, Appeal Division or Review Board appeal numbers will not be used in the body of a decision. WCAT, Appeal Division or Review Division decision numbers may be cited in decisions.

21.26 Payroll, Revenue Data, and Salary Information

Employers’ payroll and revenue data will be protected in decisions. In some cases, protecting the identity of the employer will be sufficient as the payroll or revenue data would not be identifiable by itself. Where the reasons and analysis in a WCAT decision might tend to identify the employer, it may be necessary to refer to the payroll or revenue data in general or approximate terms.

If the decision cannot be written in a meaningful fashion without providing specific figures in the body of the decision, it may be necessary to use a second level of editing (see item 21.30).

Similarly, in addressing issues concerning a worker’s employability, care must be taken to avoid disclosing the salaries paid by particular identifiable employers. This might arise, for example, in connection with a worker’s job search efforts and contacts with various employers.

21.27 Geographic Locations

Geographic locations may be used where these refer to a country, province, or large city such as Vancouver or Victoria. If reference to particular geographic locations might lead to the identification of a party or lay witness, panels should use a general description (e.g. a northern community) instead.

Names of treating facilities, such as a local physiotherapy clinic or hospital, may be used in the same fashion as physicians' names. Descriptive references may be used in place of names where the name would tend to identify the worker.

21.28 Quotations

Quotations must, for obvious reasons, also be edited to protect privacy. This will normally be accomplished by substituting a descriptive term for a name, and using square brackets to show the change, e.g. [the worker].

21.29 Corrections or Revisions — Inadvertent Error

If identifying information is inadvertently posted to the WCAT website, WCAT will edit the decision to comply with these guidelines.

21.30 Section 257 Certification to Court

WCAT files a section 257 certificate in a legal action in the appropriate British Columbia court registry. Accordingly, after filing, WCAT will make its decisions under section 257 publicly available without removing names and other identifying information.

However, a section 257 certificate provided for filing in a court registry outside of British Columbia will be edited for privacy, as it is provided to the parties and not filed in the legal action by WCAT.

21.31 Second Level of Editing in Exceptional Circumstances

In limited and exceptional circumstances, it may be appropriate for a WCAT panel to issue a decision to the parties which is further edited for privacy considerations before the decision is made accessible to the public. This will occur rarely, such as in cases where the ability of parties to understand the facts, evidence, or reasoning will be made unduly difficult by complying with the above guidelines. In this event, it will be the responsibility of the WCAT panel issuing the decision to provide the two versions of the decision.

21.32 Exception

The chair may direct that a WCAT decision not be made publicly accessible. This may be done where a secondary edit fails to protect the privacy of a party or renders the decision unintelligible.

WCAT may consider a request by a party not to place a decision on the website where the case is of a particularly identifiable nature and contains sensitive personal information. In general, however, privacy will be protected based on the other guidelines set out above.

27.30 Freedom of Information and Protection of Privacy Act (FIPPA)

Protection of Privacy

The following practice directive applies to WCAT members' handling of documents, files, and electronic files and information where these are taken outside the WCAT offices (for attending hearings or work at home):

- (a) log in and log out files using procedures outlined by WCAT;*
- (b) transport files in a locked carrying case and, if possible, keep them with the member at all times;*
- (c) if it is necessary to review the files while travelling, ensure that they are not in open view;*
- (d) always store files in a locked carrying case, locked filing cabinet, or locked room, to ensure they cannot be viewed by visitors or family members;*
- (e) do not leave files unattended in unlocked premises (whether at home or in a hotel);*
- (f) do not leave files in a vehicle, even if it is locked. If absolutely necessary, files may be locked in a trunk if the vehicle is parked in a secure location;*
- (g) do not leave electronic information, database materials, and related electronic file information unattended or in an area where they can be viewed by visitors, family members and other unauthorized individuals;*
- (h) follow all security policies and practices established for computerized systems;*
- (i) return files to the WCAT offices as soon as possible.*

If, despite the above precautions, a theft occurs and files and/or electronic systems containing personal information are stolen:

- (a) notify the chair or a senior vice chair immediately;*
- (b) file a police report immediately;*
- (c) tribunal counsel will notify the Office of the Information and Privacy Commissioner of the theft;*
- (d) tribunal counsel will notify individuals whose personal information was stolen of the theft and what information about them was taken.*

27.31 Avoidance of Third Party Identifiers

Submissions with Identifiers

To protect workers' privacy, submissions should not contain identifying information such as names or file numbers concerning the workers' compensation claims of other workers (unless written consents from those other workers are attached). Instead, parties should cite decision numbers which are accessible on the internet.

If a submission is provided with identifiers, the appeal liaison or appeal coordinator may accept the submission but remove the identifiers and advise the parties this has been done. The edited copy would be disclosed to the parties. Alternatively, the appeal liaison or appeal coordinator may ask the party to provide written consents from the other workers, or provide an edited copy of the submission which does not contain personal identifiers concerning other workers. In that event, the submission will be marked as having been excluded and kept separate from the appeal documentation pending receipt of any necessary consents or an edited copy. Upon receipt of an edited copy, the original submission will be destroyed or returned to the party.

If consents or an edited copy are not provided, the panel will determine the appropriate disposition of the submission containing identifiers (which was marked as excluded). Whether or not an excluded submission is accepted by the WCAT panel, the identifiers must be removed before the submission is added to the Board file. If the submission is not accepted by the panel and it is not practicable to remove the identifying information, the submission will be returned to the party.

APPENDIX 3

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 6
Date: June 1, 2004
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 June 1, 2004 until March 2, 2006, 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 4 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
 - (b) until 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 person who would otherwise be qualified for appointment as a member, as 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

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 senior vice chair or member holds the position.

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 the 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 tribunal counsel 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 the senior vice chair/registrar (“registrar”), the same powers and duties as delegated in paragraph 9 to tribunal counsel, but limited to situations where tribunal counsel is absent, or has determined they are exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
11. I delegate to the senior vice chair/chief operating officer (“chief operating officer”), the same powers and duties as delegated in paragraph 10 to the registrar, but limited to situations where the registrar is absent, or has determined they are exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.

12. I delegate to the specialized vice chair/inventory strategist (“inventory strategist”), the same powers and duties as delegated in paragraph 11 to the chief operating officer, but limited to situations where the chief operating officer is absent, or has determined they are exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
13. I delegate to the specialized vice chair/quality assurance (“vice chair/quality assurance”), the same powers and duties as delegated in paragraph 12 to the inventory strategist, but limited to situations where the inventory strategist is absent, or has determined they are 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.

14. 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:

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

15. 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, vice chair/quality assurance, legal counsel.

16. 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.

17. 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, vice chair/quality assurance.

18. 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 sections 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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, vice chair/quality assurance.

24. Extension of 180-day time frame at appellant's request – sections 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.

25. 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.

26. 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

27. 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 tribunal counsel.
28. I delegate to the vice chair/quality assurance, the same powers and duties as delegated in paragraph 27 to tribunal counsel, but limited to situations where tribunal counsel is absent, or has determined they are exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
29. I delegate to legal counsel, the same powers and duties as delegated in paragraph 28 to the vice chair/quality assurance, but limited to situations where the vice chair/quality assurance is absent, or has determined they are exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
30. Subject to paragraph 31 in this delegation, this delegation replaces those contained in *Workers' Compensation Appeal Tribunal Decision #1* (March 3, 2003).
31. Any delegated authority or assignment of matters prior to June 1, 2004 pursuant to a delegation of the chair continues so that the delegate may carry out and complete their duties and responsibilities and continue to exercise the powers contemplated in the delegation until completed.

Jill Callan, Chair
Workers' Compensation Appeal Tribunal

Signed at Richmond, British Columbia, as of June 1, 2004

APPENDIX 4

Order to Testify

IN THE MATTER OF the Administrative Tribunals Act, S.B.C. 2004 c.45,
and
IN THE MATTER OF the *Workers Compensation Act*, R.S.B.C. 1996 c.492, s. 247(1)
and
IN THE MATTER of an Appeal (or Application [optional for s.257 or Reconsideration])

Appellant (or Applicant):

Respondent:

Worker's WCB Claim Number:

WCAT Number:

ORDER

To:

Address:

TAKE NOTICE that the Workers' Compensation Appeal Tribunal has been advised that you may have knowledge material to this appeal (or application). You are therefore required to attend to testify as a witness before the Workers' Compensation Appeal Tribunal at the time, date, and place set out below. You are also required to bring with you all documents in your possession or control with regards to *** (and, where applicable, the following physical objects):

Time: [Time]
Date: [Month Day, Year]
Place: Workers' Compensation Appeal Tribunal
4600 Jacombs Road
Richmond, BC VYV 3B1

DATED [NAME], VICE CHAIR

IMPORTANT: NOTICE TO THE PERSON SERVING THE ORDER and NOTICE TO THE WITNESS must be attached and served with this Order.

NOTICE TO THE PERSON SERVING THE ORDER:

The proper witness fees must be tendered when the summons is served.

1. For each day or part of a day travelling to and from or attending to give evidence at any hearing: \$20.00
2. Travel allowance, where the hearing is held at a place
 - Within 200 kilometers by road (including any ferry route within the Provincial road system) of where the witness resides, 30 cents per kilometre each way by road between his or her residence and the place of hearing; provided that no travel allowance shall be made by road between that residence and the place of hearing is less than 8 kilometers. This allowance includes ferry fares and road tolls; and
 - More than 200 kilometers from where the witness resides, the minimum return air fare by scheduled airline plus 30 cents per kilometre each way from his or her residence to the departure airport and from the arrival airport to the place of hearing.
3. A reasonable allowance for meal expenses made necessary by the witness' attendance, and where the witness resides elsewhere than the place of hearing and is required to remain overnight, a reasonable allowance for overnight accommodation.
4. A reasonable sum shall be allowed for the time employed and expenses incurred by the witness in preparing to give testimony when that preparation is necessary.
5. A person served with an order compelling the production of documents is entitled to payment of the reasonable cost of copying and delivery payable in advance by the requesting party.

NOTICE TO THE WITNESS:

Take notice that, pursuant to section 247 of the *Workers Compensation Act* and the Manual of Rules of Practice and Procedure, WCAT has the same power to enforce your attendance as has a court in civil cases.

If a person fails to comply with an order issued under section 247(1), WCAT may apply to the Supreme Court for an order directing compliance, pursuant to section 247(1.1) of the *Workers Compensation Act*.

Section 49 of the *Administrative Tribunals Act* states that the failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

- (a) attend a hearing;
- (b) take an oath or affirmation;
- (c) answer questions;
- (d) produce the records or things in their custody or possession.

APPENDIX 5

Order for Documents

IN THE MATTER OF the *Administrative Tribunals Act*, S.B.C. 2004 c.45
and
IN THE MATTER the *Workers Compensation Act*, R.S.B.C. 1996 c.492
and
IN THE MATTER of an Appeal (or Application for s.257 or Reconsideration)

Appellant (or Applicant):

Respondent:

Worker's WCB Claim Number:

WCAT Number:

ORDER

To:

Address:

TAKE NOTICE that the Workers' Compensation Appeal Tribunal has been advised that you may have documents material to this appeal (or application). You are therefore required to produce the following documents:

1.

Please forward the requested materials to the following address in person, by courier or by mail postmarked no later than [month day, year]:

Workers' Compensation Appeal Tribunal
150-4600 Jacombs Road
Richmond, British Columbia V6V 3B1

DATED

[NAME], VICE CHAIR

IMPORTANT: NOTICE TO THE PERSON SERVING THE ORDER and NOTICE TO THE RECIPIENT must be attached and served with this Order.

NOTICE TO THE PERSON SERVING THE ORDER:

A person served with an order compelling the production of documents is entitled to payment of the reasonable cost of copying and delivery payable in advance by the requesting party.

NOTICE TO THE RECIPIENT:

Take notice that, pursuant to section 247 of the *Workers Compensation Act* and the Manual of Rules of Practice and Procedure, WCAT has the same power to enforce the production and inspection of books, papers, documents and things as has a court in civil cases.

If a person fails to comply with an order issued under section 247(1), WCAT may apply to the Supreme Court for an order directing compliance, pursuant to section 247(1.1) of the *Workers Compensation Act*.

If a person fails to comply with an order for documents, WCAT may also require a person to attend to testify as a witness before the tribunal and to bring the requisite documents. Section 49 of the *Administrative Tribunals Act* states that the failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

- (a) attend a hearing;
- (b) take an oath or affirmation;
- (c) answer questions;
- (d) produce the records or things in their custody or possession.

APPENDIX 6

Oath/Affirmation of Witnesses

Oath

Do you swear that the evidence you will give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Answer: I Do or I So Swear.

Affirmation

Do you affirm that the evidence that you will give in these proceedings shall be the truth, the whole truth and nothing but the truth?

Answer: I Do or I So Affirm.

APPENDIX 7

Oath/Affirmation of Interpreters

Oath

Will you truly, faithfully, and without partiality to any party in this proceeding, and to the best of your ability interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, so help you God?

Answer: I Do or I So Swear.

Affirmation

Do you affirm that you will truly, faithfully, and without partiality to any party in this proceeding, and to the best of your ability interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers?

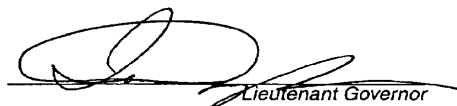
Answer: I Do or I So Affirm.

APPENDIX 8

Regulations

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. -- **1038** , Approved and Ordered NOV 28 2002


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the following provisions of the *Workers Compensation Amendment Act (No. 2), 2002*, SBC 2002, c. 66, are brought into force by this regulation:

- (a) sections 7, 34 and 36, effective November 30, 2002;
- (b) the Act except sections 7, 34 and 36, effective March 3, 2003.


Minister of Skills Development and Labour
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Amendment Act (No. 2), 2002 [Bill 63-2002] section 46

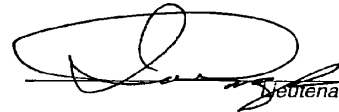
Other (specify):- _____

November 15, 2002

1262 12002/4

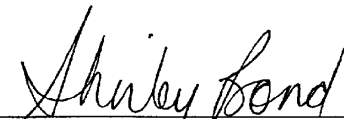
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1039**, Approved and Ordered **NOV 28 2002**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, the attached regulation is made.


Minister of Skills Development and Labour
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Act, sections 224 (1) and (2), 232 (8), 234 (2), 239 (2) and 249 (1)

Other (specify):- _____

November 15, 2002

1259 12002/4

WORKERS COMPENSATION ACT APPEAL REGULATION

Interpretation

1 In this regulation:

“Act” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;

“**appeal tribunal**” means the Workers’ Compensation Appeal Tribunal established by the Act.

Requirements for appointment

2 The chair may appoint a person as a vice chair of the appeal tribunal only if the person demonstrates the following:

- (a) a knowledge of the workers’ compensation system;
- (b) a knowledge of the principles and practice of administrative law;
- (c) the capacity to apply the knowledge under paragraph (b) so as to be able to work effectively as a vice chair of the appeal tribunal;
- (d) the ability to analyze relevant information;
- (e) the ability to make difficult decisions within an established framework of law and policy, including good judgment and decisiveness;
- (f) effective communication skills;
- (g) the ability to work with others;
- (h) the ability to work effectively;
- (i) good character and proven integrity.

Oath of office

3 For the purposes of section 232 (8) of the Act, each member of the appeal tribunal must take an oath of office, by oath or solemn affirmation, before a Commissioner for Taking Affidavits in British Columbia, in the following form:

I,, swear (solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, carry out my duties as a member of the Workers’ Compensation Appeal Tribunal, I will conduct myself with integrity, and I will discharge my duties in accordance with the laws of the Province.

Decisions that are not appealable

4 For the purposes of section 239 (2) (a) of the Act, the following are classes of decisions that may not be appealed to the appeal tribunal:

- (a) decisions applying time periods specified by the board under section 96 (8) of the Act;
- (b) decisions made under section 96.2 (4), 96.2 (7), 96.4 (2) to (5) or 96.4 (7) of the Act;

- (c) orders by the chief review officer under section 96.2 (5) of the Act;
- (d) decisions about whether or not to refer a decision back to the board under section 96.4 (8) (b) of the Act;
- (e) decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to the appeal tribunal under section 239 (2) (b) to (e) of the Act.

Health professionals

- 5 The following are "health professionals", for the purposes of section 249 (1) of the Act:
- (a) a person who is entitled to practise dentistry or dental surgery under the *Dentists Act*;
 - (b) a person who is entitled to practise dentistry under the laws of another province;
 - (c) a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the *Health Professions Act*, R.S.B.C. 1996, c.183;
 - (d) a person who is entitled to practise as a psychologist under the laws of another province.

Costs

- 6 The appeal tribunal may award costs related to an appeal under Part 4 of the Act to a party only if the appeal tribunal determines that
- (a) another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault,
 - (b) the conduct of another party has been vexatious, frivolous or abusive, or
 - (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.

Expenses

- 7 (1) Subject to subsection (2), the appeal tribunal may order the Board to reimburse a party to an appeal under Part 4 of the Act for any of the following kinds of expenses incurred by that party:
- (a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the appeal tribunal to travel to the hearing or other proceeding;
 - (b) the expenses associated with obtaining or producing evidence submitted to the appeal tribunal;
 - (c) the expenses associated with attending an examination required under section 249 (8) of the Act.
- (2) The appeal tribunal may not order the Board to reimburse a party's expenses arising from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1040**, Approved and Ordered NOV 28 2002


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, the attached regulation be made, as the Lieutenant Governor in Council is of the opinion that the matters set out in the attached regulation are insufficiently provided for, or are not provided for, in Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*, S.B.C. 2002, c. 66, and are necessary for the orderly transition to the appeal tribunal of proceedings before the review board and the appeal division.


Minister of Skills Development and Labour
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Amendment Act (No. 2), 2002, section 44

Other (specify):- _____

November 18, 2002

1260 12002/4

TRANSITIONAL REVIEW AND APPEAL REGULATION

Definitions

1 In this regulation:

“Act” means the *Workers Compensation Act*;

“amendment Act” means the *Workers Compensation Amendment Act (No. 2), 2002*;

“appeal division” means the appeal division, as defined in section 79 of the Act, immediately before that definition was repealed by the amendment Act;

“review board” means the review board, as defined in section 1 of the Act, immediately before that definition was repealed by the amendment Act;

“transition date” means the date section 232 (1) of the Act, as enacted by the amendment Act, comes into force.

Unexercised rights

2 (1) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal a decision of the Board to the review board, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chief review officer under section 96.2 (4) of the Act, as enacted by the amendment Act, to extend the time to request a review under that section and the chief review officer may extend the time to file the request for review under that section.

(2) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal

(i) a decision of the Board to the appeal division, or

(ii) a finding of the review board to the appeal division, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chair under section 243 (3) of the Act, as enacted by the amendment Act, to extend the time to file a notice of appeal under that section and the chair may extend the time to file the notice of appeal under that section.

(3) A person who is granted an extension of time to file a request for review or a notice of appeal under subsection (1) or (2) may request a review or appeal the decision or finding, as the case may be, within the extended period.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. — **1041** , Approved and Ordered **NOV 28 2002**



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2002, section 10 of the Fishing Industry Regulations, B.C. Reg. 674/76, is amended

- (a) in subsection (1) by striking out “, 58 to 66 and 89 to 93 inclusive of Part 1” and substituting “and 96.2 to 96.4 of the Act”,
- (b) in subsection (3) by striking out “58 to 66 and 89 to 93 inclusive of Part 1” and substituting “96.2 to 96.4 of the Act”, and
- (c) by adding the following:
 - (3.1) Sections 96.2 to 96.4 of the Act apply to the persons described in section 5 (1) (a) to (c) as being required to pay assessments.
 - (3.2) The persons to whom sections 96.2 to 96.4 of the Act apply as a result of this section are deemed to be employers for the purposes of those sections.



Minister of Skills Development and Labour



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Act, section 4


Other (specify):- OIC 3779/76

November 18, 2002

1261 /2002/4

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 1150, Approved and Ordered DEC 18 2002




Lieutenant Governor
Administrator

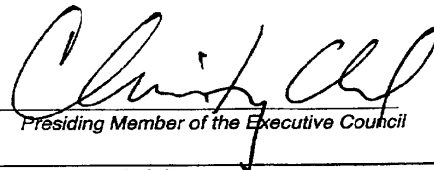
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~^{Administrator}, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, section 10 of the Fishing Industry Regulations, B.C. Reg. 674/76, is amended

- (a) in subsection (1) by striking out “, 58 to 66 and 89 to 93 inclusive of Part 1” and substituting “and 96.2 to 96.4 of the Act”,
- (b) in subsection (3) by striking out “58 to 66 and 89 to 93 inclusive of Part 1” and substituting “96.2 to 96.4 of the Act”, and
- (c) by adding the following:
 - (3.1) Sections 96.2 to 96.4 of the Act apply to the persons described in section 5 (1) (a) to (c) as being required to pay assessments.
 - (3.2) The persons to whom sections 96.2 to 96.4 of the Act apply as a result of this section are deemed to be employers for the purposes of those sections.



Minister of Skills Development and Labour



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and section.- Workers Compensation Act, section 4

Other (specify):- OIC 3779/76

December 3, 2002

.resub 1261 /2002/4