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## GLOSSARY

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|------------------------------|--|
| <b>“ADR”</b>                 | means alternative dispute resolution.  |
| <b>“allow”</b>               | 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.      |
| <b>“appeal”</b>              | includes an application.   |
| <b>“Appeal Division”</b>     | means former Appeal Division of the Workers’ Compensation Board (Board).   |
| <b>“Appeal Regulation”</b>   | means <i>Workers Compensation Act Appeal Regulation</i> , B.C. Reg. 321/02.  |
| <b>“appellant”</b>           | includes applicant.  |
| <b>“application”</b>         | includes an application for an extension of time to appeal, an application for reconsideration of a WCAT decision, and an application for a section 257 certificate.       |
| <b>“at least”</b>            | when referring to the calculation of time, means that the first and last days are not included.  |
| <b>“ATA”</b>                 | means <i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45.  |
| <b>“Amendment Act”</b>       | means <i>Workers Compensation Amendment Act, 2002</i> , S.B.C. 2002, c. 56.  |
| <b>“Amendment Act No. 2”</b> | means <i>Workers Compensation Amendment Act (No.2), 2002</i> , S.B.C. 2002, c. 66.   |
| <b>“Board”</b>               | means Workers’ Compensation Board, now operating as WorkSafeBC.  |
| <b>“board of directors”</b>  | means board of directors of the Board.   |
| <b>“Cabinet”</b>             | means Lieutenant Governor in Council.  |
| <b>“cancel”</b>              | means that the WCAT panel disagrees with a decision under appeal and determines that the decision should be set aside without a new or changed decision being substituted. |

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| <b>“chair”</b>            | means head of WCAT appointed under section 232(2)(a) who has all the powers of the chair set out in Part 4 of the WCA [s. 231].  |
| <b>“Commissioners”</b>    | means former governing body of the Board, prior to June 3, 1991.   |
| <b>“confirm”</b>          | means that, on every issue addressed in the WCAT decision, the panel agrees with the determinations made by the prior decision-maker in the decision or order under appeal, though not necessarily with the reasons for those determinations.  |
| <b>“decision”</b>         | A letter or other communication to a person affected that records the determination of the Board, including the Review Division, as to a person's entitlement to a benefit or benefits or a person's liability to perform an obligation or obligations under any section of the Act.   |
| <b>“deny”</b>             | means the WCAT panel agrees with the determination made on an issue covered by a decision or order under appeal, or does not grant the remedy requested in an application.   |
| <b>“FIPPA”</b>            | means <i>Freedom of Information and Protection of Privacy Act</i> , R.S.B.C. 1996, c. 165.   |
| <b>“issue”</b>            | means each benefit, or each aspect of a benefit or obligation, dealt with in a decision or order where the decision or order includes determinations regarding: different aspects of a benefit or obligation; more than one type of benefit or obligation; or, determinations regarding the same benefit or obligation at different places or times.                   |
| <b>“member of family”</b> | 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 in place of a parent to the worker, or to whom the worker stood in place of a parent, whether related to the worker by blood or not [s. 1]. |
| <b>“members of WCAT”</b>  | means chair, vice chairs, and temporary substitute members appointed under section 232(10) [s. 231].   |

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

**“vice chair”**

means a WCAT decision maker (not an officer), appointed by the chair, after consultation with the minister, under section 232(2)(b) to make decisions on appeals to WCAT, and whose position is not representative of employers' or workers' interests.

**“WCA”**

means *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

## 1 INTRODUCTION

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### 1.1 Workers' Compensation Appeal System

In the province of British Columbia, the *Workers Compensation Act* (WCA) establishes two levels for review or appeal of decisions by officers of the Workers' Compensation Board, operating as WorkSafeBC (Board). The first level is an internal review by a review officer of the Review Division of the Board (Review Division). The second level is an external 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. (See Appendix 1 for a short history of the workers' compensation appeal system.)

### 1.2 The Manual of Rules of Practice and Procedure

This *Manual of Rules of Practice and Procedure* (MRPP) sets out legislation relevant to WCAT's operation, rules of practice and procedure, practice directives, and guidelines established by the chair.

Section 11 of the *Administrative Tribunals Act* (ATA) and section 234 of the WCA allow WCAT to control its processes and to make rules and issue practice directives respecting practice and procedure "to facilitate the just and timely resolution of the matters before it", the "efficient and cost effective conduct of appeals", and the "efficient operation of the appeal tribunal".

Rules of practice and procedure are binding, that is, WCAT must follow them. WCAT may waive or modify its rules in exceptional circumstances. In this MRPP rules are identified in **bold**.

Section 13 of the ATA allows WCAT to issue practice directives. Practice directives are not binding, but WCAT will usually follow them. Guidelines are also not binding. In this MRPP practice directives are identified in *italics*.

Rules of practice and procedure and practice directives must be consistent with the WCA and the ATA and must be accessible to the public. Both are included in Appendices 2 and 3, respectively, at the end of this MRPP.

To facilitate the just and timely resolution of appeals, WCAT may make orders related to its rules 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].

The MRPP is accessible on WCAT's website at: [www.wcat.bc.ca](http://www.wcat.bc.ca). From time to time WCAT will post proposed revisions to the rules, or proposed practice directives, as an "Alert" on the website and will provide an opportunity for input from the community.

### **1.3 Role of WCAT**

Section 232(1) 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.

### **1.4 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) communication within the workers' compensation system while safeguarding WCAT's independence;
- (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.

### **1.5 Administrative Law Concepts**

#### **1.5.1 Introduction**

Administrative law consists of principles set out in statutes (statutory law) and described by judges in court decisions (common law) which ensure that decisions of administrative bodies, such as tribunals and government decision makers, are made fairly and within the powers granted to them by statute. Below is a brief discussion of some of the principles of administrative law.

#### **1.5.2 Jurisdiction of Tribunals**

The jurisdiction of an administrative body refers to the scope of power the legislature granted to that administrative body. The legislature may grant powers to an administrative body either in the statute that created it (the enabling statute) or in other statutes. The jurisdiction of a tribunal that decides appeals, like WCAT, is defined and necessarily implied by the powers the legislature has granted it to receive, hear, and decide appeals.

Tribunals such as WCAT, unlike some courts, have no "inherent jurisdiction". Courts with inherent jurisdiction have broad powers which they received, both historically and constitutionally, from the common law, unless these powers are limited or taken away by statute.



Historically, the compensation of injured workers was dealt with by courts with inherent jurisdiction over personal injury law. The legislatures of the various provinces took away most of that jurisdiction and gave it to administrative bodies such as workers' compensation boards and workers' compensation appeal tribunals. Courts are now left with only a limited supervisory jurisdiction over these administrative bodies (item 20.4.3).

### **1.5.3 Procedural Fairness**

There is a general common law principle called the duty of procedural fairness which applies to every administrative body making a decision affecting the rights, privileges or interests of an individual.

The content of the duty to act fairly in a given case, that is, what is "fair", depends on the circumstances of the case and may vary depending on the nature of the decision in question. The more important the decision is to those affected and the greater its impact on that person or persons, the more stringent the procedural protections that will be required. Also, administrative bodies which adjudicate formal appeals, like WCAT, are generally required to adhere to particularly high standards of procedural fairness (sometimes referred to as the "rules of natural justice").

The common law duty of fairness applies to all administrative bodies unless a statute provides otherwise, for example, if it specified that an administrative body follow a certain procedure, or the person for whose benefit a procedural rule exists waives the rule.

The duty to act fairly consists of four basic elements, which can be expressed as rights of the person whose interests are affected by a decision. The four rights are:

- a) the right to be heard,
- b) the right to a decision from an unbiased decision maker,
- c) the right to a decision from the person who hears the case, and
- d) the right to reasons for the decision.

#### **1.5.3.1 The Right to be Heard**

The right to be heard means that a person who may be directly affected by a decision has the right to receive notice that a decision may be made, the right to know what matters will be decided, and the right to be given a fair opportunity to state their case and to correct or contradict relevant statements or evidence with which they disagree. This right will usually require:

- (a) disclosure to a party of all documents that were before the Board and, if applicable, the Review Division, at the time the appealed decision(s) was made;
- (b) disclosure to a party of all material that is before the decision maker, whenever received by the decision maker, including any written submissions from other parties;

- (c) an opportunity to provide submissions in relation to all disclosed material and to respond to the written submissions of other parties;
- (d) the right to a reasonable amount of time to prepare for an oral hearing or to provide written submissions, and to be advised of any relevant submission due dates;
- (e) the right to present evidence;
- (f) the right to test adverse evidence (e.g. cross-examination);
- (g) an oral hearing if the circumstances require one;
- (h) notice of the time and place of an oral hearing, if one is held;
- (i) the right to be present throughout an oral hearing;
- (j) the right to obtain representation.

### **1.5.3.2 The Right to a Decision from an Unbiased Decision Maker**

The rule against bias ensures that decisions are both fair and are seen to be fair. Accordingly, the rule applies to both actual bias and the appearance of bias.

A decision maker's impartiality is presumed. Actual bias occurs when, for any reason, a decision maker's state of mind prevents the decision maker from deciding the case objectively and impartially. Actual bias may arise where a decision maker may benefit from a particular outcome, where a personal or professional relationship with a party may affect the outcome, or where a decision maker has made a decision before hearing the parties.

As the rule against bias is designed to protect the public's confidence in the integrity of the decision making process, actual bias need not be established. It is enough that there be a "reasonable apprehension of bias" on the part of the decision maker. A reasonable apprehension of bias exists if an informed, reasonable, and right-minded person would think that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide the matter fairly. The onus for establishing either actual bias or the appearance of bias is on the party who makes the allegation.

The personal qualities required for appointment as a vice chair at WCAT, as set out in section 2 of the Appeal Regulation, are intended to avoid actual bias or the appearance of bias from arising in any appeal (see Appendix 4 and item 2.3). Furthermore, the Code of Conduct for WCAT Members was adopted to reduce the risk of the appearance of bias arising in any appeal (item 21.3).

### **1.5.3.3 The Right to a Decision from the Person who Hears the Case**

The right to a decision from the person who hears the case was traditionally formulated by the common law as "he who hears must decide". This means that a decision maker exercising a statutory power (such as the power to hear and decide appeals) cannot delegate the power to someone else. Similarly, it is unfair if someone else, including the chair of a tribunal, instructs a decision maker how to decide a case.

This principle also recognizes the balance between safeguarding the independence of decision makers and the value of consistency in decision making. In *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America et al*, [1990] 1 S.C.R. 282, the Supreme Court of Canada concluded that this principle was not compromised when a tribunal held a full board meeting for the purpose of discussing policy issues arising from a specific case. As long as the issues of fact were not discussed at the full board meeting, the meeting was entirely voluntary, the discussion was limited to questions of law and policy, and the decision makers remained free to decide based on their conscience and their understanding of the facts and law, the practice was not unfair.

The Court also said that informal discussions with colleagues in and of themselves do not affect the capacity of panel members to decide the issues at stake independently. This principle has since been restated and applied in many court decisions.

#### **1.5.3.4 Fettering Discretion**

A corollary of the principle of “he who hears must decide” is that decision makers may not restrict, or fetter, their discretion to decide each case based on its own merits.

Traditionally, courts have found that discretion is fettered any time a decision maker decides a matter strictly on the basis of a pre-existing policy or view without considering whether an exception needs to be made in the case. Courts have held that tribunals may adopt general policies or may be guided by policies set by external agencies, so long as those policies are not regarded as binding, inflexible rules.

Sections 99(2) and 250(2) provide that the Board and WCAT are required to consider each appeal on its own merits and justice but, in so doing, must apply a policy of the board of directors that is applicable in the appeal. The common law restriction on fettering discretion has therefore been modified for the workers’ compensation system by sections 99(2) and 250(2).

The common law restriction on fettering discretion has also been modified with respect to procedural matters by the ATA which gives tribunals the power to make rules with respect to their practices and procedures [s. 11(1)]. These rules must be publicly accessible [s. 11(4)] and may be waived or modified in exceptional circumstances [s. 11(3)].

The courts have recognized that the legislature may statutorily restrict or fetter the discretion of a tribunal: *Yukon (Workers’ Compensation Appeal Tribunal) v. Yukon (Workers’ Compensation Health and Safety Board)*, [2005] Y.J. No. 5, 2005 YKSC 5.

### **1.5.3.5 The Right to Reasons**

In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada decided that reasons are part of procedural fairness. The courts have set aside tribunal decisions on the basis of a breach of procedural fairness where the decision maker either did not provide reasons, or provided inadequate reasons, for the decision.

WCAT is statutorily required to provide reasons [s. 253(3)], but the extent to which reasons must be given depends on the circumstances of each case. In *Baldwin v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2007 BCSC 942, followed in *Schulmeister v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2007 BCSC 1580, the British Columbia Supreme Court said that "reasons must be sufficient to allow the parties involved to understand the decision maker's reasoning and to provide enough information for an appeal, if one is desired, but should not be held to a standard of perfection." In *Wyant v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2006 BCSC 680, the Court also held it was proper for WCAT to incorporate the reasons of both the Review Division and Board below as its own where the decision maker agreed with them.

### **1.5.3.6 Failing to Decide a Matter (Missed Issue)**

A jurisdictional defect occurs if the tribunal does not perform the task that the relevant statute requires of it. This may occur if the decision maker fails to consider one or more of the issues that were properly before it. At WCAT this does not necessarily result in a decision being set aside. The panel retains the authority to complete its consideration of the appeal (item 20.1.3).

### **1.5.3.7 Effect of a Breach of Procedural Fairness**

Failure to observe the administrative law requirements for fair procedure may result in a court setting aside, or declaring void, a tribunal's decision and sending it back for the tribunal to reconsider after a fair hearing. Accordingly, on reconsideration of a WCAT decision, WCAT will set aside decisions of panels that are procedurally unfair (item 20.2.2). This authority is also recognized in the WCA [s. 253.1(5)].

## **2 STRUCTURE OF WCAT**

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### **2.1 Composition**

WCAT consists of the chair together with vice chairs and any temporary substitute members [s. 231].

### **2.2 Role of the Chair**

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

- (a) appointing vice chairs in accordance with any procedures or requirements prescribed by the Lieutenant Governor in Council;
- (b) establishing quality adjudication, performance and productivity standards for members of the appeal tribunal and regularly evaluating the members according to those standards;
- (c) developing a 3 year strategic plan and an annual operations plan for the appeal tribunal;
- (d) establishing any 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 any forms, practices and procedures established under paragraph (d) accessible to the public;
- (f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;
- (g) providing for public access to decisions of the appeal tribunal in a manner that protects the privacy of the parties to the proceedings;
- (h) for the purposes of section 249, establishing a list of health professionals;
- (i) presiding over meetings of the appeal tribunal;
- (j) establishing panels;
- (k) ordering the consideration of related matters in one hearing before the appeal tribunal;
- (l) establishing a code of conduct, including conflict of interest provisions, that governs the conduct of the members, officers, employees and contractors of the appeal tribunal;
- (m) preparing the annual report of the appeal tribunal;
- (n) appointing officers of the appeal tribunal;
- (o) for the purpose of judicial proceedings, preparing a certificate attaching the record of the appeal tribunal in the matter of a particular appeal or decision of the tribunal, including any practices and procedures applied by the tribunal.

### **2.2.1 Delegation by the Chair**

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)]. If the chair has delegated a power or duty and subsequently ceases to hold office, the delegation continues in effect so long as the delegate holds office or until the delegation is revoked by a new chair [s. 234(5)]. The chair routinely makes a general delegation of authority under various sections of the WCA by issuing a delegation decision.

The chair must not make a general delegation of 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 Appendix 5 for the most recent delegation decision by the chair. The delegation decision may also be found on the WCAT's web site at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

### **2.2.2 Incapacity of the Chair**

If the chair is absent or incapacitated, the Cabinet may appoint a temporary substitute member to act during the absence or incapacity. The chair may designate another member of WCAT to act in the chair's place during a temporary absence [s. 234(6)].

## **2.3 Vice Chairs**

The chair is responsible for appointments of vice chairs after consultation with the Minister of Labour, 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 [s. 2(a) to (i), Appeal Regulation] (see Appendix 4):

- (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.

### **2.3.1 Incapacity of Vice Chairs and Members**

If a vice chair 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.

## **2.4 Tribunal Counsel Office**

Tribunal counsel office (TCO) operates under the direction of the senior vice chair and tribunal counsel (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, initial review of applications for reconsideration, responding to various complaints, and representing WCAT in the courts on judicial reviews of WCAT decisions.

TCO consists of tribunal counsel, vice chair of quality assurance and training, legal counsel, legal researchers (including co-op law students), medical coordinator, library technician, and support staff.

## **2.5 Registrar's Office**

The registrar's office operates under the direction of the senior vice chair and registrar (registrar). The registrar's office is responsible for receiving appeals, determining whether appeals meet the requirements of the WCA, including determining whether WCAT has jurisdiction to hear the appeal, making the initial determination of the method of hearing, and assigning appeals to WCAT panels. The registrar's office is also responsible for managing the written submissions process and scheduling oral hearings.

The registrar's office consists of deputy registrars who are vice chairs, a senior registry officer, assessment officers, appeal coordinators, appeal liaisons, registration and scheduling clerks and support staff.

## **2.6 Officers of WCAT**

The chair may appoint officers of WCAT [s. 234(2)(n)]. The *Labour Relations Code*, R.S.B.C. 1996, c. 244, and the *Public Service Labour Relations Act*, R.S.B.C. 1996, c. 388, do not apply to members or officers of WCAT [s. 232(9)].

The chair has appointed four types of officers of WCAT:

Senior registry officer, who supervises the appeal coordinators, appeal liaisons, and the registration, scheduling, filing and reception staff. The senior registry officer consolidates related matters into one hearing, suspends and continues appeal proceedings under sections 252(1) and (3), and extends the statutory time frame as provided for under sections 253(6) and (7).



Assessment officers, who assess new appeals to determine whether they meet the requirements in section 242(2), and are within WCAT's jurisdiction; they make provisional decisions on these matters. They confirm who may bring an appeal (the standing of parties) and determine the appropriate appeal method (i.e., written submissions, oral hearing, specialty stream). They consolidate related matters into one hearing, suspend and continue appeal proceedings under sections 252(1) and (3), and extend the statutory time frame as provided for under sections 253(6) and (7).

Appeal coordinators, who are the primary liaisons between WCAT and all parties to an appeal after assessment to closure. They manage individual caseloads of appeals and ensure that timelines for appeal processing are met. Appeal coordinators also suspend and continue appeal proceedings under sections 252(1) and (3), and extend the statutory time frame as provided for under sections 253(6) and (7).

Legal counsel, who represent WCAT with respect to the hearing of petitions for judicial review and related appeals before the superior courts, conduct research and analysis on specific or general legal questions, and provide legal opinions to the chair, senior vice chairs, and vice chairs, particularly in the areas of workers' compensation and administrative law.

## **2.7 Panels**

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

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

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)].

### **2.7.1 Three Member Non-Precedent Panels**

The chair may appoint a three member panel under section 238(5) based on the complexity and significance of the issues raised in an appeal.

### **2.7.2 Precedent Panels**

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

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

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

A decision by a panel appointed under section 238(6) sets a precedent which is binding on future WCAT panels, unless [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 is repealed, replaced or revised.

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

### **2.7.3 Presiding Member**

Where the panel has three or more members, the chair or a vice chair will be the presiding member. If a panel consists of more than one member, the decision of the majority is the panel's decision. If there is no majority, the decision of the presiding member is the panel's decision [s. 238(9)].

### **2.7.4 Single Member Panel Unable to Complete Duties**

If a single member panel is unable to complete their duties (original member), the chair may direct that another member continue and complete the appeal (continuing member) [ss. 238(3) and 238(11)].

Generally the continuing member will review all the evidence, submissions and exhibits that were before the original member, including new evidence (if any) sought by the original member, for example, information or determinations requested under sections 246(2)(d), 246(3) and 249.

If the original member held an oral hearing, WCAT will provide the participating parties with the audio recording of that oral hearing. Participating parties will be asked to consent to one of the following options to complete the appeal:

- (a) the continuing member will listen to the audio recording of the original oral hearing and then complete the appeal; or
- (b) the continuing member will conduct a completely new oral hearing and then complete the appeal.

Under option (a), if the continuing member considers that further information or submissions are required to complete the appeal, the member may direct a further oral hearing be scheduled or written submission be provided. This may occur where, for example, the audio recording of the original oral hearing is inaudible in part or the continuing member requires further clarification of an issue.

Under option (b), generally the continuing member will not listen to the audio recording of the original oral hearing unless a participating party so requests before the new oral hearing is completed. A party may use the audio recording to contradict a witness' testimony during cross-questioning. The continuing member will give all parties an opportunity to make submissions on the testimony at the original oral hearing.

If all participating parties do not consent to one of these options or, due to mechanical or human failure or other accident the audio recording of the original oral hearing is destroyed or missing, the chair will direct that a new oral hearing be held before a new member [s. 238(3)(c)].

### 3 JURISDICTION

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(See Appendix 6 for limited material concerning the Review Division's jurisdiction which is provided for information purposes only. For more detailed information, see *Review Division Practices and Procedures* on the Board's website at: [www.worksafebc.com](http://www.worksafebc.com))

#### 3.1 General

WCAT has jurisdiction to decide a variety of appeals:

- (a) A final decision by a review officer respecting a compensation, assessment or occupational health and safety matter [s. 239(1)]. This includes a decision declining to conduct a review under section 96.2. The time limit for appealing a review officer's decision is 30 days [s. 243(1)].
- (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 [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) [s. 240(2)]. The Board may reopen a claim on its own initiative, or on application if, since the previous decision by the Board (item 3.1.4):
  - (i) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable; or,
  - (ii) there has been a recurrence of a worker's injury.Where the Board makes a reopening decision under section 96(2) on application, the time limit for appealing the Board decision 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.
- (d) An application under section 243(3) to extend the time for filing a notice of appeal. There is no statutory time limit for initiating such an application.
- (e) An application under section 256 for reconsideration of a WCAT decision, or a decision of the former Appeal Division, based on new evidence. There is no statutory time limit for initiating such an application.
- (f) An application under section 253.1(5) for reconsideration of a WCAT decision to cure a jurisdictional defect. There is no statutory time limit for initiating such an application.
- (g) An application under section 257 for a certificate to the court in a legal action. There is no statutory time limit for initiating such an application (item 18.3.2).

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

#### 3.1.1 Compensation Issues

The compensation issues affecting workers for which a review officer's decision is appealable include:

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

### **3.1.2 Employer Issues Concerning Assessments and Monetary Penalties**

The employer issues concerning assessments or monetary penalties for which a review officer's decision is appealable include:

- (a) relief of claim costs under section 39(1)(d) - disaster fund;
- (b) relief of claim costs under section 39(1)(e) - pre-existing disease, condition or disability;
- (c) relief of claim costs for experience rating purposes [s. 42];
- (d) charging of claim costs to an unregistered employer [s. 47(2)];
- (e) charging of claim costs to an employer due to delayed notification of injury [s. 54(8)];
- (f) transfer of claim costs [s. 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 (to the statutory maximum set out in section 73(1)(b)) all or part of the compensation 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.

### **3.1.3 Occupational Health and Safety Issues and Monetary Penalties**

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

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

### **3.1.4 Direct Appeals**

There are 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) (item 3.1).

The right of direct appeal 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. To be considered an "application", the party must refer specifically to section 96(2) or must use substantially similar language and refer to one of the reopening criteria.

When deciding 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.

### 3.1.5 Certification to Court (chapter 18)

Under section 257 WCAT has the power to make determinations and provide a certificate to the court in certain matters which are relevant to a legal action.

### 3.1.6 Application for Reconsideration (items 20.2.1 and 20.2.2)

Parties may apply for reconsideration of a completed WCAT or Appeal Division decision on the basis of new evidence under section 256. They may also apply for reconsideration of a completed WCAT decision to cure a jurisdictional defect.

WCAT has no power to reconsider a decision by the Appeal Division to cure a jurisdictional defect. Parties wishing to dispute such decisions must bring a petition for judicial review in the Supreme Court of British Columbia (item 20.4).

**RULE: WCAT will treat an application for reconsideration of a Review Board finding as an application for an extension of time to appeal that decision to WCAT** (items 8.2 to 8.2.3).

## 3.2 Matters Not Appealable to WCAT

There are several classes or types of matters that are not appealable to WCAT.

### 3.2.1 Preliminary or Procedural Decisions by a Review Officer

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

- (a) a decision applying a time period specified by the Board under section 96(8);
- (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);
- (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;
- (f) a decision under section 96.4(4) to require an employer, who is a party to a review 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) 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 about whether or not to refer a decision back to the Board under section 96.4(8)(b);
- (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).

### **3.2.2 Orders under Part 3 (Occupational Health and Safety)**

Any decision respecting an order under Part 3, other than those set out in item 3.1.3 above, is not appealable to WCAT [s. 239(2)(e)].

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

#### **3.2.2.1 Order Later Relied Upon to Impose an Administrative Penalty**

Where a decision respecting an order under Part 3 is later relied upon to impose an administrative penalty, on appeal from a review officer's decision regarding the administrative penalty, WCAT will also have jurisdiction over the underlying order(s), whether or not they were reviewed by a review officer (item 3.1.3).

### **3.2.3 Other Substantive or Merit Decisions of a Review Officer**

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, a decision respecting the percentage of impairment 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 the Board's assignment of an employer to a classification unit but not, except in limited circumstances, an employer's assignment to a class or subclass. The review officer's decision concerning the employer's assignment to a classification unit may be appealed to WCAT. As the class or subclass is not addressed by a review officer, these may not be appealed to WCAT. For a detailed listing of those types of decisions that are not reviewable, see section 96.2(2).

### **3.3 Scope of Appeal (Items 5 and 8.4.1)**

#### **3.3.1 Issues in Decision(s) Appealed**

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(s) which was under review, subject to the statutory limits on WCAT's jurisdiction. Similarly, when considering appeals of Board decisions which are appealable directly to WCAT, WCAT has jurisdiction to address any issue determined in the decision appealed.

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 (items 8.2 to 8.2.3).

The panel will normally not address issues not expressly raised by the parties, but has the discretion to do so. The panel will give notice 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 (item 1.5.3.1).

An exception is where the subject of an appeal is a permanent disability award which typically includes the effective date of the award as well as the assessment of the permanent functional impairment or the loss of earnings entitlement. Panels may address any aspect of the permanent disability award decision which was addressed in the Board decision under review by the Review Division, or which was addressed in the Review Division decision, without notice to the parties.

#### **3.3.2 Termination of Short-term Disability (Wage Loss) Benefits**

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 jurisdiction. Specifically, it is not a decision respecting matters referred to in section 16 (vocational rehabilitation benefits).

#### **3.3.3 Personal Injury (section 5) and Occupational Disease (section 6)**

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 procedural fairness concerns.

### **3.3.4 Entitlement to Interest**

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(s) below. Where the issue of interest has not been raised by the appellant, and the panel intends to address it, the panel must first give the parties an opportunity to make submissions on the issue. WCAT may also decline to address the issue of interest until there is a Board decision on the issue.

### **3.3.5 Unappealed Decisions**

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

### **3.3.6 Adverse Effect**

WCAT decisions may, on occasion, adversely affect the appellant in that the appellant may be in a worse position having appealed to WCAT than if the appellant had not appealed at all. For example, where a worker appeals a permanent disability award decision, the panel may not only increase or confirm the award, the panel may also decrease the award. If the adverse decision relates to an issue not raised by a party, the panel must first give the parties an opportunity to make submissions on that issue (item 1.5.3.1).

## **3.4 Other Matters**

### **3.4.1 Constitutional Questions**

WCAT does not have jurisdiction over constitutional questions [s. 245.1 WCA, s. 44(1), ATA].

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

### 3.4.2 Human Rights Code

WCAT does not have jurisdiction to apply the *Human Rights Code*, R.S.B.C. 1996, c. 210 [s. 245.1 WCA, s. 46.3, ATA].

### 3.4.3 Administrative Tribunals Act

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

Section 1 – Definitions  
Section 11 – General power to make rules respecting practice and procedure  
Section 13 – Practice directives tribunal may make  
Section 14 – General power to make orders  
Section 15 – Interim orders  
Section 28 – Appointment of person to conduct dispute resolution process  
Section 29 – Disclosure protection  
Section 30 – Tribunal duties  
Section 31 – Summary dismissal  
Section 32 – Representation of parties to an application  
Section 35(1) to (3) – Recording tribunal proceedings  
Section 37 – Applications involving similar questions  
Section 38 – Examination of witnesses  
Section 42 – Discretion to receive evidence in confidence  
Section 44 – Tribunal without jurisdiction over constitutional questions  
Section 46.3 – Tribunal without jurisdiction to apply the *Human Rights Code*  
Section 48 – Maintenance of order at hearings  
Section 49 – Contempt proceeding for uncooperative witness or other person  
Section 52 – Notice of decision  
Section 55 – Compulsion protection  
Section 56 – Immunity protection for tribunal and members  
Section 57 – Time limit for judicial review  
Section 58 – Standard of review if tribunal's enabling Act has privative clause  
Section 60(a) and (b) – Power to make regulations  
Section 61 – Application of FIPPA

### 3.4.4 Regulations

The Cabinet may make regulations:

- (a) prescribing any decisions or orders under the WCA or the regulations that may be appealed to WCAT, prescribing who may appeal those decisions or orders, and prescribing classes of decisions concerned with the conduct of a review which are not appealable [s. 224(2)(j)];
- (b) respecting the awarding of costs in an appeal to be paid by one party to another party [s. 224(2)(k.1)];
- (c) prescribing qualifications of health professionals to provide independent assistance or advice [s. 224(2)(k.2), s. 249];

- (d) prescribing the circumstances under which WCAT may order the Board to reimburse the expenses incurred by a party to an appeal [s. 224(2)(k.3)];
- (e) prescribing an oath of office to be taken by WCAT members before beginning their duties [s. 232(8)];
- (f) prescribing any procedures or requirements governing the chair's appointments of vice chairs [s. 234(2)(a)];
- (g) prescribing rules of practice and procedure for WCAT [s. 60(a), ATA];
- (h) repealing or amending a rule made by WCAT [s. 60(b), ATA].

The Cabinet has made the following regulations in relation to WCAT:

- (a) the *Workers Compensation Act Appeal Regulation*, with an effective date of March 3, 2003 (Order in Council No. 1039/2002 (B.C. Reg. 321/2002)); and
- (b) the *Transitional Review and Appeal Regulation*, with an effective date of March 3, 2003 (Order in Council No. 1040/2002 (B.C. Reg. 322/2002)).

The Cabinet also ordered the following by regulation:

- (a) effective November 30, 2002 or March 3, 2003 (depending on the section), the sections of the *Workers Compensation Amendment Act (No.2)*, 2002 are brought into force (Order in Council No. 1138/2002 (B.C. Reg. 320/2002));
- (b) effective December 3, 2004, the sections of the *Administrative Tribunals Act* applicable to WCAT are brought into force (Order in Council No. 1143/2004 (B.C. Reg. 516/2004));
- (c) effective March 3, 2003, an amendment to section 10 of the *Fishing Industry Regulation* is brought into force. (The original order was Order in Council No. 1041 (B.C. Reg. 323/2002) and specified an effective date of March 3, 2002. It was replaced by Order in Council No. 1150 (B.C. Reg. 384/2002) to provide an effective date for the Regulation of March 3, 2003).

(Appendix 4)

## **4 WHO MAY APPEAL**

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

### **4.1 Workers' Compensation**

Persons directly affected by a decision of a review officer concerning compensation are [s. 241(1)]:

- (a) a worker;
- (b) a deceased worker's dependant;
- (c) an employer (items 4.7 to 4.7.3.1).

### **4.2 Employer Assessment and Classification**

Persons directly affected by a decision of a review officer respecting:

- (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)

are [s. 241(2)]:

- (a) an employer,
- (b) an independent operator.

#### **4.2.1 Employer Cost Transfer Appeals (section 10(8))**

Both employers are persons directly affected by a decision of a review officer under section 10(8) respecting claims cost transfer from one employer to another.

### **4.3 Occupational Health and Safety**

Persons who may be directly affected by a decision of a review officer respecting an occupational health and safety matter under Part 3 respecting:

- (a) a Board order,
- (b) a refusal to make a Board order,
- (c) a variation of a Board order, or
- (d) a cancellation of a Board order

are [s. 241(3)]:

- (a) a worker;
- (b) an employer (items 4.7 to 4.7.3.1);
- (c) an owner [s. 106];
- (d) a supplier [s. 106];
- (e) a union [s. 106];
- (f) a member of a deceased worker's family.

#### **4.4 Discriminatory Action**

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

- (a) a worker;
- (b) an employer (items 4.7 to 4.7.3.1);
- (c) a union [s. 106].

#### **4.5 Reopening on Application**

Persons directly affected by a decision to reopen or not to reopen a claim on an application under section 96(2) are [s. 241(5)] (item 3.1.4):

- (a) a worker,
- (b) an employer.

#### **4.6 Deceased Worker – Standing of Estate**

**RULE:** The estate of a deceased worker has the right both to initiate an appeal and to continue an appeal on behalf of a deceased worker concerning a claim for 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 statutory declaration together with 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.

(See Appendix 7 for examples of statutory declarations that may be used to comply with this rule.)



## **4.7 Employer Standing**

### **4.7.1 Employer of Record**

The employer of record, that is, the original employer the Board identified on the claim file or the employer who participated at the Review Division, has standing to initiate an appeal.

#### **4.7.1.1 Change in Status**

Where the status of the employer of record has changed according to the Board's Assessment Department, for example, the employer of record has been categorized as "inactive", "not active", "cancelled", "invalid account", "closed" or there is a "successor account", the employer of record may lose its standing to appeal.

If the employer of record's status has changed, WCAT will determine whether it continues to have standing to initiate an appeal on the basis that it is directly affected (financially or non-financially) by the decision under appeal. WCAT will obtain evidence from the Board's Assessment Department to determine whether the employer has a direct financial interest in the decision under appeal. Except in appeals of assessment and classification matters under section 241(2), a direct financial effect does not include the potential to affect the employer's classification unit.

WCAT may determine that an employer is directly affected non-financially in appeals involving a discriminatory action, a claim for mental stress or psychological disability alleging harassment, or the employer's reputation.

#### **4.7.2 Other Employers**

If the status of the employer of record has changed, other employers may have standing to initiate an appeal if WCAT determines that they are directly affected (financially or non-financially) by the decision under appeal.

Where another employer or group of employers is directly affected by a decision of a review officer respecting an employer assessment or classification, they may have standing to appeal.

#### **4.7.3 Deemed Employers**

Where no employer has standing to appeal, WCAT may deem an employers' adviser or an organized group of employers (industry association) 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)].

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(3)]. If the Review Division did not deem any person to be the employer, WCAT may consider deeming an employers' adviser or an organized group of employers to be the employer where:

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

A deemed employer has standing to initiate an appeal.

#### **4.7.3.1 Organized Groups of Employers**

Organized groups of employers who wish to participate in appeals 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 concerning the privacy of information on claim files.

#### **4.8 Who May Respond**

A person who has standing to initiate an appeal of a decision to WCAT has standing to respond, that is, be a respondent, to an appeal of that decision.

#### **4.9 Federally Regulated Workers**

The *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (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.

## 5 HOW TO APPEAL

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There is a 30 day time limit for appealing a decision of a review officer to WCAT. There is a 90 day time limit for appealing a decision of a Board officer concerning a discriminatory action complaint [s. 153] or concerning a reopening application [s. 96(2)] to WCAT.

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 WCAT'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 their 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.

If the notice of appeal is deficient, WCAT will allow a reasonable time for it to be corrected [s. 242(3)]. If the appellant does not correct the deficiencies within the time allowed, WCAT will close the appeal as incomplete and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (s. 243(3), and items 8.2 to 8.2.3).

### 5.1 Initiating an Appeal

#### 5.1.1 Notice of Appeal Must Be in Writing

**RULE:** An appellant may initiate an appeal in any written form which provides the information required by section 242(2). This may be done by delivering, mailing or sending by facsimile transmission (fax) to WCAT a completed notice of appeal form, letter, or other document containing the required information in English. WCAT will treat receipt of a written notice to appeal by the Review Division or by any Board office as receipt by WCAT.

Where the appeal is initiated by fax, it is not necessary to send WCAT the original document. Where the appellant also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.

An appellant must meet the requirements of section 242(2) or WCAT will not consider an appeal to be initiated.

WCAT notice of appeal forms are accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

### **5.1.2 Telephone Notification of Intent to Appeal**

**RULE:** Telephone notification is not sufficient to initiate an appeal. WCAT will accept telephone notice of intent to appeal for the purpose of meeting the 30- or 90-day time limit, provided that WCAT receives a written notification from the appellant which meets the requirements of section 242(2), within the time WCAT subsequently allows.

Where WCAT receives telephone notification of intent to appeal, WCAT will provide the appellant with the appeal number. WCAT will promptly write to the appellant to acknowledge the telephone notification and advise that WCAT must receive a written notice of appeal within the time WCAT subsequently allows (normally 21 days).

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 243(3) and items 8.2 to 8.2.3).

### **5.1.3 Incomplete Notice of Appeal**

**RULE:** Where the notice of appeal, letter or other written method of initiating the appeal does not meet the requirements of section 242(2), the appellant must provide a complete notice of appeal within the time WCAT subsequently allows (normally 21 days), or the time limit to appeal, whichever is greater.

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. 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 8.2 to 8.2.3).

#### **5.1.3.1 Withdrawal of Incomplete Appeal**

**RULE:** An appellant may withdraw an incomplete appeal at any time. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 243(3) and items 8.2 to 8.2.3 and 8.5).

### **5.1.4 Decision or Order Appealed**

**RULE:** To meet the requirements of section 242(2)(c), it is sufficient for the appellant to provide a brief explanation as to why the decision or order appealed is incorrect or should be changed.

### 5.1.5 Outcome Requested

**RULE:** To meet the requirements of section 242(2)(d), it is sufficient for the appellant to provide a brief statement of the outcome requested. The appellant should relate the requested outcome, that is, the remedy, to the issues raised by the decision or order appealed. WCAT generally lacks jurisdiction to award remedies or outcomes with respect to matters not addressed in the decision or order appealed (item 3.3).

## 5.2 Authorizations

### 5.2.1 For Representatives to Act

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

If the appeal is initiated by a representative, the appellant must provide a signed authorization for the representative to act unless there is an authorization on the Board file that is less than two years old (item 6.3). This rule does not apply to workers' and employers' advisers (see s. 94).

The WCAT authorization of representative form is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

### 5.2.2 For WCAT to Obtain Evidence (item 9.3 to 9.3.3)

**RULE:** By signing the WCAT notice of appeal or notice of participation form, whether they are the appellant or the respondent, a worker authorizes WCAT to obtain additional medical records or other evidence with respect to them. WCAT may at any time order a worker appellant to provide a current authorization to obtain additional medical records or other evidence.

## 5.3 Service and Delivery of Documents

Section 221 sets out the principles that WCAT must apply with respect to the service and delivery of documents:

- (1) A document that must be served on or sent to a person 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.

Although WCAT may serve documents by fax or electronic transmission, WCAT will normally do so only when a party requests [s. 221(1)(c)]. The page the fax machine produces that shows the number dialled and that the fax was successfully sent, or a printout of an electronic transmission, will normally be proof of delivery or service.

If a decision is served or sent by personal service, or by electronic transmission, the time period runs from the date of service and the eight days for mailing does not apply. The presumption of service in sections 221(2) and (3) does not apply if the party receives the document late because they were absent, in an accident, ill or for another 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 they are not prejudiced, 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)].

If the last day for filing an appeal or document 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*, R.S.B.C. 1996, c. 238].

### 5.3.1 Change of Address

**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 service under section 221(2) (items 14.2 to 14.2.3.5 and 13.1 to 13.1.5).**

The WCAT change of address form is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

### 5.3.2 Returned Mail

#### *Practice Directive*

*If mail to a party is returned as undeliverable, WCAT will try to contact the party.*

*Where WCAT is unable to locate the appellant, WCAT will consider that the appellant has failed to comply with the Rule on Change of Address and the following will apply:*

- (a) *If the matter has been scheduled for an oral hearing, the oral hearing will be cancelled; and*

- (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 may dismiss the appeal [s. 31(1)(e), ATA].*

*Where WCAT is unable to locate the respondent, WCAT will continue with the proceedings.*



## 6 REGISTRATION OF APPEALS

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### 6.1 Registration

The registrar's office will register appeals and screen them for compliance with preliminary requirements. When registering an appeal, the registrar's office will determine whether:

- (a) the notice of appeal is complete;
- (b) additional information is required;
- (c) there is a respondent, other person or representative group, or deemed employer to be notified of the appeal;
- (d) the appellant has provided a valid representative authorization;
- (e) an extension of time to appeal is required;
- (f) the appeal should be handled in the "regular" or "specialty" stream. For appeals in the regular stream, the registrar's office will decide initially whether the appeal should proceed by written submissions or oral hearing (item 7.5);
- (g) to dismiss the appeal for lack of jurisdiction [s. 31(1)(a), ATA];
- (h) to dismiss the appeal for failure to comply with a WCAT order [s. 31(1)(e), ATA].

### 6.2 Acknowledging Receipt

WCAT will acknowledge it has received an appeal by sending written acknowledgement to the appellant. Where the appeal was filed by a representative, WCAT will send the written acknowledgement to the representative with a copy to the appellant. Acknowledgement will be sent by ordinary mail to the address(es) on the appeal form.

Acknowledgement does not mean that WCAT accepts that the appeal was filed within time or that it meets the conditions or requirements for the appeal to be accepted as complete.

### 6.3 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*, S.B.C. 1998, c. 9, when acting on behalf of a person on a WCAT matter [s. 94.1 WCA].

#### 6.3.1 Representative Authorizations

##### *Practice Directive*

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

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

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

The WCAT authorization of representative form is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

#### **6.4 Board Notification**

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. The Board must, as soon as practicable, provide WCAT and the participating parties with a copy of its records respecting the matter under appeal [s. 245(3)].

The appellant will be deemed to have requested disclosure or updated disclosure at the time the appellant files a notice of appeal. If a respondent indicates that they wish to participate in the appeal, the Board will provide them with disclosure or updated disclosure (item 6.5.1). Disclosure for the purpose of complying with the requirements of procedural fairness is authorized under section 260(1) as being necessary to the discharge of WCAT's obligations under Part 4 [see item 1.5.3.1].

WCAT's 180-day time frame for issuing its decision starts once WCAT receives the Board's records [s. 253(4)] (items 17.1 to 17.1.2).

#### **6.5 Notification of Respondents (item 4.8)**

WCAT will notify respondents, that is, any person directly affected by the appeal, of the appeal, and ask them to complete and return a notice of participation if they wish to participate.

More than one employer or deemed employer may be entitled to participate in a worker's appeal. This might occur, for example, where the worker's disability may be due to work injuries under two or more different claims with different employers or where the worker is suffering from an occupational disease which may be due to work exposures in multiple places of employment with different employers.

On an appeal which raises the question as to whether the members of a representative group are workers or independent operators, WCAT will notify the putative employer and all the workers/independent operators as the decision could directly affect their status.

### **6.5.1 Participating Respondents**

Participating respondents are entitled to (item 1.5.3.1):

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

### **6.5.2 Non-Participating Respondents**

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 determination issued by the Board following a referral back under section 246(3), WCAT will notify a non-participating respondent of the new determination and invite their participation (item 8.4.1) .

A panel is not precluded from hearing from the respondent, if the respondent failed to complete a notice of participation. For example, if the respondent appeared at an oral hearing without first completing a notice of participation, they would have the right to be heard (item 3.3).

### **6.5.3 Unregistered Employer Charged with Claims Costs (section 47(2))**

There is no respondent on an employer's appeal concerning the charging of claim costs under section 47(2) due to lack of registration at the time of a worker's injury or disease.

### **6.5.4 Certificate Appeals (sections 159, 162 and 163)**

There is no respondent on an appeal concerning an order under section 195 to cancel or suspend a certificate under Part 3 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*, B.C. Reg. 296/97], or a certificate of a blaster or blasting instructor [s. 163].

## **6.6 Participating Person/Representative Group**

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 will determine the appropriate means to invite participation (by letter, posting of a notice in the workplace, or other public notice) and the extent of their participation (whether they will receive disclosure of some or all of the file, whether they will participate by written submission only, or whether they will select one representative to speak on their behalf at an oral hearing).

### **6.6.1 In Assessment Appeals**

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.

### **6.6.2 In Employer Relief of Costs Appeals (section 39(1)(e))**

Where an employer’s appeal concerns relief of claim costs under section 39(1)(e) on the basis of a worker’s pre-existing disease, condition or disability, WCAT will invite the worker to participate as the worker’s evidence of their prior medical and employment history may be relevant.

### **6.6.3 In Employer Cost Transfer Appeals (section 10(8))**

Where an employer’s appeal concerns claims cost transfer from one employer to another under section 10(8), WCAT will invite the injured worker to participate as the worker may have relevant information to provide.

### **6.6.4 In Administrative Penalty Appeals (section 196)**

Where an appeal concerns an administrative penalty under section 196, WCAT will invite the employer’s joint health and safety committee or worker health and safety representative, and the worker representative indicated on the initiating inspection report (if any), to participate as they may have relevant information to provide.

### **6.6.5 In Certificate Appeals (sections 159, 162 and 163)**

Where an appeal concerns an order under section 195 to cancel or suspend a certificate under Part 3 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], WCAT may invite the employer to participate.

### **6.6.6 Other**

WCAT may request a representative group of workers or employers to participate in an appeal that involves an important issue of policy or significant financial value or the input of the representative group would assist the panel.

### **6.6.7 Participation by the Board**

WCAT may invite the Board to participate in an appeal under the general authority to request participation by “any person” [s. 246(2)(i)]. The Board does not have standing to participate in an appeal except by WCAT’s invitation.

WCAT will determine the extent to which the Board may participate in an appeal. When making this determination, WCAT may consider the submissions of the parties.

## **6.7 Posting a Notice in Occupational Health and Safety Appeals**

Where a party appeals an occupational health or safety matter under Part 3, WCAT may 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)].

The employer must post the information at or near the workplace in one or more conspicuous place(s) where it is most likely to come to the attention of the workers, or otherwise bring it to their attention. If reasonably practicable, at least one place of posting must be at or near the equipment or work area to which it relates [s. 154]. The employer must provide a copy of the posted notice to WCAT.

The employer is not required to post a notice of appeal 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].

The WCAT form for notice to employees of an appeal of an occupational health or safety matter is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

## **7 PRELIMINARY PROCESSES**

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### **7.1 Streaming: Regular or Specialty**

The registrar's office will assign each appeal to the regular or specialty stream.

In the regular stream, an assessment officer will make a preliminary determination as to whether the matter should proceed by written submissions or oral hearing. A panel will be assigned once written submissions are complete or an oral hearing is scheduled.

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 written submissions or oral hearing. Prevention appeals, including discriminatory action appeals under section 153, and assessment appeals will normally be assigned to the specialty stream. The registrar's office will assign other appeals to the specialty stream based on procedural complexity.

### **7.2 Joining or Combining Appeals**

The chair may order that related matters be considered together in one hearing [s. 234(2)(k)].

Section 37(1) of the ATA also gives WCAT the authority to combine appeals, hear them at the same time, or one immediately after the other, or stay one or more appeals until another of them has been determined. As this use of "stay" does not apply in the context of WCAT appeals and, as WCAT has no authority under the WCA to suspend appeals in these circumstances, WCAT may delay processing appeals in appropriate circumstances.

#### **7.2.1 Joining Appeals Regarding the Same Worker**

Where there are multiple appeals regarding the same worker involving similar issues, the chair may assign all of the appeals to one panel to be considered together 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.

In determining whether appeals should be joined, the registrar's office may consider such factors as whether the appeals have similar issues, their respective appeal methods, their stages in the appeal process, and the effect of joining on the statutory time frames for making decisions on the appeals.

#### **7.2.2 Combining Appeals**

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. WCAT will consider what steps, if any, are required to protect the privacy of the parties.

WCAT may require each party to sign an authorization to release information to the other parties in the appeal. WCAT may also require each party to sign an agreement with respect to placing documentation pertaining to the appeal on the Board files of all the parties (see Appendix 8).

Depending on the circumstances, the panel may issue:

- (a) a “generic” decision, addressing all of the combined appeals;
- (b) a “generic” decision dealing with a common issue raised by the combined 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.

### **7.3 Alternative Dispute Resolution (ADR)**

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

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

#### **7.3.1 Mediation**

WCAT has limited the use of mediation to discriminatory action appeals under section 240(1) and appeals from classification decisions under section 37(2). It is unlikely that WCAT will utilize mediation to address compensation entitlement issues.

WCAT may recommend to the parties to the appeal that mediation be used to assist in the resolution of an appeal [s. 246(2)(g)]. The purpose of mediation is to seek a consensual resolution to a dispute, and/or to some of the issues or matters in dispute, between or among the parties to an appeal. Where WCAT considers it appropriate, representatives from the Board may also be involved in the mediation process.

The representatives of parties participating in mediation must have the authority to enter into a settlement agreement. If mediation is undertaken but does not result in a consensual resolution, WCAT will proceed to adjudicate the appeal. Unless the parties otherwise agree, evidence, notes or records from a mediation process which does not produce a consensual resolution will be destroyed and will not be placed on the WCAT file. They are inadmissible in the appeal proceedings [s. 246.1(5)]. The appeal will be assigned to a WCAT panel which did not have any involvement in the mediation.

Where the parties achieve a consensual resolution, the parties’ representatives will draft a settlement agreement. The mediator may assist in preparing the settlement



agreement. Generally, the settlement agreement will not refer to the appellant withdrawing the appeal.

A WCAT panel will review the settlement agreement to ensure it is consistent with the WCA. The panel will dispose of the appeal through a decision, confirming that a settlement agreement was reached which is lawful under the WCA. The terms of the settlement need not be contained in the WCAT decision.

The final settlement agreement 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 settlement agreement will not be placed on the Board file. They will be stored at WCAT.

Parties to an appeal that participated in mediation, whether or not it resulted in a settlement agreement, may request reimbursement of expenses associated with attending a mediation and obtaining or producing evidence that was submitted to WCAT with respect to the appeal. In deciding whether to reimburse the expenses, WCAT will apply the criteria set out in item 16.1.3.

#### **7.4 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)]. The panel will decide whether a pre-hearing conference should be held. 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 mediation;
- (e) consider whether the panel should seek advice from a health professional under section 249.
- (f) identify and resolve disclosure issues.

Pre-hearing conferences will be recorded.

#### **7.5 Appeal Method**

WCAT may conduct an appeal in the manner it considers necessary, that is by oral hearing or written submissions. Oral hearings may be conducted in person, by teleconference, videoconference, or any other electronic means [s. 246(1)].

**RULE: WCAT will normally grant the appellant's request for an oral hearing where the appeal involves a significant issue of credibility, where there are significant factual issues in dispute, and/or where there are other compelling**

**reasons for convening an oral hearing (e.g. where an unrepresented appellant has difficulty communicating in writing or in English).**

**WCAT will normally conduct an appeal by written submissions where the issues are largely medical, legal, or policy based and credibility is not at issue.**

**WCAT will normally conduct applications for an extension of time to appeal (item 8.2), a stay of decision (item 8.3), a certification to court (chapter 18), and a reconsideration (items 20.2 to 20.3.2) by written submissions.**

For appeals in the regular stream, the registrar's office will determine at the outset whether the appeal will proceed by written submissions or oral hearing. The panel assigned to hear the appeal makes the ultimate decision regarding the appeal method. For appeals in the specialty stream, the panel will determine the appeal method at the outset (item 7.1).

Panels have the discretion to change the appeal method. A panel may decide to convene an oral hearing if the panel considers it 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 written submissions.

## 8 SUMMARY DECISIONS

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WCAT decisions are of two types: merit decisions which involve the weighing of evidence and argument in relation to the primary issues on appeal, and summary decisions which are of three types. A summary decision may be procedural, that is, concerned with the steps or processes in the appeal; it may be an interim decision, such as suspending an appeal; or it may provide a final outcome such as dismissing an appeal without a decision on its merits [s. 31(1) ATA].

Summary decisions may be provided by a formal numbered decision or by letter. They may be issued by the registrar's office or by a 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) dismissal of an appeal;
- (e) suspension of an appeal; or,
- (f) an appellant's request to withdraw an appeal.

### 8.1 Dismissing Appeals

Section 31(1) of the ATA allows WCAT to dismiss all or part of an appeal in a summary manner 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.

### 8.2 Extending the Time to Appeal

There is a 30 day time limit for appealing a decision of a review officer to WCAT [s. 243(1)]. There is a 90 day time limit for appealing a decision of a Board officer concerning a discriminatory action complaint (under section 153) or concerning a reopening on application (under section 96(2)) to WCAT [s. 243(2)] (items 5.1 to 5.1.5). WCAT adds eight days to the time to allow for mailing [s. 221(2)].

The chair has the discretion to extend the time to appeal under section 243(3). In order for the chair to exercise that discretion in favour of extending the time to appeal, an applicant must meet, at a minimum, the following two requirements:

- (a) the chair must be satisfied that special circumstances precluded the filing of the appeal on time; and,
- (b) the chair must be satisfied that an injustice would result if the extension were not granted.

In considering whether to exercise the discretion to extend the time to appeal, the chair may also consider other relevant factors, such as whether there is prejudice to the respondent and whether the delay is so long that WCAT cannot reasonably or fairly decide the appeal.

A decision to allow or deny an extension of time to appeal to WCAT is final and conclusive.

#### *Practice Directive*

### **8.2.1 Application for Extension of Time**

*WCAT will not process an application for an extension of time to appeal where the notice of appeal, letter or other written method of initiating the appeal, does not meet the requirements of section 242(2)(item 5).*

*An application for an extension of time to appeal will normally be considered on the basis of written submissions. Disclosure of the Board file will not usually be provided. WCAT will invite the respondent to participate (item 6.5).*

*Applicants must provide reasons for not appealing within the statutory time frame. Applicants must also provide reasons for any further delay after the expiry of that time. If the applicant fails to provide these reasons, the applicant will be required to provide or complete the reasons within 21 days.*

*If WCAT does not receive the completed reasons by the due date, the appeal will be closed as incomplete and WCAT will take no further action. If the applicant later wishes to pursue the appeal, they must again apply for an extension of time to appeal.*

### **8.2.2 Special Circumstances Precluded**

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

*The special circumstances test in section 243(3)(a) is only applicable to the failure to file the appeal on time. It does not apply to any subsequent delay after the time to appeal expired.*

*In determining whether special circumstances precluded the filing of the appeal on time, the chair may consider a number of factors, including:*

- (a) the date on which the applicant actually received the decision under appeal;*
- (b) if there was a delay in the applicant receiving the decision, the reason for the delay;*
- (c) whether the applicant was aware of the right to appeal and the time limit for initiating the appeal;*
- (d) whether the applicant has obtained significant new evidence that would support the appeal which, when the time limit to appeal expired, either did not exist or existed but was not discovered and could not through the exercise of reasonable diligence have been discovered; and,*
- (e) whether the applicant took all reasonable steps to ensure a timely appeal.*

#### **8.2.2.1 Representative Acts or Omissions**

*When considering whether acts and omissions of a representative constitute special circumstances that precluded the filing of the appeal on time, the overriding consideration is whether the applicant acted reasonably in all of the circumstances.*

*In determining whether acts and omissions of a representative constitute special circumstances that precluded the filing of an appeal on time, the chair may consider a number of factors, including:*

- (a) whether, within the relevant appeal period, the applicant instructed a representative to appeal;*
- (b) whether the applicant was in any way responsible for the delay;*
- (c) any other relevant circumstances particular to the appeal.*

#### **8.2.3 Injustice**

*In order to extend the time to appeal, an injustice must result from the refusal to grant the extension (s. 243(3)(b)). “Injustice” is given a wide meaning, including “unfairness”, “lack of justice”, or “wrong”. In determining whether “an injustice would otherwise result”, the chair may consider a number of factors, including:*

- (a) the significance of the matter under appeal (i.e. the magnitude or importance of the issues under appeal);*
- (b) the length of the delay;*
- (c) the reasons for any delay beyond the expiry of the time limit to appeal;*
- (d) 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; and,*

- (e) *any other relevant circumstances particular to the appeal.*

The WCAT extension of time to appeal application form is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

### **8.3 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 the decision or order under appeal [s. 244].

**RULE: A stay is an extraordinary remedy. WCAT will not process a stay application unless the applicant has completed a notice of appeal within the time limit to appeal which meets the requirements of s. 242(2) (item 5).**

**When determining whether to issue a stay, panels will consider:**

- (a) whether the appeal, on its face, appears to have merit;**
- (b) whether the applicant would likely suffer serious harm if the stay were not granted (for example, loss of a business);**
- (c) which party would likely 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 likely endanger worker safety.**

This list is not exhaustive and WCAT may take other factors into account.

#### **8.3.1 Application for Stay of Decision**

##### *Practice Directive*

*WCAT will generally deal with an application for a stay as a preliminary matter on the basis of written submissions. Disclosure of the Board file will not usually be provided. The applicant must be a party to the appeal.*

*The applicant is required to provide written submissions in support of the stay application together with the notice of appeal or within seven days from the date WCAT received the notice of appeal. WCAT will send the submissions to the respondents who have 14 days to respond. The applicant will then have five days to provide a rebuttal. The panel will issue a written decision on the stay application as soon as practicable once submissions are complete.*

*If the applicant fails to provide written submissions in support of their stay application within seven days of the date WCAT received their notice of appeal, or the applicant's submission does not address the stay application, WCAT will deny the stay application and process the appeal as usual.*

The WCAT application for a stay form is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

## **8.4 Suspension of an Appeal**

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

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

### **8.4.1 Suspension for Referral of an Undetermined Matter Back to the Board under Section 246(3)**

Where a panel considers there to be a matter that should have been determined by the Board but was not, the panel may refer that matter back to the Board for determination and suspend the appeal until the Board makes that determination. Before referring the matter back, the panel may make findings of fact or resolve other issues. The panel will include these in the referral which will be issued as a numbered decision.

As this referral is an interim decision, the panel will not make any final decisions on other matters raised by the appeal before it. However, where the panel is considering appeals from more than one decision, the panel may sever unrelated appeals from the referral and make final decisions on them.

If a panel refers a matter back to the Board under section 246(3), the panel must take the Board's determination into account in deciding the original appeal. The parties may not request a review of that determination by a review officer [s. 246(4)]. The panel has jurisdiction to deal with the whole matter, including the issues arising from the Board's new determination. The panel must make a decision (that is, confirm, vary or cancel) both on the matter which was the subject of the original appeal, as well as on the new Board determination that resulted from the referral.

When WCAT receives the Board's determination requested under section 246(3), WCAT will reactivate the suspended appeal. WCAT will notify a non-participating respondent of the Board's new determination and will provide the parties with the opportunity to make submissions. If the Board's determination is with respect to another claim, any new respondent will also be invited to participate. 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.



#### **8.4.2 Suspension to Obtain Independent Health Professional Advice under Section 249**

When a panel decides to retain an independent health professional to provide advice in respect of a specific appeal under section 249, WCAT will suspend the appeal when the panel provides the registrar's office with the completed terms of reference for the health professional. WCAT will reactivate the suspended appeal when it receives the health professional's report [s. 249(12)] (see chapter 12).

#### **8.4.3 Suspension for Referral to the Chair for Lawfulness of Policy under Section 251**

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)], the panel must refer that issue to the chair. WCAT must suspend the appeal 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 the chair considers to be affected by the same policy until the board of directors makes a determination [s. 251(5)(b)] (see chapter 10).

#### **8.4.4 Suspension Pending a Board Decision on a Related Matter under Section 252**

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

A related matter is one which deals with similar issues in the same file, or another related file for the same appellant, or one which may have a direct impact on the appeal. A pending matter is one which the appellant has already initiated, or one which the Board or the Review Division is in the process of deciding.

##### *Practice Directive*

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

*If WCAT is considering suspending an appeal under section 252(1) on its own initiative, WCAT may seek further submissions from the parties. Prior to suspending the appeal, WCAT 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 WCAT suspends an appeal under section 252(1), WCAT will notify all participating parties and clearly identify the pending decision of the Board or review officer. When an appeal is suspended, a deferral of compensation payable due to a review officer's decision continues.*

*At any time before the Board or review officer issues the pending decision, the appellant may ask WCAT to continue the appeal. WCAT may grant the request or may continue the suspension [s. 252(3)]. WCAT cannot continue the appeal on its own initiative or at the request of the respondent.*

*When the Board or review officer, as the case may be, issues their decision on the related matter, the appellant has 30 days after the date of the decision to ask WCAT to proceed with the suspended appeal [s. 252(2)]. WCAT must then reactivate and continue the appeal. If the appellant does not ask WCAT to proceed with the suspended appeal within 30 days, WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to continue the appeal [s. 252(4) and items 8.2 to 8.2.3].*

*The appellant must ask WCAT to reactivate the suspended appeal within 30 days even if the appellant intends to appeal or request a review, as the case may be, of the new decision. Where the new decision was issued by the Board, the appellant may ask WCAT to re-suspend the appeal after they have filed their request for review with the Review Division.*

## **8.5 Withdrawals**

**RULE:** An appellant may withdraw an appeal by right at any time before the appeal has been assigned to a panel.

**After assignment, WCAT will decide whether to allow a request for withdrawal. The request for withdrawal will normally be granted.**

**Requests for withdrawal must be made in writing, or in person at an oral hearing.**

Parties to a withdrawn appeal may request reimbursement of expenses associated with obtaining or producing evidence that was submitted to WCAT with respect to the appeal. In deciding whether to reimburse the expenses, WCAT will apply the criteria set out in item 16.1.3.

WCAT's decision to accept the withdrawal of an appeal that has met the requirements of section 242(2) is final and conclusive. If the appellant later wishes to pursue the appeal, they must apply for reconsideration of the withdrawal decision (items 20.2 to 20.3.2).

## 9 NATURE OF WCAT PROCEEDINGS

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### 9.1 General Principles

WCAT proceedings combine many features. They are hybrid in nature. They are partly inquiry based and partly adversarial (as in the court system), that is, reliant on the evidence and arguments provided by the parties to the appeal. WCAT proceedings are referred to as rehearings because they are not completely new hearings, nor are they simply reviews of the record from the previous proceedings (either the Board or the Review Division). How much of each feature (inquiry and adversarial) influences a particular rehearing depends on the circumstances of each appeal and may vary from appeal to appeal. WCAT exercises an independent adjudicative function.

WCAT has full substitutional authority. A WCAT panel can reweigh the evidence and substitute its decision for the decision below. This authority is found in the statutory discretion to confirm, vary or cancel the appealed decision or order [s. 253(1)].

In court proceedings, a decision is made on the basis of evidence presented in the hearing. If the opposing party does not appear at the hearing to present evidence, the judgment may be issued only on the basis of the evidence provided by the party who appeared at the hearing.

In the hybrid rehearing model at WCAT, the Board's file is provided to the parties and to WCAT [s. 245(3)]. Thus, the documents in the file become evidence on the appeal without needing further proof as would be required in a court proceeding. While the documents become evidence, how much weight is given to the matters described in the documents is for the WCAT panel to decide. The parties may also provide new evidence to WCAT that did not exist at the time the matter was before previous decision makers and make new arguments [s. 246(1)].

WCAT is not limited by the evidence in the Board's file and the evidence provided by the parties. If WCAT is not satisfied with the sufficiency and/or reliability of the evidence presented, WCAT has the authority to inquire into the matter under appeal and consider all information obtained [s. 246(2)(c)]. While WCAT has inquiry power, and the discretion to seek further evidence, it is not obliged to do so. The question as to whether the evidence is sufficiently complete and reliable to arrive at a sound conclusion with confidence is one which rests with the panel. It is not WCAT's responsibility to evaluate the appeal and then notify parties of the weaknesses in the case for the purpose of obtaining further evidence.

WCAT's inquiry power includes asking searching questions of the parties and the witnesses at oral hearings, asking the Board to investigate further into a matter and report back, and inviting another person or representative group to participate in an appeal if their participation will help WCAT to fully consider the merits of the appeal [s. 246(2)(d) and (i)].

There is also an adversarial nature to WCAT proceedings. Opposing parties may participate as respondents, provide evidence, make argument and, if an oral hearing is held, cross-examine witnesses.

Parties should not assume that WCAT will carry out any further investigations. Where a panel declines to conduct further inquiry requested by a party, it will normally provide reasons in its written decision.

Parties should be mindful of the limitations of reconsideration based on new evidence in section 256. New evidence must be substantial and material and must not have existed at the time of the appeal hearing or did exist but was not discovered and could not have been discovered through the exercise of reasonable diligence (item 20.2.1).

## **9.2 Panels' Authority**

WCAT panels have the general authority to determine how to conduct the appeal and whether and how to seek additional evidence. A panel may request independent assistance or advice from a health professional under section 249. A panel may exercise its inquiry powers under sections 246 and 247. The question as to whether such inquiry powers should be exercised is a matter to be determined by the panel.

Specifically, panels have the authority to consider:

1. How the appeal will be conducted, including:
  - (a) who should participate [s. 246(2)(i)] (items 6.6 to 6.6.7);
  - (b) whether to deem the employers' adviser or an organized group of employers to be the employer [s. 248] (items 4.7.3 to 4.7.3.1);
  - (c) whether to convene a pre-hearing conference [s. 246(2)(e)] (item 7.4);
  - (d) whether to require pre-hearing disclosure of evidence [s. 246(2)(f)] (item 7.4);
  - (e) whether the appeal should proceed by written submissions or oral hearing, and whether the oral hearing should be conducted by teleconference, videoconference, or other electronic means [s. 246(1)] (item 7.5);
  - (f) the requirements for any oral hearing (date, location, duration, interpreter);
  - (g) any other preliminary matters which would normally be addressed by the registrar's office.
2. Whether to obtain additional evidence and by what means:
  - (a) whether to request independent medical assistance or advice from a health professional under section 249 and, if so, what findings of non medical fact are required (see chapter 12);
  - (b) whether other evidence should be requested [s. 246(2)(c), s. 247] (items 9.3.2 to 9.3.3 and 11.7 to 11.8);
  - (c) whether the Board should be requested to investigate a matter further and report in writing to WCAT [s. 246(2)(d)] (item 9.3.1);

(d) whether there should be a pre-hearing examination of a party on oath or affirmation or by affidavit [s. 246(2)(f)].

3. Whether additional decisions or determinations are necessary:

- (a) whether an appeal should be suspended while a matter that should have been determined is referred back to the Board for determination [s. 246(3)] (item 8.4.1);
- (b) whether an appeal should be suspended pending the Board's decision on a related matter [s. 252] (item 8.4.2).

### **9.3 Panel Inquiries**

#### **9.3.1 Investigation by the Board under Section 246(2)(d)**

A panel may ask the Board to investigate further into a matter relating to a specific appeal and report back in writing. Examples of such inquiries include, but are not limited to, ergonomic assessments and other types of worksite assessments, functional capacity evaluations, and obtaining class averages for particular occupations.

Before requesting further investigation by the Board, the WCAT panel may make findings of fact or resolve other issues. These will be included in the request which will be issued in the form of a memorandum. When WCAT receives the Board's report, it will be provided to the parties together with the memorandum of request. WCAT will then give the parties the opportunity to make submissions (item 1.5.3.1).

#### **9.3.2 Other Panel Inquiries under Section 246(2)(c)**

A panel may directly obtain further evidence or information relating to a specific appeal. Examples of such inquiries include, but are not limited to, medical opinions outside of the IHP process, or income tax information from the Canada Revenue Agency. WCAT will provide this new evidence or information to the parties and give them the opportunity to make submissions (item 1.5.3.1).

#### **9.3.3 Panel 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 convene or reconvene an oral hearing for submissions on the relevance or significance of the matters observed during the site visit. Generally, no voice recording will be made of the site visit or of any comments or submissions the parties make during the site visit.

### **9.4 Statutory Provisions affecting WCAT Deliberations**

There are several provisions of the WCA that govern WCAT deliberations and decision-making.

#### **9.4.1 Merits and Justice**

The panel may consider all questions of fact and law arising in the appeal [s. 250(1)].

A 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 appeal [s. 250(2)]. 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)].

#### **9.4.2 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 a panel must apply a policy of the board of directors that is applicable. It is for the panel to determine if the policy is applicable in that appeal. A panel may refuse to apply a 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 [s. 251(1)]. In that event, the panel must refer the policy to the chair of WCAT (see chapter 10).

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)].

#### **9.4.3 Legal Precedent Not Binding**

The panel is not bound by legal precedent such as prior WCAT decisions on similar issues unless provided by a precedent panel under section 238(6) [s. 250(1)] (item 2.7.2). WCAT is bound by previous final decisions on the specific claim that is the subject of appeal. This includes decisions of Board officers, the Review Division, WCAT, former appeal bodies, and the courts.

The panel is also not bound by decisions of the courts. However, if a court in another case determined the correct interpretation of a WCA or Board policy provision, the panel may be bound to apply the court's interpretation. In contrast, if a court upheld an earlier WCAT interpretation of a WCA or Board policy provision as reasonable, the panel need not follow that interpretation if it prefers another interpretation that is also reasonable.

#### **9.4.4 Except Precedent Panel Decisions**

The panel is bound by a prior precedent panel decision (under section 238(6)) unless the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the precedent panel's decision or, subsequent to the

precedent panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised [s. 250(3)] (item 2.7.2).

WCAT precedent panel decisions are accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).



## **10 SECTION 251 REFERRAL TO THE CHAIR FOR LAWFULNESS OF POLICY**

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Section 251 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.

WCAT panels have the authority to refuse to apply an applicable policy on their own motion and refer the matter to the chair. Generally however, a panel will not expressly address the question of the lawfulness of Board policy unless one of the parties to an appeal raises it (item 3.3). If a party believes a policy of the board of directors is patently unreasonable, the party should raise the issue during the appeal or reconsideration application, or WCAT may take the position on judicial review that the party failed to exhaust internal remedies.

If a panel considers that an applicable policy of the board of directors should not be applied, that issue must be referred to the chair and the particular 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 section 251(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 the chair's authority under sections 251(3), (4) and (5).

### **10.1 Referral Process**

#### *Practice Directive*

*If a panel considers that an applicable policy of the board of directors should not be applied:*

- (a) *the panel must provide written reasons in a numbered decision 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 decision will be forwarded to the chair to determine the appeal method that will be followed. Generally, the referral will be considered by written submissions;*
- (c) *the panel's decision will be disclosed to the parties for submissions; at the same time, as a courtesy, the panel's decision will be disclosed to the Board, specifically, to the chair of the board of directors, the Vice President, Policy, Investigation & Review, the Director of the Policy and Research Division, and the Chief Review Officer; the decision will also be posted to WCAT's website;*
- (d) *if there is no respondent or the respondent is not participating, the chair may invite a workers' or employers' adviser to participate [s. 246(2)(i)];*
- (e) *when submissions from the parties are complete, the chair may invite submissions from representative groups, including Workers' Advisers, Employers' Advisers, Workers' Compensation Advocacy Group, Business Council of B.C., Coalition of B.C. Businesses, Employers' Forum to the Board, and B.C. Federation of Labour [s. 246(2)(i)]. No unsolicited submissions from other individuals or groups will be accepted;*
- (f) *the parties will be provided the opportunity to respond to any submissions received from representative groups;*
- (g) *if the chair has determined that an oral hearing is necessary, the oral hearing will be scheduled and held. The parties and the representative groups who were invited to provide written submissions will be invited to the oral hearing;*
- (h) *the chair will then decide whether the policy should or should not be applied. The chair will notify the parties, the board of directors, and the other representative groups who were invited to participate of that determination along with written reasons. The chair's decision will also be posted on WCAT's website;*
- (i) *if the chair decides that a policy should be applied, WCAT will reactivate the suspended appeal and request submissions from the parties regarding the effect of the chair's decision on the appeal. When submissions are complete, the appeal will be returned to the panel for completion;*
- (j) *if the chair decides that a policy should not be applied, the chair will make reasonable efforts to identify other appeals 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 of WCAT;*
  - (ii) *conducting a computer search using the WCAT case management system of current appeals at WCAT;*
  - (iii) *posting a notice on the WCAT website for 30 days;*

- (k) *the chair's decision, with written reasons, will be made accessible to the parties in all suspended appeal proceedings pending before WCAT which the chair considers to be affected by the same policy;*
- (l) *when WCAT sends the notice to the board of directors, a list of all suspended appeals, with names and addresses of the parties, will be provided to the board of directors. WCAT will provide a copy of the notice to the Board's Policy and Research Division and Legal Services Division at the same time;*
- (m) *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)];*
- (n) *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. WCAT will reactivate the suspended appeals.*

## **11 EVIDENCE**

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### **11.1 Introduction**

Unlike the courts, WCAT is not bound to follow strict rules of evidence. WCAT has the authority to conduct an appeal in the manner it considers necessary [s. 246(1)]. However, knowledge of the basic principles of evidence and the reasoning behind them assists panels in deciding what "weight" or importance to give to particular pieces of evidence.

While most of the information contained in this chapter relates more to oral hearings than to written submissions, the principles involved in weighing evidence and applying the correct burden of proof are common to both methods of appeal.

### **11.2 Types of Evidence**

Evidence is the raw material introduced to establish the factual basis against which legal interpretation, policy, and logical reasoning will operate. Evidence includes all means of proof including oral statements, written records (documents), demonstrations, physical objects, etc. Evidence does not include argument or submissions made by a party for the purpose of persuading a panel to view the appeal in a particular way.

Oral evidence consists of verbal statements made by party or non-party witnesses at a hearing. Documentary evidence means any form of written or printed record, including the worker's claim file or the employer's assessment file. Generally, documentary evidence need not be sworn as an affidavit or declared as a statutory declaration. However, it should be dated and signed by the person who made the record or statement.

Direct evidence consists of firsthand accounts of events – a report about facts perceived by a witness with their own senses. Hearsay consists of second-hand accounts of events, that is, a report by one person of what another person has said or done which is offered to prove the event. Courts generally do not accept hearsay evidence because of its potential to be inaccurate and because the credibility of the source of the evidence cannot be tested. WCAT is not precluded from admitting hearsay evidence (item 11.5.1).

Circumstantial evidence refers to evidence other than first-hand accounts of events provided by witnesses. Courts may decide cases based on circumstantial evidence; so may WCAT.

Character evidence consists of written or oral statements concerning the personal qualities of a party. Generally, this type of evidence is relevant only where the credibility of the party is at issue. For example, character evidence would not be helpful to a panel where the appeal involves a strictly medical or legal issue.

Expert evidence consists of opinions from a witness who has the expertise to render an opinion on a particular subject. In the context of WCAT appeals, experts include a physician, vocational rehabilitation consultant, occupational therapist, engineer, accountant, physiotherapist, or occupational hygienist. If a witness has no expert qualification in a particular area, their personal belief is merely an opinion.

### **11.3 Relevance**

WCAT may receive and accept evidence it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law [s. 246.1]. Evidence is relevant if it tends to establish the existence or non-existence of a fact in issue. Panels have no obligation to consider evidence that has no logical connection to the issue to be decided. All participants benefit from oral hearings that are controlled for relevance by allowing the maximum amount of time for addressing the essential elements of the appeal, and avoiding confusion with respect to the central issue(s).

### **11.4 Admissibility**

While WCAT can admit or receive any kind of evidence, the panel may decide to intervene when clearly irrelevant evidence is being introduced. Parties should first be allowed to explain why the evidence that they are seeking to introduce is relevant or significant.

There are also some statutory exceptions to this general principle on admissibility of evidence. Panels may exclude any information that is unduly repetitious [s. 246.1(2)]. Notes or records kept by a person appointed to conduct an alternative dispute resolution process are inadmissible [s. 246.1(5)], as is anything that would be inadmissible in court based on privilege under the law of evidence [s. 246.1(3)]. The general rule regarding admissibility is subject to the provisions of any other statute that expressly limits the extent to which or purpose for which any evidence may be admitted or used [s. 246.1(4)]. Other such statutes include the ATA, the B.C. *Evidence Act*, R.S.B.C. 1996, c. 124, the *Canada Evidence Act*, R.S. 1985, c. C-5, and the *Apology Act*, S.B.C. 2006, c. 19.

#### **11.4.1 Categories of Privilege**

Privilege is an exclusionary rule of evidence that entitles certain people to be exempt from giving evidence that is relevant. The evidence is excluded because there is an overriding social interest in preserving and encouraging particular relationships that exist in the community at large which are based upon confidentiality.

The recognized categories of privilege are solicitor-client, litigation, matrimonial, public interest, settlement negotiation (items 7.3 to 7.3.1), privilege against self incrimination, and police informer.

Certain communications may also be found to be privileged on a case-by-case basis if:

- (a) the communication originated in a confidence that it would 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 is one which, in the opinion of the community, ought to be diligently fostered; and
- (d) the injury to the relationship resulting from the disclosure would be greater than the benefit to be gained related to the correct disposition of the appeal.

Examples of these types of communications include doctor-patient and counsellor-client.

#### **11.4.2 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].

The rules of procedural fairness will almost always be paramount in WCAT proceedings. Thus, only in extraordinary circumstances, such as issues of national security or where another statute expressly so allows, would a panel receive evidence in confidence.

### **11.5 Weight, Credibility and Reliability**

In general, panels will admit any type of relevant evidence (apart from the exceptions set out under items 11.4 and 11.4.1) and later decide what weight, if any, should be given to it.

Weight is how much evidence can be relied upon to decide the issue in question. This involves consideration of whether the evidence is believable, internally and externally consistent, plausible, and credible.

#### **11.5.1 Weight**

The weight or importance which panels give to the evidence is largely a matter of common sense. Direct evidence is generally more reliable than indirect (hearsay or circumstantial) evidence. Hearsay evidence may be considered unreliable as its source is not available for questioning. In some circumstances, a panel will give more weight to a sworn or declared statement.

Expert evidence is generally given more weight than the opinion of a lay person. For example, a doctor's opinion concerning the diagnosis of a worker's condition would almost always be preferred to the worker's own opinion. Conflicting expert opinions must be carefully examined for depth of reasoning, completeness and accuracy of

medical observations and non-medical facts upon which the opinion is based, and the degree of the author's expertise.

### 11.5.2 Credibility

As the British Columbia Court of Appeal said in *Faryna v. Chorny*, [1952] 2 D.L.R. 354: "...the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

The credibility of a witness will obviously have a bearing on the weight given to that person's testimony. Panels must consider whether a witness' evidence is internally consistent, logical, and consistent with prior statements of that same witness. Panels should allow witnesses to comment upon earlier inconsistent statements. For example, where a worker's evidence at an oral hearing is inconsistent with statements attributed to the worker in the claim file, the panel should allow the worker to comment on the inconsistency.

### 11.5.3 Reliability

The concepts of reliability and credibility are interrelated. The reliability of a witness' evidence will also have a bearing on the weight to be given to that person's testimony. Panels must consider whether a witness' evidence is externally consistent, that is, consistent with the proven or undisputed facts in the case. This involves consideration of what is most reasonable and probable when the case is viewed as a whole.

In oral hearings, panels should allow witnesses to comment on externally inconsistent evidence. For example, where a worker's evidence regarding an injury event is inconsistent with that of a co-worker, the panel should allow the worker to comment on the inconsistency where it is significant.

## 11.6 Expert Evidence

Sections 10 and 11 of the *Evidence Act* set out the court rules for admitting expert evidence. Section 10(2) provides that sections 10 and 11 do not apply where a tribunal makes its own rules for the introduction of expert evidence and the testimony of experts. Where there is a conflict between those rules and sections 10 or 11, those rules apply.

WCAT has made its own rules for the introduction of expert evidence and the testimony of experts [s. 234 and 246.1 WCA, and s. 11 ATA].

These rules apply to expert evidence where an oral hearing is being held. The same principles apply generally to expert evidence where no oral hearing is being held. In particular, rules (a) to (d) apply to a matter being considered by written submissions, subject to WCAT's procedures regarding time frames for filing evidence and submissions and giving notice to other parties (items 13.1 to 13.1.5).



**RULES FOR EXPERT EVIDENCE** (items 16.1.3 to 16.1.3.2):

- (a) Opinion evidence will generally only be accepted from a person the panel finds to be qualified by education, training or experience as an expert in the field or discipline in which they are giving their opinion.
- (b) The qualifications of the expert should be stated in writing with the expert's report. Such a statement of qualifications will generally be accepted as evidence of those qualifications. A job title (such as Board medical advisor, or vocational rehabilitation consultant) or professional designation will generally be accepted as evidence of the person's qualifications to hold the position described by the job title. However, it does not determine the level of expertise of that person in relation to specialized disciplines.
- (c) Objections to a person's qualifications as an expert will not generally cause a panel to exclude that 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. An expert's oral evidence will not be admissible in an oral hearing unless their written report was provided to WCAT at least 21 days prior to the hearing. The correspondence requesting the expert's written report must also be submitted.

(Item 16.1.3.1.1)

- (e) Where an oral hearing is to be held, the parties should provide written reports to WCAT promptly after receiving them so that they may be disclosed to all participants. WCAT must receive any expert's report at least 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 participating 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 participating party would be prejudiced by not having had enough time to respond to the new expert evidence, the panel may:
  - (i) allow 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.

(Item 14.2.3.5)

- (g) **WCAT will not require an expert to attend an oral hearing unless the panel believes the attendance is necessary for a fair hearing of the issues or 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].**

### **11.7 Orders (Subpoenas) for the Production of Existing Evidence**

At WCAT, an order is what is otherwise known as a subpoena.

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.

#### *Practice Directive*

*A party to an appeal may request an order where a person who is not a party to an appeal has documentary or oral evidence that is relevant to the matters under appeal and they are not willing or able to provide that evidence voluntarily. This may, for example, include persons who require an order for their employers to give them the time off from work. It may also include experts who have provided a written opinion on which a party wishes to cross-examine them. It does not include Board decision makers but may include Board officers who provide evidence, such as vocational rehabilitation consultants, field investigators and medical advisors.*

*Together with their request for an order under section 247(1), parties must provide WCAT with 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 class of documents or things requested;*
- (b) *the relevance of the evidence to the issue under appeal, that is*
  - (i) *how it relates to the issue under appeal, and*
  - (ii) *how it is necessary for WCAT to address the issue under appeal and make a decision in the appeal;*
- (c) *whether the witness is willing to attend voluntarily, or the person is willing to produce the documents or things voluntarily and, if not, why not;*
- (d) *whether there is another way of testing the evidence.*

*Where an oral hearing is scheduled, the request for an order must be made at least 14 days in advance. Where there is no oral hearing, the request for an order must be made at least 14 days before the party's written submission is due. Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat a request for an order to the panel.*

*In deciding whether to issue an order under section 247(1), WCAT 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 a person in possession of documents to provide evidence, voluntarily.*

*The panels will sign an order under section 247(1) in a form approved by WCAT (see Appendix 9 as modified from time to time). A person served with an order compelling their attendance at a hearing is entitled to conduct money payable at the time of service (Supreme Court Civil Rule 12-5(35)). 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 delivering the documents, payable in advance.*

*WCAT will be responsible for service and payment of conduct money and/or the costs of production of documents.*

### **11.7.1 Depositions**

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

### **11.7.2 Non-Participating Party**

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.

### **11.7.3 Failure to Comply**

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].

#### **11.7.4 FIPPA**

Section 3(2) of FIPPA states that it "does not limit the information available by law to a party to a proceeding." This means that, in WCAT appeal proceedings, FIPPA does not limit the information available to a panel or the parties to the appeal. In issuing an order to obtain documents, the panel will determine the relevance of the information in the documents to the appeal. If the panel finds it necessary, the panel may sever irrelevant information in the copies of the documents before disclosing them to the parties to the appeal.

#### **11.8 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 WCAT to address those issues and to make a decision in the appeal.

The minimum 14 day time frame for requesting orders set out in item 11.7 also applies to requests for orders under section 247(3). Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat the request to the panel.

A member of the board of directors or an officer, employee, or 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 does not prevent voluntary production of these documents.

#### **11.9 Documents in Languages other than English**

WCAT conducts its proceedings in English although we provide interpreters at oral hearings when required (item 14.4.3). All documents submitted to WCAT in an appeal must be in English. If any documents are in another language, the party should also provide an English translation and a signed translator's declaration. A translator's declaration normally includes the translator's name, the language translated and a statement by the translator that the translation is accurate.

WCAT has no obligation to consider or translate documents submitted in another language and may return them to the party for translation. The expense a party incurs associated with translating documents may be claimed as an appeal expense (item 16.1.3).

## 12 INDEPENDENT MEDICAL ASSISTANCE OR ADVICE (IHP PROCESS)

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### 12.1 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)].

The IHP process is not a replacement for the former Medical Review Panel appeal. The statutorily mandated process, the authority of the WCAT panel, and the rights of the parties to the appeal are significantly different. For example, a party to a WCAT appeal does not have a right to the IHP process, does not have input on the choice of specialty or specialist, or on the terms of reference for, or questions posed to, the independent health professional.

### 12.2 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)]. Section 5 of the Appeal Regulation defines health professionals to include:

- (a) a person who is entitled to practice dentistry or dental surgery under the *Dentists Act*, R.S.B.C. 1996, c. 94;
- (b) a person who is entitled to practice 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 practice 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 panel may retain a health professional from this list [s. 249(6)].

#### 12.2.1 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)].

### **12.2.2 Form of IHP**

The panel may seek independent medical assistance or advice from one or more health professionals, whether individually or as a panel of health professionals, from the same or different medical specialties. The panel will determine the applicable medical specialty and choose the health professional from the list established by the chair. Where different specialties are used, the advice may be requested concurrently or sequentially.

### **12.2.3 Exclusions**

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

- (a) have previously examined the worker whose claim is the subject of the appeal;
- (b) are treating or have previously treated the worker;
- (c) have been consulted in the treatment of the worker;
- (d) have acted as a consultant to the employer;
- (e) are a partner of or practice with a health professional described in this subsection; or
- (f) are 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 these grounds. WCAT will generally avoid retaining a health professional who falls within the terms of these exclusions.

## **12.3 Terms of Reference**

The 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.

The terms of reference the panel provides for the health professional will include determinations of non-medical facts. These will generally involve concise factual details of the incident or accident giving rise to a claim for personal injury, or factual details with respect to the nature of the worker's employment activities and exposure(s) giving rise to a claim for occupational disease. They may also include any other facts relevant to the independent health professional's medical opinion, such as incidents, accidents, activities or exposures outside the worker's employment.

The terms of reference the panel provides will also include information required for the health professional's review. This may include parts of the claim file(s), appeal documents, WCAT-requested medical records, or audio/video evidence.

## **12.4 Suspension Pending Health Professional's Report**

WCAT will suspend an appeal from the time the panel provides the registrar's office with the completed terms of reference until WCAT receives the health professional's written report [s. 249(12)].

## **12.5 Medical Examination**

For a health professional to provide independent assistance or advice under section 249, a medical examination is not required.

If the health professional considers it necessary to examine the worker in order to provide the assistance or advice, WCAT will give written notice to the worker to attend for an examination [s. 249(8)]. Where a medical examination is conducted, the health professional may determine the form and nature of the examination.

### **12.5.1 Expenses for Medical Examination**

Where a worker is required to travel to attend an examination by the independent health professional, WCAT will direct the Board to pay for the necessary arrangements for travel and accommodation. WCAT will also direct the Board to reimburse the worker's expenses for attending the examination according to their criteria (see item 100.14 of the *Rehabilitation Services and Claims Manual, Volumes I and II (RSCM)*). Such expenses may include lost time from work, and child care.

### **12.5.2 Failure to Attend or Obstruction of the Examination**

**RULE:** Pursuant to section 14(c) of the ATA, a written notice of examination given by WCAT is an order to the worker to appear at the time and place stipulated.

If a worker fails to attend the examination, or obstructs that examination without reasonable cause, the health professional will return the matter to the panel for direction. The panel may, after giving notice to the worker, do one or more of the following [ss. 249(9) and 246(5) WCA, s. 31(1)(e) ATA ]:

- (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) decide the appeal on the available evidence;
- (d) determine that the worker has abandoned the appeal;
- (e) dismiss the appeal.



## **12.6 Written Report**

A health professional retained to provide independent medical assistance or advice under section 249 must provide the panel with a written report consistent with the terms of reference. WCAT will disclose the report to the parties together with the terms of reference as well as all information provided to the health professional and invite submissions [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 also be provided in writing and will be disclosed to the parties for submissions.

## **12.7 Decision**

After receiving the health professional's written report, WCAT will reactivate the appeal and request submissions from the parties. The panel will then decide the appeal. The panel is not bound by the report of the health professional.

## **12.8 Other Medical Advice or Clarification**

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

## 13 WRITTEN SUBMISSIONS

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WCAT considers an appeal proceeding by written submissions by reviewing the Board's record along with any other written evidence and argument the parties submitted, and any further evidence the panel obtained (see chapter 11).

### 13.1 Filing Written Submissions

#### *Practice Directive*

*In order for WCAT to issue its decision within 180 days of receiving the Board's records, the following guidelines will apply:*

#### 13.1.1 Appellant

- (a) *WCAT will give the appellant 21 days to provide a submission in addition to the information contained in their notice of appeal.*
- (b) *Within the 21 day period, the appellant may request additional time, with reasons. If the appellant neither files a submission nor requests more time within the 21 day period, they lose the right to provide a submission and their notice of appeal will be considered as their submission, subject to WCAT's discretion to accept late submissions (item 13.1.5).*
- (c) *The maximum additional time for submissions that WCAT will give at the appellant's request is 45 days [s. 253(6)]. Any additional time runs from the end of the initial 21 day period for submissions.*
- (d) *Reasons for which WCAT may give additional time include:*
  - (i) *complexity of the issues under appeal;*
  - (ii) *need to seek additional medical or other evidence;*
  - (iii) *need to interview witnesses and provides adequate reasons for requiring more time to do so;*
  - (iv) *need to seek representation;*
  - (v) *personal or family health problems, bereavement, or other emergencies;*
  - (vi) *pre-arranged vacation; or*
  - (vii) *current labour relations dispute which severely limits opportunity to participate.*

#### 13.1.2 Respondent

- (e) *WCAT will give the respondent 21 days to provide a submission.*
- (f) *WCAT will give the respondent additional time upon request only if WCAT gave the appellant additional time. The respondent must specify the amount of additional time they are requesting but need not provide reasons.*

- (g) *The maximum additional time that WCAT will give at the respondent's request can be no greater than the amount of additional time WCAT gave to the appellant [s. 253(7)]. WCAT cannot otherwise grant a respondent additional time.*
- (h) *Whether or not the appellant provided a submission, any submission from the respondent will be disclosed to the appellant with 14 days for rebuttal.*

### **13.1.3 General**

- (i) *Parties may request up to 14 days of additional time by telephone or in writing. Requests for more than 14 days must be in writing.*
- (j) *WCAT cannot give additional time for rebuttal.*
- (k) *If WCAT gives additional time for submissions, WCAT may set a new decision due date (item 17.1.1).*
- (l) *Where a submission is sent to WCAT by fax, it is not necessary to send the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

### **13.1.4 Submissions Complete**

- (m) *WCAT will consider submissions complete where:*
  - (i) *WCAT does not receive a submission from the appellant by the most recent due date and there is no respondent participating;*
  - (ii) *whether or not the appellant provided a submission, WCAT does not receive a submission from the respondent by the due date;*
  - (iii) *WCAT has received the appellant's rebuttal to the respondent's submission or the appellant did not file a rebuttal by the due date.*
- (n) *Where neither party provides submissions, WCAT will consider the appeal based on the notice of appeal.*

### **13.1.5 Late or Unsolicited Submissions**

- (o) *WCAT will generally not accept late or unsolicited written submissions after the due date has passed.*
- (p) *WCAT may accept a late or unsolicited submission if the party specifically requests further time before sending in the submission and WCAT agrees in advance. Otherwise, WCAT will consider the late or unsolicited submission also to be the request for further time.*

- (q) *In deciding the request for further time, WCAT will consider why the submission was not available earlier, its relevance to the appeal, and the impact of the delay on the statutory time frame for issuing the decision.*
- (r) *If WCAT decides to accept a late or unsolicited written submission, WCAT will decide the procedure for disclosure to the other party, and their response. The party who provided the late or unsolicited submission will normally not be given an opportunity to respond.*
- (s) *If WCAT decides to accept a late or unsolicited written submission, WCAT may set a new decision due date.*

### **13.2 New Evidence Obtained by the Panel**

- (t) *Where the panel obtains further evidence or views relevant new evidence or information on the Board file that was placed there after the date of last disclosure or updated disclosure to the parties, the panel will disclose that evidence to the parties for comment.*
- (u) *The panel will decide the procedure and due dates to be set for obtaining comments on the new evidence or information. Normally the evidence will first be disclosed to the appellant and their representative. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative. 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, and then give each party an opportunity to respond to the other.*

### **13.3 Avoidance of Third Party Identifiers (Chapter 15)**

#### **Practice Directive**

*To protect the privacy of third parties, that is, persons who are not the appellant or the respondent or an identified witness, submissions should not contain identifying information such as names or file numbers of the workers' compensation claims of other workers. Instead, parties should cite Review Division and WCAT decision numbers which are accessible on the internet.*

*If WCAT receives a submission that contains personal identifiers of this sort, WCAT may ask the party to provide written consents from the other persons, or an edited copy of the submission which does not contain identifiers. In that event, WCAT will mark the submission as excluded and will keep it separate from the appeal documentation pending receipt of either the necessary consents or an edited copy. Upon receipt of an edited copy, WCAT will destroy the original submission or return it to the party. Alternatively, WCAT may accept the submission but remove the identifiers and advise the parties this has been done. WCAT will disclose the edited copy to the parties.*

*If the party does not provide consents or an edited copy, the panel will determine the appropriate disposition of the submission containing identifiers. Whether or not the panel accepts an excluded submission, the identifiers must be removed before WCAT places the submission on the Board file. If the panel does not accept the submission and it is not practicable to remove the identifying information, WCAT will return the submission to the party.*

## 14 ORAL HEARINGS

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WCAT holds oral hearings at its Richmond office and in various locations throughout British Columbia. One hour is generally scheduled for an oral hearing in the regular stream, although more time may be scheduled if WCAT considers it necessary. For appeals in the specialty stream, the panel will determine the length of time to be scheduled for the oral hearing (item 7.1).

### 14.1 Before the Oral Hearing

#### 14.1.1 Practice Directive on Scheduling

*If an appellant requests an oral hearing in their notice of appeal, the appellant must be prepared to proceed with the oral hearing within two to three months of the request. The parties will normally be given at least four weeks' notice of the oral hearing date. The registry will generally schedule oral hearings (item 7.1) without consultation with the parties. If parties request a change of date within 14 days of the date of the notice of hearing letter, WCAT will automatically grant it.*

*Where WCAT reschedules the oral hearing at the request of the parties, or where the parties were consulted when the hearing was scheduled initially, WCAT will make further date changes for exceptional circumstances only (item 14.1.2).*

#### 14.1.2 Postponements

**RULE:** After the 14 day period for automatic date changes expires, WCAT will grant postponements only for exceptional circumstances, for example, personal emergencies such as serious medical problems or hospitalization, family crises, bereavement, and motor vehicle accidents, or the unforeseeable unavailability of an essential witness. Parties should provide documentation in support of their request for postponement.

Factors such as the need for more time to gather evidence or information, 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 considered exceptional circumstances.

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 exceptional circumstances. The panel will consult with the registrar's office before granting the postponement.

**When deciding a postponement request, WCAT may consider a variety of factors including:**

- (a) whether the request is made far enough in advance so 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;**
- (d) the effect of the postponement on the statutory time frame for decision making;**
- (e) any prejudice to the other parties balanced against the prejudice to the appellant if the postponement is not granted.**

**Where a hearing is postponed, WCAT will reschedule the hearing having regard to the statutory time frame for decision making. WCAT will not grant an open ended postponement.**

#### **14.1.3 Communication of the Postponement Decision**

If the postponement request is granted, all parties will be notified by telephone or other means. If a panel grants a postponement request directly (particularly out of town), the panel is responsible for ensuring all participating parties are notified.

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

#### **14.1.4 New Documentary Evidence**

New documentary evidence, including expert opinions, should be sent to WCAT at least 21 days in advance of the oral hearing so that WCAT may disclose it to other participating parties (item 11.6). Where WCAT receives a submission or evidence before the date of hearing, WCAT will provide it to all participating parties.

If a party fails to comply with this expectation, the panel may accept new documentary evidence at the oral hearing. The panel will decide how to ensure the other party is given an adequate opportunity to respond.



## 14.2 Attendance at the Oral Hearing

### 14.2.1 Presence of the Appellant

An oral hearing will generally not proceed in the absence of the appellant unless the panel agreed in advance of the hearing. If the appellant's representative appears at the hearing with written instructions from the appellant to proceed in the appellant's absence, the panel may proceed with the hearing. The panel will make a copy of the appellant's written instructions which will be placed on the Board file.

#### 14.2.1.1 Presence of the Appellant's Representative

An oral hearing may proceed in the absence of the appellant's representative.

### 14.2.2 Late Appearance

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 of the panel, whether other hearings will be delayed, and whether any respondent or witnesses have left. If the panel does not proceed with the hearing, WCAT will consider that the appellant failed to appear (item 14.2.3).

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 they arrive late. The panel will determine the nature and extent of that participation depending on the lateness of the respondent as well as their reasons for being late.

### 14.2.3 Failure to Appear for an Oral Hearing

**RULE:** Pursuant to section 14(c) of the ATA, a written notice of oral hearing is an order to the appellant to appear at the time and place stipulated.

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

- (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; or
- (c) dismiss the appeal.

*Practice Directive*

**14.2.3.1 Appellant**

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

**14.2.3.2 Adequate Reasons**

*An appellant's failure to appear at an oral hearing would normally only be justified by a personal emergency or other serious and unforeseen circumstances which prevented the appellant both from attending the hearing and from notifying WCAT in advance of the hearing.*

*Valid reasons would include a personal or family emergency that could not have been anticipated, 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 or serious injury of a family member on or immediately before the day of the hearing; or,*
- (e) failing to receive notice of the hearing where the appellant had previously provided WCAT with their current address.*

**14.2.3.3 Inadequate Reasons**

*Panels will generally not consider the following as valid reasons for failing to appear at an oral hearing:*

- (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 (for example, preparations for a wedding or legal proceedings, care of sick family members, administering an estate, etc.); or*
- (g) *vacation.*

#### **14.2.3.4 No Show Decision**

*Once submissions regarding the failure to appear at the oral hearing are complete, or the due date for those submissions has passed, the panel will decide whether the appellant has failed to comply with the order to appear at the hearing, or the order to provide written reasons for not appearing. The panel will decide to:*

- (a) *reschedule the oral hearing;*
- (b) *continue with the appeal by telephone, videoconference, or other electronic hearing;*
- (c) *continue with the appeal by written submissions, with or without further submissions; or*
- (d) *dismiss the appeal.*

*Usually WCAT will dismiss the appeal if the appellant failed to comply with both the order to appear at the oral hearing and the order to provide written reasons for not appearing.*

*Where the appellant provides inadequate reasons for not appearing at the oral hearing, panels have the discretion to reschedule the hearing where the panel considers that the appeal should be addressed on the merits despite the appellant's failure to appear at the oral hearing, and 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 appear at the rescheduled hearing would likely result in the appeal being dismissed.*

#### **14.2.3.5 Respondent**

*Where an oral hearing is scheduled, a participating respondent is normally expected to appear at the oral hearing, either in person or by telephone.*

*If a respondent fails to appear at an oral hearing, and fails to make the necessary arrangements to participate by telephone, they will be deemed to have waived their right to participate further in the appeal. Where a participating respondent does not attend the oral hearing, either in person or by telephone, they may send in a written submission in advance of the oral hearing. For the purpose of participating in the appeal, WCAT will not provide a copy of the voice recording of the oral hearing or any new documentary evidence or argument that was submitted at the oral hearing or obtained by the panel after the hearing. Panels may, however, invite the respondent's comments if the panel considers this to be necessary or helpful to its consideration.*

*Where WCAT receives evidence establishing that the respondent was unavoidably delayed or otherwise prevented from attending the hearing, the panel will decide how to ensure the respondent is given an adequate opportunity to participate in the appeal.*

### **14.3 Procedure at the Oral Hearing**

Oral hearing procedures may vary depending on the circumstances of a particular appeal. WCAT will generally follow this sequence in an appeal involving an appellant and a respondent:

- (a) the panel will introduce themselves, explain the role of WCAT, and ask other persons in attendance to introduce themselves and explain their role in the hearing;
- (b) the panel will confirm the parties' addresses. The panel will ask the worker and other witnesses whether they are seeking reimbursement of lost wages for attending the hearing. The panel will ask both the worker and the employer whether they are seeking reimbursement for 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 clarify the issues under appeal. Where there is disagreement, the panel will give the parties an opportunity to comment before the panel decides what issues they will consider;
- (e) the appellant will present their case, including a brief statement of the remedy sought (including expenses) and grounds for the appeal, followed by their 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 may present their case, including a brief statement of the remedy sought (including expenses), followed by the 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 panel may give the appellant the opportunity to present additional evidence to respond to new evidence the respondent introduced;
- (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 any extension of time being necessary due to complexity.

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

### **14.3.1 Conduct of Oral Hearings**

At oral hearings parties may expect that WCAT panels will:

- (a) 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) treat all participants in the hearing process with courtesy and respect;
- (c) make every effort to ensure that all participants treat each other with courtesy and respect;
- (d) allow parties reasonable latitude to present their case without interruption, subject to the panel's obligation to control the hearing for relevance and to ensure that the procedure is fair;
- (e) explain the hearing procedure and the issues to be decided. The panel's explanation will be consistent with the knowledge and experience of the participants.

(Items 17.3 to 17.33 and 21.1 to 21.3.)

### **14.3.2 Maintaining Order at the Oral Hearing**

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

- (a) impose restrictions on a person's continued participation in or attendance at an oral hearing;
- (b) exclude a person from further participation in or attendance at an oral hearing until the panel otherwise orders.

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

#### **14.3.2.1 Security**

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

### **14.4 Who May Attend the Oral Hearing**

Oral hearings are not open to the public, as WCAT must maintain confidentiality [s. 260].

The appellant, the appellant's representative, the respondent, and the respondent's representative have a right to attend an oral hearing. Some appeals may involve more than one respondent.

Parties have the right to be present for the whole of the oral hearing even if they will be giving evidence. The panel will determine the extent to which interested participants will be permitted to participate in an oral hearing.

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. WCAT may require observers to sign a promise of confidentiality. 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 oral hearings if all parties consent: family members, friends, trainee representatives, and WCAT or Board staff wishing to observe for training purposes. Any observers must be identified at the outset of the hearing. A party may withdraw their consent at any time during the oral hearing.

Observers are not permitted to participate in the oral hearing. Observers or participants who disrupt the hearing may be expelled from the oral hearing room.

#### **14.4.1 Representatives**

A party may be represented by counsel or an agent [s. 32, ATA]. A representative may be a lay person, union advocate, human resources personnel, 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 or observers.

#### **14.4.2 Witnesses (item 11.7)**

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 for 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.

Panels can place greater weight on the evidence of a non-party witness if the witness was not present in the hearing to listen to the evidence of other witnesses. A panel may give less weight to the evidence of a witness who was present to hear other 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 this is a real risk, 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. 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.

#### **14.4.2.1 Affirmation or Oath** (Appendix 10)

Witnesses, including the parties to an appeal, will usually be required to give evidence under affirmation or oath. This involves a solemn promise to tell the truth, in a form binding on the conscience of the witness. The panel will usually swear or affirm each witness immediately before the witness gives their evidence.

#### **14.4.3 Interpreters** (item 11.9)

WCAT provides independent interpreters when required. The appellant should advise WCAT of their need for an interpreter in their notice of appeal. The respondent should advise WCAT of their need for an interpreter in their notice of participation.

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 only needs assistance with a few words. Where the panel believes that an interpreter is necessary and none is present, the hearing will be rescheduled.

Interpreters are normally affirmed or sworn at the start of the hearing (see Appendix 10).

### **14.5 Record of the Oral Hearing**

**RULE: No party, representative, or observer may record a WCAT hearing by any audio, video or other electronic means.**

WCAT is authorized to audio record or transcribe its hearings [s. 35(1), ATA]. Where practical, WCAT will audio 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].

WCAT does not generally provide a copy of the oral hearing recording to the parties. However, 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. WCAT will provide a copy of the oral hearing recording where a single member panel is unable to complete their duties and the appeal must be continued and completed by another member



(item 2.7.4). WCAT may also provide a copy of the oral hearing recording where a procedural fairness concern is raised on a reconsideration application (item 20.3.2).

WCAT does not provide written transcripts of the oral hearing except where the panel determines that a transcript of specific evidence is necessary. In that case, WCAT will provide transcripts of that evidence to all parties.

#### **14.6 Unsolicited Post-Hearing Evidence or Submissions**

##### *Practice Directive*

*WCAT generally will not accept unsolicited post-hearing evidence or written submissions.*

*Alternatively, WCAT may accept unsolicited post-hearing evidence or written submissions if the party specifically requests and the panel agrees in advance. In deciding the request, the panel will consider why the evidence or written submission was not available earlier, its relevance to the appeal, and the impact of the delay on the statutory time frame for issuing the decision.*

*If the panel decides to accept the additional evidence or written submissions, WCAT may set a new decision due date (item 17.1.1). The panel will provide reasons for accepting or not accepting the late evidence or submission in its decision.*

*If a panel accepts additional evidence or written submissions, WCAT will disclose it to all participating parties who attended the oral hearing. The other parties will generally have an opportunity to respond. However, WCAT may disclose submissions that do not include new and relevant evidence for information purposes only.*

*Where a submission is transmitted to WCAT by fax, it is not necessary to send WCAT the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

#### **14.7 New Evidence Obtained by the Panel**

##### *Practice Directive*

*Where the panel obtains further evidence or views relevant new evidence or information on the Board file that was placed there after the date of last disclosure or updated disclosure to the parties, the panel will disclose that evidence to the parties for comment.*

*The panel will decide the procedure and due dates to be set for obtaining comments on the new evidence or information. Normally the evidence will first be disclosed to the appellant and their representative. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative. 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, and then give each party an opportunity to respond to the other.*

*Where a submission is sent to WCAT by fax, it is not necessary to send the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

## 15 CONFIDENTIALITY

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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.

Section 95(1.1) provides:

95 (1.1) If information in a claim file, or in any other material pertaining to the claim of an injured or disabled worker, is disclosed for the purposes of the Act by an officer or employee of the board to a person other than the worker, that person must not disclose the information except

- (a) if anyone whom the information is about has identified the information and consented, in the manner required by the board, to its disclosure,
- (b) in compliance with an enactment of British Columbia or Canada,
- (c) in compliance with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information, or
- (d) for the purpose of preparing a submission or argument for a proceeding under this Part or Part 3.

WCAT members must not, except in the proper performance of their duties, disclose any information obtained as a member [s. 30, ATA]. 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 [s. 55 ATA].

Members, officers, employees, and contractors of WCAT who cease to hold office, or who cease to be employees or contractors, continue to be bound by the obligations of confidentiality in respect of any matter arising while they were a member, officer, employee, or contractor of WCAT (item 21.2 to 21.2.2).

## **15.1 Freedom of Information and Protection of Privacy Act (FIPPA)**

The 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 members 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 sections 6 and 7 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 within 60 days, WCAT will refer persons with inquiries concerning WCAT decisions to the internet site.

### **15.1.1 FIPPA and WCAT Proceedings (item 13.3)**

Once a panel issues a decision on an appeal, WCAT forwards all new documentation and correspondence pertaining to the appeal, including evidence and submissions, to the Board to be placed on the Board's file. The only exception is section 257 applications for certifications to a court (item 18.7). WCAT also maintains an electronic case management system which is an electronic record of appeal activity. All that WCAT keeps as a permanent record after the decision is issued is an electronic copy of the decision itself and the electronic record of appeal activity.

Certain categories of records are exempt from disclosure because they do not fall within the scope of FIPPA or FIPPA does not apply [s. 61, ATA]. These include:

- (a) personal notes, communications, or draft decisions of a decision maker;
- (b) personal information, the disclosure of which would be an unreasonable invasion of a third party's personal privacy;
- (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 WCAT receives in an oral hearing from which the public, a party, or participating person/representative group was excluded;
- (h) a transcription or audio recording of a proceeding;
- (i) a WCAT decision which is publicly accessible.

## **15.2 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, WCAT will not disclose such information without a signed authorization form from the worker, unless required by law. Where the request for information does not specifically authorize WCAT to disclose information, but it specifically authorizes the Board to do so, WCAT will refer the third party to the Board.

## **16 EXPENSES AND COSTS**

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### **16.1 Expenses**

Section 7(1) of the Appeal Regulation provides that WCAT may order the Board to reimburse a party to an appeal for the following:

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

#### **16.1.1 General**

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

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

WCAT's authority to reimburse a party's appeal expenses is derived from the Appeal Regulation. Thus, there is no board of directors' policy on reimbursement of appeal expenses. Notwithstanding this, WCAT will generally be guided by Board policy at item #100.14 of the RSCM, regarding the amount and type of expenses the Board will pay. These are calculated in accordance with the rules set out in items #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).

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

*Practice Directive*

### **16.1.2 Parties' Attendance at Oral Hearings**

*WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker was successful on the appeal. The amount of reimbursement may be limited. WCAT will not normally order reimbursement of expenses for an employer's attendance at an oral hearing.*

#### **16.1.2.1 Travel Expenses**

*Oral hearings will normally be held in British Columbia locations closest to the community where the appellant resides. If, on its own initiative, WCAT schedules an oral hearing at a location that is not the closest, WCAT will order reimbursement of the appellant's travel expenses. If, to accommodate a representative, a worker appellant requests the hearing in another location that is not the closest, WCAT may limit the amount of reimbursement.*

*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. Where the respondent is an employer whose head office is in a different location, WCAT will not normally grant a respondent's request for reimbursement of travel expenses where the hearing is held in the branch location.*

*WCAT generally limits reimbursement of a party's travel expenses from outside the province to the portion of travel within British Columbia. However, if WCAT specifically orders the party or witness to attend an oral hearing, WCAT will generally order reimbursement for the full amount of the trip.*

*Travel expenses are not paid for that portion of the journey which takes place within a distance of 24 kilometres of the oral hearing location.*

#### **16.1.2.2 When Oral Hearing does not Proceed**

*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 WCAT's administrative error. For example, where a party had not been informed of a postponement and incurs travel expenses to attend the hearing, WCAT will generally award the expenses regardless of the outcome of the appeal. WCAT will generally award a respondent's expenses for attending an oral hearing where the appellant fails to attend the hearing without adequate notice.*

#### **16.1.2.3 When the Appellant has Moved**

*Where the appellant has moved without notifying WCAT, and the oral hearing was scheduled in the location closest to the community where the appellant 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 the appellant's travel expenses.*

### **16.1.3 Expense of Obtaining or Producing Evidence (Section 7(1)(b))**

WCAT will generally order reimbursement of expenses for attendance of witnesses or obtaining or producing 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, reimbursement of expenses is not dependent upon the result in the appeal. WCAT will generally limit the amount of reimbursement of expenses to the rates or fee schedule established by the Board for this purpose.

WCAT will not order reimbursement of expenses associated with a party duplicating or transmitting written evidence obtained or produced for the appeal. This does not apply to duplicating expenses included in a Board fee schedule (Appendix 11).

#### **16.1.3.1 Expert Evidence**

WCAT may direct reimbursement for different types of expert evidence (items 11.4 and 11.6). Most commonly, this involves additional medical evidence obtained for an appeal. It may also include other forms of expert evidence such as ergonomic assessments, employability assessments and functional capacity assessments.

When seeking reimbursement of an expert opinion, in addition to the opinion, the requesting party must also provide a copy of their request and the expert's bill or account. WCAT will usually order reimbursement of expert opinions at the rate established by the Board for similar expenses. The balance is the responsibility of the party who obtained the report.

A WCAT panel has the discretion to award reimbursement of an expert opinion in an amount greater than the fee schedule in limited circumstances. If the bill or account exceeds the Board fee schedule, the party seeking reimbursement of the full amount must explain the reasons the account exceeds the fee schedule and why the panel should order reimbursement of the full amount. In the absence of a request and a satisfactory explanation of the circumstances, WCAT will limit reimbursement to the fee schedule amount.

Examples of the limited circumstances include whether the case is so difficult that it required significant time and effort, the length of the report, and/or whether the detail and analysis of the report is uncommon.

Excerpts from the current Board fee schedule for medical legal and psychological matters are found in Appendix 11.

#### **16.1.3.1.1 Attendance at Oral Hearing**

WCAT will generally order reimbursement of the expense for attendance of an expert at an oral hearing, regardless of the result in the appeal where:

- (a) the attendance of the expert was useful or helpful to the consideration of the appeal; or
- (b) it was reasonable for the party to have the expert attend the oral hearing to give evidence in connection with the appeal.

The current Board fee schedule does not include an item for attendance of an expert at an oral hearing. WCAT will be guided by the BCMA Guide to Fees – Medical-Legal Matters, Scale B\*. WCAT may not order reimbursement of this expense unless the expert's written report was provided to WCAT at least 21 days prior to the hearing (item 11.6).

#### **16.1.3.2 Evidence Previously Submitted to the Board**

WCAT may authorize reimbursement of the expenses associated with obtaining or producing evidence submitted to WCAT, even if the evidence was previously submitted to the Board or the Review Division. If, for example, the Board and/or the Review Division denied reimbursement, 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.

#### **16.1.4 Representatives' Fees**

WCAT will not reimburse a party for the expense of a representative. 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.

#### **16.1.5 WCAT Investigations**

Where a worker is required to travel to participate in a WCAT-initiated investigation, such as a medical examination by a health professional [ss. 249(13) and 246(2)(c)], WCAT will direct the Board to make the necessary arrangements for travel and accommodation. WCAT will also direct the Board to reimburse the worker's expenses for attending the examination according to the Board's criteria (see item 100.14 of the

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\* Found at: [https://www.bcma.org/files/MEDICAL\\_LEGAL.pdf](https://www.bcma.org/files/MEDICAL_LEGAL.pdf) .

RSCM). Such expenses will be reimbursed even though the worker is not required to travel and may include lost time from work and child care (items 9.3.1 and 12.5.1).

## **16.2 Costs**

Section 6 of the Appeal Regulation provides that WCAT may only award 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.

### **16.2.1 Legal Costs**

Costs under section 6 of the Appeal Regulation may include legal costs.

Where a panel concludes that the requirements of sections 6(a) or (b) have been met and orders one party to pay the legal costs of another party in an appeal, the panel will generally be guided by the principles set out in Supreme Court Civil Rule 14-1(3) when assessing the legal costs. The amount of legal costs assessed under section 6(c) will generally be less than if the legal costs were assessed under sections 6(a) or (b).

A panel will generally award those legal costs that the panel considers were proper or reasonably necessary to conduct the appeal and, in exercising that discretion, the panel will consider all of the circumstances, including:

- (a) the complexity of the appeal and the difficulty or the novelty of the issues involved;
- (b) the skill, specialized knowledge and responsibility required of the lawyer;
- (c) the amount involved in the appeal;
- (d) the time reasonably expended in conducting the appeal;
- (e) the conduct of the party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding;
- (f) the importance of the appeal to the party and the result obtained; and
- (g) the benefit to the party of the services rendered by the lawyer.

## **17 WCAT DECISION MAKING**

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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)].

### **17.1 Time Frame for Decision Making**

#### **17.1.1 General**

WCAT must make its decision within 180 days after receiving a copy of the Board's records [s. 253(4)(a)]. The 180 day time frame is subject to:

- (a) a suspension of the appeal on statutory grounds (items 8.4 to 8.4.4);
- (b) an extension by the chair if the complexity of the proceedings or the matter under appeal makes the time period impracticable [s. 253(5)(a)] (item 17.1.2);
- (c) an extension where the appellant requests a delay to submit new evidence or make additional submissions [s. 253(5)(b)] (item 13.1 and 13.1.3);
- (d) an extension where the respondent requests a delay to submit new evidence or make additional submissions [s. 253(7)] (items 13.1.2 and 13.1.3);
- (e) a shorter time period being prescribed by the Cabinet [s. 253(4)(b) (Note: Cabinet has not provided a regulation to shorten this time.)].

The chair may extend the time frame 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 sections 239 and 240. It does not apply to other types of applications such as extensions of time to appeal, reconsiderations, or certifications to the court under section 257.

#### **17.1.2 Extension of Time for Complexity**

The chair may extend the time frame where the complexity of the proceedings in the appeal or the matter under appeal makes the time frame impractical [s. 253(5)(a)]. Complexity of the proceedings concerns the procedural steps in the appeal; complexity of the matter concerns the issues or subject matter of the appeal.

### **17.2 The Written Decision**

#### **17.2.1 Hallmarks of Quality Decision Making (item 19.2)**

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, that is, why some evidence was preferred over other evidence;
- (d) responds to the relevant submissions and arguments;
- (e) identifies and applies relevant law and policy, including WCAT precedent panel decisions;
- (f) uses plain language where possible and uses technical and legal terminology in a manner consistent with other decisions;
- (g) makes the panel's reasoning clear and understandable and leads to a logical conclusion that resolves the issues.

### **17.2.2 Decision-Making Principles**

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.

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).

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. WCAT decisions will be written in clear terms, using plain, direct language where possible. Short and concise decisions will be provided where 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 WCA, policy, and WCAT precedent decisions.

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.

### **17.2.2.1 Disclosure of Prior Decisions**

Panels may refer to past Review Board, Appeal Division ([www.worksafebc.com](http://www.worksafebc.com)), WCAT ([www.wcat.bc.ca](http://www.wcat.bc.ca)), or former commissioners' decisions without first disclosing those decisions to the parties and inviting further submissions as long as they are accessible on an internet website or published in the *Workers' Compensation Reporter* ([www.worksafebc.com](http://www.worksafebc.com)). 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 disclose the prior decision for comment. Panels may also invite comments concerning a publicly accessible decision.

## **17.3 Reasonable Apprehension of Bias and Conflict of Interest**

### **17.3.1 Reasonable Apprehension of Bias**

Members must exercise their duties and responsibilities in a neutral, impartial manner. Parties have the right to have their appeal heard by an impartial and unbiased decision maker who has not prejudged the issues and who does not have a predisposition in favour of one or the other side. This is known as the "rule against bias".

Since justice must not only be done, but must also be seen to be done, a member should not hear an appeal if there is a significant appearance (reasonable apprehension) that they are biased, even if they do not believe that they are biased. No member should hear an appeal if they have a personal interest in or may benefit from the result. Nor should a member hear an appeal if a reasonable and informed person looking at the situation would assume that the member would probably be biased.

For greater certainty:

- (a) "actual bias" 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 their duties fairly and impartially;
- (b) a "reasonable apprehension of bias" occurs when a reasonable and informed person looking at the situation would assume that a personal interest (either pecuniary or non-pecuniary), relationship or association (past or present) impairs the member's ability to discharge their duties fairly and impartially.

It is the responsibility of each member to actively inquire into and consider any circumstance which might raise a perception of bias regarding any of the member's responsibilities. On recognizing a possible 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 tribunal counsel, the chair, or the registrar. Alternatively, the member could disclose the possible issue of bias to the parties in the appeal and invite submissions on whether the member should withdraw or continue with the appeal.

### **17.3.2 Conflict of Interest**

Members must avoid all real or apparent conflicts of interest. Members 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 an appeal.

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) as a result of which the member will benefit or suffer directly or indirectly as a result of the outcome of an appeal;
- (b) an "apparent conflict of interest" exists when a reasonable and informed person looking at the situation would assume that, as a result of a personal interest (either pecuniary or non-pecuniary), relationship or association (past or present), a member will benefit or suffer directly or indirectly as a result of the outcome of an appeal.

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

### **17.3.3 Procedure**

If the member considers that it is appropriate to withdraw from the appeal, it will be returned to the registry for reassignment. If the member considers that withdrawal may not be necessary, the details giving rise to the possible bias or conflict of interest will be disclosed to the parties for submission. These details will be disclosed in writing if the appeal is by written submissions or there are at least 14 days before a scheduled oral hearing. If the appeal is by oral hearing and there are less than 14 days before the scheduled oral hearing, the member will disclose the details giving rise to the possible bias or conflict of interest orally at the outset of the oral hearing.

Parties are expected to make any allegations regarding a member's possible bias or conflict of interest related to an appeal at the earliest practicable 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 possible bias or conflict of interest exists, the appeal will be returned to the registry for reassignment. If the panel concludes that neither actual nor apparent bias exists or that a real or apparent conflict of interest does not exist, the panel must inform the parties in writing and provide reasons. This may be by preliminary decision dealing only with the bias or conflict of interest allegation, or as a preliminary determination made as part of the final decision in the appeal.

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 may invite oral submissions on the matter. The panel may adjourn to reach a decision on the matter, or the member may withdraw from the appeal if the member considers it appropriate. Alternatively, the parties may consent to the member proceeding with the oral hearing.

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

Following a WCAT decision, if a party raises an allegation of actual or a reasonable apprehension of bias or a real or apparent conflict of interest against a member, the chair will review the allegation and, if an apparent case is established, will treat the allegation as an application for reconsideration of the decision to cure a jurisdictional defect, that is, a breach of the duty of procedural fairness. If the chair was a member of the panel which issued the decision, tribunal counsel or the registrar will address the allegation.

## **17.4 Appeal 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, the panel will state whether the decision under appeal was confirmed, varied, or cancelled and provide a summary of its decision on each issue [s. 253(1)].

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)] must be reopened, or may not be reopened (item 3.1.4).

Given the final and conclusive nature of a WCAT decision, a panel has no authority over the Board's implementation of the panel's decision.

### **17.4.1 Findings versus Recommendations**

WCAT decisions should clearly distinguish between 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 restrictions on the Board's authority to revisit previous decisions, panels will exercise caution in making recommendations.

### **17.4.2 Signing Decisions**

WCAT members will personally sign their decisions. In extraordinary circumstances, such as where a panel member is unexpectedly away from WCAT for an extended period due to illness, the panel member may authorize another WCAT member to sign on their behalf provided there is no change from the version the panel member approved.

## **17.5 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.

### **17.5.1 Filing Final Decision in Supreme Court**

A party to a 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)].

## **18 CERTIFICATION TO COURT – SECTION 257 APPLICATIONS**

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### **18.1 General**

Section 257 authorizes WCAT to provide a certificate to court in a legal action. WCAT may determine a matter which is relevant to a legal action and is within the jurisdiction of the Board. This may include determining whether:

- (a) a person was a worker at the time the cause of action arose;
- (b) the injury, disability or death suffered by 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 employed by another employer at the time the cause of action arose;
- (d) an employer was engaged in an industry within the meaning of the WCA at the time the cause of action arose.

WCAT may provide a certificate even though no party to the legal action has applied for workers' compensation benefits, or registered with the Board as an employer, and there has been no decision by a Board officer or a review officer. WCAT will consider all of the evidence and argument afresh regardless of a prior decision by a Board officer or a review officer. There is no appeal from the matters determined in a section 257 certificate.

### **18.2 Processing Applications**

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. Section 257 applications will normally be considered by written submissions.

Where the Board (or a Workers Compensation Board of another jurisdiction) is subrogated to the rights of the worker or the dependent, WCAT must be satisfied that the Board has given its authorization for the legal action to proceed.

WCAT will follow its usual processes for considering appeals as set out in this MRPP insofar as they are applicable to section 257 applications. These are the modifications to those usual processes which WCAT will follow on section 257 applications.

### **18.3 Standing to Make Application**

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

#### **18.3.1 Participating Persons**

Other persons who might be directly and adversely affected by the section 257 determination may be given standing to participate in the application even though they

are not parties in the legal action. This would include, for example, the alleged employer of a party who is alleged to have been a worker at the time of the injury.

### **18.3.2 Timing of Application**

There is no time limit to apply for a certificate under section 257. WCAT will accept an application any time after a legal action has been commenced.

WCAT will normally address section 257 applications on a first come, first served basis. WCAT may address an application on a priority basis where exceptional circumstances are demonstrated and the parties are ready to proceed. WCAT requires at least 180 days from the date of application to complete a section 257 determination. The onus is on the parties to bring their application at least 180 days in advance of the trial date to leave adequate time for submissions by the parties and for consideration by WCAT.

### **18.3.3 Pleading a Defence under Section 10**

WCAT will consider an application for a certificate under section 257 without requiring a defence under section 10 to be pleaded in the legal action. However, pleading such a defence may still be necessary for the purposes of the legal action.

### **18.3.4 Application for Compensation**

Plaintiffs/claimants may wish to file an Application for Compensation with the Board 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 and does not prejudice the plaintiff/claimant in the legal action.

The general requirement of section 55 is that an application for compensation be filed within one year of the date of injury.

### **18.3.5 Representative Authorizations**

Where a party to a legal action is represented by counsel, WCAT will not normally require any other form of representative authorization (item 6.3.1).

## **18.4 Initiating the Application for Certification**

### **RULE:**

- (a) An application for a section 257 certificate must be made in writing to WCAT. WCAT will not consider a section 257 application without a written request.**
- (b) The application must be accompanied by a copy of the Writ of Summons/Notice of Claim (and any other pleadings) filed in the legal action.**

- (c) The applicant must identify the persons for whom section 257 determinations are sought.
- (d) The application must specify the determinations requested.

**Failure to meet these requirements may result in WCAT closing the application as incomplete.**

The WCAT application form for a section 257 certificate is accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

#### **18.4.1 Other Necessary Information**

For WCAT to process the application, the following information must also be provided:

- (a) the birth date(s), current address(es) and personal health numbers or social insurance number(s) of the parties to the legal action;
- (b) any claim numbers for related Board claims or claims established in other jurisdictions;
- (c) the names and current addresses of the employer(s) of all plaintiffs, defendants and third parties at the time the cause of action arose;
- (d) current or past Board registration numbers of any employer or person with personal optional protection coverage;
- (e) the identity of other related legal actions arising from the same event and the names and current addresses of counsel representing the parties in them;
- (f) the names and current addresses of other persons involved in the same event who have outstanding claims with the insurer but are not named in this or a related action;
- (g) copies of the following documents:
  - (i) any statements made to I.C.B.C., another insurer, or the police (in motor vehicle accident cases);
  - (ii) transcripts of Examinations for Discovery, if held (item 18.5.1);
  - (iii) any third party pleadings;
  - (iv) any relevant affidavits and motions filed in the legal action; and,
  - (v) Notice of Trial (if scheduled).

#### **18.4.2 Related Appeals or Legal Actions**

##### *Practice Directive*

*Where there is a related legal action arising from the same event, WCAT will invite the parties to that action, and any additional affected parties, either to participate in the proceeding before WCAT or to make a separate application for a section 257 determination. In the latter case WCAT will process the applications jointly. One panel will consider all applications together and will normally issue one decision addressing all applications. However, the panel will issue a separate section 257 certificate for each legal action.*

*Where there is an appeal pending before WCAT that addresses the same matters as the section 257 application, one panel will consider the section 257 application and the appeal at the same time.*

## **18.5 Written Submissions**

**RULE:** Where the application proceeds by written submission, or written submissions are provided in an oral hearing, parties to the legal action must provide copies of their submissions to the other parties and to all other persons participating in the section 257 application at the same time as they send their submissions to WCAT.

### **18.5.1 Transcripts of Examinations for Discovery**

**RULE:** Where a party to the legal action submits a transcript of an examination for discovery, the party is not required to provide a courtesy copy of the transcript to any other party to the legal action. This rule does not apply to participating persons (item 18.3.1).

Parties to the legal action that are participating in the section 257 application must provide WCAT with a complete copy of any transcript of an examination for discovery conducted in the legal action. The party is not required to provide a copy of the transcript to any other party to the legal action; they are responsible for obtaining their own.

If there are persons participating in the section 257 application that are not parties to the legal action (item 18.3.1), at WCAT's request the party submitting the transcript must provide a copy of the transcript to each participating person.

Portions of a transcript may contain information about the person examined that is both irrelevant to the section 257 determinations requested and personal. Before disclosing the transcript to any person participating in the section 257 application who is not a party to the legal action, WCAT will notify the person examined, or their authorized representative. WCAT will give that person an opportunity to request that WCAT sever material from the transcript on the basis that it is irrelevant and involves a significant privacy concern (item 15).

### **18.5.2 Evidence and Written Submissions**

The applicant and respondent must 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.

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 testimony 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 (see Chapter 11).

WCAT will normally give each party and participating person 21 days to provide submissions. A shorter time frame may be required if the trial date for the legal action is pending. WCAT may extend the time in appropriate circumstances.

### **18.5.3 Disclosure of Existing Board Files**

If the Board has established a file, it will be accessible to the WCAT panel. WCAT will provide disclosure of selected relevant documents to the parties. Upon written request from a participating employer, WCAT will ask the Board to provide full disclosure of an employee's claim file. Parties may obtain full disclosure of the Board file by writing to the Board's legal department. (item 6.4)

## **18.6 Withdrawal of Application**

An applicant may withdraw a section 257 application by right at any time. This does not affect the right of the applicant, or any other party to the legal action, to reapply for a section 257 certificate in the future.

## **18.7 Decision**

The panel will issue both a certificate and written reasons for its decision. Section 253(4) does not apply to a section 257 application.

WCAT will provide an unentered copy of the written decision and certificate to all parties to the legal action, all persons invited to participate in the section 257 application, and the Board. WCAT files the certificate and decision in the court registry if the legal action has been brought in British Columbia. WCAT provides entered copies of the certificate and decision only to the parties to the legal action.

If the legal action has been brought outside of British Columbia, the applicant is responsible for filing the WCAT certificate and decision in the appropriate court registry.

WCAT's section 257 file is not forwarded to the Board even if there is a Board file. It is stored at WCAT.

### **18.7.1 Expenses and Costs**

Expenses and costs are normally matters to be determined in the legal action. Thus WCAT normally will not award expenses or costs in a section 257 application. (chapter 16)



### **18.8 Effect on the Legal Action**

WCAT does not determine the effect of the section 257 certificate on the legal action, that is, 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 Supreme Court Civil Rules to determine whether the action should be dismissed based on section 10 and the findings contained in the certificate.

## 19 PUBLIC ACCESS TO WCAT DECISIONS

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### 19.1 General

Section 234(2)(g) provides that the chair is responsible for providing 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](http://www.wcat.bc.ca)) with a search engine which permits public access to its decisions. WCAT will delay five days before posting decisions to the website to ensure that the parties receive them by regular mail before they become publicly accessible.

In general, panels write decisions without parties' personal identifiers so that no severing of identifying information is required. As section 257 certificates are publicly accessible after being filed in the legal action at a British Columbia court registry, personal identifiers are not removed.

### 19.2 Writing Decisions Without Identifiers

#### *Practice Directive*

*Panels are primarily responsible for ensuring that their decisions do not contain identifiers and may be posted to WCAT's website without violating section 234(2)(g).*

#### 19.2.1 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, the doubt should generally be resolved to protect confidentiality and privacy.*

#### 19.2.2 Names

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

*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 initial.*

*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.*

*Names of treating facilities will be dealt with similarly. Panels may refer to treating facilities 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.).*

### **19.2.3 Representatives**

*Following the convention in the superior courts, panels will not normally refer to representatives by name or role, unless necessary to make sense of a particular issue. Rather, panels will only refer to the parties' evidence and arguments. For example, where a worker's representative submitted evidence or made an argument orally or in writing, the panel will write that "the worker submitted" or "the worker argued".*

### **19.2.4 File or Appeal Numbers**

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

### **19.2.5 Payroll, Revenue Data, and Salary Information**

*Panels will protect employers' payroll and revenue data 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 for the panel to refer to the payroll or revenue data in general or approximate terms.*

*Similarly, in addressing issues concerning a worker's employability, panels must take care 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.*

### **19.2.6 Geographic Locations**

*Panels may name geographic locations 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.*

### **19.2.7 Quotations**

*Panels must edit quotations from sources such as medical opinions and submissions 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].*

### **19.2.8 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.*

### **19.2.9 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 WCAT does not file it in the legal action.*

### **19.2.10 Second Level of Editing in Limited Circumstances**

*In limited circumstances, it may be appropriate for a panel to issue a decision to the parties which is further edited to protect privacy before the decision is made accessible to the public. This will occur rarely 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 panel to provide the two versions of the decision.*

### **19.2.11 Exception**

*In exceptional circumstances, the chair may direct that a WCAT decision not be made publicly accessible, or that only a summary be made publicly accessible. WCAT may also consider a party's request not to post a decision to the website. This may occur where:*

- (a) the case is particularly identifiable and contains sensitive personal information;*
- (b) editing fails to protect the privacy of a party or renders the decision unintelligible; and*
- (c) the beneficial effects of non-publication on the website, including protecting a party's privacy, outweigh its deleterious effects, taking into account the public interest in having access to decisions of significance to workers' compensation law, and public accountability where issues raised are significant to the public.*

*In general, however, privacy will be protected by following the above guidelines.*

### 19.3 Noteworthy Decisions

WCAT is a high volume tribunal which decides thousands of appeals each year. Given the size of the decisions database, it is sometimes difficult to conduct useful searches. As a result, WCAT staff have selected certain decisions to be designated as noteworthy.

Noteworthy decisions fall into two distinct categories:

- (a) they may provide significant commentary or interpretive guidance regarding workers' compensation law or policy, or comment on important issues related to WCAT procedure; or
- (b) they may serve as general examples of the application of provisions of the WCA and its regulations, the policies of the board of directors, or various adjudicative principles.

Noteworthy decisions are not binding on WCAT. Although they may be cited and followed by WCAT panels, they are not necessarily intended to be leading decisions. It is open to panels to consider any previous WCAT decision in the course of considering an appeal. Noteworthy decisions are provided on WCAT's website at [www.wcat.bc.ca](http://www.wcat.bc.ca) for general information and guidance only.

## 20 POST-DECISION

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A decision of WCAT is final and conclusive and is not open to question or review in any court [s. 255(1)]. There is no further right of appeal and the Board must comply with a final decision of WCAT [s. 255(3)]. This includes summary decisions (such as those concerning applications for extensions of time to appeal or dismissals or withdrawals of appeals) and decisions on the merits. It does not include referrals back to the Board under section 246(3), and interim decisions such as decisions on stay applications under section 244 (chapter 8).

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

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

The WCA contains some limited exceptions to the general principle of *functus officio* where it is necessary to correct a clerical error, an inadvertent error or omission, or to clarify an ambiguity in the decision [ss. 253.1(1), (2), (3) and (4)]. WCAT may complete a decision where a panel has failed to decide an issue.

WCAT also has the power to reconsider a decision on the statutory ground of new evidence that meets the requirements of section 256(3) and the power to set aside a decision to cure a jurisdictional defect [s. 253.1(5)].

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

### 20.1 Amendments to Final Decisions

#### 20.1.1 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)].

#### 20.1.2 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.

As the Board is not a party to an appeal, the Board does not have the authority to request that WCAT clarify a decision. WCAT may not clarify a final decision on its own initiative.

### **20.1.3 Incomplete Decision**

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, either on its own initiative or on request by a party.

If a party requests that a panel complete its decision and the panel declines or is unable to complete its decision, WCAT will treat the request as an application for reconsideration. This will not, however, exhaust a party's one time only opportunity to apply for reconsideration to cure a jurisdictional defect (item 20.2.5).

## **20.2 Reconsideration of Final Decisions**

### **20.2.1 Reconsideration Based on New Evidence (Section 256)**

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. Substantial means that it has weight and supports a different conclusion; material means that it is relevant 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 have been discovered through the exercise of reasonable diligence.

The chair has delegated this authority to vice chairs (see Appendix 5).

A new evidence reconsideration application does not call into question the validity of the decision. Rather, the application is based on new evidence now available which may support a different decision on the merits.

### **20.2.2 Reconsideration to Cure a Jurisdictional Defect**

Section 253.1(5) states that provisions regarding amendment of errors or to clarify a decision do not limit WCAT's ability to cure a jurisdictional defect on the request of a party. A reconsideration is not an opportunity to re-argue the appeal.



WCAT may set aside one of its decisions to cure a jurisdictional defect. There are three main types of jurisdictional defects: breaches of the duty of procedural fairness; patently unreasonable errors of fact, law or exercise of discretion in respect of matters that are within WCAT's exclusive jurisdiction; and, errors of law in respect of matters that are not within WCAT's exclusive jurisdiction.

An application for reconsideration to cure a jurisdictional defect calls into question the validity of the decision.

WCAT will apply the same standards of review to reconsiderations to cure jurisdictional defects as will be applied by the court on judicial review (item 20.4.3).

#### **20.2.2.1 Limits on WCAT's Reconsideration Power**

WCAT does not have the authority to reconsider a final decision on its own initiative. As the Board is not a party to an appeal, the Board does not have the authority to request that WCAT reconsider a decision.

WCAT does not have the authority to reconsider decisions by the former Review Board or the current Review Division. Objections to those decisions will be treated as appeals, or applications for extensions of time to appeal. WCAT also does not have the authority to reconsider decisions of the former Commissioners on any ground, or of the former Appeal Division to cure a jurisdictional defect. An objection to one of those decisions must be brought as a judicial review in the Supreme Court of British Columbia.

WCAT has the authority to reconsider a former Appeal Division decision on new evidence grounds [s. 256(1)(b)].

#### **20.2.3 Reconsideration on Both Grounds**

As an application for reconsideration to cure a jurisdictional defect concerns the validity of the initial decision, 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, parties may seek reconsideration on both grounds at the same time or separately.

#### **20.2.4 Time Limit**

There is no time limit for applying for reconsideration.

#### **20.2.5 One Time Only**

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 had more than one appeal, and WCAT administratively joined the appeals such that only one decision was issued, the party may bring separate

reconsideration applications 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.

The authority to consider an application to cure a jurisdictional defect is discretionary in nature. WCAT will hear an application for reconsideration on this basis 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 unless a new jurisdictional defect (including a new breach of procedural fairness) is alleged in relation to the second decision.

If, before a decision has been made, a party withdraws the reconsideration application, they may reapply at a later date.

### **20.3 Reconsideration Applications**

#### *Practice Directive*

*Reconsideration applications, whether on the ground of new evidence or to cure a jurisdictional defect, normally involve a two stage process. The first stage results in a formal written decision, issued by a reconsideration panel, about whether there are grounds for reconsideration, that is, whether the threshold test has been met.*

*If the reconsideration panel finds that there was a jurisdictional defect, and sets aside the decision (as void), the second stage involves a fresh hearing of the appeal. If the reconsideration panel finds that the new evidence grounds are established, the second stage involves a reconsideration of the decision on the basis of the new evidence.*

*The second stage may be considered by the original panel, the reconsideration panel or a new panel. Where appropriate, both stages of the reconsideration process will be considered at the same time.*

*The reconsideration procedure is flexible and can be varied to fit the needs of a particular case. Reconsideration applications are normally decided on the basis of written submissions. This is the usual process that will be followed:*

- (a) Parties applying for reconsideration must complete the Application for Reconsideration form and must explain the specific grounds for reconsideration. Forms are available from TCO and WCAT's website at [www.wcat.bc.ca](http://www.wcat.bc.ca). Completed forms should be sent to TCO.*
- (b) TCO will conduct a preliminary review of a party's objection to a WCAT decision.*

### **20.3.1 Reconsideration not to Proceed**

- (c) *If the objection does not appear to set out potential grounds for reconsideration, TCO will provide the applicant with information about the grounds for reconsideration and will advise them of the procedure for applying. TCO will not forward an objection that does not appear to set out potential grounds for reconsideration to the registry. WCAT will take no further action with respect to the objection.*

### **20.3.2 Reconsideration to Proceed**

- (d) *If the objection sets out potential grounds for reconsideration, TCO will advise the applicant that the reconsideration will proceed. TCO will forward the application to the registry which will process the application and invite written submissions from the parties.*
- (e) *Once submissions are complete, the reconsideration application will be assigned to a panel for decision about whether there are grounds for reconsideration.*
- (f) *If a panel decides that there was a jurisdictional defect, then the original decision will be found void, in whole or in part, and the application will proceed to the second stage in which a panel will hear the appeal afresh. WCAT will decide how the second stage will be conducted (item 7.1). The second stage panel will explain the adjudicative history in their decision. The statutory 180 day time limit for decision-making applies to the second stage reconsideration to cure a jurisdictional defect (item 17.1. to 17.1.2).*
- (g) *If a panel decides that there are new evidence grounds for reconsideration, the original decision is not found to be void, in whole or in part. The application will proceed to the second stage in which a panel will reconsider the previous decision on the basis of the new evidence. The second stage panel's decision will only concern the specific issues on which the new evidence grounds were met and whether the new evidence will result in a change to the original decision.*
- (h) *WCAT will decide how the second stage of new evidence reconsiderations will be conducted (items 7.1 and 7.5). The statutory time limit for decision-making does not apply to the second stage of a new evidence reconsideration, however WCAT will nominally apply a 180-day time limit.*
- (i) *WCAT will invite respondents to participate in both stages of the reconsideration process.*
- (j) *Where a reconsideration application is based on new evidence, requests for reimbursement of expenses will generally be addressed by the second stage reconsideration panel (chapter 16).*

## **20.4 Judicial Review**

A judicial review is a legal procedure that takes place in the Supreme Court of British Columbia. In a judicial review, a Supreme Court judge reviews a decision that has been made by an administrative tribunal or an administrative decision maker. WCAT is an administrative tribunal.

A judicial review is not an appeal and will be granted only in limited circumstances. General information about judicial reviews of WCAT decisions is accessible on WCAT's website at [www.wcat.bc.ca](http://www.wcat.bc.ca). Parties are advised to contact a lawyer if they have questions regarding the judicial review process. Further information is also available on-line at the B.C. Supreme Court's Self-Help Information Centre at: [www.supremecourtselfhelp.bc.ca](http://www.supremecourtselfhelp.bc.ca).

### **20.4.1 Reconsideration and Judicial Review**

A party may apply to WCAT for reconsideration of a decision and apply to the court for judicial review of the same decision at the same time. In that case, WCAT will provide the reconsideration panel with the judicial review petition and related documents. The panel will consider the portions of those documents which are relevant to the reconsideration application.

### **20.4.2 Time Limit for bringing a Judicial Review**

A judicial review of a final WCAT decision must be commenced within 60 days of the date the decision is issued [s. 57(1), ATA]. Under certain circumstances, the court may extend the time.

### **20.4.3 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 [s. 254, WCA];
- (b) fairness 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 court will consider a discretionary decision 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].

#### **20.4.4 Publication of Judicial Review Decisions**

In addition to the court websites, all judicial review decisions regarding WCAT decisions are accessible on WCAT's website at [www.wcat.bc.ca](http://www.wcat.bc.ca).

#### **20.5 Effect of Application for Reconsideration or Petition for Judicial Review**

An application for reconsideration or a petition for judicial review does not act as a stay of the WCAT decision. Unless and until the WCAT decision has been set aside, it continues to be final and conclusive.

## **21 CODES OF CONDUCT**

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### **21.1 For Parties**

#### **21.1.1 General**

This Code is intended to alert parties, whether or not they are represented, to the minimum standards of behaviour. Parties are expected to know and abide by this Code.

This Code also applies to any person or representative group WCAT has requested to participate in an appeal under section 246(2)(i) (items 6.6 to 6.6.7).

#### **21.1.2 Duties of a Party**

- (a) A party will not put forward any information known to be untrue, nor will they be dishonest or misrepresent facts.
- (b) A party must meet deadlines for written submissions and for scheduling oral hearings.
- (c) A party must be prepared. Being prepared includes being familiar with the relevant Board file(s), gathering their evidence and preparing their position on the appeal based on the relevant law, policy, and precedent decisions.
- (d) A party must observe WCAT's rules of practice and procedure and practice directives.
- (e) A party 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. A party must also behave courteously and respectfully in written correspondence, including written submissions.

A party's conduct and demeanour toward the WCAT panel should not be influenced by ill feelings between a worker and an employer, or between them and the Board, including previous decision makers.

- (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 party 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 the person's continued participation in or attendance at a proceeding [s. 48(3)(a), ATA];
  - (iii) exclude the person 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 person for contempt [s. 49(2)), ATA].
- (g) A party 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. 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) At the earliest practicable opportunity, a party should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the party fails to do so, WCAT may deem them to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.
- (i) A party 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 [s. 95(1.1), WCA].
- (j) A party should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A party who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a party should not contact WCAT by e-mail.
- (k) Following a WCAT decision, a party must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

## **21.2 For Representatives**

### **21.2.1 General**

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

This Code is intended to alert representatives to the 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 TCO's attention. Panels may also address breaches of this Code directly during the course of oral hearings and/or in their written decisions.



### **21.2.2 Duties of a Representative**

- (a) A representative's conduct should at all times be characterized by candour and fairness. The representative should maintain toward WCAT a courteous and respectful attitude and insist on similar conduct on the part of their client, at the same time discharging their duty to their client resolutely and with self-respecting independence.
- (b) 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.
- (c) A representative must have proper instructions from their client before proceeding. A representative must obtain instructions from their client before taking any significant step including, but not limited to, initiating or withdrawing an appeal.
- (d) A representative must meet deadlines for written submissions and for scheduling oral hearings. A representative should not undertake to represent a client unless they will be able to provide such representation within the statutory time frames, as required by section 253.
- (e) A representative must be prepared. 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.
- (f) A representative must observe WCAT's rules of practice and procedure and practice directives.
- (g) 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. A representative must also behave courteously and respectfully in written correspondence, including submissions. Respectful behaviour includes representatives conducting their business affairs so as to enable WCAT staff to contact them easily.

A representative's conduct and demeanour toward any other representative in the case, or toward the WCAT panel should not be influenced by ill feelings between a worker and an employer, or between the client (or the representative) and the Board, including previous decision makers.

- (h) A representative should instruct their client and witnesses about appropriate conduct in a hearing and in written correspondence, including submissions, 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 (item 21.1).

- (i) 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].
- (j) 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 appeals. 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.
- (k) At the earliest practicable opportunity, a representative should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the representative fails to do so, WCAT may deem the party to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.
- (l) A representative should not engage in personal attacks on members.
- (m) 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 [s. 95(1.1), WCA].
- (n) A representative should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A representative who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a representative should not contact WCAT by e-mail.
- (o) Following a WCAT decision, a representative must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

- (p) Members who cease to hold office, and legal staff of TCO who cease to be employed by or contracted to WCAT, are 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 until six months after the member's/legal staff's appointment/employment/contract ends.

### **21.3 For WCAT Members**

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

The Code of Conduct for WCAT Members 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. Each member must ensure their 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 that member's possible contravention of this Code.

(Appendix 12)

#### **21.3.1 Involvement in Legal Proceedings**

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)].

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].

### **21.4 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*, R.S.B.C. 1996, c. 385. 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*.

## Appendix 1

### A Short History of the Workers' Compensation Appeal System

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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 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. WCAT eliminated this backlog within three years.

## Appendix 2

### Rules

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#### 3.1.6. Application for Reconsideration

**RULE:** WCAT will treat an application for reconsideration of a Review Board finding as an application for an extension of time to appeal that decision to WCAT.

#### 4.6 Deceased Worker – Standing of Estate

**RULE:** The estate of a deceased worker has the right both to initiate an appeal and to continue an appeal on behalf of a deceased worker concerning a claim for 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 statutory declaration together with 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.

#### 5.1.1 Notice of Appeal Must Be in Writing

**RULE:** An appellant may initiate an appeal in any written form which provides the information required by section 242(2). This may be done by delivering, mailing or sending by facsimile transmission (fax) to WCAT a completed notice of appeal form, letter, or other document containing the required information in English. WCAT will treat receipt of a written notice to appeal by the Review Division or by any Board office as receipt by WCAT.

Where the appeal is initiated by fax, it is not necessary to send WCAT the original document. Where the appellant also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.

An appellant must meet the requirements of section 242(2) or WCAT will not consider an appeal to be initiated.

#### 5.1.2 Telephone Notification of Intent to Appeal

**RULE:** Telephone notification is not sufficient to initiate an appeal. WCAT will accept telephone notice of intent to appeal for the purpose of meeting the 30- or 90-day time limit, provided that WCAT receives a written notification from the appellant which meets the requirements of section 242(2), within the time WCAT subsequently allows.

Where WCAT receives telephone notification of intent to appeal, WCAT will provide the appellant with the appeal number. WCAT will promptly write to the appellant to acknowledge the telephone notification and advise that WCAT must receive a written notice of appeal within the time WCAT subsequently allows (normally 21 days).

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 243(3) and items 8.2 to 8.2.3).

### **5.1.3 Incomplete Notice of Appeal**

**RULE:** Where the notice of appeal, letter or other written method of initiating the appeal does not meet the requirements of section 242(2), the appellant must provide a complete notice of appeal within the time WCAT subsequently allows (normally 21 days), or the time limit to appeal, whichever is greater.

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. 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 8.2 to 8.2.3).

#### **5.1.3.1 Withdrawal of Incomplete Appeal**

**RULE:** An appellant may withdraw an incomplete appeal at any time. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal.

### **5.1.4 Decision or Order Appealed**

**RULE:** To meet the requirements of section 242(2)(c), it is sufficient for the appellant to provide a brief explanation as to why the decision or order appealed is incorrect or should be changed.

### **5.1.5 Outcome Requested**

**RULE:** To meet the requirements of section 242(2)(d), it is sufficient for the appellant to provide a brief statement of the outcome requested. The appellant should relate the requested outcome, that is, the remedy, to the issues raised by the decision or order appealed. WCAT generally lacks jurisdiction to award remedies or outcomes with respect to matters not addressed in the decision or order appealed.

### **5.2.1 For Representatives to Act**

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

If the appeal is initiated by a representative, the appellant must provide a signed authorization for the representative to act unless there is an authorization on the Board file that is less than two years old (item 6.3). This rule does not apply to workers' and employers' advisers (see s. 94).

### **5.2.2 For WCAT to Obtain Evidence (item 9.3 to 9.3.3)**

**RULE:** By signing the WCAT notice of appeal or notice of participation form, whether they are the appellant or the respondent, a worker authorizes WCAT to obtain additional medical records or other evidence with respect to them. WCAT may at any time order a worker appellant to provide a current authorization to obtain additional medical records or other evidence.

### **5.3.1 Change of Address**

**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 service under section 221(2) (items 14.2 to 14.2.3.5 and 13.1 to 13.1.5).

## **7.5 Appeal Method**

**RULE:** WCAT will normally grant the appellant's request for an oral hearing where the appeal involves a significant issue of credibility, where there are significant factual issues in dispute, and/or where there are other compelling reasons for convening an oral hearing (e.g. where an unrepresented appellant has difficulty communicating in writing or in English).

WCAT will normally conduct an appeal by written submissions where the issues are largely medical, legal, or policy based and credibility is not at issue.

WCAT will normally conduct applications for an extension of time to appeal (item 8.2), a stay of decision (item 8.3), a certification to court (chapter 18), and a reconsideration (items 20.2 to 20.3.2) by written submissions.

## **8.3 Stay of Decision under Section 244**

**RULE:** A stay is an extraordinary remedy. WCAT will not process a stay application unless the applicant has completed a notice of appeal within the time limit to appeal which meets the requirements of s. 242(2) (item 5).



When determining whether to issue a stay, panels will consider:

- (a) whether the appeal, on its face, appears to have merit;
- (b) whether the applicant would likely suffer serious harm if the stay were not granted (for example, loss of a business);
- (c) which party would likely 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 likely endanger worker safety.

### **8.5 Withdrawals**

**RULE:** An appellant may withdraw an appeal by right at any time before the appeal has been assigned to a panel.

After assignment, WCAT will decide whether to allow a request for withdrawal. The request for withdrawal will normally be granted.

Requests for withdrawal must be made in writing, or in person at an oral hearing.

### **11.6 Expert Evidence**

**RULES FOR EXPERT EVIDENCE** (items 16.1.3 to 16.1.3.2):

- (a) Opinion evidence will generally only be accepted from a person the panel finds to be qualified by education, training or experience as an expert in the field or discipline in which they are giving their opinion.
- (b) The qualifications of the expert should be stated in writing with the expert's report. Such a statement of qualifications will generally be accepted as evidence of those qualifications. A job title (such as Board medical advisor, or vocational rehabilitation consultant) or professional designation will generally be accepted as evidence of the person's qualifications to hold the position described by the job title. However, it does not determine the level of expertise of that person in relation to specialized disciplines.
- (c) Objections to a person's qualifications as an expert will not generally cause a panel to exclude that 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. An expert's oral evidence will not be admissible in an oral hearing unless their written report was provided to WCAT at least 21 days prior to the hearing. The correspondence requesting the expert's written report must also be submitted.

(Item 16.1.3.1.1)

- (e) Where an oral hearing is to be held, the parties should provide written reports to WCAT promptly after receiving them so that they may be disclosed to all participants. WCAT must receive any expert's report at least 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 participating 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 participating party would be prejudiced by not having had enough time to respond to the new expert evidence, the panel may:
  - (i) allow 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.

(Item 14.2.3.5)

- (g) WCAT will not require an expert to attend an oral hearing unless the panel believes the attendance is necessary for a fair hearing of the issues or 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].

#### **12.5.2 Failure to Attend or Obstruction of the Examination**

**RULE:** Pursuant to section 14(c) of the ATA, a written notice of examination given by WCAT is an order to the worker to appear at the time and place stipulated.

#### **14.1.2 Postponements**

**RULE:** After the 14 day period for automatic date changes expires, WCAT will grant postponements only for exceptional circumstances, for example, personal emergencies such as serious medical problems or hospitalization, family crises, bereavement, and motor vehicle accidents, or the unforeseeable unavailability of an essential witness. Parties should provide documentation in support of their request for postponement.

Factors such as the need for more time to gather evidence or information, 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 considered exceptional circumstances.

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 exceptional circumstances. The panel will consult with the registrar's office before granting the postponement.

When deciding a postponement request, WCAT may consider a variety of factors including:

- (a) whether the request is made far enough in advance so 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;
- (d) the effect of the postponement on the statutory time frame for decision making;
- (e) any prejudice to the other parties balanced against the prejudice to the appellant if the postponement is not granted.

Where a hearing is postponed, WCAT will reschedule the hearing having regard to the statutory time frame for decision making. WCAT will not grant an open ended postponement.

#### **14.2.3 Failure to Appear for an Oral Hearing**

**RULE:** Pursuant to section 14(c) of the ATA, a written notice of oral hearing is an order to the appellant to appear at the time and place stipulated.

#### **14.5 Record of the Oral Hearing**

**RULE:** No party, representative, or observer may record a WCAT hearing by any audio, video or other electronic means.

#### **18.4 Initiating the Application for Certification**

**RULE:**

- (a) An application for a section 257 certificate must be made in writing to WCAT. WCAT will not consider a section 257 application without a written request.
- (b) The application must be accompanied by a copy of the Writ of Summons/Notice of Claim (and any other pleadings) filed in the legal action.
- (c) The applicant must identify the persons for whom section 257 determinations are sought.
- (d) The application must specify the determinations requested.

Failure to meet these requirements may result in WCAT closing the application as incomplete.

## **18.5 Written Submissions**

**RULE:** Where the application proceeds by written submission, or written submissions are provided in an oral hearing, parties to the legal action must provide copies of their submissions to the other parties and to all other persons participating in the section 257 application at the same time as they send their submissions to WCAT.

### **18.5.1 Transcripts of Examinations for Discovery**

**RULE:** Where a party to the legal action submits a transcript of an examination for discovery, the party is not required to provide a courtesy copy of the transcript to any other party to the legal action. This rule does not apply to participating persons.

## Appendix 3

### Practice Directives

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#### 5.3.2 Returned Mail

##### *Practice Directive*

*If mail to a party is returned as undeliverable, WCAT will try to contact the party.*

*Where WCAT is unable to locate the appellant, WCAT will consider that the appellant has failed to comply with the Rule on Change of Address and the following will apply:*

- (a) If the matter has been scheduled for an oral hearing, the oral hearing will be cancelled; and*
- (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 may dismiss the appeal [s. 31(1)(e), ATA].*

*Where WCAT is unable to locate the respondent, WCAT will continue with the proceedings.*

#### 6.3.1 Representative Authorizations

##### *Practice Directive*

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

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

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

## **8.2 Extending the Time to Appeal**

### *Practice Directive*

#### **8.2.1 Application for Extension of Time**

*WCAT will not process an application for an extension of time to appeal where the notice of appeal, letter or other written method of initiating the appeal, does not meet the requirements of section 242(2)(item 5).*

*An application for an extension of time to appeal will normally be considered on the basis of written submissions. Disclosure of the Board file will not usually be provided. WCAT will invite the respondent to participate (item 6.5).*

*Applicants must provide reasons for not appealing within the statutory time frame. Applicants must also provide reasons for any further delay after the expiry of that time. If the applicant fails to provide these reasons, the applicant will be required to provide or complete the reasons within 21 days.*

*If WCAT does not receive the completed reasons by the due date, the appeal will be closed as incomplete and WCAT will take no further action. If the applicant later wishes to pursue the appeal, they must again apply for an extension of time to appeal.*

#### **8.2.2 Special Circumstances Precluded**

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

*The special circumstances test in section 243(3)(a) is only applicable to the failure to file the appeal on time. It does not apply to any subsequent delay after the time to appeal expired.*

*In determining whether special circumstances precluded the filing of the appeal on time, the chair may consider a number of factors, including:*

- (a) the date on which the applicant actually received the decision under appeal;*
- (b) if there was a delay in the applicant receiving the decision, the reason for the delay;*
- (c) whether the applicant was aware of the right to appeal and the time limit for initiating the appeal;*

- (d) *whether the applicant has obtained significant new evidence that would support the appeal which, when the time limit to appeal expired, either did not exist or existed but was not discovered and could not through the exercise of reasonable diligence have been discovered; and,*
- (e) *whether the applicant took all reasonable steps to ensure a timely appeal.*

#### **8.2.2.1 Representative Acts or Omissions**

*When considering whether acts and omissions of a representative constitute special circumstances that precluded the filing of the appeal on time, the overriding consideration is whether the applicant acted reasonably in all of the circumstances.*

*In determining whether acts and omissions of a representative constitute special circumstances that precluded the filing of an appeal on time, the chair may consider an number of factors, including:*

- (a) *whether, within the relevant appeal period, the applicant instructed a representative to appeal;*
- (b) *whether the applicant was in any way responsible for the delay;*
- (c) *any other relevant circumstances particular to the appeal.*

#### **8.2.3 Injustice**

*In order to extend the time to appeal, an injustice must result from the refusal to grant the extension (s. 243(3)(b)). “Injustice” is given a wide meaning, including “unfairness”, “lack of justice”, or “wrong”. In determining whether an injustice would otherwise result, the chair may consider a number of factors, including:*

- (a) *the significance of the matter under appeal (i.e. the magnitude or importance of the issues under appeal);*
- (b) *the length of the delay;*
- (c) *the reasons for any delay beyond the expiry of the time limit to appeal;*
- (d) *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; and,*
- (e) *any other relevant circumstances particular to the appeal.*

#### **8.3.1 Application for Stay of Decision**

##### **Practice Directive**

*WCAT will generally deal with an application for a stay as a preliminary matter on the basis of written submissions. Disclosure of the Board file will not usually be provided. The applicant must be a party to the appeal.*



*The applicant is required to provide written submissions in support of the stay application together with the notice of appeal or within seven days from the date WCAT received the notice of appeal. WCAT will send the submissions to the respondents who have 14 days to respond. The applicant will then have five days to provide a rebuttal. The panel will issue a written decision on the stay application as soon as practicable once submissions are complete.*

*If the applicant fails to provide written submissions in support of their stay application within seven days of the date WCAT received their notice of appeal, or the applicant's submission does not address the stay application, WCAT will deny the stay application and process the appeal as usual.*

#### **8.4.4 Suspension Pending a Board Decision on a Related Matter under Section 252**

##### *Practice Directive*

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

*If WCAT is considering suspending an appeal under section 252(1) on its own initiative, WCAT may seek further submissions from the parties. Prior to suspending the appeal, WCAT 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 WCAT suspends an appeal under section 252(1), WCAT will notify all participating parties and clearly identify the pending decision of the Board or review officer. When an appeal is suspended, a deferral of compensation payable due to a review officer's decision continues.*

*At any time before the Board or review officer issues the pending decision, the appellant may ask WCAT to continue the appeal. WCAT may grant the request or may continue the suspension [s. 252(3)]. WCAT cannot continue the appeal on its own initiative or at the request of the respondent.*

*When the Board or review officer, as the case may be, issues their decision on the related matter, the appellant has 30 days after the date of the decision to ask WCAT to proceed with the suspended appeal [s. 252(2)]. WCAT must then reactivate and continue the appeal. If the appellant does not ask WCAT to proceed with the suspended appeal within 30 days, WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to continue the appeal [s. 252(4) and items 8.2 to 8.2.3].*

*The appellant must ask WCAT to reactivate the suspended appeal within 30 days even if the appellant intends to appeal or request a review, as the case may be, of the new decision. Where the new decision was issued by the Board, the appellant may ask WCAT to re-suspend the appeal after they have filed their request for review with the Review Division.*

## **10.1 Referral Process**

### *Practice Directive*

*If a panel considers that an applicable policy of the board of directors should not be applied:*

- (a) the panel must provide written reasons in a numbered decision 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 decision will be forwarded to the chair to determine the appeal method that will be followed. Generally, the referral will be considered by written submissions;*
- (c) the panel's decision will be disclosed to the parties for submissions; at the same time, as a courtesy, the panel's decision will be disclosed to the Board, specifically, to the chair of the board of directors, the Vice President, Policy, Investigation & Review, the Director of the Policy and Research Division, and the Chief Review Officer; the decision will also be posted to WCAT's website;*
- (d) if there is no respondent or the respondent is not participating, the chair may invite a workers' or employers' adviser to participate [s. 246(2)(i)];*
- (e) when submissions from the parties are complete, the chair may invite submissions from representative groups, including Workers' Advisers, Employers' Advisers, Workers' Compensation Advocacy Group, Business Council of B.C., Coalition of B.C. Businesses, Employers' Forum to the Board, and B.C. Federation of Labour [s. 246(2)(i)]. No unsolicited submissions from other individuals or groups will be accepted;*
- (f) the parties will be provided the opportunity to respond to any submissions received from representative groups;*
- (g) if the chair has determined that an oral hearing is necessary, the oral hearing will be scheduled and held. The parties and the representative groups who were invited to provide written submissions will be invited to the oral hearing;*
- (h) the chair will then decide whether the policy should or should not be applied. The chair will notify the parties, the board of directors, and the other representative*

*groups who were invited to participate of that determination along with written reasons. The chair's decision will also be posted on WCAT's website;*

- (i) if the chair decides that a policy should be applied, WCAT will reactivate the suspended appeal and request submissions from the parties regarding the effect of the chair's decision on the appeal. When submissions are complete, the appeal will be returned to the panel for completion;*
- (j) if the chair decides that a policy should not be applied, the chair will make reasonable efforts to identify other appeals 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 of WCAT;*
  - (ii) conducting a computer search using the WCAT case management system of current appeals at WCAT;*
  - (iii) posting a notice on the WCAT website for 30 days;**
- (k) the chair's decision, with written reasons, will be made accessible to the parties in all suspended appeal proceedings pending before WCAT which the chair considers to be affected by the same policy;*
- (l) when WCAT sends the notice to the board of directors, a list of all suspended appeals, with names and addresses of the parties, will be provided to the board of directors. WCAT will provide a copy of the notice to the Board's Policy and Research Division and Legal Services Division at the same time;*
- (m) 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)];*
- (n) 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. WCAT will reactivate the suspended appeals.*

## **11.7 Orders (Subpoenas) for the Production of Existing Evidence**

### *Practice Directive*

*A party to an appeal may request an order where a person who is not a party to an appeal has documentary or oral evidence that is relevant to the matters under appeal and they are not willing or able to provide that evidence voluntarily. This may, for example, include persons who require an order for their employers to give them the time off from work. It may also include experts who have provided a written opinion on which a party wishes to cross-examine them. It does not include Board decision makers but may include Board officers who provide evidence, such as vocational rehabilitation consultants, field investigators and medical advisors.*

*Together with their request for an order under section 247(1), parties must provide WCAT with 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 class of documents or things requested;*
- (b) the relevance of the evidence to the issue under appeal, that is
  - (i) how it relates to the issue under appeal, and*
  - (ii) how it is necessary for WCAT to address the issue under appeal and make a decision in the appeal;**
- (c) whether the witness is willing to attend voluntarily, or the person is willing to produce the documents or things voluntarily and, if not, why not;*
- (d) whether there is another way of testing the evidence.*

*Where an oral hearing is scheduled, the request for an order must be made at least 14 days in advance. Where there is no oral hearing, the request for an order must be made at least 14 days before the party's written submission is due. Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat a request for an order to the panel.*

*In deciding whether to issue an order under section 247(1), WCAT 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 a person in possession of documents to provide evidence, voluntarily.*

*The panels will sign an order under section 247(1) in a form approved by WCAT (see Appendix 9 as modified from time to time). A person served with an order compelling their attendance at a hearing is entitled to conduct money payable at the time of service (Supreme Court Civil Rule 12-5(35)). 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 delivering the documents, payable in advance.*

*WCAT will be responsible for service and payment of conduct money and/or the costs of production of documents.*

### **13.1 Filing Written Submissions**

#### *Practice Directive*

*In order for WCAT to issue its decision within 180 days of receiving the Board's records, the following guidelines will apply:*

#### **13.1.1 Appellant**

- (a) WCAT will give the appellant 21 days to provide a submission in addition to the information contained in their notice of appeal.*

- (b) *Within the 21 day period, the appellant may request additional time, with reasons. If the appellant neither files a submission nor requests more time within the 21 day period, they lose the right to provide a submission and their notice of appeal will be considered as their submission, subject to WCAT's discretion to accept late submissions (item 13.1.5).*
- (c) *The maximum additional time for submissions that WCAT will give at the appellant's request is 45 days [s. 253(6)]. Any additional time runs from the end of the initial 21 day period for submissions.*
- (d) *Reasons for which WCAT may give additional time include:*
  - (i) *complexity of the issues under appeal;*
  - (ii) *need to seek additional medical or other evidence;*
  - (iii) *need to interview witnesses and provides adequate reasons for requiring more time to do so;*
  - (iv) *need to seek representation;*
  - (v) *personal or family health problems, bereavement, or other emergencies;*
  - (vi) *pre-arranged vacation; or*
  - (vii) *current labour relations dispute which severely limits opportunity to participate.*

### **13.1.2 Respondent**

- (e) *WCAT will give the respondent 21 days to provide a submission.*
- (f) *WCAT will give the respondent additional time upon request only if WCAT gave the appellant additional time. The respondent must specify the amount of additional time they are requesting but need not provide reasons.*
- (g) *The maximum additional time that WCAT will give at the respondent's request can be no greater than the amount of additional time WCAT gave to the appellant [s. 253(7)]. WCAT cannot otherwise grant a respondent additional time.*
- (h) *Whether or not the appellant provided a submission, any submission from the respondent will be disclosed to the appellant with 14 days for rebuttal.*

### **13.1.3 General**

- (i) *Parties may request up to 14 days of additional time by telephone or in writing. Requests for more than 14 days must be in writing.*
- (j) *WCAT cannot give additional time for rebuttal.*
- (k) *If WCAT gives additional time for submissions, WCAT may set a new decision due date (item 17.1.1).*

- (l) *Where a submission is sent to WCAT by fax, it is not necessary to send the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

#### **13.1.4 Submissions Complete**

- (m) *WCAT will consider submissions complete where:*
  - (i) *WCAT does not receive a submission from the appellant by the most recent due date and there is no respondent participating;*
  - (ii) *whether or not the appellant provided a submission, WCAT does not receive a submission from the respondent by the due date;*
  - (iii) *WCAT has received the appellant's rebuttal to the respondent's submission or the appellant did not file a rebuttal by the due date.*
- (n) *Where neither party provides submissions, WCAT will consider the appeal based on the notice of appeal.*

#### **13.1.5 Late or Unsolicited Submissions**

- (o) *WCAT will generally not accept late or unsolicited written submissions after the due date has passed.*
- (p) *WCAT may accept a late or unsolicited submission if the party specifically requests further time before sending in the submission and WCAT agrees in advance. Otherwise, WCAT will consider the late or unsolicited submission also to be the request for further time.*
- (q) *In deciding the request for further time, WCAT will consider why the submission was not available earlier, its relevance to the appeal, and the impact of the delay on the statutory time frame for issuing the decision.*
- (r) *If WCAT decides to accept a late or unsolicited written submission, WCAT will decide the procedure for disclosure to the other party, and their response. The party who provided the late or unsolicited submission will normally not be given an opportunity to respond.*
- (s) *If WCAT decides to accept a late or unsolicited written submission, WCAT may set a new decision due date.*

#### **13.2 New Evidence Obtained by the Panel**

- (t) *Where the panel obtains further evidence or views relevant new evidence or information on the Board file that was placed there after the date of last disclosure or updated disclosure to the parties, the panel will disclose that evidence to the parties for comment.*



- (u) *The panel will decide the procedure and due dates to be set for obtaining comments on the new evidence or information. Normally the evidence will first be disclosed to the appellant and their representative. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative. 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, and then give each party an opportunity to respond to the other.*

### **13.3 Avoidance of Third Party Identifiers (Chapter 15)**

#### **Practice Directive**

*To protect the privacy of third parties, that is, persons who are not the appellant or the respondent or an identified witness, submissions should not contain identifying information such as names or file numbers of the workers' compensation claims of other workers. Instead, parties should cite Review Division and WCAT decision numbers which are accessible on the internet.*

*If WCAT receives a submission that contains personal identifiers of this sort, WCAT may ask the party to provide written consents from the other persons, or an edited copy of the submission which does not contain identifiers. In that event, WCAT will mark the submission as excluded and will keep it separate from the appeal documentation pending receipt of either the necessary consents or an edited copy. Upon receipt of an edited copy, WCAT will destroy the original submission or return it to the party. Alternatively, WCAT may accept the submission but remove the identifiers and advise the parties this has been done. WCAT will disclose the edited copy to the parties.*

*If the party does not provide consents or an edited copy, the panel will determine the appropriate disposition of the submission containing identifiers. Whether or not the panel accepts an excluded submission, the identifiers must be removed before WCAT places the submission on the Board file. If the panel does not accept the submission and it is not practicable to remove the identifying information, WCAT will return the submission to the party.*

#### **14.1.1 Practice Directive on Scheduling**

*If an appellant requests an oral hearing in their notice of appeal, the appellant must be prepared to proceed with the oral hearing within two to three months of the request. The parties will normally be given at least four weeks' notice of the oral hearing date. The registry will generally schedule oral hearings (item 7.1) without consultation with the parties. If parties request a change of date within 14 days of the date of the notice of hearing letter, WCAT will automatically grant it.*

*Where WCAT reschedules the oral hearing at the request of the parties, or where the parties were consulted when the hearing was scheduled initially, WCAT will make further date changes for exceptional circumstances only (item 14.1.2).*



### 14.2.3 Failure to Appear for an Oral Hearing

#### Practice Directive

#### 14.2.3.1 Appellant

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

#### 14.2.3.2 Adequate Reasons

*An appellant's failure to appear at an oral hearing would normally only be justified by a personal emergency or other serious and unforeseen circumstances which prevented the appellant both from attending the hearing and from notifying WCAT in advance of the hearing.*

*Valid reasons would include a personal or family emergency that could not have been anticipated, 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 or serious injury of a family member on or immediately before the day of the hearing; or,*
- (e) *failing to receive notice of the hearing where the appellant had previously provided WCAT with their current address.*

#### 14.2.3.3 Inadequate Reasons

*Panels will generally not consider the following as valid reasons for failing to appear at an oral hearing:*

- (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 (for example, preparations for a wedding or legal proceedings, care of sick family members, administering an estate, etc.); or*
- (g) *vacation*

#### **14.2.3.4 No Show Decision**

*Once submissions regarding the failure to appear at the oral hearing are complete, or the due date for those submissions has passed, the panel will decide whether the appellant has failed to comply with the order to appear at the hearing, or the order to provide written reasons for not appearing. The panel will decide to:*

- (a) *reschedule the oral hearing;*
- (b) *continue with the appeal by telephone, videoconference, or other electronic hearing;*
- (c) *continue with the appeal by written submissions, with or without further submissions; or*
- (d) *dismiss the appeal.*

*Usually WCAT will dismiss the appeal if the appellant failed to comply with both the order to appear at the oral hearing and the order to provide written reasons for not appearing.*

*Where the appellant provides inadequate reasons for not appearing at the oral hearing, panels have the discretion to reschedule the hearing where the panel considers that the appeal should be addressed on the merits despite the appellant's failure to appear at the oral hearing, and 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 appear at the rescheduled hearing would likely result in the appeal being dismissed.*

#### **14.2.3.5 Respondent**

*Where an oral hearing is scheduled, a participating respondent is normally expected to appear at the oral hearing, either in person or by telephone.*

*If a respondent fails to appear at an oral hearing, and fails to make the necessary arrangements to participate by telephone, they will be deemed to have waived their right to participate further in the appeal. Where a participating respondent does not attend the oral hearing, either in person or by telephone, they may send in a written submission in advance of the oral hearing. For the purpose of participating in the appeal, WCAT will not provide a copy of the voice recording of the oral hearing or any new documentary evidence or argument that was submitted at the oral hearing or obtained by the panel after the hearing. Panels may, however, invite the respondent's comments if the panel considers this to be necessary or helpful to its consideration.*

*Where WCAT receives evidence establishing that the respondent was unavoidably delayed or otherwise prevented from attending the hearing, the panel will decide how to ensure the respondent is given an adequate opportunity to participate in the appeal.*

#### **14.6 Unsolicited Post-Hearing Evidence or Submissions**

##### *Practice Directive*

*WCAT generally will not accept unsolicited post-hearing evidence or written submissions.*

*Alternatively, WCAT may accept unsolicited post-hearing evidence or written submissions if the party specifically requests and the panel agrees in advance. In deciding the request, the panel will consider why the evidence or written submission was not available earlier, its relevance to the appeal, and the impact of the delay on the statutory time frame for issuing the decision.*

*If the panel decides to accept the additional evidence or written submissions, WCAT may set a new decision due date (item 17.1.1). The panel will provide reasons for accepting or not accepting the late evidence or submission in its decision.*

*If a panel accepts additional evidence or written submissions, WCAT will disclose it to all participating parties who attended the oral hearing. The other parties will generally have an opportunity to respond. However, WCAT may disclose submissions that do not include new and relevant evidence for information purposes only.*

*Where a submission is transmitted to WCAT by fax, it is not necessary to send WCAT the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

#### **14.7 New Evidence Obtained by the Panel**

##### *Practice Directive*

*Where the panel obtains further evidence or views relevant new evidence or information on the Board file that was placed there after the date of last disclosure or updated disclosure to the parties, the panel will disclose that evidence to the parties for comment.*

*The panel will decide the procedure and due dates to be set for obtaining comments on the new evidence or information. Normally the evidence will first be disclosed to the appellant and their representative. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative. 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, and then give each party an opportunity to respond to the other.*

*Where a submission is sent to WCAT by fax, it is not necessary to send the original document. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*

## **16.1 Expenses**

### *Practice Directive*

#### **16.1.2 Parties' Attendance at Oral Hearings**

*WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker was successful on the appeal. The amount of reimbursement may be limited. WCAT will not normally order reimbursement of expenses for an employer's attendance at an oral hearing.*

##### **16.1.2.1 Travel Expenses**

*Oral hearings will normally be held in British Columbia locations closest to the community where the appellant resides. If, on its own initiative, WCAT schedules an oral hearing at a location that is not the closest, WCAT will order reimbursement of the appellant's travel expenses. If, to accommodate a representative, a worker appellant requests the hearing in another location that is not the closest, WCAT may limit the amount of reimbursement.*

*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. Where the respondent is an employer whose head office is in a different location, WCAT will not normally grant a respondent's request for reimbursement of travel expenses where the hearing is held in the branch location.*

*WCAT generally limits reimbursement of a party's travel expenses from outside the province to the portion of travel within British Columbia. However, if WCAT specifically orders the party or witness to attend an oral hearing, WCAT will generally order reimbursement for the full amount of the trip.*

*Travel expenses are not paid for that portion of the journey which takes place within a distance of 24 kilometres of the oral hearing location.*

##### **16.1.2.2 When Oral Hearing does not Proceed**

*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 WCAT's administrative error. For example, where a party had not been informed of a postponement and incurs travel expenses to attend the hearing, WCAT will generally award the expenses regardless of the outcome of the appeal. WCAT will generally award a respondent's expenses for attending an oral hearing where the appellant fails to attend the hearing without adequate notice.*

### **16.1.2.3 When the Appellant has Moved**

*Where the appellant has moved without notifying WCAT, and the oral hearing was scheduled in the location closest to the community where the appellant 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 the appellant's travel expenses.*

### **18.4.2 Related Appeals or Legal Actions**

#### *Practice Directive*

*Where there is a related legal action arising from the same event, WCAT will invite the parties to that action, and any additional affected parties, either to participate in the proceeding before WCAT or to make a separate application for a section 257 determination. In the latter case WCAT will process the applications jointly. One panel will consider all applications together and will normally issue one decision addressing all applications. However, the panel will issue a separate section 257 certificate for each legal action.*

*Where there is an appeal pending before WCAT that addresses the same matters as the section 257 application, one panel will consider the section 257 application and the appeal at the same time.*

### **19.2 Writing Decisions Without Identifiers**

#### *Practice Directive*

*Panels are primarily responsible for ensuring that their decisions do not contain identifiers and may be posted to WCAT's website without violating section 234(2)(g).*

#### **19.2.1 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, the doubt should generally be resolved to protect confidentiality and privacy.*

#### **19.2.2 Names**

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

*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 initial.*

*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.*

*Names of treating facilities will be dealt with similarly. Panels may refer to treating facilities 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.).*

### **19.2.3 Representatives**

*Following the convention in the superior courts, panels will not normally refer to representatives by name or role, unless necessary to make sense of a particular issue. Rather, panels will only refer to the parties' evidence and arguments. For example, where a worker's representative submitted evidence or made an argument orally or in writing, the panel will write that "the worker submitted" or "the worker argued".*

### **19.2.4 File or Appeal Numbers**

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

### **19.2.5 Payroll, Revenue Data, and Salary Information**

*Panels will protect employers' payroll and revenue data 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 for the panel to refer to the payroll or revenue data in general or approximate terms*

*Similarly, in addressing issues concerning a worker's employability, panels must take care 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.*



### **19.2.6 Geographic Locations**

*Panels may name geographic locations 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.*

### **19.2.7 Quotations**

*Panels must edit quotations from sources such as medical opinions and submissions 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].*

### **19.2.8 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.*

### **19.2.9 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 WCAT does not file it in the legal action.*

### **19.2.10 Second Level of Editing in Limited Circumstances**

*In limited circumstances, it may be appropriate for a panel to issue a decision to the parties which is further edited to protect privacy before the decision is made accessible to the public. This will occur rarely 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 panel to provide the two versions of the decision.*

### **19.2.11 Exception**

*In exceptional circumstances, the chair may direct that a WCAT decision not be made publicly accessible, or that only a summary be made publicly accessible. WCAT may also consider a party's request not to post a decision to the website. This may occur where:*

- (a) the case is particularly identifiable and contains sensitive personal information;*
- (b) editing fails to protect the privacy of a party or renders the decision unintelligible;*
- and*



- (c) *the beneficial effects of non-publication on the website, including protecting a party's privacy, outweigh its deleterious effects, taking into account the public interest in having access to decisions of significance to workers' compensation law, and public accountability where issues raised are significant to the public.*

*In general, however, privacy will be protected by following the above guidelines.*

### **20.3 Reconsideration Applications**

#### *Practice Directive*

*Reconsideration applications, whether on the ground of new evidence or to cure a jurisdictional defect, normally involve a two stage process. The first stage results in a formal written decision, issued by a reconsideration panel, about whether there are grounds for reconsideration, that is, whether the threshold test has been met.*

*If the reconsideration panel finds that there was a jurisdictional defect, and sets aside the decision (as void), the second stage involves a fresh hearing of the appeal. If the reconsideration panel finds that the new evidence grounds are established, the second stage involves a reconsideration of the decision on the basis of the new evidence.*

*The second stage may be considered by the original panel, the reconsideration panel or a new panel. Where appropriate, both stages of the reconsideration process will be considered at the same time.*

*The reconsideration procedure is flexible and can be varied to fit the needs of a particular case. Reconsideration applications are normally decided on the basis of written submissions. This is the usual process that will be followed:*

- (a) *Parties applying for reconsideration must complete the Application for Reconsideration form and must explain the specific grounds for reconsideration. Forms are available from TCO and WCAT's website at [www.wcat.bc.ca](http://www.wcat.bc.ca). Completed forms should be sent to TCO.*
- (b) *TCO will conduct a preliminary review of a party's objection to a WCAT decision.*

#### **20.3.1 Reconsideration not to Proceed**

- (c) *If the objection does not appear to set out potential grounds for reconsideration, TCO will provide the applicant with information about the grounds for reconsideration and will advise them of the procedure for applying. TCO will not forward an objection that does not appear to set out potential grounds for reconsideration to the registry. WCAT will take no further action with respect to the objection.*

### 20.3.2 Reconsideration to Proceed

- (d) *If the objection sets out potential grounds for reconsideration, TCO will advise the applicant that the reconsideration will proceed. TCO will forward the application to the registry which will process the application and invite written submissions from the parties.*
- (e) *Once submissions are complete, the reconsideration application will be assigned to a panel for decision about whether there are grounds for reconsideration.*
- (f) *If a panel decides that there was a jurisdictional defect, then the original decision will be found void, in whole or in part, and the application will proceed to the second stage in which a panel will hear the appeal afresh. WCAT will decide how the second stage will be conducted (item 7.1). The second stage panel will explain the adjudicative history in their decision. The statutory 180 day time limit for decision-making applies to the second stage reconsideration to cure a jurisdictional defect (item 17.1. to 17.1.2).*
- (g) *If a panel decides that there are new evidence grounds for reconsideration, the original decision is not found to be void, in whole or in part. The application will proceed to the second stage in which a panel will reconsider the previous decision on the basis of the new evidence. The second stage panel's decision will only concern the specific issues on which the new evidence grounds were met and whether the new evidence will result in a change to the original decision.*
- (h) *WCAT will decide how the second stage of new evidence reconsiderations will be conducted (items 7.1 and 7.5). The statutory time limit for decision-making does not apply to the second stage of a new evidence reconsideration, however WCAT will nominally apply a 180-day time limit.*
- (i) *WCAT will invite respondents to participate in both stages of the reconsideration process.*
- (j) *Where a reconsideration application is based on new evidence, requests for reimbursement of expenses will generally be addressed by the second stage reconsideration panel (chapter 16).*

## Appendix 4

### Regulations

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*Workers Compensation Act Appeal Regulation*, Order in Council No. 1039/2002  
(B.C. Reg. 321/2002)

Volume 29 Number 38


Orders in Council and Ministerial Orders

2002

#### 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.

## 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.

*Transitional Review and Appeal Regulation*, Order in Council No. 1040/2002 (B.C. Reg. 322/2002)

Volume 29 Number 38

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2002

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 /2002/4



## 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.

*Fishing Industry Regulation*, Order in Council No. 1041 (B.C. Reg. 323/2002) and Order in Council No. 1150 (B.C. Reg. 384/2002)

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2002

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

## Appendix 5

### Chair's Delegation Decision

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#### Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 12  
Date: January 2, 2009  
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 senior registry officer, assessment officer, appeal coordinator, and legal counsel;

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

**“senior vice chair”** means the tribunal counsel and the registrar;

**“specialized vice chair”** means a vice chair/team leader 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 January 2, 2009, 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. Under 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. Under 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, if I determine 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. Under 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 specialized vice chair/quality assurance (vice chair/quality assurance), 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.

### **D. DELEGATIONS BY AUTHORITY/POSITION**

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

#### **12. 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,  
senior registry officer, assessment officer.

**13. 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:

senior vice chair, vice chair/quality assurance, legal counsel.

**14. Establish panels – section 238(2)**

I delegate the authority of the chair under section 238(2), to establish panels of the appeal tribunal, to the following positions:

senior vice chair, specialized vice chair, deputy registrar.

**15. 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.

**16. 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 three member panel, and to appoint a panel with either of the following memberships:

- (a) a vice chair, acting as presiding member, plus two 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.

**17. Appointment of new panel – section 238(11)**

I delegate the authority of the chair under section 238(11), where a panel is comprised of one member and that member is unable for any reason to complete the member's duties, to appoint a new panel to continue to hear and determine

an appeal with the consent of all parties and on terms agreed to by the parties, to the following positions:

senior vice chair, vice chair/quality assurance, deputy registrar.

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

I delegate the authority of the chair to extend the time to file a notice of appeal under section 243(3), to the following position:

member.

19. **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, senior registry officer, assessment officer, appeal coordinator.

20. **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 the following position:

member, senior registry officer, assessment officer, appeal coordinator.

21. **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 extend the time to make a request under section 252(2) that WCAT continue the appeal proceedings, to the following position:

member.

22. **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), to the following positions:



senior vice chair, vice chair/quality assurance, deputy registrar.

**23. 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 extend the time for not more than 45 days, to the following positions:

member, senior registry officer, assessment officer, appeal coordinator.

**24. 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 the following positions:

member, senior registry officer, assessment officer, appeal coordinator.

**25. 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.

**26. Appointment of member, staff or other person to conduct a dispute resolution process – section 28(1) of the *Administrative Tribunals Act* (ATA).**

I delegate the authority of the chair to appoint a member or staff of the tribunal or other person to conduct a dispute resolution process under section 28(1) of the ATA to the following positions:

senior vice chair, vice chair/quality assurance.

## **E. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

Delegations under this Part to positions means any incumbent of such a position, but only so long as the senior vice chair, vice chair/quality assurance or legal counsel holds the position.

27. Under 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 No. 9* (February 1, 2007).
31. Any delegated authority or assignment of matters prior to January 2, 2009 under 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 January 2, 2009

## Appendix 6

### The Review Division's Jurisdiction – A Summary

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**NOTE:** This limited material is provided for information purposes only. Detailed information on the Practices and Procedures of the Review Division is accessible at [www.worksafebc.com](http://www.worksafebc.com)

Most Board officers' decisions 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 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);
- (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 [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, 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)].

## Appendix 7

### Standing of an Estate – Statutory Declarations

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|                              |   |                   |
|------------------------------|---|-------------------|
| CANADA                       | ) | IN THE MATTER OF  |
|                              | ) |                   |
|                              | ) |                   |
|                              | ) | _____             |
| PROVINCE OF BRITISH COLUMBIA | ) | (Deceased's Name) |
|                              | ) |                   |
|                              | ) | _____             |
|                              | ) | (Claim Number)    |

#### **STATUTORY DECLARATION**

(No Will and Estate is Small or Substantially Held in Joint Tenancy)

I \_\_\_\_\_, residing at \_\_\_\_\_  
(Full Name) (Address)  
\_\_\_\_\_, SOLEMNLY DECLARE THAT:

I have personal knowledge of the matters set out in this Statutory Declaration.

1. The Deceased, \_\_\_\_\_, passed away on the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_  
(Deceased's name) (Day) (Month) (Year)  
and to the best of my knowledge has no will.
2. I am applying to proceed on behalf of the Deceased's estate to initiate or continue an appeal to the Workers' Compensation Appeal Tribunal (WCAT).
3. I have conduct of the administration of the Deceased's estate and if there is any other person who has or may have conduct of the Deceased's estate, I have obtained their consent to initiate or continue an appeal to WCAT on behalf of the estate.
4. The estate of the Deceased to the best of my knowledge is small or substantially held in joint tenancy.
5. I consent to the disclosure of this Statutory Declaration to the Workers' Compensation Board of British Columbia, operating as WorkSafeBC.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Declared before me at:

\_\_\_\_\_, \_\_\_\_\_ )  
          (City)                  (Province) )  
  ) )  
On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. )  
          (Day)                  (Month) (Year) )  
  ) )  
  ) )

\_\_\_\_\_  
(Signature of a Commissioner for taking  
Affidavits, Lawyer, Notary Public)

\_\_\_\_\_  
(Signature of person making Declaration)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_



CANADA

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF

(Deceased's Name)

(Claim Number)

**STATUTORY DECLARATION**

(There is a Will and Estate is Small and Probate Not Required)

I, \_\_\_\_\_, residing at \_\_\_\_\_  
(Full Name) (Address)  
\_\_\_\_\_, SOLEMNLY DECLARE THAT:

I have personal knowledge of the matters set out in this Statutory Declaration.

1. The Deceased, \_\_\_\_\_, passed away on the \_\_\_\_\_ of \_\_\_\_\_,  
(Deceased's name) (Day) (Month)  
\_\_\_\_\_.  
(Year)
2. The estate of the Deceased is small and probate is not required.
3. As the Executor or Administrator of the Deceased's will I am applying to proceed on behalf of the Deceased's estate to initiate or continue an appeal to the Workers' Compensation Appeal Tribunal (WCAT).
4. If there is any other person who is also an Executor or Administrator of the Deceased's will, I have obtained their consent to initiate or continue an appeal to WCAT on behalf of the estate.
5. Attached to this Statutory Declaration as "Exhibit A" is a copy of the Deceased's will.
6. I consent to the disclosure of this Statutory Declaration to the Workers' Compensation Board of British Columbia, operating as WorkSafeBC.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Declared before me at:

\_\_\_\_\_, \_\_\_\_\_  
(City) (Province)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(Day) (Month) (Year)

\_\_\_\_\_  
(Signature of a Commissioner for taking  
Affidavits, Lawyer, Notary Public)

\_\_\_\_\_  
(Signature of person making Declaration)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Address)

## Appendix 8

### Combined Appeals – Authorization to Release Information

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**WCAT** **Workers' Compensation  
Appeal Tribunal**

#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

---

TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT):

Please be advised that \_\_\_\_\_ (representative's name) is representing me and a number of my co-workers in appeals before WCAT with respect to the decision of the Workers' Compensation Board, operating as WorkSafeBC (Board), or the Review Division, dated \_\_\_\_\_ regarding \_\_\_\_\_ (issue).

By this authorization I consent to have my appeal dealt with in conjunction with those of my co-workers. I also authorize the release of all information, including evidence, documentation and submissions, which is presented on my behalf or obtained by WCAT, to the other parties involved in these appeals.

I understand that once decisions are issued, WCAT places all documentation pertaining to the appeal on the Board files of all the parties involved in these appeals. To maintain the confidentiality of my personal information, the representative has signed the attached "Documentation Agreement", under which they will provide WCAT with an extra copy of all documentation with my name and personal information blacked out (the Amended Documents). I understand that WCAT will provide the Amended Documents to the Board to form part of the files of the other parties involved in these appeals once the decisions are issued.

\_\_\_\_\_  
NAME (please print)

\_\_\_\_\_  
BOARD CLAIM NUMBER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
WCAT APPEAL NUMBER

\_\_\_\_\_  
CITY

\_\_\_\_\_  
PROVINCE

\_\_\_\_\_  
POSTAL CODE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

---

**DOCUMENTATION AGREEMENT**

---

**WCAT** Workers' Compensation  
Appeal Tribunal

#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

---

TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT):

Please be advised that I \_\_\_\_\_ (representative's name)  
am representing \_\_\_\_\_ (worker's name) and  
a number of their co-workers in appeals before WCAT with respect to the decisions of the  
Workers' Compensation Board, operating as WorkSafeBC (the Board), or the Review Division,  
dated \_\_\_\_\_ regarding \_\_\_\_\_  
\_\_\_\_\_ (issue).

By this Agreement I confirm that I will provide WCAT with an extra copy of all the worker's  
documentation with their name and personal information blacked out (the Amended  
Documents).

I understand that once a decision is issued WCAT will provide the Amended Documents to the  
Board to form part of the files of the other parties involved in these appeals.

\_\_\_\_\_  
REPRESENTATIVE'S NAME  
(please print)

\_\_\_\_\_  
WORKER'S NAME  
(please print)

\_\_\_\_\_  
REPRESENTATIVE'S SIGNATURE

\_\_\_\_\_  
WORKER'S BOARD CLAIM NUMBER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
WORKER'S WCAT APPEAL NUMBER

## Appendix 9

### Orders (to Testify and for the Production of Documents)

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**WCAT** **Workers' Compensation  
Appeal Tribunal**

#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

---

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, other things):

Time: [Time]  
Date: [Month Day, Year]  
Place: Workers' Compensation Appeal Tribunal  
4600 Jacombs Road  
Richmond, BC V6V 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.**



#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

## **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 if the distance 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.

**WCAT** Workers' Compensation  
Appeal Tribunal

#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

---

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 (or, where applicable, other things) relevant to this appeal (or application).

THEREFORE the Workers' Compensation Appeal Tribunal requires you to produce the following documents (or, where applicable, other things):

1.

The Workers' Compensation Appeal Tribunal directs you to forward the required documents (or, where applicable, other things) 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.**





#150 – 4600 Jacombs Rd.  
Richmond, BC V6V 3B1  
Telephone: (604) 664-7800  
Toll Free: 1-800-663-2782  
Fax: (604) 664-7898

---

**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*.

## Appendix 10

### Oaths and Affirmations

---

#### **Oath/Affirmation of Witnesses**

You are about to give evidence to the Workers' Compensation Appeal Tribunal. WCAT is dependent on you telling us the truth and the law requires you to do so. Therefore, before you testify, I must ask you this:

#### Oath

1. 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.

#### Affirmations

1. 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.

2. Do you solemnly promise that the evidence that you are about to give will be the truth, the whole truth and nothing but the truth?

Answer: I So Promise

And, do you understand that a breach of your oath/affirmation/promise would be an offence under our law?

Answer: I Do

## **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 11

### Current Fee Schedules

#### BCMA Fee Schedule

| Fee Code | Description   | Current Rate | Rate Effective April 01/06 | Effective Date of Ratification (Dec 1/06) | Feb 01/07  | Apr 01/07  | Apr 01/08  | Apr 01/09  | Rate Effective Oct 01/10 |
|----------|---|--------------|----------------------------|---|------------|------------|------------|------------|--------------------------|
| 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     | \$815.00                   | \$815.00                                  | \$815.00   | \$815.00   | \$839.00   | \$856.00   | \$873.12                 |
| 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. | \$1,275.00   | \$1,361.00                 | \$1,361.00                                | \$1,361.00 | \$1,361.00 | \$1,402.00 | \$1,430.00 | \$1,458.60               |
| 19904    | WorkSafeBC request for copy of a consultation, operative, chart notes or other existing report – first twenty, received within three (3) business days of request. Not to be paid in addition to other Fee Codes except 19906.  | \$22.36      | \$22.36                    | \$40.00                                   | \$40.00    | \$40.00    | \$40.00    | \$40.00    | \$40.80                  |
| 19905    | WorkSafeBC requested copy of consultation, operative, or other existing report – first five (5) pages or less sent by mail.   | \$21.36      | \$21.36                    | \$25.00                                   | \$25.00    | \$25.00    | \$25.00    | \$25.00    | \$25.50                  |

| Fee Code     | Description   | Current Rate | Rate Effective April 01/06 | Effective Date of Ratification (Dec 1/06) | Feb 01/07 | Apr 01/07 | Apr 01/08 | Apr 01/09 | Rate Effective Oct 01/10 |
|--------------|---|--------------|----------------------------|---|-----------|-----------|-----------|-----------|--------------------------|
| <b>19906</b> | Continuation of 19904 – over twenty (20) pages additional per page.   | \$1.15       | \$1.15                     | \$1.20                                    | \$1.20    | \$1.20    | \$1.20    | \$1.20    | \$1.22                   |
| <b>19907</b> | A factual written summary or reasoned medical opinion upon written request from WorkSafeBC (19904 may not be billed in addition). If extractions included over five (5) pages – may bill 19906.   | \$255.00     | \$255.00                   | \$255.00                                  | \$255.00  | \$255.00  | \$255.00  | \$255.00  | \$260.10                 |
| <b>19953</b> | WorkSafeBC Request For Existing Report or Chart Notes - ISOLATING SPECIFIC INFORMATION. When WorkSafeBC 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 WorkSafeBC, 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     | \$120.00                   | \$120.00                                  | \$120.00  | \$120.00  | \$120.00  | \$120.00  | \$122.40                 |

## Psychologist Fee Schedule for WCAT Independent Health Professional

| Assessment Service  | WCAT Flat Fees<br>June 1/08 to May 31/09<br>(=WorkSafe Hrly Rate<br>Max Cap) | WCAT Flat Fees<br>June 1/09 to May 31/10<br>(=WorkSafe Hrly Rate<br>Max Cap) | WCAT Flat Fees<br>June 1/10 to May 31/11<br>(=WorkSafe Hrly Rate<br>Max Cap) | WCAT Flat Fees<br>June 1/11 to May 31/12<br>(=WorkSafe Hrly Rate<br>Max Cap) | WCAT Flat Fees<br>June 1/12 to May 31/13<br>(=WorkSafe Hrly Rate<br>Max Cap) |
|---|--|--|--|--|--|
| <b>Psychology<br/>Assessment (&amp; report)<br/>&amp; Timely Report Fee</b>                   | \$1,809<br>\$1,909 (report within<br>10 business days)                       | \$1,845<br>\$1,945 (report within<br>10 business days)                       | \$1,882<br>\$1,982 (report within<br>10 business days)                       | \$1,920<br>\$2,020 (report within<br>10 business days)                       | \$1,958<br>\$2,058 (report within<br>10 business days)                       |
| <b>Psychology<br/>Assessment for PFI:</b>   | \$1,809<br>\$1,909 (report within<br>10 business days)                       | \$1,845<br>\$1,945 (report within<br>10 business days)                       | \$1,882<br>\$1,982 (report within<br>10 business days)                       | \$1,920<br>\$2,020 (report within<br>10 business days)                       | \$1,958<br>\$2,058 (report within<br>10 business days)                       |
| <b>Neuropsychology<br/>Assessment:</b>  | \$2,412<br>\$2,512 (report within<br>20 business days)                       | \$2,460<br>\$2,560 (report within 20<br>business days)                       | \$2,509<br>\$2,609 (report within 20<br>business days)                       | \$2,560<br>\$2,660 (report within 20<br>business days)                       | \$2,611<br>\$2,711 (report within 20<br>business days)                       |
| <b>Supplemental<br/>Psych/Neuropsych<br/>Consultation including<br/>PFI Timely Report Fee</b> | \$2,412<br>\$2,512 (report within 20<br>business days)                       | \$2,460<br>\$2,560 (report within 20<br>business days)                       | \$2,509<br>\$2,609 (report within 20<br>business days)                       | \$2,560<br>\$2,660 (report within 20<br>business days)                       | \$2,611<br>\$2,711 (report within 20<br>business days)                       |
| <b>Supplemental<br/>Psych/Neuropsych<br/>Consultation including<br/>PFI Timely Report Fee</b> | \$250<br>Add \$50 if rpt within 10<br>business days                          | \$255<br>Add \$50 if rpt within<br>10 business days                          | \$260<br>Add \$50 if rpt within<br>10 business days                          | \$265<br>Add \$50 if rpt within<br>10 business days                          | \$270<br>Add \$50 if rpt within<br>10 business days                          |
| <b>Patient Cancellation<br/>Document Review Fee:<br/>(see contract rules)</b>                 | \$250<br>Flat Fee  | \$255<br>Flat Fee  | \$260<br>Flat Fee  | \$265<br>Flat Fee  | \$270<br>Flat Fee  |

## WorkSafeBC Psychologist Fee Schedule

| Assessment Service   | Fee Item Code | Fee<br>June 1/10<br>to May 31/11             | Fee<br>June 1/11<br>to May 31/12             | Fee<br>June 1/12<br>to May 31/13             |
|--|---------------|--|--|--|
| <b>Psychology<br/>Assessment (&amp; report)<br/>&amp; Timely Report Fee</b>      | 19768         | \$156.84 / hr                                | \$160.00 / hr                                | \$163.20 / hr                                |
|  | 19769         | \$100.00 (report within<br>10 business days) | \$100.00 (report within<br>10 business days) | \$100.00 (report within<br>10 business days) |
| <b>Psychology<br/>Assessment for PFI<br/>&amp; Timely Report Fee</b>             | 19770         | \$156.84 / hr                                | \$160.00 / hr                                | \$163.20 / hr                                |
|  | 19771         | \$100.00 (report within<br>10 business days) | \$100.00 (report within<br>10 business days) | \$100.00 (report within<br>10 business days) |
| <b>Neuropsychology<br/>Assessment<br/>&amp; Timely Report Fee</b>                | 19772         | \$156.84 / hr                                | \$160.00 / hr                                | \$163.20 / hr                                |
|  | 19773         | \$100.00 (report within<br>20 business days) | \$100.00 (report within<br>20 business days) | \$100.00 (report within<br>20 business days) |
| <b>Supplemental<br/>Psychology<br/>/Neuropsychology<br/>Consultation</b>         | 19776         | \$260.10                                     | \$265.30                                     | \$270.60                                     |
|  |               | Flat Fee                                     | Flat Fee                                     | Flat Fee                                     |
| <b>Supplemental<br/>Psychology<br/>/Neuropsychology<br/>Consultation for PFI</b> | 19777         | \$260.10                                     | \$265.30                                     | \$270.61                                     |
|  |               | Flat Fee                                     | Flat Fee                                     | Flat Fee                                     |
| <b>Patient Cancellation<br/>Document Review Fee:<br/>(see contract rules)</b>    | 19778         | \$260.10                                     | \$265.30                                     | \$270.61                                     |
|  |               | Flat Fee                                     | Flat Fee                                     | Flat Fee                                     |



## Appendix 12

### Code of Conduct for WCAT Members

---

#### 1 General

The requirement to comply with this 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 members (including the chair, vice chairs, and temporary substitute members appointed under section 232(10)). Members must ensure their 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 that member's possible contravention of this Code.

##### 1.1 Oath of Office

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 [s. 3, Appeal Regulation]:

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.

##### 1.2 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 with a mind that is genuinely open with respect to every issue, and open to persuasion by convincing evidence and argument. Members must avoid doing or saying anything that would cause a reasonable, well-informed individual to think otherwise.

Members will not decline to follow an applicable policy on the basis that it is unlawful, except in accordance with section 251. Members will not decline to follow an applicable decision of a precedent panel appointed under section 238(6), except in accordance with section 250(3). Members will respect and apply the provisions of sections 250(3) and 251, 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.

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.

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 written in a neutral, respectful tone and 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.

### **1.3 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 (item 15.1).

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

#### **1.3.1 Protection of Privacy outside WCAT's Offices**

##### *Practice Directive*

*Members will comply with these guidelines to protect the privacy and security of confidential records. This practice directive applies to members' handling of documents, files, and electronic files and information where these are taken outside the WCAT offices (for attending hearings or working 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) *do not take files outside of Canada;*
- (j) *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) *TCO will notify the Office of the Information and Privacy Commissioner of the theft;*
- (d) *TCO will notify individuals whose personal information was stolen of the theft and what information about them was taken.*

## **2 Conduct**

### **2.1 General**

Members will not engage in discriminatory behaviour contrary to the 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.

### **2.2 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.

### **2.3 Skills and Training**

Members 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.

### **2.4 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.

### **2.5 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 current applicable policy. This policy does not prohibit members from making or receiving occasional brief electronic messages or private telephone calls.

## **2.6 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 who 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.

## **2.7 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. Members 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.

Members will not introduce partisan politics at the local, provincial, or national levels into the workplace. This does not apply to informal private discussions among co-workers.

## **2.8 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 apprehension 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.

## **2.9 Reporting and Consequences**

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 is 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.

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 member in question and the chair, tribunal counsel, or registrar 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, or registrar is protected from any reprisal.

The chair shall, if the allegation is not considered frivolous or vexatious, make whatever inquiries or investigations the chair determines to be 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. 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.

### **3 Termination of Appointments**

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 [s. 14.9, Public Sector Employers Act, RSBC 1996, c. 384].

### **4 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. Members who cease to hold office may not take improper advantage of their former office.

Members who cease to hold office are 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 (item 21.2.2 (p)).