

This *Legal Action Guide (Section 257 Certificate)* answers questions you may have as a defendant or plaintiff/claimant about the Workers' Compensation Appeal Tribunal's (WCAT) role in a legal action that involves a disability caused by occupational disease, a personal injury, or death of a worker.

WHAT IS A SECTION 257 CERTIFICATE?

Any party to a legal action, or the court, may ask us to determine certain issues, and to give our findings to the court in a document called a section 257 certificate.

Typical questions answered by a section 257 certificate include the following:

1. Whether a person was a worker at the time of the incident.
2. Whether the injuries suffered by a worker arose out of and in the course of their employment.
3. Whether an employer or their agent was employed by another employer at the time of the incident.
4. Whether an employer was engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act (Act)* at the time of the incident.

The section 257 certificate determines these issues and cannot be appealed.

HOW DOES A SECTION 257 CERTIFICATE AFFECT A "SECTION 10 BAR"?

The decisions WCAT makes in the section 257 certificate affect what legal actions may be taken. Section 10 of the Act bars a legal action by a worker, the worker's dependants and family members, against a worker or employer in certain circumstances. Section 10 states that only workers' compensation benefits can be claimed for a worker's injuries, disablement, or death arising out of and in the course of their employment. Workers cannot

sue their employer, another employer, or another worker who may have caused or contributed to their injury, disability, or death where the conduct that caused the injury, disability, or death arose out of and in the course of the employment. This is called the "section 10 bar".

CAN THE DEFENDANT APPLY FOR A SECTION 257 CERTIFICATE WITHOUT PLEADING THE SECTION 10 BAR?

Yes. We will consider an application for a section 257 certificate without requiring the defendant in a legal action to plead the section 10 bar. However, pleading that defence may still be necessary for the purposes of the legal action.

WHAT DOES A SECTION 257 CERTIFICATE DO?

The section 257 certificate provides the court with our findings regarding the issues we have determined, but only the court can decide how our findings will affect the legal action.

WHEN SHOULD I APPLY FOR A SECTION 257 CERTIFICATE?

You may only ask us for a section 257 certificate after a legal action has commenced. Any party involved in a legal action, or the court, may then request a section 257 certificate.

HOW DO I APPLY FOR A SECTION 257 CERTIFICATE?

You can apply for a section 257 certificate by completing the *Application for Section 257 Determination* form found at www.wcat.bc.ca, signing it, and sending it to us by email, fax or mail. You will find the form under the **Forms** tab on our website.

With your form include a copy of all the court documents that have been filed in the legal action, such as the Notice of Civil Claim/ Notice of Claim, Response to Civil Claim/ Reply and any other documents.

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Also, provide us with the following:

- the birth date(s), current address(es) and BC CareCard number(s) of all parties to the legal action
- any claim numbers for related WorkSafeBC claims
- the names and current addresses of the employer(s) of all plaintiffs/claimants, defendants and third parties
- current or past WorkSafeBC registration numbers of any employer or person with personal optional protection coverage
- 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
- copies of the following documents:
 - any statements made to ICBC in motor vehicle accident cases
 - transcripts of any examinations for discovery
 - any third party pleadings
 - any relevant affidavits and motions filed in the legal action
 - Notice of Trial (if scheduled)
 - Notice of Change of Lawyer (if any).

IS THERE A TIME LIMIT TO APPLY FOR A SECTION 257 CERTIFICATE?

No. However, you must make your application **at least** six months before your trial date so that we have enough time to process the application and make a decision.

Please note that we do not give priority to urgent section 257 applications with imminent trial dates. Generally, we process applications on a “first come, first served” basis.

DOES AN INJURED PERSON OR, IF THEY ARE DECEASED, THEIR DEPENDANT, NEED TO CLAIM COMPENSATION FROM WORKSAFEBC BEFORE BRINGING A LEGAL ACTION?

No. An injured person or, if they are deceased, their dependant, can start a legal action without making a WorkSafeBC compensation claim. However, there is a **one-year time limit** to make a compensation claim with WorkSafeBC. Therefore, you should file a claim on a provisional basis within a year of the incident in order to preserve your rights. Filing a provisional claim for compensation does not affect our status determination or prejudice the injured person’s/dependant’s position in the legal action.

We may provide a section 257 certificate even though the injured person or, if deceased, their dependant, has not applied for workers’ compensation benefits and there has been no decision by a WorkSafeBC officer or review officer. We will consider all of the evidence and argument afresh regardless of a prior decision by WorkSafeBC or by the Review Division.

If the injured person/dependant has received compensation from WorkSafeBC for the injury, death or disablement, WorkSafeBC has a subrogated right to bring a legal action. In that case, we cannot process the section 257 application until WorkSafeBC has authorized the person to pursue the legal action. You can obtain this authorization from the Legal Department at WorkSafeBC.

HOW LONG WILL MY SECTION 257 APPLICATION TAKE?

We normally require 90 days from the end of submissions to make our decision. If your application is complicated, reaching a decision may take us more than 90 days.

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WHO CAN PARTICIPATE IN A SECTION 257 APPLICATION?

We will invite all the parties named in the legal action to participate in the section 257 application. We will also invite persons who the decision may affect, even if they are not a party to the legal action, for example, the employer of a party who may have been a worker at the time of the injury.

If there is a related legal action or other WorkSafeBC claim resulting from the same accident or event, we will also invite the involved parties to participate in the section 257 application.

WHAT INFORMATION SHOULD I PROVIDE TO OTHER PARTIES?

Please provide the other side's lawyers with copies of all your correspondence with us, including your submissions.

HOW DO SECTION 257 APPLICATIONS PROCEED?

Usually we consider these applications by written submissions, but in some cases we hold oral hearings. We will send notice of the application to all parties to the legal action, and to any affected parties, to give them an opportunity to provide submissions. WCAT coordinates the submissions process. We will give you more information at that time about how the application will proceed.

Please tell us immediately of any important developments in the legal action, such as scheduling the trial date, settlement or dismissal, or change of lawyer. Also, tell us as soon as possible of any related actions or claims you learn about.

WHAT MUST I PROVIDE TO WCAT TO OBTAIN A SECTION 257 CERTIFICATE?

In addition to the application documents and information that you give to us, you will need to make submissions that clearly identify the issues, set out the factual background, and

provide all the evidence and argument necessary for WCAT to consider the issues.

Although we have the right to seek additional evidence, please do not assume that we will investigate further. Ensure that you provide us with all relevant evidence.

IF THERE HAS BEEN A CLAIM FOR COMPENSATION, WILL I BE ABLE TO GET A COPY OF THE WORKSAFEBC FILE?

Yes. We will make the necessary arrangements for parties to the legal action to get copies (disclosure) of any relevant documents on the WorkSafeBC file(s). You can obtain disclosure of the WorkSafeBC file(s), including claims, assessment, and prevention files, by writing to the Legal Disclosures Clerk at WorkSafeBC. You will need either a court order or the written consent of the worker or employer.

WorkSafeBC charges a fee for this service if you wish to obtain disclosure before making a section 257 application.

If you have a WorkSafeBC file, you may also request disclosure through the Freedom of Information and Protection of Privacy Office at WorkSafeBC.

HOW DOES WCAT MAKE A DECISION?

We consider the evidence and submissions that you and the other parties provide and the evidence in the WorkSafeBC file, if there is one.

We must apply the policies of WorkSafeBC's board of directors relevant to the application unless a policy is completely inconsistent with the Act (section 251). WorkSafeBC policies are contained in various policy manuals and in policy decisions of the board of directors. All WorkSafeBC policies are available on their website at www.worksafebc.com under the **Regulation and Policy** tab. These include archived versions of the policies in effect at the time of the incident causing the injuries or death.

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We are not bound by previous WCAT decisions, except in the rare situation of a decision by a precedent panel appointed under section 238(6) of the Act. We must follow our precedent panel decision unless the decision involved different circumstances or depends upon a policy that has been changed.

If the evidence is evenly weighted on a compensation issue, we must decide the issue in favour of workers' compensation coverage.

On other issues, we will make our decision on a balance of probabilities.

WHAT HAPPENS AFTER WCAT MAKES ITS DECISION?

We will mail our decision with reasons to all the parties in the legal action. Since these decisions are filed in court and become public documents, we will publish them on our website without editing.

WHO IS RESPONSIBLE FOR FILING THE SECTION 257 CERTIFICATE IN COURT?

For actions started in British Columbia, we will file the certificate in the court registry and provide filed copies to you and the other parties.

For actions started outside of British Columbia, it is the applicant's responsibility to file the section 257 certificate in the proper court.

WHERE CAN I FIND MORE INFORMATION?

More information about WorkSafeBC is available on their website: www.worksafebc.com. This includes the *Rehabilitation Services and Claims Manual*, the *Assessment Manual*, the *Prevention Manual*, and previous Appeal Division decisions.

You will find our *Manual of Rules of Practice and Procedure* (chapter 18.00 on Certification to Court – Section 257 Applications), forms, other information guides, and WCAT decisions on our website at www.wcat.bc.ca.

WCAT INFORMATION GUIDES

(available on our website – if you do not have access to the internet, call us and we will send you a copy)

- *Appealing a Review Division Decision – Worker's Guide**
- *Appealing a Review Division Decision – Employer's Guide**
- *Respondent's Guide**
- *Oral Hearing Guide**
- *Written Submission Guide**
- *Medical Evidence Guide**
- *Post Decision Guide*
- *Judicial Review Guide*
- *Legal Action Guide (Section 257 Certificate)*
- *Direct Appeal Guide for Workers*
- *Direct Appeal Guide for Employers*

* *These Guides are also available on our website in Punjabi, Chinese (Traditional) and Chinese (Simplified).*

WCAT CONTACT INFORMATION

Mailing Address:

Workers' Compensation Appeal Tribunal
150 - 4600 Jacombs Road
Richmond, BC V6V 3B1

Telephone: 604 664-7800

Email: appeals@wcat.bc.ca

Fax: 604 664-7898

Toll Free within BC: 1 800 663-2782

Website: www.wcat.bc.ca

If you have a smart phone, scan this code to access our website.

