Practice Directions

(ce document est aussi disponible en français)

Ontario

Workplace Safety and Insurance **Appeals Tribunal**

Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail

Practice Direction #1

How to Start an Appeal at the WSIAT

1.0 This Practice Direction explains how to start an appeal of a final decision of the Workplace Safety and Insurance Board (WSIB).

2.0 Notice of Appeal

2.1 If you, the appellant, want to appeal a final decision of the WSIB, you must provide notice of your appeal in writing to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). You will need to explain why the decision is incorrect or why it should be changed.

2.2 You must file a Notice of Appeal (NOA) Form with the WSIAT. There are different NOA forms for workers and employers.

2.3 You must provide a copy of the WSIB's final decision with the NOA Form. This is usually from an Appeals Resolution Officer.

2.4 If you are an employer, the contact person for the employer must sign the NOA for Employers Form. This is to confirm their understanding of confidentiality (section 9 of the NOA for Employers Form).

2.5 If you do not complete the NOA Form within 6 months, the WSIAT may close your appeal. You can start another appeal for the same decision(s) but time limits will apply. To proceed with the appeal, you will first need to get a time limit extension granted.

3.0 Time Limit to File a Notice of Appeal

3.1 The WSIAT must receive an appeal within 6 months of the date of the WSIB's final decision.

3.2 If the appeal is received after 6 months, it is considered late. If this is the case, you will need to apply for a time extension. To proceed with the appeal, you will first need to get a time limit extension granted.

4.0 What Happens After I File the Notice of Appeal (NOA) Form?

4.1 When the WSIAT receives your completed NOA Form, WSIAT staff will review it. Staff may contact you or your representative to discuss your appeal.

4.2 WSIAT staff will write to you to confirm if your appeal was received on time. If so, WSIAT staff will request the claim file(s) and the applicable policy from the Workplace Safety and Insurance Board (WSIB).

5.0 Respondents

5.1 The WSIAT will determine who has an interest in your appeal. WSIAT staff will send them

- your NOA Form
- a copy of the final WSIB decision
- a Response Form

The WSIAT will invite them to participate in the appeal as a respondent.

5.2 If an employer or worker responds and wants to participate, they become a participating respondent to the appeal. They will receive all case materials and take part in the hearing. If they want to appeal any issues in the same decision, they should put it on their Response Form.

5.3 If an employer responds and does not want to participate, WSIAT staff will confirm this in writing. WSIAT staff will not send the employer any additional information except the final WSIAT decision.

5.4 If an employer does not respond, the WSIAT assumes the employer is not participating in the appeal. WSIAT staff will confirm this in writing. WSIAT staff will not send the employer any additional information except the final WSIAT decision.

5.5 If a worker does not want to participate, WSIAT staff may contact the worker to discuss their participation. The WSIAT may decide that it is necessary for the worker to participate, for example, to testify. WSIAT staff will also discuss the release of case materials to the employer.

5.6 If a worker does not respond, WSIAT staff will follow up by phone and with a letter.

6.0 Case Materials

6.1 The WSIAT receives the claim file(s) and applicable policy from the Workplace Safety and Insurance Board (WSIB). Once this happens, WSIAT staff will prepare the Case Record for the appeal. A Case Record contains the WSIB claim file on appeal and any related WSIB claim files.

6.2 WSIAT staff will send the Case Record to the worker and/or their representative. WSIAT staff will request the worker's consent to release the materials to the employer, if they are participating.

6.3 Once all participating parties have received the Case Record, WSIAT staff will review all the appeal documents. WSIAT staff will determine if the appeal is ready for a hearing.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 125(2) (time limit to file notice of appeal with the WSIAT) and 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#3 – Consent for the WSIAT to Release a Worker's Information

#15 – Time Extension Applications

#26 – Closing Appeals by the WSIAT

#28 – Representatives

#33 – Role of the Vice-Chair Registrar

#35 – Calculation of Time

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #2

Appeals Involving Deceased Workers

1.0 **This Practice Direction** explains how the WSIAT processes appeals when a worker dies. This could be either before or after an appeal is started. This could happen in 2 different ways.

a. The worker's estate brings an appeal that the worker may have been entitled to benefits while alive.

b. One or more of the survivors of the worker starts an appeal. This is on the basis that the worker's death was caused by their work.

2.0 Requirement to Give Notice

2.1 The WSIAT must give notice to the appropriate parties in all appeals. The WSIAT must be certain that the parties in an appeal are properly authorized to participate.

2.2 The WSIAT has general guidelines to help it process appeals that involve deceased workers. WSIAT staff may refer the issue to a Vice-Chair or Panel if they cannot resolve

- an issue about notice
- an issue about the authority to proceed

3.0 Appeals Brought by the Worker's Estate When There Is a Will

3.1 Appeals brought by the worker's estate are for benefits that the worker may have been entitled to while alive. When the worker dies, the right to any benefits goes to the worker's estate.

3.2 The WSIAT will ask for a copy of the worker's will. This request goes to the party acting on behalf of the worker's estate. The estate trustee named in the will can generally act on behalf of the estate in these proceedings.

3.3 In some cases, the party seeking to act on behalf of the worker's estate is not the estate trustee. WSIAT staff will ask the party to get written consent from the estate trustee. This is so the party can act on behalf of the worker's estate in the appeal.

3.4 The WSIAT may ask the party to get a Certificate of Appointment of Estate Trustee along with the will. The WSIAT does not normally require the party to get one. But there are circumstances where it is needed. For example, it would be needed if there is an issue with the validity of the will.

3.5 There is sometimes doubt about whether the party has the authority to act on behalf of the estate. In these cases, the WSIAT makes inquiries as appropriate. For example, WSIAT staff may contact the estate trustee to confirm consent. This is when the party seeking to act on behalf of the estate is not the estate trustee.

3.6 Written authorization must be provided if the party acting for the estate gets a representative to act in the proceedings. This is the same for all appeals. An example is when the estate trustee brings an appeal on behalf of the worker's

estate and they hire a representative to act in the proceedings. In this case, written authorization must be provided and signed by the estate trustee.

4.0 Appeals Brought by the Worker's Estate Where There Is No Will

4.1 Appeals brought by the worker's estate are for benefits that the worker may have been entitled to while alive. When the worker dies, the right to any benefits goes to the worker's estate.

4.2 When the worker dies without a will, the WSIAT asks if a Certificate of Appointment of Estate Trustee without a Will has been obtained. These court documents appoint an administrator for an estate when there is no will. If there is a certificate of appointment, the estate trustee named in that document can generally act on behalf of the worker's estate in proceedings. The process described under section 2.1 applies with any necessary modifications.

4.3 If there is not a Certificate of Appointment of Estate Trustee without a Will, the WSIAT does not normally require the party seeking to act for the estate to get one. Instead, the WSIAT asks the party to contact all persons who appear to be the direct beneficiaries of the worker's estate. The party must get their consent to act on behalf of the estate in the proceedings.

4.4 The direct beneficiaries are usually the worker's spouse and all children. But this is not always the case. The WSIAT follows the provisions of the *Succession Law Reform Act*. This determines the persons who should provide their consent for the party to act on behalf of the estate in an appeal.

4.5 Once the party provides consent in writing from these persons, the WSIAT is generally satisfied that the party can act on behalf of the estate in the appeal proceedings. This is usually done by providing written consent to the WSIAT.

4.6 But the WSIAT can investigate further if needed, even when written consent has been submitted. For example, if the case materials suggest that there are other potential beneficiaries who have not been contacted.

4.7 In addition to the written consent, the party must also submit a letter. The letter must state that they believe that all the deceased worker's direct beneficiaries have provided written consent. It must be signed, dated and witnessed.

4.8 Sometimes it is not possible to get consent from all direct beneficiaries. In these cases, the WSIAT generally refers the matter as a preliminary issue to a Vice-Chair or Panel. The Vice-Chair or Panel decides on a case-by-case basis if the party has sufficient authority to act on behalf of the estate. This decision is guided by several considerations including the following

a. what attempts have been made to locate the beneficiaries and get their consent

b. if consent has been expressly withheld by a beneficiary, the circumstances surrounding the refusal

c. if there are any examples of the party having legitimately acted on behalf of the estate in other contexts (including if they have been recognized by any other provincial or federal authorities as representing the estate)

d. any prejudice that may result from allowing the party to proceed with the appeal

5.0 Appeals Brought by a Survivor of the Deceased Worker

5.1 An appeal for survivor's benefits is brought by a family member of a deceased worker. This is when they claim that the worker's death was from an injury

that the worker would otherwise have been entitled to benefits. The applicable legislation lists potential survivors. Usually, the parties claiming survivor's benefits are the deceased worker's spouse and/or child(ren).

5.2 The WSIAT always makes reasonable efforts to find potential survivors and provide notice of the appeal to them.

5.3 The WSIAT may ask for documentation to confirm a party's status as a survivor under the applicable legislation. This also assists the WSIAT to identify potential survivors who should receive notice. Documentation could include

- a death certificate, any marriage/divorce certificates and any court orders for child support or custody
- bank or investment account statements, documents pertaining to property (such as real estate or vehicle) ownership, insurance policies, and pension documentation
- medical documents, if they mention relevant information such as the existence of significant past or current relationships
- an affidavit, to swear to the truth of facts that are otherwise undocumented

5.4 The matter may be referred to a Vice-Chair or Panel if there is still an issue about the party's right to proceed. This could include whether all potential survivors have been given notice. It could also include when a party refuses to provide requested documentation.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 2(1) (definitions of “spouse” and “survivor”), 48 (death benefits), and 131 (the WSIAT can determine its own practice and procedure)

Succession Law Reform Act

6.2 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#28 – Representatives

Effective date: May 6, 2024

Practice Direction #3

Consent for the WSIAT to Release a Worker's Information

1.0 This Practice Direction

- outlines the access principles to release a worker's information
- describes the process of getting worker consent to release their information to their employer (if they are participating in the appeal)
- describes what occurs when a worker does not consent to release their information or return the Consent Form to Release a Worker's Information
- identifies situations where full access may not occur

2.0 Access Principles

2.1 Interested parties to an appeal (generally a worker and their employer) need access to relevant information to have a fair hearing.

2.2 The WSIAT will determine who has an interest in each appeal.

3.0 Employer Participation

3.1 If an employer is participating, they have the right to receive all of the case materials relevant to the appeal.

3.2 If an employer is participating in an appeal, they must sign an Undertaking of Confidentiality. This means that they understand that the information the WSIAT sends to them is to be used for workplace safety and insurance purposes only.

3.3 If an employer shares the information with a non-party (for example, a doctor), they must remove any details that identify the worker.

3.4 If an employer is not participating, the WSIAT will not send them the case materials for the appeal.

4.0 Release of Information to an Employer

4.1 If an employer is participating in a worker appeal, the WSIAT will send the case material to the worker and/or their representative. The WSIAT will ask the worker to complete a Consent Form to Release a Worker's Information (consent form).

4.2 Workers have **4 weeks** to complete and return the consent form to the WSIAT.

4.3 On the consent form, the worker must indicate if they consent to release information to the participating employer(s) and their representatives. This includes

- the WSIB claim file information
- related WSIB claim file information
- any other information the worker sends to the WSIAT

4.4 The worker may consent to the release of all or part of this information.

5.0 What Happens When the Worker Does Not Consent?

5.1 WSIAT staff will contact the parties to see if the access issue can be resolved through mediation. If not, WSIAT staff will send the access objection to a Vice-Chair for a decision.

5.2 If the worker does not consent to the release of information, WSIAT staff ask both the worker and the employer to provide submissions to the WSIAT. The submissions must be in writing. They should include

- why access should or should not be granted
- if the information is relevant to the issue(s) in dispute
- if the information is prejudicial to the worker and, if so, in what way

5.3 If the worker does not provide written submissions, the worker may have abandoned their objection to access. At this point, WSIAT staff will refer it to a Vice-Chair for a decision.

5.4 If the Vice-Chair finds that the objection has been abandoned, the Vice-Chair will send a letter to the parties to confirm the decision. The WSIAT will release the information to the employer 15 business days after the date of the letter.

5.5 If the worker provides written submissions, WSIAT staff will refer the access objection to a Vice-Chair for a decision.

5.6 Most access objections are decided by a Vice-Chair who reviews the written documents without an oral hearing. This is based on the written submissions and review of the documents in question. If an objection raises unusual issues, the WSIAT may decide an oral hearing is needed.

5.7 The Vice-Chair will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair may impose conditions on access. The WSIAT will send the decision to the parties.

5.8 If the decision grants access to the employer, the WSIAT will release the information 15 business days after the date of the decision.

6.0 What Happens When the Worker Does Not Return the Consent Form?

6.1 The Consent Form to Release a Worker's Information is required. Both parties need access to relevant information so an appeal can proceed to a hearing.

6.2 If the worker does not return the completed consent form within 4 weeks, WSIAT staff will call the worker (or their representative) to advise that the information will be released.

6.3 A Vice-Chair will send a letter to the parties to confirm the release of the information to the employer.

7.0 Other Situations Where Full Access May Not Be Granted

7.1 The WSIAT may identify personal information in records such as the items identified in Schedule A (noted below). If these items are not relevant to the issues in dispute, the WSIAT will not release them to the employer.

7.2 Sensitive or harmful information may also be excluded from the case materials. The WSIAT may withhold the information and send it to a Vice-Chair for a decision on whether it should or should not be released.

7.3 The WSIAT might be concerned that information may be harmful to a worker if it is released directly to them. In this case, the WSIAT will provide copies of the information to the worker's treating health care provider or representative. WSIAT staff will confirm with the worker or representative if the information was released by the treating health care provider.

7.4 The matter will be sent to a Vice-Chair for a decision if

a. the worker objects to this procedure

b. the treating health care provider does not release all or part of the information

The Vice-Chair will decide how or if the information should be released (review Section 5.0).

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 57, 58, 59 (access to records sections), 131 (the WSIAT can determine its own practice and procedure), 150 (employer duty to keep information confidential), 181 (duty not to disclose information)

Note: The Act does not discuss access to a worker's file at the WSIAT. The WSIAT does have the authority to determine its own practice and procedure. Through this Practice Direction the WSIAT exercises its authority to determine its own practice and procedure on the issue of access to a worker's file when there is an appeal at the WSIAT.

Freedom of Information and Protection of Privacy Act

8.2 Related Practice Directions

#5 – Hearing Formats

#28 – Representatives

#31 – Powers of Practice and Procedure

#33 – Role of the Vice-Chair Registrar at the WSIAT

Schedule A

Information that the Workplace Safety and Insurance Appeals Tribunal (WSIAT) Will Not Release

The WSIAT will usually not release the following information unless it is relevant to the appeal

a. personal banking account documents (for example, direct deposit forms or copies of personal cheques)

b. personal identity documents (for example, driver's licence, passport, SIN card, health card or certificate of citizenship)

c. support or garnishment orders

d. PINs (personal identification numbers) to access personal information

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #4

How to Prepare an Appeal at the WSIAT

1.0 This Practice Direction

- explains how the WSIAT processes an appeal after all parties receive the Case Record
- identifies the letters and forms that parties will get from the WSIAT
- outlines the responsibilities of the parties
- lists the timelines of this stage in the appeal

2.0 Issues on Appeal Letter

2.1 After the parties receive the Case Record, WSIAT staff will review all the information provided. The WSIAT will determine if the appeal is ready for a hearing. If it is, the WSIAT will prepare an Issues on Appeal Letter. The WSIAT will send it to the parties with a Hearing Ready Form.

2.2 The purpose of the Issues on Appeal Letter is to

- confirm who is participating in the appeal (the parties and representatives)
- identify the final Workplace Safety and Insurance Board (WSIB) decision(s) on appeal
- identify the issue(s) on appeal
- identify the hearing format (videoconference, teleconference, in-person, or in writing)

- ask parties for any new evidence
- ask parties for any written submissions
- ask parties for information on any witness(es) they want to testify at an oral hearing

2.3 Parties must review the Issues on Appeal Letter. They must advise the WSIAT of any concerns, especially if they believe the issues on appeal are not correct.

They must

- complete and return the Hearing Ready Form
- attach any new information (evidence or submissions) they want the WSIAT to consider

3.0 Hearing Ready Form

3.1 The purpose of the Hearing Ready Form is to

- provide an outline of key evidence and relevant law, policies and/or legal precedents
- file any new evidence
- file submissions for hearings in writing
- advise the WSIAT and other parties about witnesses for oral hearings

3.2 Parties must send any new evidence they want the WSIAT to consider in the appeal with the Hearing Ready Form.

3.3 Written submissions should

- be easy to read

- clearly identify the issue(s) on appeal
- outline the relevant facts in the order they occurred
- refer to the relevant evidence and how it relates to the facts in the appeal
- identify any relevant law and policy and connect it to the facts in the case
- state the outcome or benefits being requested
- clearly identify the documents that are referred to by date, author and page number in the case materials

3.4 Parties must send the completed Hearing Ready Form and any attachments to any other participating parties or their representatives. Then, send it to the WSIAT.

4.0 Time to File – Hearing Ready Form

4.1 Appellants have 4 weeks from the date of the Issues on Appeal Letter to complete and return their Hearing Ready Form. They must return the form even if they have nothing further to add to the appeal. They must also send a copy of the form and any evidence or submissions to any other participating party. Then, send it to the WSIAT.

4.2 If the appellant is not ready to complete their Hearing Ready Form, they must complete and return the Not Ready for Hearing Form within 4 weeks. The WSIAT will then place the appeal into inactive status.

4.3 If the WSIAT does not receive the appellant's Hearing Ready Form or Not Ready for Hearing Form within 4 weeks, the WSIAT may close the appeal.

4.4 The WSIAT will send written confirmation to all participating parties when the appellant's Hearing Ready Form is on file.

4.5 Respondents have 4 weeks from the date of their Issues on Appeal letter to complete and return their Hearing Ready Form. They must return the form even if they do not have anything else to add to the appeal. They must also send a copy of the form and any evidence or submissions to the appellant or their representative. Then, send it to the WSIAT.

4.6 If the respondent is not ready to provide their Hearing Ready Form, they must complete and return the Not Ready for Hearing Form within 4 weeks. WSIAT staff will review the form and may place the appeal into inactive status.

4.7 If the WSIAT does not receive the respondent's Hearing Ready Form or Not Ready for Hearing Form within 4 weeks, the WSIAT will assume that the respondent does not have anything to add to the appeal. The WSIAT will then prepare the appeal for the hearing.

5.0 Time to File – Reply

5.1 For hearings in writing, the appellant has the last right of reply. If the appellant would like to submit reply submissions, they must do so within 2 weeks of receiving the respondent's Hearing Ready Form, evidence and/or submissions.

5.2 For oral hearings, both parties can submit additional information within 2 weeks of receiving the respondent's Hearing Ready Form, evidence and/or submissions.

6.0 Hearing Ready Letter

6.1 When the WSIAT has received all evidence and/or submissions, WSIAT staff will confirm that the appeal is ready for the hearing. The WSIAT will prepare and send the Hearing Ready Letter to the parties.

6.2 The purpose of the Hearing Ready Letter is to confirm the details of the appeal, including

- the issue(s) on appeal
- the hearing format
- any involvement of the WSIAT Medical Liaison Office
- any interpreter(s) that will be attending the hearing
- any witness(es) expected to testify at the hearing and any summonses that will be issued to compel their attendance
- any accommodation that will be made for the hearing
- any details that the WSIAT determines may be important for the Vice-Chair or Panel to be aware of in preparation for the hearing

The details in the Hearing Ready Letter allow the WSIAT to schedule an appropriate amount of hearing time for each appeal.

6.3 Parties must review all of the details in the Hearing Ready Letter. If parties have any concerns with the information in the Hearing Ready Letter, they should contact the WSIAT promptly. That way, issues that could delay an appeal are addressed as soon as possible.

6.4 The issues on appeal are particularly important. If parties believe the issues are not correct on the Hearing Ready Letter, they must tell the WSIAT as soon as possible.

6.5 Sometimes there may be disagreements about the issues or the issues might be unclear. Ultimately, the Vice-Chair or Panel hearing the appeal will decide the issue agenda.

6.6 After the Hearing Ready Letter has been sent to the parties, the Scheduling Department will arrange the hearing date.

6.7 For hearings in writing, the WSIAT will send the decision to the parties once it is made.

6.8 For in-person, videoconference, and teleconference oral hearings, the WSIAT will send the parties a proposed time, date, and location or connection details for the hearing. This will be confirmed later if there are no objections to the proposed hearing date.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#5 – Hearing Formats

#8 – Disclosure

#9 – Evidence

#24 – Inactive Appeals

#26 – Closing Appeals by the WSIAT

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

7.3 Guide

Guide to Medical Information and Medical Assessors

Effective date: May 6, 2024

Practice Direction #5

Hearing Formats

1.0 This Practice Direction

- explains the purpose of hearings at the WSIAT
- identifies the types of hearings conducted
- identifies what the WSIAT considers when determining the hearing format
- explains how to object to the hearing format

2.0 Hearing Objectives

2.1 The WSIAT has the power to review all relevant evidence, including new evidence that was not considered by the WSIB. The WSIAT makes a new decision on the merits of the case. This is sometimes called a “de novo” hearing.

This is to

- get evidence and submissions
- ensure the other participating parties can cross-question witnesses and make submissions to reply
- allow a WSIAT Vice-Chair or Panel to ask questions, seek clarification, and get additional information
- be fair with adjudication
- make timely decisions based on the best evidence available

3.0 Hearing Formats

3.1 The WSIAT conducts hearings in these formats

a. oral hearings by videoconference

b. oral hearings by teleconference (telephone)

c. oral hearings in person

d. oral hearings in a mixed format

e. hearings in writing (written appeals)

3.2 The WSIAT will make an initial determination of the hearing format. WSIAT staff will identify the hearing format in the Issues on Appeal Letter. WSIAT staff will confirm it in the Hearing Ready Letter.

3.3 The Vice-Chair or Panel assigned to adjudicate the appeal will decide the hearing format. They will let WSIAT staff know if the format should be changed.

3.4 WSIAT staff will notify the parties if the Vice-Chair or Panel decides that a different hearing format is needed. The WSIAT may request additional information.

4.0 Oral Hearings

4.1 Oral hearings allow parties to

- present their opening statements
- make submissions
- present testimony
- cross-question witnesses
- make reply submissions

- present closing statements orally to the Vice-Chair or Panel

They also allow Vice-Chairs and Panels to question the parties and witnesses.

4.2 Everyone who testifies must make an affirmation, which is a solemn promise to tell the truth. It is against the law for a witness to lie during their testimony.

4.3 Oral hearings will be held in one of the following formats

a. by videoconference

b. on the telephone

c. in person

d. in a mixed format

4.4 **Hearings by Videoconference**

The WSIAT may conduct an oral hearing by videoconference. This requires a device with a working webcam (a desktop computer, laptop, tablet, or smartphone) and enough Internet speed to stream video and sound. The WSIAT will give the parties the information they need to connect to the hearing.

4.5 **Hearings by Teleconference**

The WSIAT may conduct an oral hearing on the telephone. The WSIAT will give the parties the information they need to connect to the hearing.

4.6 **Hearings in Person**

WSIAT in-person hearings take place at the main office in Toronto, the WSIAT office in Hamilton, and in other cities in Ontario. The location closest to the appellant's residence or place of business is usually chosen as the hearing location.

5.0 Hearings in Writing (Written Appeals)

5.1 Some appeals will be based on written submissions. They will not have an oral hearing. In these appeals, a Vice-Chair or Panel decides the appeal. They will do this by reviewing the case materials, including written submissions from the parties.

5.2 Written appeals are typically not as complicated as those appeals selected for an oral hearing.

5.3 Your appeal may be selected for a written appeal when

- the issue under appeal is one that is listed in the Appendix to this Practice Direction (Issues that are Usually Suitable to be Decided by a Hearing in Writing)
- the facts are generally not in dispute
- the medical evidence (if required) is complete
- testimony would not add to the information already in the case materials

6.0 Objections to the Hearing Format

6.1 If parties disagree with the hearing format identified in the Issues on Appeal Letter, they must

- write to the WSIAT to identify their preferred format
- explain the reasons they believe the format should be changed
- include why they believe oral testimony is or is not required

6.2 The WSIAT will review the objection. This may involve a discussion with other parties. It may also involve submissions from the other parties.

6.3 If the WSIAT cannot come to an agreement with the parties on the hearing format, the objection will be sent to a Vice-Chair for a preliminary decision.

6.4 The Vice-Chair or Panel assigned to adjudicate the appeal will decide on the hearing format. If a party does not agree with the preliminary decision, they can raise it as a preliminary issue for the assigned Vice-Chair or Panel at the hearing.

6.5 If the WSIAT processes the appeal for a hearing in writing, the objecting party should include with their written submissions why they believe the appeal should be determined by an oral hearing. The Vice-Chair assigned to the appeal will consider the request for an oral hearing before considering the merits of the appeal.

6.6 Where the Vice-Chair agrees that an oral hearing is required, they will direct WSIAT staff to prepare the appeal for an oral hearing. Where the Vice-Chair does not agree that an oral hearing is required, they will decide the appeal based on the case materials. For this reason, the parties' submissions should be complete.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 123 (WSIAT jurisdiction), 124(3) (types of Hearings at the WSIAT) and 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#9 – Evidence

#21 – Who May Attend a Hearing

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

#39 – Fees and Expenses

Appendix

Practice Direction – Issues that are Usually Suitable to be Decided by a Hearing in Writing

a. time limit appeals under section 120 of the *Workplace Safety and Insurance Act, 1997*

b. employer requests for Second Injury and Enhancement Fund (SIEF) relief

c. employer premium rating

d. loss of earnings or temporary disability under 4 weeks

e. earnings basis

f. Canada Pension Plan (CPP) offset – this could be either loss of earnings (LOE) or future economic loss (FEL) benefits

g. ongoing entitlement to section 147(4) benefits

h. commutations

i. hearing loss claims where the issue is the level of impairment

j. entitlement to health care benefits

k. quantum (the amount) of a non-economic loss (NEL) award for an organic impairment

l. quantum of a pension for an organic permanent disability where no claim for loss of earnings is involved.

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #6

Mediation – 2-Party Appeals

1.0 **This Practice Direction** explains

- the purpose of mediation
- the cases that are suitable for mediation
- the mediation process
- confidentiality in the mediation process
- cooperation in the mediation process

2.0 Purpose of Mediation

2.1 The goal of mediation is to find ways to resolve 2-party appeals without holding a full oral or written hearing.

2.2 Alternative Dispute Resolution (ADR) for single-party appeals is not mediation. The WSIAT has a separate Practice Direction on ADR for single-party appeals (review Practice Direction #7 – Alternative Dispute Resolution (ADR) – 1-Party Appeals).

3.0 Cases Suitable for Mediation

3.1 Both parties must consent to participate in mediation.

3.2 The WSIAT must also agree that the issue(s) on appeal are suitable for mediation.

3.3 Appeals that are not suitable for mediation are generally

- appeals that are complex or novel
- appeals where credibility is an issue

4.0 Steps in the Mediation Process

4.1 The usual steps in the mediation process are

1. Before a hearing is scheduled, one or both parties ask that the appeal be resolved through mediation and the WSIAT agrees. Or, the WSIAT identifies that mediation may be suitable and the parties agree to participate. (If either of the parties or the WSIAT do not agree to mediation, the case will go to a hearing.)
2. The parties sign a consent form agreeing to participate in mediation. The consent form sets out what information will and will not be kept confidential during mediation.
3. WSIAT staff mediators are called Dispute Resolution Officers (DROs). A DRO will contact the parties to discuss if the appeal can be resolved without a written or oral hearing. If the parties do not agree to a proposed resolution, the case will go to a hearing. If the parties agree to a proposed resolution, the parties will sign a Proposed Resolution (PR) Agreement. This agreement will set out the terms of the resolution. The PR is then referred to a Vice-Chair for approval.
4. If the Vice-Chair agrees with the PR, they will release a decision with the terms of the PR. A PR must address all the issues in the appeal and be consistent with the applicable law and policy. If a Vice-Chair is not satisfied with the PR, the case will go to a hearing in front of a different Vice-Chair or Panel. The PR will not be included in the case materials.

4.2 Some mediations are conducted by designated Vice-Chairs. For mediations conducted by a Vice-Chair, the process described above is essentially the same as mediations conducted by DROs. The only difference is that the PR agreed to and signed by the parties will not be sent to a different Vice-Chair for review. The Proposed Resolution (PR) will be incorporated into a decision by the same Vice-Chair as long as they accept the PR. If the Vice-Chair does not accept the PR, the case will go to a hearing in front of a different Vice/Chair or Panel.

5.0 Confidentiality and Mediation

5.1 The mediation process is confidential. This means that communications

- will only be used for the purpose of resolving an appeal
- are not part of the record
- will not be shared without the consent of the party
- will not be used in any other proceeding

Internal communication about a Proposed Resolution (PR) is confidential and will not be placed on the record.

5.2 There are some exceptions to the confidentiality rule. For example, documentary evidence. This could include medical reports and records, employment records and witness statements.

Exceptions will be added to the appeal record. When the appeal is closed, they will also be added to the Workplace Safety and Insurance Board (WSIB) claim file.

6.0 Cooperation in the Mediation Process

6.1 Parties are expected to cooperate fully with the Mediator. Full cooperation means

- providing additional or clarifying information when requested

- returning phone calls and answering letters promptly
- participating willingly and openly in meetings and conference calls
- assisting with drafting and reviewing agreed statements of facts or Proposed Resolutions (PRs)
- communicating in a respectful manner.

6.2 If a party does not cooperate, WSIAT staff may end the mediation process. WSIAT staff will then refer the appeal for a hearing.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 130 (mediation at the WSIAT), and 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#3 – Consent for the WSIAT to Release a Worker's Information

#7 – Alternative Dispute Resolution (ADR) – 1-Party Appeals

#19 – Hearing Assignments

#22 – Downside Risk

#23 – Adjournments and Withdrawals

#24 – Inactive Appeals

#26 – Closing Appeals by the WSIAT

#31 – Powers of Practice and Procedure

Effective date: May 6, 2024

Practice Direction #7

Alternative Dispute Resolution (ADR) – 1-Party Appeals

1.0 **This Practice Direction** explains

- the purpose of Alternative Dispute Resolution (ADR)
- which cases are suitable for ADR
- the ADR process
- confidentiality in the ADR process
- cooperation in the ADR process

2.0 Purpose of ADR

2.1 The goal of ADR is to find ways to resolve single-party appeals without holding a full oral hearing or a hearing in writing.

2.2 ADR for single-party appeals is not mediation. The WSIAT has a separate Practice Direction on mediation for 2-party appeals (review Practice Direction #6 – Mediation – 2-Party Appeals).

3.0 Cases Suitable for ADR

3.1 A party must consent to participate in ADR for 1-party appeals.

3.2 The WSIAT must also agree that the issue(s) on appeal are suitable for ADR.

3.3 Appeals that are not suitable for ADR include

- appeals that are complex or novel
- appeals where credibility is an issue

4.0 Steps in the ADR Process

4.1 The usual steps in the ADR process are

1. Before a hearing is scheduled, the appellant asks that the appeal be resolved through ADR and the WSIAT agrees. Or, the WSIAT identifies that ADR may be suitable and the party agrees to participate. (If either the party or the WSIAT do not agree to ADR, the case will go to a hearing.)
2. The party signs a consent form agreeing to participate in ADR. The consent form sets out what information will and will not be kept confidential.
3. WSIAT staff who conduct ADR sessions are called Dispute Resolution Officers (DROs). A DRO will contact the party to discuss if the appeal can be resolved without an oral hearing or a hearing in writing. If the party does not agree to a proposed resolution, the case will go to a hearing. If the party agrees to a proposed resolution, the party will sign a Proposed Resolution (PR) Agreement. This agreement will set out the terms of the resolution. The PR is then referred to a Vice-Chair for approval.
4. If the Vice-Chair agrees with the PR, they will release a decision with the terms of the PR. A PR must address all the issues in the appeal and be consistent with the applicable law and policy. If a Vice-Chair is not satisfied with the PR, the case will be referred to a hearing in front of a different Vice-Chair or Panel. The PR will not be included in the case materials.

5.0 Confidentiality and Alternative Dispute Resolution (ADR)

5.1 The ADR process is confidential. This means that communications

- will only be used for the purpose of resolving an appeal
- are not part of the record
- will not be shared without the consent of the party
- will not be used in any other proceeding

Internal communication about a Proposed Resolution (PR) is confidential and will not be placed on the record.

5.2 There are some exceptions to the confidentiality rule. For example, documentary evidence. This could include medical reports and records, employment records and witness statements.

Exceptions will be added to the appeal record. When the appeal is closed, they will be added to the Workplace Safety and Insurance Board (WSIB) claim file.

6.0 Cooperation in ADR

6.1 Parties are expected to cooperate fully with the Dispute Resolution Officer (DRO). Full cooperation means

- providing additional or clarifying information when requested
- returning phone calls and answering letters promptly
- participating willingly and openly in meetings and conference calls
- assisting in drafting and reviewing PRs

6.2 If a party does not cooperate, the WSIAT may end the ADR process. WSIAT staff will then refer the appeal for a hearing.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 130 (mediation at the WSIAT), and 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#3 – Consent for the WSIAT to Release a Worker's Information

#19 – Hearing Assignments

#22 – Downside Risk

#23 – Adjournments and Withdrawals

#24 – Inactive Appeals

#26 – Closing Appeals by the WSIAT

#31 – Powers of Practice and Procedure

Effective date: May 6, 2024

Practice Direction #8

Disclosure

1.0 This Practice Direction explains

- the purpose of disclosure
- the disclosure requirements at the WSIAT
- what happens if disclosure is late

2.0 Definition and Purpose of Disclosure

2.1 Disclosure is sharing information. In appeals, relevant information must be shared with the WSIAT and participating parties.

2.2 Disclosure gives the parties, WSIAT staff and WSIAT Vice-Chairs or Panels a chance to

- understand what the case is about
- prepare for the hearing
- consider if the WSIAT can resolve the case without a hearing
- put the case materials together including all evidence and submissions
- identify other information that may be needed at the hearing
- schedule and manage the hearing appropriately

3.0 Disclosure of Related Issues

3.1 Parties must keep the WSIAT informed of any related issues or appeals with the Workplace Safety and Insurance Board (WSIB), or other agency. This helps to avoid unnecessary adjournments or delays of appeals.

4.0 Disclosure of Evidence and Witnesses

4.1 The WSIAT will prepare and send the Case Record to the participating parties in an appeal. The Case Record has the WSIB file information that will be considered in the appeal. Parties should send the WSIAT and any other participating party any additional information they want considered.

This additional information might include

- evidence, such as medical reports or other documents
- witness information
- written submissions
- case law

4.2 Parties should not send the WSIAT information that is already in the case materials. Parties should identify key evidence already on file on the Hearing Ready Form.

4.3 Parties should provide electronic evidence or submissions in a way that is easy to read and navigate. For example, bookmark key pages in an electronic file. WSIAT staff may ask you to resubmit electronic documents that are not easy to navigate or are of poor resolution quality.

4.4 Submissions should not contain hyperlinks to web pages. As web pages change, please provide a copy of the information you want added to the record.

4.5 Parties must disclose all their evidence relevant to the appeal to the WSIAT and to the other participating parties. They do this on their Hearing Ready Form.

4.6 Parties can bring witnesses to their oral hearing to testify. If they do, they must disclose witness information on the Hearing Ready Form.

The following witness information must be provided

a. a witness list – a list of all witnesses the party intends to have at the hearing, other than the worker

b. a summary of the evidence that each witness is likely give at the hearing (a “will say” statement)

c. a request for a summons – if a summons is required to get the witness to attend and testify

5.0 Disclosure Period – Oral Hearings

5.1 For oral hearings, appellants must provide their

- Hearing Ready Form
- evidence
- witness information

These must be submitted within **4 weeks** from the date of the appellant’s Issues on Appeal Letter.

5.2 Respondents must provide their

- Hearing Ready Form
- evidence
- witnesses

These must be submitted within **4 weeks** from the date of the respondent's Issues on Appeal Letter.

5.3 Both parties are given another **2 weeks** to provide any additional information.

5.4 If either party needs more time to provide their Hearing Ready Form, they must send the WSIAT a complete Not Ready for Hearing Form. Parties must include the reason and how much additional time is needed.

5.5 The WSIAT considers evidence received after the disclosure period to be late.

6.0 Disclosure Period – Hearings in Writing

6.1 For hearings in writing, appellants must provide their

- Hearing Ready Form
- evidence
- written submissions

These must be submitted within **4 weeks** from the date of the appellant's Issues on Appeal Letter.

6.2 Respondents must provide their

- Hearing Ready Form
- evidence
- written submissions

These must be submitted within **4 weeks** from the date of the respondent's Issues on Appeal Letter.

6.3 Appellants have an additional **2 weeks** to provide reply submissions.

6.4 If either party needs more time to provide their Hearing Ready Form, they must send the WSIAT a complete Not Ready for Hearing Form. Parties must include the reason and how much additional time is needed.

6.5 The WSIAT considers evidence received after the disclosure period to be late.

7.0 Exception to the Disclosure Requirements

7.1 The disclosure requirements do not apply to submissions on the law (including copies of decisions) or Workplace Safety and Insurance Board (WSIB) policy. Parties may send the WSIAT these submissions up to 1 business day before the hearing. The party must provide a copy to any other participating party or their representative. The WSIAT will provide a copy to the Vice-Chair or Panel.

7.2 For oral hearings, the WSIAT may get Workplace Safety and Insurance Board (WSIB) claim file updates before the hearing. The WSIAT will send these updates to the parties and the hearing Vice-Chair or Panel.

8.0 Late Evidence – Oral Hearings

8.1 If parties discover evidence after the disclosure period closes and they want it considered at the hearing, they must

1. provide a copy to any other participating parties
2. send a copy to the WSIAT

This needs to be done as soon as the evidence is available.

Also, the party must provide a letter explaining

- why the evidence was not previously available
- why it should be accepted

8.2 WSIAT staff will call the party to advise them that the material was filed late and will provide it to the Vice-Chair or Panel. The party must raise the late material as a preliminary issue at the hearing.

8.3 At the hearing, the Vice-Chair or Panel considers the late evidence as a preliminary issue. They have sole discretion to accept or reject the evidence.

9.0 Late Witnesses – Oral Hearings

9.1 If a party wants to change or add a new witness to their witness list after the disclosure period closes, they must provide

- written notice to any other participating parties
- written notice to the WSIAT

Also, a “will say” statement must be disclosed for each new witness.

The party must provide a letter explaining

- why the new witness(es) was not identified before
- why they should be allowed to testify at the hearing

9.2 WSIAT staff will call the party to advise them that the witness request is late. Staff will advise the party to raise the request as a preliminary issue at the hearing.

9.3 At the hearing, the Vice-Chair or Panel will consider any new witness(es) as a preliminary issue. They have sole discretion to accept testimony from the witness(es).

9.4 A party is responsible for telling their new witness(es) that they may be called to a hearing. The witness should be ready to testify if the Vice-Chair or Panel accepts they can testify.

9.5 If a party needs a summons for a witness to attend a hearing, they must make a written request to the WSIAT. A copy of the request must be sent to other participating parties. It takes time to process and serve a summons. A late request may result in a delay of the hearing date.

10.0 Late Evidence – Hearings in Writing

10.1 If parties discover evidence after the disclosure period closes and they want it considered at the hearing, they must

1. provide copies to any other participating parties
2. send a copy to the WSIAT

This needs to be done as soon as the evidence is available.

Also, the party must provide a letter explaining

- why the evidence was not previously available
- why it should be accepted

10.2 If there is enough time before the scheduled hearing date, WSIAT staff

1. write to the other party, if they are participating
2. give them an opportunity to submit whether the new evidence should be accepted

10.3 A decision about whether the evidence will be added to the record will be made by either

- the Vice-Chair Registrar (or designate) or
- the assigned Vice-Chair or Panel

11.0 Considerations for Late Evidence and Witnesses

11.1 The Vice-Chair Registrar or the Vice-Chair or Panel will consider the following when deciding whether to accept late evidence or witnesses

a. the reasons for not disclosing the evidence or witness(es) on time

b. if the information was known to the other party

c. if the other party opposes the new evidence or testimony

d. how relevant the documents or testimony is to an issue in dispute

e. if the other party will be prejudiced by the new information

f. if there were timely efforts to provide documents to the other parties

11.2 The Vice-Chair Registrar or the Vice-Chair or Panel will decide

- if the material can be used at the hearing
- if the new witness(es) may testify at the hearing
- if the matter requires any other order (this could include a referral under the WSIAT's Code of Conduct for Representatives)

11.3 A request to adjourn a hearing to admit late disclosure or allow a new witness to testify at the hearing is only granted in unusual circumstances.

12.0 References and Resources

12.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

12.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#9 – Evidence

#10 – Surveillance Evidence

#12 – Summonses and the Production of Documents

#29 – WSIAT Code of Conduct for Representatives

#33 – Role of the Vice-Chair Registrar

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Revised Date: November 19, 2025

Practice Direction #9

Evidence

1.0 This Practice Direction

- defines evidence
- explains the different types of evidence that may support a case
- explains how the WSIAT determines if audio or visual recordings are admissible
- explains what weight is given to audio or visual recordings

2.0 Definition of Evidence

"Evidence" is information that proves or disproves a fact. Evidence can take many forms, including

- testimony
- affidavits
- written statements
- medical reports
- expert opinions
- surveillance evidence
- audio or visual recordings – this includes audiotapes, videos, film and photographs
- information gathered from the Internet
- physical objects

2.1 The WSIAT obtains a copy of all documents in the WSIB file and shares it with the parties. Parties to an appeal are expected to submit any other relevant evidence that is not contained in the WSIB file.

3.0 Admissibility of Evidence

3.1 The WSIAT has the authority to accept oral or written evidence as it deems appropriate. This evidence might or might not be admissible in a court.

3.2 The WSIAT takes a broad approach to matters of evidence. Parties are allowed to use evidence in WSIAT proceedings that is

- relevant
- valuable to help a Vice-Chair or Panel
- disclosed in the proper time frame

3.3 The WSIAT generally admits hearsay evidence. But the WSIAT may give it less weight depending on the circumstances (see section 4.0 on weighing evidence).

3.4 A Vice-Chair or Panel can decide to exclude evidence that would otherwise be admissible. This happens when the prejudicial effect of the evidence outweighs its probative value.

- Evidence is probative if it proves a fact in issue.
- Evidence is prejudicial when there is danger that it will be misused and distort the hearing process.
- Evidence is not prejudicial when it undermines a party's position on the merits.
- Evidence also is not prejudicial when it is personal or private.

3.5 Opinion evidence is generally inadmissible. The exception is the admission of expert evidence (review Practice Direction #11 – Expert Evidence).

3.6 The Vice-Chair or Panel decides whether to admit audio or visual evidence. This includes surveillance evidence. The Vice-Chair or Panel may consider any relevant factors including the following criteria

a. how relevant it is to the issue in dispute

b. if it should be excluded due to special circumstances (like flaws in the evidence or that it was obtained improperly)

c. if the evidence is shown to be authentic (review Practice Direction #10 – Surveillance Evidence).

3.7 If a party objects to evidence being admitted, they should raise this before their scheduled hearing date, if possible. The Vice-Chair or Panel will decide whether to admit the evidence or not. This will usually happen at the start of the hearing.

4.0 Weighing Evidence

4.1 The Vice-Chair or Panel will determine how much weight is given to evidence by considering factors such as the

- credibility of the witness presenting the evidence
- reliability of the evidence

4.2 Evidence from the internet is approached with caution. This is because of concerns about whether it is reliable. Internet evidence may be found to be unreliable when

- the author is unknown
- the author's expertise is unknown
- it cannot be authenticated

4.3 The Vice-Chair or Panel will determine how much weight to give to medical evidence by considering

- **Consistency** – Is the report internally consistent? Is it consistent with other evidence from the same practitioner? Are the medical opinions the same?
- **Credentials** – Does the practitioner have sufficient qualifications and expertise in the subject matter of the report?
- **Knowledge of the Facts** – Is the opinion based on incomplete, exaggerated or incorrect facts? When comparing opinions, are they based on the same understanding of the facts?
- **Neutrality** – What was the purpose of the report? Does the report advocate for the patient?
- **Objective Evidence** – Does the report include objective, clinical medical testing or observation, or only subjective reports from the patient?
- **Opportunity to Observe** – Has the practitioner conducted a direct examination of the worker? How long did they observe the worker?
- **Quality** – Is the report detailed and thorough? Are the findings and conclusions well-explained? Does it contain unsupported claims?
- **Responsiveness** – Has the practitioner answered the questions asked? Does the report address the issue at hand? Was there an updated opinion when presented with new facts?
- **Timing** – Was the report completed close to the events in question?

4.4 The Vice-Chair or Panel will determine how much weight to give to audio or visual recording or surveillance evidence by considering

- if it has been properly authenticated

- if it has been edited or is a selected snapshot and not a whole picture
- the quality and clarity of the recording
- the length of the recording
- any strengths and weaknesses in the recording procedures
- if the subject in the recording has had a chance to explain the activity in the evidence
- if the Investigator attended the hearing

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) 132 (the WSIAT's powers regarding proceedings including the power to accept such oral or written evidence as the WSIAT considers proper, whether or not it would be admissible in a court) and 125(4) (the WSIB shall give the WSIAT a copy of its records relating to the appeal promptly upon being notified of the appeal)

5.2 Decisions

WSIAT Decision No. 1639/03 (evidence)

WSIAT Decision No. 307/90 (use of hearsay evidence by the WSIAT)

WSIAT Decision No. 688/87 (admissibility of audio or visual evidence)

WSIAT Decision No. 755/20 (credibility)

WSIAT Decision No. 588/10 (credibility and reliability)

WSIAT Decision No. 930/19R (credibility and weighing medical evidence)

5.3 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#10 – Surveillance Evidence

#11 – Expert Evidence

#12 – Summonses and Production of Documents

#13 – Medical Information Requested by the WSIAT

#38 – Transcripts of Workplace Safety and Insurance Board (WSIB) Hearings

Effective date: May 6, 2024

Practice Direction #10

Surveillance Evidence

1.0 This Practice Direction

- defines surveillance
- explains how a party can introduce surveillance into evidence
- explains how to authenticate surveillance evidence

2.0 Definition of Surveillance

2.1 “Surveillance” commonly involves a person discreetly observing another

- person
- situation
- object

It may involve the use of

- audio recording
- video recording
- film
- photographs

Surveillance evidence is any record of audio or visual observations.

3.0 General Practice on How a Party May Introduce Surveillance into Evidence

3.1 The WSIAT has the authority to accept any oral or written evidence that the WSIAT considers appropriate. This is whether it would be admissible in a court or not.

3.2 Parties are allowed to use surveillance evidence in WSIAT proceedings if the evidence

- is relevant
- is of sufficient probative value to help a Vice-Chair or Panel without warranting exclusion

4.0 Procedure for Authenticating Surveillance Evidence

4.1 Parties who want to rely on surveillance evidence in WSIAT proceedings must provide

- a copy of the surveillance evidence
- the surveillance report
- an affidavit authenticating the evidence

The affidavit must be signed by the person that conducted the surveillance. This is the “Investigator” or the person that prepared the evidence.

4.2 The affidavit authenticating the evidence should include confirmation

- of when (date and time) and where the recording was made
- that the recording was not altered and is a true representation of its subject

4.3 A party or the Vice-Chair or Panel may request that the Investigator attend the hearing. So the party that submits the surveillance evidence must be prepared

to call the Investigator as a witness. If the Investigator is asked to attend the hearing, they can expect to testify about how the evidence was made. The Investigator will be asked to authenticate the surveillance evidence. They will need to answer questions from the parties, the Vice-Chair or Panel.

4.4 The signed affidavit authenticating the evidence may be acceptable if

- the Investigator is not called as a witness to authenticate the evidence
- a party or the Vice-Chair or Panel does not request the Investigator's attendance at the hearing

4.5 The Vice-Chair or Panel may not admit the audio or visual recording evidence or may give it less weight if

- the Investigator is not called as a witness
- the surveillance evidence has not been authenticated

4.6 If a party wants to object to the surveillance evidence being submitted, the party should object before their scheduled hearing date, if possible. The Vice-Chair or Panel will decide whether to admit the evidence. This will usually happen at the start of the hearing. For more information about admitting surveillance evidence or the weight given to surveillance evidence, review Practice Direction #9 – Evidence.

4.7 Surveillance evidence ordered by the Workplace Safety and Insurance Board (WSIB) is sometimes received as a part of a worker's claim file. In these cases, the WSIAT cannot require the Investigator to attend as a witness at the hearing. But the WSIAT would expect that the surveillance evidence would be authenticated by affidavit and section 4.4 would apply.

4.8 Surveillance evidence will be considered in context. It will be considered with all other evidence on record.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), 132 (the WSIAT's powers regarding proceedings) and 180 (rules regarding the compellability of witnesses)

5.2 Related Practice Directions

#8 – Disclosure

#9 – Evidence

#33 – Role of the Vice-Chair Registrar at the WSIAT

Effective date: May 6, 2024

Practice Direction #11

Expert Evidence

1.0 This Practice Direction explains

- what is expert evidence
- who pays for an expert report or fees
- how the WSIAT hears expert evidence
- who qualifies as an expert
- the filing requirements of an expert report

2.0 Who is an Expert?

2.1 An “expert” is a person who gives an opinion on an issue before the Vice-Chair or Panel. “Experts” are based on

- education and training
- qualifications
- expertise
- experience

An expert can include a “specialized physician or a scientist or another person with a specific skill in a certain area.”

2.2 “Expert evidence” is evidence given by an expert.

3.0 Who Qualifies as an Expert?

3.1 The Vice-Chair or Panel must recognize a person as an expert before they provide a technical, scientific, or specialized opinion about an issue.

3.2 An expert must provide fair, objective and non-partisan evidence.

3.3 To determine if a person is an expert, the Vice-Chair or Panel may consider the person's

- education
- certification
- knowledge
- skill
- training
- expertise
- publications
- affiliations with regulatory or teaching institutions
- peer recognition of expertise
- experience in the area that the person will give evidence or testify about

4.0 Filing an Expert Report

4.1 If a party wants to use expert evidence in the hearing, they must disclose the written report of the expert as soon as possible. It must be before the time limits listed in Practice Direction #8 – Disclosure.

4.2 The party's disclosure must have a copy of

- the expert report, signed by the expert
- an acknowledgement by the expert that they are providing fair, objective and non-partisan evidence – this overrides any obligation the expert owes to the party who hired them
- the letter asking for the expert report, including the questions asked
- the expert's qualifications – education, training or expertise

4.3 This requirement does not apply to the disclosure of updates on the worker's condition from the family doctor or treating specialists.

4.4 The Vice-Chair or Panel gets a complete copy of the Workplace Safety and Insurance Board (WSIB) file. This includes copies of all medical and expert reports filed with the WSIB. It may also include clinical notes and records from family doctors and other treating medical professionals like physiotherapists. Parties do not have to file this material because it is already in the record.

4.5 The parties can make submissions about the expert's qualifications to give opinion evidence.

5.0 Oral Expert Evidence in Hearings

5.1 Oral testimony from an expert is extremely rare. It is not the WSIAT's practice to hear oral evidence from an expert. A written report is usually enough.

5.2 The Vice-Chair or Panel decides if it is necessary for an expert to give oral evidence. An expert can only testify if a report of the expert's opinion is filed with the WSIAT (review section 4.1).

5.3 The parties can make submissions and get evidence from the expert about their qualifications.

6.0 Who Pays for an Expert?

6.1 A party who files an expert report pays for the report. A party who calls an expert as a witness pays the fee of the expert.

6.2 In exceptional circumstances, the WSIAT will pay for an expert report, fee or witness called by a worker if the Vice-Chair or Panel decides that

- the expert report is significant in the decision making process
- the expert testimony is important to the decision-making process

6.3 If the Vice-Chair or Panel agrees to pay for an expert report or fees, it will be based on the WSIAT's approved schedule of rates.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 132 (the WSIAT's powers regarding proceedings)

7.2 Decisions

WSIAT Decision No. 2106/03 (expert evidence definition)

WSIAT Decision No. 249/96 (exceptional circumstances where the WSIAT pays for the report)

WSIAT Decision No. 260/94 (exceptional circumstances where the WSIAT pays for the report)

WSIAT Decision No. 3079/01R (payment under the WSIAT fee schedule)

White Burgess Langille Inman v. Abbott and Haliburton Co., [2015] 2 SCR 182 (duty for expert to give fair, objective and non-partisan evidence)

7.3 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#9 – Evidence

#36 – Delivery and Filing Documents

#39 – Fees and Expenses

Effective date: May 6, 2024

Practice Direction #12

Summonses and Production of Documents

1.0 This Practice Direction

- explains how to request a summons for a witness
- identifies the factors the WSIAT reviews when deciding whether to issue a summons
- explains how to request documents from parties or a summons for documents
- does not apply to applications to determine the right to sue (review Practice Direction #17 – Right to Sue Applications).

2.0 Summons for a Witness

2.1 A summons is a document that requires a person to attend a hearing to give evidence on a certain date. The summons takes effect when it is served on the witness.

2.2 The summons will have the time and place that the witness is required to attend. The summons requires a witness to re-attend until their testimony is no longer required by the Vice-Chair or Panel.

3.0 Requesting a Summons for a Witness

3.1 A party to an appeal may request a summons.

3.2 A summons request must be made on the Hearing Ready Form.

3.3 The party requesting the summons must include why it is required on the Hearing Ready Form.

4.0 Reviewing the Request for a Witness

4.1 WSIAT staff review all summons requests and determine if the WSIAT will issue a summons. All requests are reviewed based on the facts of the case. When reviewing a request, the WSIAT considers whether

- the evidence is relevant to the issues in dispute
- the evidence is significant to the issues in dispute
- the evidence can be obtained from other sources
- the proposed witness can be compelled by law to give evidence in the proceedings
- a summons is required to compel attendance
- the witness requires the summons to get time off work

4.2 During the review, WSIAT staff may ask the party requesting the summons to provide a brief statement about

- why the testimony is necessary for the appeal
- if the witness is willing to attend

4.3 If the WSIAT agrees to issue the summons, the party requesting the summons will be asked to provide the witness'

- name

- current address
- telephone number

4.4 The witness' address must be specific so the WSIAT can locate the person to serve the summons. The WSIAT cannot serve a summons to addresses that only contain post office boxes or rural routes. WSIAT staff will notify the requestor if the address information is not correct. The WSIAT will not try to locate the witness if a specific address is not given or if the address is not correct unless directed by a Vice-Chair or Panel.

4.5 The WSIAT will prepare the summons and arrange for it to be served. The WSIAT will get an affidavit of service from the process server.

4.6 If the WSIAT decides not to issue the summons, the party may raise it with the Vice-Chair or Panel at the hearing.

5.0 Enforcement

5.1 If the WSIAT is not able to serve a summons, the Vice-Chair or Panel assigned to the appeal may proceed to hear the case. Then, they will decide if the witness' testimony is necessary.

5.2 If the witness was served with a summons and does not attend the hearing, the Vice-Chair or Panel may

- go ahead without the evidence of the witness if it is not necessary
- continue with the hearing and decide if the evidence or witness is necessary
- decide whether to take steps against the person who did not attend

6.0 Conduct Money

6.1 Conduct money is money paid when a witness is summonsed to a hearing. The WSIAT will provide conduct money with the summons.

6.2 Worker witnesses can claim extra expenses for attending a hearing. The WSIAT does not cover extra expenses for employer witnesses. This is not provided for in the *Workplace Safety and Insurance Act, 1997*.

6.3 For information about other expenses the WSIAT will pay to attend a hearing, review Practice Direction #39 – Fees and Expenses.

6.4 The WSIAT does not pay fees and expenses to witnesses in Right to Sue Applications. Review Practice Direction #17 – Right to Sue Applications.

7.0 Production and Summons of Documents

7.1 When parties have documents relevant to an appeal, they must share them with all parties during the disclosure period.

7.2 If documents are not shared or cannot be obtained by the parties, WSIAT staff will work with the parties to get them. If the parties or the WSIAT cannot get the documents, a request may be sent to the Vice-Chair Registrar, or a Vice-Chair or Panel, for instructions. The Vice-Chair Registrar, or a Vice-Chair or Panel, may issue a production order or a summons for the production of documents.

7.3 The Vice-Chair Registrar, or a Vice-Chair or Panel, will give instructions about a summons for documents, if one is issued. The summons will identify a person to bring the documents to a pre-hearing conference.

7.4 The Vice-Chair Registrar, or a Vice-Chair or Panel, may consider the following factors

a. reasons for any refusal to provide documents

b. submissions of parties

c. if the document is relevant and necessary to the issues in dispute

d. if the information can be obtained from other sources

e. privacy considerations

f. legal rules of evidence

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), 132 (the WSIAT's powers regarding proceedings), 133 (payment of expenses) and 180 (rules regarding the compellability of witnesses)

8.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#17 – Right to Sue Applications

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

#39 – Fees and Expenses

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #13

Medical Information Requested by the WSIAT

1.0 **This Practice Direction** explains

- how to get medical information requested by the WSIAT before the hearing (pre-hearing)
- how to get medical information requested by the WSIAT after the hearing (post-hearing)

2.0 Pre-Hearing Medical Information – Parties to Obtain

2.1 Before the hearing, the WSIAT may determine that relevant medical information is missing from a worker's case materials. Examples of existing medical information include

- copies of the worker's hospital records
- a doctor's clinical notes
- a physiotherapist's summary of treatment

The WSIAT will pay for the information it asks the worker to get. This is as long as the worker follows the proper steps when getting the information.

2.2 WSIAT staff will write to the worker or their representative and request that they get the missing medical information. The letter will describe the information they need to get and how to get it. For more information about ordering the information, review the WSIAT Guidelines for Obtaining Medical Records. With the letter, the worker or their representative will get

- the guidelines
- consent forms
- medical releases
- invoice forms setting out the amount the WSIAT will pay for the information

2.3 When they get the medical information, the worker or their representative must follow the instructions in the guidelines. If the worker or their representative does not follow the instructions in the guidelines, the worker may have to pay for the information.

2.4 If a worker or representative has difficulty getting the medical evidence, they can ask the WSIAT for help.

2.5 The missing information must be submitted to the WSIAT promptly. Otherwise, the appeal might be delayed. If there is a long delay before the WSIAT gets the information, the appeal may be made inactive. If a party objects to the WSIAT's request for additional medical information, they must notify the WSIAT in writing with their reason for the objection. The WSIAT will consider the objection. If necessary, the written objection will be sent to a Vice-Chair for a preliminary ruling.

3.0 Post-Hearing Medical Information – WSIAT May Obtain

3.1 After a hearing, the Vice-Chair or Panel may decide that more medical information is needed before a decision can be made. If more information is required, WSIAT staff will write to the worker or their representative to ask the worker to complete and sign consent forms. After the WSIAT gets the consent forms, WSIAT staff will write to the doctor, hospital or other institution to get the medical information. The WSIAT will pay for the information using its established fee schedules.

4.0 WSIAT-Initiated Assistance for Medical Issues

4.1 A Vice-Chair or Panel may determine that it is necessary to get WSIAT-initiated assistance. This would be in relation to one or more medical issues arising in an appeal.

4.2 There are different types of WSIAT-initiated assistance that may be requested by a Vice-Chair or Panel. For more information, review the WSIAT Guide to Medical Information and Medical Assessors. The guide also describes the Medical Liaison Office and explains the roles of the WSIAT Medical Counsellors and Medical Assessors.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), 132 (the WSIAT's powers regarding proceedings) and 134 (assistance by health professionals to the WSIAT)

5.2 Related Practice Directions

#24 – Inactive Appeals

#25 – Post-Hearing Procedure

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

5.3 Guides

Guide to Medical Information and Medical Assessors

Effective date: May 6, 2024

Practice Direction #14

Pre-Hearing Conferences

1.0 **This Practice Direction** explains

- what a pre-hearing conference is
- situations where the WSIAT may schedule a pre-hearing conference before the scheduled appeal hearing date

2.0 Pre-Hearing Conference

2.1 A pre-hearing conference is a discussion between a Vice-Chair or Panel and the parties to the appeal. The Vice-Chair or Panel may give directions for the processing of the appeal. Or, they might determine the way the hearing will proceed on its scheduled hearing date.

2.2 The WSIAT expects hearings to proceed as scheduled. The WSIAT requires the parties to notify it about any issues that need to be resolved before the hearing.

2.3 Issues that might be resolved at a pre-hearing conference include

- procedural matters like whether to give notice to certain parties
- issue agenda matters like what issues will be decided at the hearing
- evidence issues like attendance of witnesses or if a document is admissible

2.4 A party to an appeal or WSIAT staff can request a pre-hearing conference. A pre-hearing conference can take place

- by telephone
- by videoconference
- in person

3.0 Requests for a Pre-Hearing Conference

3.1 A party must request a pre-hearing conference in writing. They must explain

- the reasons for the request
- if the other parties agree to the request

3.2 They must send a copy of the request to any other participating party. The party should make the request as soon as they identify the issue. This is so the WSIAT has enough time to review the request and schedule it.

3.3 The WSIAT will consider the request. Depending on the circumstances, the WSIAT will allow or deny the request.

4.0 Scheduling of a Pre-Hearing Conference

4.1 The WSIAT will consult with the parties to the appeal to schedule a pre-hearing conference.

4.2 The same Vice-Chair or Panel who conducts the pre-hearing conference will usually hear the merits of the appeal.

4.3 The WSIAT gives the Vice-Chair or Panel a copy of the pre-hearing conference request. The WSIAT also provides any other relevant material prior to the scheduled pre-hearing conference.

4.4 After the pre-hearing conference, the Vice-Chair or Panel will give instructions for processing the appeal if necessary.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

5.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#9 – Evidence

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #15

Time Extension Applications

1.0 This Practice Direction

- explains the time limit to appeal to the WSIAT
- outlines how the WSIAT processes time extension applications
- lists information that must be included in a time extension application
- includes the factors the WSIAT considers when making time extension decisions

2.0 Time Limits to Appeal Decisions to the WSIAT

2.1 The WSIAT must receive an appeal within 6 months of the date of the final Workplace Safety and Insurance Board (WSIB) decision.

2.2 If the appeal is received after 6 months, it is considered late. The WSIAT must first decide to extend the time limit before it will hear the appeal.

2.3 A party must file a time extension application to request that the WSIAT extend the time limit to appeal.

3.0 Date the WSIAT Uses to Determine if an Appeal is Filed Late

3.1 Generally, the WSIAT counts 6 months from the date on the final WSIB decision to the date it receives notice of an appeal.

3.2 The date of the original final WSIB decision is generally used. If the WSIB considered significant new evidence or changed the original decision, the date of the reconsidered decision will be used.

4.0 Filing a Time Extension Application

4.1 The WSIAT will send you a letter stating that your notice of appeal was received late. WSIAT staff will ask you to file (send the WSIAT) a time extension application if you still want to appeal.

4.2 You have **4 weeks** to send the WSIAT your time extension application.

4.3 If you do not send the WSIAT your time extension application within **4 weeks**, the WSIAT will close your file.

5.0 Respondents

5.1 The WSIAT will determine who has an interest in your time extension application and send them a copy of your application. The WSIAT will invite them to participate in the application as a respondent.

5.2 If an employer or worker responds and wants to participate, they become a participating respondent to the application. They will have **4 weeks** to respond to the application.

5.3 If an employer or a worker responds and does not want to participate, WSIAT staff will confirm this in writing. The WSIAT will not send them any additional information except the final WSIAT decision about the time extension.

5.4 If an employer or a worker does not respond, the WSIAT assumes they are not participating in the application. WSIAT staff will confirm this in writing. The

WSIAT will not send them any additional information except the final WSIAT decision about the time extension.

6.0 Deciding the Time Extension Application

6.1 Time extension applications are decided by hearings in writing. The Vice-Chair bases their decision on the information in the time extension file. This includes the application and response to the application. There is no oral hearing.

6.2 The decision number for a time extension to appeal decision at the WSIAT will end in an “E”.

6.3 If the WSIAT grants the extension of time, it will hear the appeal.

6.4 If the WSIAT denies the extension, it will not hear the appeal. The WSIAT will close the file.

7.0 Information to Include in a Time Extension Application

7.1 A time extension application must include

- the completed Notice of Appeal Form
- a copy of the final Workplace Safety and Insurance Board (WSIB) decision being appealed
- a letter explaining
    - why the appeal was not filed on time and
    - why a time extension should be granted

7.2 Parties should consider including an affidavit or signed statement. It should explain the delay.

7.3 The WSIAT does not request or review Workplace Safety and Insurance Board (WSIB) files to see if there is relevant material to a time extension. Any relevant documents should be attached to the application or response. These could be from the WSIB claim file. These could also be from a Workplace Safety and Insurance Appeals Tribunal (WSIAT) file.

7.4 Parties should include the following in the time extension application (if available)

a. evidence of an earlier filing of the appeal (for example, an E-File confirmation number)

b. evidence that shows that the applicant intended to appeal before the time limit ended (for example, notice of appeal mistakenly sent to the WSIB)

c. evidence of unusual circumstances where the applicant was unaware of the time limit or was prevented from meeting the time limits (for example, very serious illness or family circumstances)

d. evidence of unusual delays (for example, a significant delay in receiving the WSIB decision)

e. requests to the WSIB to reconsider the decision (especially if it was made within 6 months of the original decision)

f. evidence on the merits of the proposed appeal (if there is an arguable case)

8.0 Factors the WSIAT Considers in a Time Extension Application

8.1 The factors the WSIAT considers include

a. if the applicant showed an intent to appeal within the time limit

b. the length of the delay in filing

c. the explanation for the delay in filing

d. any prejudice to the responding parties caused, prolonged or made worse by the delay in filing

e. if the issue is so connected to another appeal that the WSIAT cannot reasonably decide the other appeal without considering it

f. if a refusal to hear the appeal could cause an unjust outcome (this could be due to errors in the original decision)

g. if there is prejudice to a party (for example, a witness is no longer available to testify)

h. whether the case is so old that it cannot be reasonably decided

i. the merits of the proposed appeal (to see if there is an arguable case)

9.0 References and Resources

9.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 112(3) and 125(2) (sections on time limit to appeal to the WSIAT)

9.2 Decisions

WSIAT Decision No. 978/18E (factors to consider in considering a request for a time extension)

Laski v. Laski, 2016 ONCA 337 (CanLII) (factors to consider in a request for a time extension)

Cunningham v. Hutchings, 2017 ONCA 938 (CanLII) (holistic approach to determine the justice of the case in deciding time extension)

9.3 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#35 – Calculation of Time

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #16

Access to Workers' Information When the Issue in Dispute is at the Workplace Safety and Insurance Board (WSIB)

1.0 This Practice Direction

- describes the legislation and principles governing appeals about access when the issue in dispute is at the WSIB
- describes the process that happens when a worker objects to the employer's access

2.0 Legislation and Principles Governing Access

2.1 When there is an issue in dispute, the *Workplace Safety and Insurance Act, 1997* (the *Act)* and WSIB Policy allow workers and employers to have access to the information in a worker's claim file.

2.2 This Practice Direction uses the principles on access in the *Act* and WSIB Policy. Both parties need access to relevant information in order to have a fair hearing.

3.0 Process for Objecting to Access

3.1 The employer is entitled to access a worker's claim file when there is an issue in dispute at the WSIB. A worker can object to the release of health care information found in their claim file.

3.2 If a worker objects, the WSIB makes a decision about whether the information should be released to the employer.

3.3 If a party is not satisfied with the WSIB's decision, they can appeal it within 21 days of the decision. The WSIB will refer the appeal to the WSIAT.

3.4 The WSIAT may contact the parties to find out if the access issue can be resolved with mediation. This would happen before sending an access appeal to a Vice-Chair for a decision.

3.5 When the WSIAT gets an objection to the release of documents, WSIAT staff ask both the worker and the employer to provide submissions to the WSIAT. The submissions must be in writing. They should include

- why access should or should not be granted
- if the information is relevant to an issue in dispute
- if the information is prejudicial or harmful to the worker – if so, in what way

The WSIAT decides if the employer does or does not get access to the information. The WSIAT does not decide the issue in dispute.

3.6 If the worker does not provide written submissions, a Vice-Chair will decide if the objection has been abandoned.

3.7 If the Vice-Chair finds that the objection has been abandoned, they will send a letter to the parties to confirm the decision. The information is sent back to the WSIB. They release the information to the employer 15 business days after the date of the letter.

3.8 If the parties provide written submissions, the access appeal is referred to a Vice-Chair for a decision.

3.9 Most access appeals are decided by a Vice-Chair by a hearing in writing. This is based on the written submissions and review of the documents in question. If the appeal raises unusual or extraordinary issues, the WSIAT may decide that an oral hearing is needed.

3.10 The Vice-Chair will decide if access to the information should or should not be granted to the employer. Sometimes, the Vice-Chair may set conditions for access. A written decision will be sent to the parties.

3.11 Once a decision is made, the matter is sent back to the Workplace Safety and Insurance Board (WSIB). If access is granted to the employer, the information is released by the WSIB. This will happen 15 business days after the WSIAT decision is released. The WSIB will decide the issue in dispute.

4.0 References and Resources

4.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 57, 58, 59 (access to records sections) and 131 (the WSIAT can determine its own practice and procedure)

4.2 Related Practice Directions

#6 – Mediation – 2-Party Appeals

#26 – Closing Appeals by the WSIAT

#33 – Role of the Vice-Chair Registrar

#36 – Delivery and Filing Documents

4.3 WSIB Documents

WSIB Operational Policy Manual, Document No. 21-02-02 – Disclosure of Claim File Information (Issue in Dispute)

Effective date: May 6, 2024

Practice Direction #17

Right to Sue Applications

1.0 This Practice Direction

- governs the right to sue application process
- outlines the format and content for application materials
- outlines the process for summonses, withdrawals, orders on consent and other matters

2.0 Legislation

2.1 The WSIAT uses certain statutory provisions to determine if a right of action is taken away by the legislation in a right to sue application.

2.2 Section 126 of the *Act* requires the WSIAT to use Workplace Safety and Insurance Board (WSIB) policy in appeals. Since a right to sue is an application and not an appeal, section 126 does not apply. The WSIAT is not bound to apply WSIB policy in right to sue applications. The WSIAT asks the WSIB to provide it with relevant policy for right to sue applications and may consider it. This is to promote consistent decision-making at the WSIAT.

3.0 Who Can Apply?

3.1 Section 31(1) of the *Workplace Safety and Insurance Act, 1997* (the *Act*) states that the following may apply to the WSIAT for certain determinations

- a party to an action

- an insurer from whom statutory accident benefits are claimed under section 268 of the *Insurance Act*

4.0 Available Determinations Under Section 31 of the *Act*

4.1 A party to an action or an insurer from whom statutory accident benefits are claimed can apply to the WSIAT to determine

- if the right to commence an action is taken away because of the *Act*
- if the amount that a person might be liable to pay in an action is limited by the *Act*
- if the plaintiff is entitled to claim benefits under the insurance plan

4.2 The WSIAT has exclusive jurisdiction to determine an application as described in section 31(1). This is from section 31(2) of the *Act*.

4.3 A worker or survivor can file a claim for benefits with the WSIB within 6 months after the WSIAT determination under section 31(1). This is under 31(4) of the *Act*.

5.0 Interested Parties

5.1 Interested parties are normally

- the parties in the civil action
- the plaintiff's employer

5.2 The Statutory Accident Benefits insurer is usually an interested party in applications where statutory accident benefits were claimed under section 268 of the *Insurance Act*.

5.3 Parties who are not applicants or respondents but have an interest in the application can contact the WSIAT.

5.4 If a party submits that a company, organization or individual is a person's employer, the WSIAT will generally require that notice of the application be sent to that employer.

6.0 Materials

6.1 General

6.1.1 All Right to Sue Statements and other material to be relied upon in a right to sue application must be served on all interested parties to the application. The party filing the material must provide the WSIAT with an affidavit of service. This proves notification to all other parties.

6.1.2 All materials submitted by the parties should be sent to the WSIAT electronically. Parties should provide their materials in a way that is easy to read and navigate. For example, bookmark key pages in your statement. WSIAT staff may ask you to resubmit electronic documents that are not easy to navigate or are of poor quality resolution. If you submit your materials by mail, do not use tabs as part of your application materials. This helps the WSIAT create page-numbered addenda and electronic hearing documents.

6.2 Applicant's Materials

6.2.1 The Applicant must complete a Right to Sue Application Form. They must file the form with the WSIAT. They must include their Applicant's Right to Sue Statement.

6.2.2 The Applicant's Right to Sue Statement should have the following information

a. a table of contents

b. a statement of the facts

c. the issues and arguments to be made

d. the law

e. the determination sought

f. documentary evidence to support the facts that the applicant intends to rely, including any relevant material from the Workplace Safety and Insurance Board (WSIB) file

g. copies of the relevant portions of examinations for discovery

h. copies of the relevant portions of transcripts of any previous proceedings, if applicable

i. a list of all witnesses who will give testimony and an outline of their testimony

j. all pleadings in the action and in any other matter arising out of the same set of facts

6.2.3 The Applicant's Right to Sue Statement is forwarded to Tribunal Counsel for review.

6.3 Right to Sue Participation Form

6.3.1 WSIAT staff will write to all Interested Parties. WSIAT staff will provide them with a Right to Sue Participation Form. Interested Parties must return the Right to Sue Participation Form to the WSIAT within 3 weeks.

6.3.2 If a party does not return the Right to Sue Participation Form within 3 weeks, the WSIAT will assume that the party does not intend to participate in the application. The party will not receive any further communication from the WSIAT other than the final decision.

6.3.3 Parties must copy all other parties when they send their Right to Sue Participation Form to the WSIAT.

6.4 Employer and Claim Status Information

6.4.1 Once the deadline to return the Right to Sue Participation Form has passed, WSIAT staff will send a Confirmation Letter to the participating parties. The WSIAT will provide the parties with a party list. This will confirm who will be participating in the application.

6.4.2 The WSIAT will also send out Addendum 1 to all participating parties. This has the WSIAT Status Memo about employer accounts, claim files and Workplace Safety and Insurance Board (WSIB) policy.

6.4.3 The Confirmation Letter sets out the due dates for

- Co-Applications
- Respondent's Materials
- Reply Materials

6.5 Co-Applicant or Interested Party's Materials

6.5.1 A Co-Applicant or an Interested Party can also file a Right to Sue Statement. Their statement will be in the same form as the Applicant's Statement. No material needs to be duplicated.

6.5.2 The Co-Applicant's or Interested Party's Right to Sue Statement must generally be served on all participating parties. It must be filed with the WSIAT within 4 weeks of the Confirmation Letter. Or it must be filed in the time set out in the Confirmation Letter.

6.5.3 A Co-Application will generally be heard at the same time as the main application.

6.6 Respondent's Materials

6.6.1 The Respondent's Right to Sue Statement will be in the same form as the Applicant's Statement. No material needs to be duplicated.

6.6.2 The Respondent's Right to Sue Statement must generally be served on all participating parties. It must be filed with the WSIAT within 8 weeks of the Confirmation Letter. Or it must be filed in the time set out in the Confirmation Letter.

6.7 Reply Material

6.7.1 The Applicant can prepare a Reply to the Respondent's Right to Sue Statement.

6.7.2 The Applicant's Reply must generally be served on all participating parties. It must be filed with the WSIAT within 10 weeks of the Confirmation Letter. Or it must be filed in the time set out in the Confirmation Letter.

6.8 Correspondence

6.8.1 Parties are responsible for copying all other participating parties on all materials they send to the WSIAT.

6.9 Late Filing of Materials

6.9.1 If any of the following is filed late, copies should be provided to the parties to the application as outlined above

- Co-Applicant's or Interested Party's Right to Sue Statements
- Respondent's Right to Sue Statement
- Applicant's Reply Statement

6.9.2 The Vice-Chair or Panel assigned to the application will decide if late documents will be admitted.

7.0 WSIAT Process

7.1 Role of Tribunal Counsel and Assignment of a Vice-Chair or Panel

7.1.1 The Applicant's Right to Sue Statement is forwarded to Tribunal Counsel. They will review the application to ensure that it is complete. They will also ensure that all interested parties have been identified and served with a copy of the Applicant's Right to Sue Statement. Tribunal Counsel may request clarification of the issues or request further documentation.

7.1.2 Tribunal Counsel will review all employer and claim status information received. They will confirm that the Application is ready to proceed. They will also confirm that the Confirmation Letter can be sent.

7.1.3 The Confirmation Letter will outline the filing deadlines for

- Co-Applicant's or Interested Party's Right to Sue Statements
- Respondent's Right to Sue Statements
- Applicant's Reply Statements

7.1.4 Once all materials have been received, Tribunal Counsel will request that the Scheduling Department assign a Vice-Chair or Panel to the application. Once a Vice-Chair or Panel is assigned, the materials are forwarded to them for further instructions. They may render a decision using the written record. Or they may provide further instructions like whether the matter is ready to proceed to

- a hearing
- mediation
- a Pre-Hearing Conference

7.2 Mediation at the WSIAT

7.2.1 Only Vice-Chairs conduct mediations at the WSIAT for right to sue applications. The Practice Direction #6 – Mediation – 2-Party Appeals applies with some necessary modifications for right to sue applications.

7.2.2 If an agreement is reached between the parties through mediation, the Vice-Chair will release a decision with the terms of the agreement. All agreements must be consistent with

- the *Workplace Safety and Insurance Act, 1997* (the *Act*)
- Workplace Safety and Insurance Board (WSIB) policy

7.2.3 If an agreement is not reached between the parties through mediation, it will be referred to a hearing before a different Vice-Chair or Panel. They may give more instructions about proceeding.

7.3 Pre-Hearing Conference

7.3.1 A pre-hearing conference can be

- in person

- by video conference
- by phone

It is a discussion between a Vice-Chair or Panel and the parties in the application. The Vice-Chair or Panel might give direction for further processing of the application. Or they might determine the way the hearing will proceed.

7.3.2 The Vice-Chair or Panel who conducts the pre-hearing conference will generally hear the merits of the application.

7.3.3 For more information, review Practice Direction #14 – Pre-Hearing Conferences.

7.4 Written Hearing

7.4.1 After a Vice-Chair or Panel has been assigned, they may render a decision from the written record. This will happen without an oral hearing. Review section 7.1.

7.4.2 The Vice-Chair or Panel might ask for more information or submissions from the parties before making a decision.

7.5 Oral Hearing

7.5.1 Parties will be informed if a Vice-Chair or Panel determines that an oral hearing is required. The Scheduling Department will contact the parties to set a date for an oral hearing.

7.5.2 If a party cannot proceed with the oral hearing, they should request an adjournment in writing as soon as possible. The request should set out the reasons for the request and include the consent of the parties. A copy of the

request should be sent to the other parties. If an adjournment is granted, it will be several months before the matter can be rescheduled.

7.6 Summons to Witness and Production of Documents

7.6.1 Any party in a right to sue application can ask for the WSIAT to issue a summons to a witness. This happens when the application is likely to be an oral hearing.

7.6.2 A summons request should be made as soon as possible. It must be submitted at least 6 weeks before the hearing date.

7.6.3 The party requesting the summons must provide the witness' name and address information to the WSIAT.

7.6.4 All summons requests will be reviewed by the WSIAT. The WSIAT will prepare the summons if it agrees that

- the person's testimony is necessary
- it will be useful to the proceeding
- a summons is required

7.6.5 The summons will be delivered to the party making the request. That party will be responsible for serving the summons. They must pay the expenses. This follows Tariff A of the *Rules of Civil Procedure*. That party will provide the WSIAT with an original affidavit of service.

7.6.6 If the WSIAT does not issue a summons, the party can ask the Vice-Chair or Panel assigned to the application to consider their summons request. The Vice-Chair or Panel will decide the request based on written submissions.

7.6.7 If the WSIAT issues a summons on its own initiative, the WSIAT will serve the summons and pay the expenses.

7.6.8 A request for a summons for the production of documents is usually referred to the Vice-Chair or Panel assigned to the application for instructions. When documents are in the control of one of the parties, the parties are required to explore the release and exchange of documents.

7.7 Withdrawals and Orders on Consent

7.7.1 The Applicant must notify the WSIAT in writing as soon as possible if the parties have settled and want to withdraw the application. This letter must be copied to all participating parties. Last minute withdrawals waste everyone's resources. Parties should provide as much notice as possible of withdrawals.

7.7.2 If the parties have settled the action but still need a decision from the WSIAT about an issue raised in the application, they must notify the WSIAT in writing as soon as possible. They must send the WSIAT a signed Draft Order and Consent. Tribunal Counsel will review them. Tribunal Counsel may ask for further instructions from a Vice-Chair or Panel.

7.7.3 If the parties come to an agreement on facts about the issue(s), they must notify the WSIAT in writing as soon as possible. They must send the WSIAT a signed Agreed Statement of Facts. The WSIAT is not bound by the Agreed Statement of Facts from the parties to an application.

7.8 Costs and Expenses

7.8.1 The WSIAT does not award costs. Review Practice Direction #30 – Representatives' Fees and Costs.

7.82 The WSIAT does not reimburse expenses of parties to an application.

7.9 The Decision

7.9.1 In right to sue decisions, the court file number and family names of the parties to the civil action are generally not anonymous. This is because the civil case is already in the public record.

7.9.2 Names will be anonymous if

- the people are not named in the civil action
- they are not Interested Parties (this could be witnesses or employers who are not named as a party in the civil action)

7.9.3 If a party would like to be anonymous, they must request this when they file their right to sue materials.

7.10 Reconsiderations

7.10.1 WSIAT decisions are final. The WSIAT can reconsider a decision but reconsiderations are exceptional.

7.10.2 A reconsideration has 2 steps.

1. The WSIAT will decide whether it is advisable to reconsider the decision. This is called the “threshold test”.
2. If the threshold test is met, the WSIAT will decide if the previous decision should be changed. If so, the WSIAT will decide how it should be changed. This is called the “decision on the merits”.

7.10.3 For more information about the threshold test, review Practice Direction #27 – Reconsiderations. The process for a reconsideration request from a right

to sue application is set out here. Most requests are decided from written submissions. But the WSIAT may require an oral hearing. The usual process is described in section 7.11 and 7.12.

7.11 Limited Time to Apply for Reconsideration

7.11.1 A request to reconsider a right to sue decision must be received by the WSIAT and the other parties within 60 days of the date of the final decision. The application must include any supporting materials. This timing does not apply to a request for clarification.

7.11.2 The Chair or their designate can decide to extend the time for a late reconsideration request. The Chair or their designate will consider any relevant factor, including

- whether the request raises a significant issue that has a reasonable prospect of meeting the threshold test
- whether there is a reasonable explanation for the delay
- whether there is any prejudice to any party
- the particular importance of finality in right to sue applications to allow parties to pursue other legal proceedings

7.11.3 If the time extension is granted, the Chair will assign the late reconsideration request to a Vice-Chair or Panel.

7.12 Reconsideration Process in Applications About the Right to Sue

7.12.1 A party who requests a reconsideration must complete the Reconsideration/Clarification Request form. They must explain why the decision should be reconsidered or clarified. They must attach any additional

submissions and any supporting documents. Forms are available on the WSIAT website at **www.wsiat.on.ca**.

7.12.2 The completed Request for Reconsideration/Clarification form, any additional submissions and any supporting documents must be sent to

- the WSIAT
- the other parties that participated in the hearing (the Participating Parties)

7.12.3 These must be received by the WSIAT and the Participating Parties within 60 days of the date of the decision.

7.12.4 If they are later than 60 days of the date of the decision, the party requesting a reconsideration should include submissions on why the time limit should be extended.

7.12.5 The WSIAT staff will send an Acknowledgement Letter to the Participating Parties when a reconsideration request is received.

7.12.6 The Participating Parties will have 3 weeks to respond to the request for reconsideration. This is from the date of the Acknowledgment Letter. Or it must be filed in the time set out in the Acknowledgment Letter.

7.12.7 Section 6.1.1 of this Practice Direction also applies to reconsideration/ clarification requests of right to sue applications. This means that parties requesting or responding to a reconsideration/clarification request must serve the other parties and provide the WSIAT with an affidavit of service.

7.12.8 The responding party to the reconsideration request must complete the Reconsideration/Clarification Response form. They should attach any additional submissions and any supporting documents to the form. If the

Request for Reconsideration/Clarification form was not received within 60 days of the date of the decision, Respondents should include submissions on whether the time limit for considering the reconsideration should be extended. The completed submissions must be sent to the WSIAT and to any other parties. At this point, submissions are complete. The reconsideration request is assigned to a Vice-Chair or Panel for a decision on the threshold test.

7.12.9 If the threshold test is met, the decision will be reconsidered. A new decision will be made on the merits. The WSIAT might give instructions about the procedure to be followed on the decision on the merits.

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 26, 27, 28, 29, and 31 (rights of action), and sections 129 (the WSIAT power to reconsider) and 131 (the WSIAT can determine its own practice and procedure)

Insurance Act, section 268 (statutory accident benefits)

Rules of Civil Procedure

8.2 Decisions

WSIAT Decision No. 1362/06I (the word “plaintiff” in subsection 31(1)(c) of the *Act* includes “claimants,” so insurers may bring an application to the WSIAT under section 31(1) for statutory accident benefits)

WSIAT Decisions No. 755/02, 1460/02 and *117/98* (WSIB Policy may be considered but is not binding in right to sue applications)

WSIAT Decision No. 350/10I (the *Rules of Civil Procedure* do not prevent the use of evidence that came through the discovery process in a right to sue application if it was about the same civil action)

8.3 **Related Practice Directions**

#6 – Mediation – 2-Party Appeals

#14 – Pre-Hearing Conferences

#27 – Reconsiderations

#30 – Representatives' Fees and Costs

#35 – Calculation of Time

#36 – Delivery and Filing Documents

#37 – WSIAT Hearing Recordings and Transcripts

#38 – Transcripts of WSIB Hearing

Effective date: May 6, 2024

Practice Direction #18

Notice of Hearing and Failure to Attend

1.0 This Practice Direction

- outlines the process for setting hearing dates
- describes what happens when a party fails to attend a hearing

2.0 Responsibility for Address Information

2.1 Representatives and participating parties are responsible for providing the WSIAT with their correct

- address
- contact information

2.2 Representatives and participating parties must notify the WSIAT as soon as possible if their address or contact information changes.

3.0 Setting a Hearing Date

3.1 The hearing date will be confirmed in writing and sent to

- the appellant and their representative
- any participating responding parties and their representatives

3.2 If the parties cannot agree to a hearing date after 2 dates are offered, the WSIAT will set a hearing date.

3.3 The hearing date will be confirmed in the Confirmation of Hearing Notice.

3.4 The WSIAT will assign the hearing length based on the information in the file. For example, the hearing length will depend on the number of witnesses expected to attend.

4.0 Confirmation of Hearing Notice

4.1 The WSIAT will send out a Confirmation of Hearing Notice to

- the appellant and their representative
- any participating responding parties and their representatives

It will be sent to the last address the WSIAT has on file for those parties.

4.2 The WSIAT usually sends a Confirmation of Hearing Notice several months before the hearing date.

4.3 The Confirmation of Hearing Notice has

- the statutory authority for the hearing
- the case name and WSIAT Number
- the purpose of the hearing
- the hearing date, time and estimated length
- the hearing location
- the language and dialect for interpretation, if applicable
- the list of parties and addresses
- a statement about not attending – if a party does not attend, the WSIAT may proceed and the party will not be entitled to any further notice

4.4 The WSIAT expects parties and their representatives to attend the hearing.

4.5 The hearing will start at the time stated on the hearing notice.

4.6 If a respondent agrees to a hearing date and then decides not to attend, they need to contact the WSIAT before the hearing date to confirm they will not be participating.

5.0 Failure to Attend – Representative or Respondent

5.1 If a responding party or a representative of any party does not attend within **30 minutes** of the hearing start time, the hearing may start without them.

5.2 A party or representative must contact the WSIAT on the day of the hearing if there is something preventing them from attending.

5.3 The WSIAT may not contact a party on the date of hearing or after the hearing if that party does not attend within the time provided above.

6.0 Failure to Attend – Appellant

6.1 If the appellant does not attend within **30 minutes** of the time stated on the hearing notice, the Vice-Chair or Panel may

- decide the case from the written materials before them
- direct the case to be made inactive for 3 months – if the WSIAT is not contacted within that time, the case may be deemed withdrawn or abandoned
- make any other order they consider appropriate

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#19 – Hearing Assignments

#20 – Interpreters

#21 – Who May Attend a Hearing

#23 – Adjournments and Withdrawals

#24 – Inactive Appeals

Effective date: May 6, 2024

Practice Direction #19

Hearing Assignments

1.0 This Practice Direction explains how Vice-Chairs or Panels are assigned to

- appeals
- applications
- other matters under the *Workplace Safety and Insurance Act, 1997*

2.0 Hearing of Appeals

2.1 The Chair has the authority to hear and decide appeals, applications and other matters or assign a Vice-Chair. Most appeals, applications and other matters decided by the WSIAT are assigned to a Vice-Chair.

2.2 The Chair may appoint a panel of 3 or 5 members to hear and decide an appeal, application or other matter.

2.3 A 3-member Panel will be made up of

- the Chair or a Vice-Chair
- a member representing workers
- a member representing employers

2.4 A 5-member Panel will be made up of

- the Chair or a Vice-Chair
- 2 additional Vice-Chairs

- a member representing workers
- a member representing employers

2.5 The decision is determined by the majority of either a 3- or 5-member panel. The decision of the Panel is the decision of the WSIAT.

3.0 Panel Assignments

3.1 The Chair has the sole discretion to assign a Vice-Chair, or 3 or 5-member Panel to any case at the WSIAT.

3.2 Most appeals, applications and other matters are heard and decided by a single Vice-Chair.

3.3 To decide if a 3-member Panel should be assigned, the Chair may consider if the case has

- novel medical or scientific issues that have important implications for the workplace safety and insurance system
- novel legal issues that have important implications for the workplace safety and insurance system
- significant issues of credibility
- new hearing techniques and procedures
- significant financial consequences for the Insurance Fund

The Chair may also consider other factors when assigning a 3-member Panel. This could include scheduling matters, if parties are self-represented, or training purposes.

3.4 In exceptional circumstances, the Chair may assign a 5-member Panel to hear and decide an appeal, application or other matter. To decide if a 5-member Panel should be assigned, the Chair may consider if the case

- has leading, significant or novel issues that may have a significant impact on the workplace safety and insurance system
- raises broader societal issues beyond the workplace safety and insurance system
- turns on ongoing conflicting case law from the WSIAT – needing a leading case approach to resolve the inconsistency

4.0 Requests for a 3-Member Panel Assignment

4.1 Parties can request that a 3-member Panel be assigned to hear and decide a matter. They do this by submitting a written request as soon as possible. It must be sent to the WSIAT at least **8 weeks** before the hearing date. The request must have reasons. It should consider the factors set out in section 3.3. Late requests will not be considered.

4.2 The party making the request must send the request to the Manager, Scheduling Administration. They must send a copy of the request to all parties participating in the hearing. Where possible, the party making the request should consult with the other parties. They should confirm if the other parties

- agree
- oppose
- take no position

4.3 The Chair will review the request and make a decision. The Manager, Scheduling Administration will share the decision with the parties in writing.

5.0 Requests for a 5-Member Panel Assignment

5.1 Parties can request that a 5-member Panel be assigned to hear and decide a matter. They do this by submitting a written request as soon as possible. It must be sent to the WSIAT at least **12 weeks** before the hearing date. The request must have reasons. It should address the factors set out in section 3.4. Late requests will not be considered.

5.2 The party must send the request to the Manager, Scheduling Administration. They must send a copy of the request to all parties participating in the hearing. Where possible, the party making the request should consult with the other parties. They should confirm if the other parties

- agree
- oppose
- take no position

5.3 The Chair will review the request and make a decision. The Manager, Scheduling Administration will share the decision with the parties in writing.

5.4 If a 5-member Panel has been assigned, a pre-hearing conference will be held to discuss the hearing.

5.5 It usually takes longer to process a matter for a 5-member Panel. The WSIAT will make every effort to ensure efficient processing. If there are any concerns about the assignment of a 5-member Panel, parties must write to the Chair as soon as possible.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 174 (who may hear and decide appeals at the WSIAT)

6.2 Related Practice Directions

#14 – Pre-Hearing Conferences

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #20

Interpreters

1.0 This Practice Direction explains

- who can interpret at a WSIAT hearing
- how to arrange for an interpreter
- the information the WSIAT needs about your language
- the services provided by interpreters

2.0 Who can Interpret at a WSIAT Hearing

2.1 WSIAT hearings are conducted in English or French. If a party or witness does not speak or understand either of these languages, the WSIAT will provide a qualified, impartial interpreter for the hearing. The WSIAT's interpreters swear an oath that they understand the language to be interpreted and the English or French language. They also swear that they will interpret accurately to the best of their ability. They maintain the confidentiality of all personal information while interpreting.

2.2 Relatives and friends of parties or witnesses cannot interpret evidence at a hearing.

3.0 How to Request an Interpreter at a Hearing

3.1 To request an interpreter for yourself at your hearing, indicate the language and dialect on your Notice of Appeal (NOA) Form or Response Form.

3.2 If your witnesses need an interpreter at the hearing, indicate the language and dialect on your Hearing Ready Form.

3.3 If you find that you need an interpreter after filing the Hearing Ready Form, you must request an interpreter more than **6 weeks** before the hearing. This is so the WSIAT has enough time to arrange for an interpreter.

4.0 Information about the Language to be Interpreted

4.1 Parties must provide the WSIAT with precise information about the language and the dialect of the party or witnesses who need an interpreter. This will help the WSIAT arrange for an appropriate interpreter to be at the hearing. It will also help to avoid delays and possibly adjournments at hearings.

5.0 WSIAT Expectations of Interpreters

5.1 Interpreters must provide word for word interpretation services at the hearing. This is sometimes called “verbatim”. The Vice-Chair or Panel may ask the interpreter to assist in a different way. Interpreters are not allowed to paraphrase evidence. They also cannot attempt to clarify a response given by a witness. The interpreter must inform the Vice-Chair or Panel if they are not able to translate a word or phrase in testimony, or if they do not understand the testimony. The Vice-Chair or Panel will give them instructions.

5.2 A party or witness may be able to testify in English or French and only need interpretation for unfamiliar words. In these cases, the Vice-Chair or Panel will consult with the parties and the interpreter before the hearing. They will direct a form of interpretation that is not verbatim.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 178 (French language services)

6.2 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#4 – How to Prepare an Appeal at the WSIAT

#21 – Who May Attend a Hearing

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #21

Who May Attend a Hearing

1.0 This Practice Direction identifies who

- must attend a hearing at the WSIAT
- may attend a hearing at the WSIAT

2.0 Parties to the Appeal

2.1 The WSIAT expects the appellant to attend the hearing. If the appellant has a representative, the WSIAT expects them to attend as well.

2.2 If a respondent is participating, the WSIAT expects the respondent to attend the hearing. If the respondent has a representative, the WSIAT expects them to attend as well. Some cases may involve more than one respondent.

2.3 If there is an issue in an employer appeal about a worker's entitlement to benefits, the WSIAT will notify the worker of the appeal. The WSIAT will invite the worker to participate in the proceeding. If the worker is not participating and the employer wants to question the worker at the hearing, the employer needs to notify the WSIAT during the disclosure period. This is so arrangements can be made for the worker to attend the hearing.

3.0 Tribunal Counsel Office

3.1 Tribunal Counsel Office (TCO) offers neutral assistance to the WSIAT for appeals and applications. They may provide assistance before, at, and after a hearing.

The Vice-Chair or Panel may request TCO assistance.

3.2 TCO does not take a position on the outcome of an appeal or application.

3.3 TCO does not provide representation to parties participating in an appeal or application.

3.4 Review Practice Direction #34 – Role of Tribunal Counsel Office at the WSIAT.

4.0 Standing – Who Else May Participate in a Hearing?

4.1 If a person or organization is named in the final Workplace Safety and Insurance Board (WSIB) decision, the WSIAT will typically allow them to attend as a party of record.

4.2 If a person or organization has a significant interest in the outcome of the appeal, the WSIAT may allow them to attend the hearing. Their interest is usually monetary. The WSIAT can do this on its own or if a party requests it.

4.3 If the WSIAT determines an individual or organization has an interest in the proceeding, it will send them notice of the proceeding.

4.4 Review Practice Direction #32 – Procedure When Raising a Human Rights or Charter Question for issues relating to

- the *Ontario Human Rights Code*
- the *Canadian Charter of Rights and Freedoms* (Charter)
- notifying the Attorney General, Ontario, or Attorney General, Canada

5.0 Observers

5.1 Family and friends can attend the hearing as a support person for the worker.

5.2 WSIAT staff and adjudicators can attend hearings for training purposes.

5.3 New representatives or students can attend hearings for training purposes.

5.4 All requests to observe a hearing must be sent to the WSIAT's Scheduling Department. This must happen at least **2 weeks** before the hearing date.

5.5 The WSIAT may ask the parties if they consent to the observer attending the hearing. If a party objects, the WSIAT will ask for submissions. A Vice-Chair or Panel will consider the submissions of the parties when deciding on a request for an observer. The issues in a hearing may be sensitive with personal or financial information. The WSIAT considers this when reviewing requests to observe a hearing. The WSIAT can refuse a request to observe a hearing.

5.6 Observers must be identified at the beginning of the hearing. Observers are not allowed to participate in the hearing. Any observer who disrupts the hearing will be given a warning. If they continue, they will be required to leave the hearing.

6.0 Witnesses

6.1 A worker and one person from the employer can

- testify
- attend throughout the hearing
- instruct their representative

6.2 Witnesses will be asked to leave the hearing room before and after giving their evidence. This is unless otherwise directed by the Vice-Chair or Panel.

6.3 There must be no communication with an excluded witness about evidence given at the hearing until after the witness testifies. This is unless otherwise ordered by the Vice-Chair or Panel.

7.0 Expert Witnesses

7.1 Oral testimony from an expert witness is extremely rare.

8.0 Workplace Safety and Insurance Board (WSIB)

8.1 As a decision-maker, the WSIB is not a party to proceedings. In exceptional circumstances, the WSIAT can invite submissions from the WSIB if it would be helpful.

9.0 Intervenors

9.1 An “intervenor” is an individual or group the WSIAT may invite to participate in an appeal. An intervenor is not a party to the appeal. In rare circumstances, the WSIAT can use discretion to identify intervenors.

9.2 Intervenors usually come from the worker and employer community. They are asked to participate in rare cases. For example, where there is a general issue of substantial interest to both the worker and employer communities. Intervenors are used to

- provide the Vice-Chair or Panel with information and insights from a broad range of perspectives
- provide the WSIAT with thorough submissions

9.3 Intervenors will have limited participation in a hearing process. The Vice-Chair or Panel will decide how much an intervenor will participate in the hearing process and the issue of intervenor access to materials. They will do this after considering the submissions of or an agreement by the parties.

10.0 References and Resources

10.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), and 132 (the WSIAT's powers regarding proceedings)

10.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#11 – Expert Evidence

#32 – Procedure When Raising a Human Rights or Charter Question

#33 – Role of the Vice-Chair Registrar

#34 – Role of Tribunal Counsel Office at the WSIAT

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #22

Downside Risk

1.0 This Practice Direction

- explains what a “downside risk” is
- explains that the WSIAT will notify parties if it identifies a potential downside risk
- describes the process for notifying parties of a downside risk

2.0 What is a Downside Risk?

2.1 A downside risk means that there is a reasonable chance that an appellant (worker or employer) may be worse off than if they had not appealed. So, a downside risk is a situation where deciding an issue may result in a party losing rights or entitlements. For example, the appeal may result in lower benefits for a worker or higher claim costs for an employer.

2.2 Examples of downside risk

a. A worker may appeal for a higher non-economic loss (NEL) award. But, there is the possibility that the appeal will result in a lower NEL award than they received before. Or, they could get no NEL award at all.

b. An employer appeals its level of Second Injury and Enhancement Fund (SIEF) cost relief. But, the Vice-Chair or Panel may find that the evidence shows that they should get a lower level of SIEF cost relief. Or, they could get none at all.

3.0 Notice of Downside Risk

3.1 To have a fair, consistent and transparent process, the Vice-Chair or Panel will take steps to notify parties of the potential downside risk.

4.0 How Parties are notified of a Downside Risk

4.1 How parties are notified depends if it is an oral hearing or a hearing in writing.

4.2 Before or during an oral hearing (by videoconference, in-person, or by teleconference), the Vice-Chair or Panel will

1. notify the parties at the hearing of the potential downside risk
2. ask the parties for submissions on the downside risk issue and how the appellant wants to proceed – they can
    a. continue with their appeal of all issues or
    b. withdraw their appeal of the issue where a downside risk has been identified

If the appellant wants to continue with their appeal, they accept the risk that the Vice-Chair or Panel may change a decision that was previously made in their favour.

4.3 Before a written hearing or after an oral hearing

1. The Vice-Chair or Panel will send a memo or interim decision to notify the parties of the potential downside risk – this will be sent as a post-hearing request.
2. The WSIAT will carry out the post-hearing request. The WSIAT will ask the parties for written submissions about the downside risk issue and

how the appellant wants to proceed – they can

a. continue with their appeal of all issues

b. withdraw their appeal of the issue where a downside risk has been identified

If the appellant wants to continue with their appeal, they accept the risk that the Vice-Chair or Panel may change a decision that was previously made in their favour.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

5.2 Related Practice Directions

#23 – Adjournments and Withdrawals

#25 – Post-Hearing Procedure

Effective date: May 6, 2024

Practice Direction #23

Adjournments and Withdrawals

1.0 This Practice Direction

- explains the difference between an adjournment and a withdrawal
- explains the WSIAT's strict adjournment policy and the reasons for it
- outlines the process for adjournment or withdrawal requests
- explains what to do after an adjournment or withdrawal

2.0 Adjournment or Withdrawal?

2.1 An "adjournment" means that the hearing will not be on the scheduled day. It will be on another day.

2.2 A "withdrawal" means the appellant does not want to continue with their appeal. The WSIAT will close the appeal without making a decision about the merits of the case.

3.0 Strict Adjournment Policy

3.1 The WSIAT handles thousands of appeals each year. The WSIAT has limited adjudicator and staff resources. The WSIAT requires parties to follow pre-hearing procedures so it can use hearing time efficiently.

3.2 The WSIAT gives self-represented parties before the hearing

- information about representatives

- time to get a representative if they want one
- navigation services if they are interested

This is so parties can make an informed decision about getting a representative before the hearing. The WSIAT will likely not grant a request for an adjournment to get representation without a reason.

3.3 The WSIAT schedules hearings in consultation with the parties.

3.4 The WSIAT confirms the hearing details in writing before the hearing.

3.5 The WSIAT expects parties to prepare for the hearing and to be ready to attend when the date is set. Adjournments waste everyone's resources. They cause significant delays to the parties and to other parties who are waiting for hearing dates. An appeal can take months to reschedule. Delays can also cause other prejudice to the parties and the hearing process. For example, witnesses may move.

3.6 This is why the WSIAT focuses on pre-hearing preparation and has a strict adjournment policy.

4.0 Adjournments before a Hearing

4.1 Parties should request an adjournment as soon as possible. This is so resources are not wasted. This is also so significant prejudice is less likely to happen.

4.2 The WSIAT Manager, Scheduling Administration generally decides a pre-hearing request for an adjournment. The party must make the request in writing to the Manager, Scheduling Administration as soon as possible.

The request must

- give the reason for the request
- be sent to the other party or representative if they are participating

4.3 Representatives must confirm in writing that the party they represent agrees to the adjournment. This is if the representative is making the request.

The request must have this information. If not, the Manager, Scheduling Administration may not make a decision until all the information is provided in writing.

4.4 If the Manager, Scheduling Administration cannot set a new hearing date because the appellant is not ready to proceed, the WSIAT will handle the case using Practice Direction #24 – Inactive Appeals.

4.5 The respondent must contact the appellant to request their agreement if they want an adjournment. If the appellant agrees, the respondent must advise the Manager, Scheduling Administration in writing. The Manager, Scheduling Administration will consider whether the appellant agrees or disagrees with the adjournment request.

4.6 If the Manager, Scheduling Administration grants the adjournment, the WSIAT will process the appeal when the party is ready to continue.

4.7 The WSIAT does not schedule a hearing sooner if it has previously been adjourned at the appellant's request.

5.0 Adjournments after the Hearing Begins

5.1 The parties must attend the hearing at the scheduled time if the Manager, Scheduling Administration does not approve the adjournment. The parties must

be ready to proceed with the hearing if the adjournment request is refused. The party can ask the Vice-Chair or Panel for an adjournment at the hearing.

5.2 In some appeals, a Vice-Chair or Panel is seized with a matter. In this case, a request for an adjournment can be referred to the seized Vice-Chair or Panel. For example, a request to adjourn a reconvened hearing will go to the Vice-Chair or Panel.

5.3 Parties and representatives are given notice of the hearing. Parties and representatives are expected to attend a hearing at the scheduled time. They must be prepared to proceed with the hearing. The Vice-Chair or Panel will wait **30 minutes** for late parties or representatives to arrive or to contact the WSIAT. If the party or representative still has not appeared, the Vice-Chair or Panel may proceed or adjourn the hearing. Or, they will make another order.

5.4 The Vice-Chair or Panel will consider if an adjournment is necessary for a fair hearing. The Vice-Chair or Panel will refuse an adjournment request if the matter can be addressed by

- a short break
- post-hearing submissions
- changing the order of proceedings
- other directions

5.5 The Vice-Chair or Panel may consider other issues about the adjournment request like

- if the party or representative that is requesting the adjournment has added to the need for the adjournment request or previous adjournments
- if the party or representative made the request as early as possible

- if the party or representative made reasonable efforts to avoid the need for an adjournment
- if there is any prejudice that could come from granting or refusing the adjournment.

5.6 A Vice-Chair or Panel can impose conditions on adjournments. This could include a condition that no other adjournment will be allowed.

5.7 Representatives and parties must identify any new issues related to the appeal. They must complete outstanding issues at the Workplace Safety and Insurance Board (WSIB). This must happen well before the scheduled hearing date at the WSIAT. This is to avoid an adjournment. A Vice-Chair or Panel can grant an adjournment if there is an outstanding issue at the WSIB. The hearing will be rescheduled when the WSIB issues its decision. It is the party's responsibility to complete the outstanding issues. Parties must keep the WSIAT informed of the status of the proceedings at the WSIB. The party should contact the WSIAT when they receive the WSIB decision.

5.8 The Vice-Chair or Panel will usually hear the testimony of any available witnesses before adjourning a hearing. This is to preserve the evidence.

5.9 For adjournments in Right to Sue hearings, review Practice Direction #17 – Right to Sue Applications.

5.10 Cases may be adjourned without setting a new date if the appellant is not ready to proceed.

6.0 Withdrawals

6.1 A party can withdraw an appeal at any time before the hearing date. Parties that want to withdraw need to give the WSIAT as much notice as possible in writing.

If more than one party is appealing, a withdrawal of one party will not affect the appeal of the other party.

6.2 Once a hearing has started, a request to withdraw will be addressed by the Vice-Chair or Panel.

6.3 When an appeal is withdrawn, the WSIAT closes the file and returns it to the Workplace Safety and Insurance Board (WSIB). If parties want to appeal later, they must file a new Notice of Appeal Form. The time limit to appeal will generally have expired. If this is the case, the party can only appeal again if the WSIAT agrees that a time extension should be granted.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

7.2 **Related Practice Directions**

#1 – How to Start an Appeal at the WSIAT

#15 – Time Extension Applications

#17 – Right to Sue Applications

#24 – Inactive Appeals

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #24

Inactive Appeals

1.0 This Practice Direction explains

- when the WSIAT might make an appeal inactive
- the procedure for making an appeal inactive
- the procedure for reactivating an appeal
- the procedure for updating or closing an inactive appeal

2.0 Inactive Appeals

2.1 The WSIAT can make an appeal inactive if it cannot prepare the appeal for hearing or issue a decision.

2.2 The WSIAT can make an appeal inactive if it is requested by an appellant. This is if they need more time to

- get a representative
- prepare for the hearing
- get additional information
- complete related issues at the Workplace Safety and Insurance Board (WSIB)

2.3 The WSIAT might make an appeal inactive if it is requested by the respondent.

2.4 The party that is requesting an appeal be made inactive must provide

- their reasons
- an estimate of when they expect to be ready to proceed

2.5 The WSIAT can make an appeal inactive without it being requested. For example, the WSIAT can make an appeal inactive if the appellant

- does not respond to the WSIAT's letters or phone calls
- has not provided the required information
- needs time to consider if they want to continue or abandon the appeal
- is not able to commit to a hearing date

2.6 The WSIAT will write to the participating parties to let them know why the appeal is going inactive. The WSIAT will also outline what would be required to reactivate it.

2.7 The WSIAT can decline a request to make an appeal inactive.

2.8 The WSIAT can reactivate an appeal without the agreement of the parties.

3.0 Objections to an Appeal Being Made Inactive

3.1 A party may object to

- an appeal being made inactive
- the WSIAT declining to make the appeal inactive

3.2 A Vice-Chair will consider the objection. They will issue a decision. Or, they will provide direction about the further processing of the appeal.

4.0 Communications for Inactive Appeals

4.1 While an appeal is inactive, parties must inform the WSIAT if

- their contact information changes or if their representative information changes
- they decide not to continue with the appeal

5.0 Reactivating Appeals

5.1 Any participating party can request an inactive appeal be reactivated.

5.2 Requests to reactivate an appeal must be made in writing. If the appeal was made inactive because of missing information, the parties must

- provide all the missing information, or
- explain why the information cannot be provided

5.3 A request to reactivate an appeal will be denied if the appeal still cannot be concluded. In these cases, the WSIAT writes to the participating parties. The WSIAT explains the reason and what needs to be done.

5.4 Parties requesting that an appeal be reactivated should expect this process to take some time. The WSIAT has to

- get claim file updates from the Workplace Safety and Insurance Board (WSIB)
- review the appeal before it can be reactivated

5.5 The WSIAT can reactivate an appeal with or without the agreement of the parties.

6.0 Updating and Closing Inactive Appeals

6.1 The WSIAT's caseload has many inactive appeals that cannot be concluded. The WSIAT updates cases that it will be reactivating. The WSIAT closes inactive appeals that have been abandoned. The WSIAT does this so that it does not have a lot of inactive cases in its caseload.

7.0 Updating Inactive Appeals

7.1 The WSIAT might write to the appellant (or the representative) of an inactive appeal if

- the respondent requests that an inactive appeal be closed or continued to a hearing and decision
- the appellant (or the representative) has not been in contact with the WSIAT for an extended period of time
- the WSIAT becomes aware that the appeal information is not current
- the parties' time estimate to be ready has expired without explanation

In these cases, the WSIAT will ask the appellant to confirm that they want to continue the appeal. If the appellant is not ready to continue, they must provide a letter. This letter must explain the steps taken to prepare the appeal and an estimate of when they will be ready.

7.2 When the appellant provides the information requested, the appeal information is updated. The file may remain inactive.

7.3 The WSIAT may close the appeal if the appellant

- cannot be located
- is unresponsive
- does not provide the requested information

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

8.2 Related Practice Directions

#23 – Adjournments and Withdrawals

#26 – Closing Appeals by the WSIAT

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #25

Post-Hearing Procedure

1.0 This Practice Direction

- explains what a post-hearing request is at the WSIAT
- provides examples of common post-hearing requests
- explains how communications with a Vice-Chair or Panel are handled
- lists the steps that must be completed to get medical information
- explains what should happen when a party discovers new evidence
- describes what happens when more hearing dates are needed
- describes the usual method of getting written submissions
- explains what happens after a post-hearing request is completed

1.1 The WSIAT has certain investigative powers. Vice-Chairs or Panels can get additional information that was not available for the hearing. They will do this if they feel it is necessary to adjudicate an appeal. These requests can be made before or after the hearing. When a request for information is made after the hearing, it is a post-hearing request.

1.2 The WSIAT's investigative powers do not replace the parties' obligations to prepare and present their case. The WSIAT will only use investigative powers when necessary.

1.3 WSIAT staff deal with post-hearing requests for additional information made by Vice-Chairs and Panels. These post-hearing requests could be in a memo or

a interim decision. An “interim decision” is a decision of a Vice-Chair or Panel. It does not dispose of all issues under appeal. Interim decisions often have instructions to be carried out on a post-hearing basis.

1.4 A Vice-Chair or Panel can request any type of information, including testimony from additional witnesses. They will request this if they think it will help them make a fair decision. Some common types of information requested are

- additional medical information like clinical notes, medical records and reports
- disability claim applications for benefits like Canada Pension Plan (CPP), Employment Insurance (EI) and Ontario Disability Support Program (ODSP)
- medical assessor reports (additional medical information from independent health professionals)
- additional documents from the parties or the Workplace Safety and Insurance Board (WSIB)
- written post-hearing submissions from the parties and Tribunal Counsel Office (TCO) Lawyers

1.5 The Vice-Chair or Panel decides an appeal, not WSIAT staff. The post-hearing role of staff is to carry out the instructions of the Vice-Chair or Panel. Staff members can provide information to the parties on an appeal’s progress and WSIAT practices. But staff members are not a representative of any party. If parties need advice on how to present their case, they should get professional representation.

2.0 Communication

2.1 Parties cannot communicate directly with a Vice-Chair or Panel about an appeal outside of the hearing. All communication is done by the assigned staff member. They communicate with the Vice-Chair or Panel in writing.

2.2 All communications between a Vice-Chair or Panel and staff are shared with the parties. This includes post-hearing instructions. If a party wants to raise an issue with the Vice-Chair or Panel, the party should

1. put their concern in writing
2. forward this document to the appropriate staff member

2.3 WSIAT staff will correspond directly with a party's authorized representative. Parties should share their correspondence with the WSIAT and all other parties in the appeal. If a party is represented, copy the representative.

2.4 The WSIAT strives to keep parties informed of what is happening with an appeal. The WSIAT will provide them with copies of any information it gets. Parties can contact the staff member assigned to their appeal if they have any questions or concerns.

2.5 At any time, staff may also ask for further instructions from the Vice-Chair or Panel hearing an appeal.

3.0 Additional Evidence and Unsolicited Information

3.1 Vice-Chairs and Panels may request that staff get more information if they need it to make a fair decision. Parties need to cooperate to get additional information. Parties should respond to correspondence and phone calls as soon as possible to help avoid delay.

3.2 New evidence submitted to the WSIAT by parties after the hearing will not be accepted without the permission of the Vice-Chair or Panel.

3.3 Parties need to make every effort to produce all evidence during the disclosure period. This is before the first hearing date. If new documents or information is discovered after the first hearing date, parties should submit it in writing. Include a cover letter explaining why you could not get it before the first hearing date.

3.4 Parties must provide copies of any new evidence to all other participating parties to an appeal. The WSIAT may request submissions from all parties asking if the new evidence should be accepted.

3.5 The Vice-Chair or Panel may decide that new evidence will be accepted before they ask staff to forward the new evidence to them. Vice-Chairs and Panels may decide not to accept additional evidence sent to staff after a hearing.

3.6 In some appeals, a Vice-Chair or Panel finds it useful to understand what is happening in a worker's claim(s). Or, it might be helpful to get an employer's assessments from the Workplace Safety and Insurance Board (WSIB). The WSIAT will include any updates it receives from the WSIB claim file. Updates to a WSIB claim file can be admitted at any time before post-hearing activity is completed.

4.0 Additional Medical Evidence

4.1 A Vice-Chair or Panel can request more medical information. To get medical information about a worker, the WSIAT asks the worker to complete a Consent to Disclose Personal Health Information form.

4.2 This consent form asks if the worker or their estate trustee agree to release the medical information to the employer once it is received. If an employer is participating in an appeal, they have a right to review the information. They can make submissions on the information. This information informs a Vice-Chair's or Panel's decision. An appeal might be delayed if a worker or an estate trustee refuses to release any new medical information to an employer. If a worker or estate trustee does not want to release medical information to the employer, they can identify the information that they do not want released. The Vice-Chair or Panel will decide if that medical information will become part of the case materials.

4.3 The WSIAT will pay fees to those that provide additional medical information that was requested by the Vice-Chair or Panel hearing an appeal. This includes

- doctors
- clinics
- hospitals

The WSIAT will do this according to its fee schedule.

5.0 WSIAT-Initiated Assistance for Medical Issues

5.1 In some cases, a Vice-Chair or Panel might need assistance with medical issues arising in an appeal.

5.2 For more information about types of assistance requested by a Vice-Chair or Panel, review the WSIAT Guide to Medical Information and Medical Assessors. The Guide also describes the Medical Liaison Office. It explains the roles of the Medical Counsellors and Medical Assessors.

6.0 Reconvened Hearing Days

6.1 Sometimes a Vice-Chair or Panel will need more oral hearing days to complete a hearing. This is called a reconvened hearing. Staff will ask the Scheduling Department to arrange for the additional hearing day(s). They will choose a date that all parties and the Vice-Chair or Panel are available.

6.2 WSIAT staff will update the case materials before the reconvened hearing. They will do this by compiling any further correspondence into an addendum.

6.3 Parties should bring all case materials to the reconvened hearing.

6.4 A Vice-Chair or Panel usually stays seized with an appeal after there has been a hearing. If a Vice-Chair or Panel does not stay seized, a new Vice-Chair or Panel will be assigned for the reconvened hearing.

7.0 Post-Hearing Submissions

7.1 Parties can make submissions on all post-hearing evidence. Submissions can be made at a reconvened hearing. But usually written submissions are requested. This happens according to the Vice-Chair's or Panel's instructions.

7.2 All parties will be asked to provide their initial submissions at the same time and by a specific date. This is unless otherwise specified by the Vice-Chair or Panel. All parties will be given time to provide submissions in reply to the other party (or parties) if they so choose. Written submissions need to be sent to staff. They must also be copied to all other parties to an appeal.

7.3 Parties should make every effort to send their submissions by the deadline date. A Vice-Chair or Panel can choose not to accept written submissions that are late. If a party needs an extension, they should contact staff before the deadline date.

They will need to explain why an extension is needed. In some cases, staff may ask the Vice-Chair or Panel for instructions about the extension.

8.0 What Happens When a Post-Hearing Request is Complete?

8.1 WSIAT staff will advise a Vice-Chair or Panel when their post-hearing instructions are complete. This means that the post-hearing stage of the appeal appears to be complete.

8.2 At this point, the case materials are with the Vice-Chair or Panel. There is no communication between the parties or staff until the final decision is released. Staff members do not help the Vice-Chair or Panel write the decision. If a Vice-Chair or Panel decides that more information is required, they can issue another post-hearing request. This will be through a memo or an interim decision. Any new post-hearing request will be referred to staff.

8.3 Decisions take time to complete. There is a guideline of 120 days for a decision to be released. Complex appeals may take more time. Parties can contact the Chair's Office to ask about the status of a decision.

9.0 References and Resources

9.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 127 (time limit for decisions to be released) 131 (the WSIAT can determine its own practice and procedure) 132 (the WSIAT's powers regarding proceedings) and 134 (assistance by health professionals to the WSIAT)

9.2 Related Practice Directions

#8 – Disclosure

#13 – Medical Information Requested by the WSIAT

#19 – Hearing Assignments

#34 – Role of Tribunal Counsel Office at the WSIAT

#35 – Calculation of Time

#36 – Delivery and Filing Documents

9.3 Guides

WSIAT Guide to Medical Information and Medical Assessors

Effective date: May 6, 2024

Practice Direction #26

Closing Appeals by the WSIAT

1.0 This Practice Direction

- explains when the WSIAT considers an appeal abandoned by the appellant
- describes the Notice of Intent to Close letter, and when it is sent
- outlines the procedure for closing an appeal that has been abandoned

2.0 When May an Appeal be Considered Abandoned?

2.1 The WSIAT may close appeals when it appears that the appellant has abandoned the appeal. This could be when the appellant has not

- submitted a complete Notice of Appeal Form
- submitted a complete Hearing Ready Form
- provided information the WSIAT requested
- acted on a Vice-Chair's or Panel's instructions (this could be from an interim decision, adjournment memo or written ruling)
- provided current contact information

3.0 Failure to Provide Information

3.1 The WSIAT will write to the appellant when information is needed to prepare or conclude an appeal.

3.2 If the WSIAT does not receive the requested information, it sends a Notice of Intent to Close letter.

3.3 If the information requested is a direction from a Vice-Chair or Panel, any responses (or lack of response) will be referred back to the same Vice-Chair or Panel. They will be asked for further instructions.

3.4 If the appeal is referred to a Vice-Chair or Panel, they may

- make the appeal inactive or extend the inactive period
- instruct the WSIAT to close the appeal without issuing a decision
- issue a decision finding that the appeal has been abandoned or withdrawn
- refer the appeal for a hearing

4.0 Notice of Intent to Close the Appeal Letter

4.1 This letter warns the appellant that the WSIAT may close the appeal as abandoned if they do not provide the required information. They need to submit the information by the deadline date in the letter.

4.2 Before sending the notice letter, WSIAT staff will make 1 attempt to contact the appellant by phone. During the phone call, staff will review the information required to proceed with the appeal.

4.3 The Notice of Intent to Close letter is signed by the Director of Appeal Services (or their designate). It explains what the appellant is required to do to prevent the WSIAT from closing the appeal as abandoned. The letter provides a timeframe that the appellant must respond to in writing.

4.4 The deadline to respond to a Notice of Intent to Close letter is **4 weeks**.

4.5 The notice letter is sent to the last address on file for all participating parties.

4.6 If the appellant responds to the Notice of Intent to Close letter, the WSIAT may

- prepare the appeal for hearing
- make the appeal inactive
- extend the inactive period
- refer the appeal to a Vice-Chair or Panel for further instructions

5.0 Closing Appeals by the WSIAT

5.1 If the appellant does not respond to the Notice of Intent to Close letter by the response deadline, the appeal is closed. There will be no other notice.

5.2 If a letter to the appellant is returned to the WSIAT undelivered, staff will make all reasonable attempts to get current contact information. If the appellant cannot be located, the WSIAT will close the appeal without further notice. This will happen after the response deadline in the Notice of Intent to Close letter.

5.3 If the WSIAT cannot locate an appellant before a Notice of Intent to Close letter is sent, the Director of Appeal Services (or their designate) will authorize the closure of the appeal. The WSIAT will put a memo on file to confirm the closure.

6.0 Closed Appeals

6.1 Once an appeal is closed as abandoned, an appellant can start an appeal of the same decision(s) again but time limits will apply.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

7.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#15 – Time Extension Applications

#24 – Inactive Appeals

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #27

Reconsiderations

1.0 This Practice Direction

- explains your options when trying to have a decision changed
- explains the reconsideration process
- explains who can request a reconsideration
- provides examples of information you should include in a reconsideration application
- outlines the threshold test that you must meet to have a decision reconsidered
- explains how reconsiderations of interim decisions or rulings are handled

2.0 Options When Trying to Have a Decision Changed

2.1 WSIAT decisions are final and cannot be appealed. The WSIAT can reconsider a decision if it decides to. The power to reconsider a decision is discretionary. It is important that decisions are final. Reconsiderations are considered to be exceptional.

2.2 You can request a clarification if a decision is

- unclear
- incomplete
- has an obvious error (for example, a typographical error that does not impact the decision)

A clarification is a type of reconsideration request. Review section 14 for more information.

2.3 There is only one other option for having a decision changed. This is to file an application for Judicial Review in the Superior Court of Justice – Divisional Court. Parties should also review section 16 below. It explains the role of the Office of the Ombudsman of Ontario.

3.0 The Reconsideration Process

3.1 A reconsideration is different from an appeal. You must provide a good reason for a decision to be reconsidered. Review section 4.4 for examples of good reasons. The WSIAT will not grant a reconsideration because you disagree with the decision and want to re-argue your case.

3.2 A reconsideration involves 2 steps

1. The WSIAT decides if it should reconsider the decision. This is called “the threshold test”.
2. If the threshold test is met, the WSIAT decides if the previous decision should be changed. If it should be changed, the WSIAT decides how it should be changed. This is called “the decision on the merits”.

4.0 The Threshold Test

4.1 Reconsiderations are discretionary. The WSIAT’s power to reconsider is only used in unusual circumstances. Reconsiderations are not meant to be used when you are unhappy with a decision.

4.2 The WSIAT has developed a specific threshold test in its decisions. To decide if a reconsideration should go forward, the WSIAT weighs the need for finality of its decisions against the circumstances for reconsideration.

4.3 To meet the threshold test, you must either

- show that there was a fundamental error of law that, if corrected, would likely produce a different result
- show that there was a fundamental error of process
- send the WSIAT substantial new evidence that was not available at the time of the original hearing and would likely have resulted in a different decision

4.4 Examples of when the WSIAT may decide that there is a good reason to reconsider a decision are when

- significant new evidence is discovered that was not available at the original hearing and would likely have changed the outcome
- the decision overlooks an important piece of evidence (instead of rejecting the evidence or distinguishing it)
- the decision contains a clear error of law (for example, the decision does not use the relevant sections of the *Workplace Safety and Insurance Act, 1997*)
- the decision is not internally coherent in its reasons and it is not justified, transparent and intelligible in light of the legal and factual constraints that bear on the decision
- the decision has a jurisdictional error (for example, the WSIAT decided an issue that it did not have the legal authority to decide)

5.0 The Reconsideration Request Process

5.1 Most reconsideration requests are decided by a hearing in writing. In certain circumstances, the WSIAT may need an oral hearing. The reconsideration request process is flexible. It can be changed to fit the needs of a particular case. The usual process is described in sections 6 and 7.

6.0 When to Request a Reconsideration

6.1 You should request a reconsideration within 6 months of the date of the decision. If you delay and request a reconsideration after 6 months it will be a factor that may be weighed in deciding whether the threshold test is met.

7.0 Who Can Request a Reconsideration?

7.1 A reconsideration can be requested by

- a party in a decision (note – if a party chose not to participate in the original hearing, it is unlikely that their reconsideration request will be granted)
- the Workplace Safety and Insurance Board (WSIB)
- the WSIAT

7.2 If the WSIAT starts a reconsideration process, the parties will have an opportunity to make submissions on the threshold test. This is unless the proposed change is only a clarification. Review section 14 about clarifications.

8.0 The Threshold Test Process

8.1 A reconsideration request must include

- the completed Request for Reconsideration / Clarification form

- a copy of any significant new evidence supporting your request (for example, an affidavit or signed witness statements or medical evidence)
- a letter explaining
    - why the reconsideration request should be granted
    - what evidence was overlooked and where that evidence can be located (include page numbers and if the evidence is found in the Case Record or an Addendum)
    - any jurisdictional error or error of law

8.2 Requests will not be processed until the WSIAT confirms that your reconsideration is complete. The WSIAT will close your file if it does not receive a complete reconsideration request within the set timeframe.

8.3 The Chair may assign the reconsideration request to the original Vice-Chair or Panel. Or, the Chair may assign it to a new Vice-Chair or Panel. In deciding the request, the Vice-Chair or Panel will consider

- the reconsideration request materials
- the original case materials
- any previous decisions

9.0 Process Where No Prospect of Success on Threshold Test

9.1 If the Vice-Chair or Panel decides that the reconsideration request does not have any prospect of success, the WSIAT will

- not seek submissions from other parties
- issue a decision explaining why the threshold test has not been met
- send the reconsideration decision to

- the person requesting the reconsideration
- any other party of record even if they did not participate
- the Workplace Safety and Insurance Board (WSIB)

10.0 Process Where There Is an Arguable Case

10.1 The case will be referred for processing if the Vice-Chair or Panel decides that the reconsideration request makes an arguable case. The WSIAT will

- provide the reconsideration materials to all parties who participated at the original hearing (the "Respondent" to the reconsideration request)
- ask the Respondent to
  - complete a Reconsideration / Clarification Response form
  - make submissions on the threshold test

If a party did not participate in the original hearing, the WSIAT will not normally ask for submissions from that party.

10.2 The Respondent has 3 weeks to respond in writing to the reconsideration request. The Respondent must send their submissions and response form to the WSIAT and the party requesting the reconsideration (the "Applicant").

10.3 The Applicant will have 2 weeks to make a written reply to the Respondent's submissions. The Applicant's reply must be sent to the WSIAT and the Respondent.

10.4 The Applicant's reply is sent to the Respondent for information only. Submissions are complete at this point unless the WSIAT requests additional information.

11.0 Multiple Reconsideration Requests

11.1 A Vice-Chair or Panel will review a first reconsideration request. You should raise all possible arguments and issues. You should provide strong evidence when making your first reconsideration request.

11.2 A further reconsideration request (2nd or 3rd) may not be assigned for review. The Chair or their designate may decide that a further reconsideration request does not raise a new issue. Or they may decide that it does not provide new evidence that would need another review.

12.0 Decision on the Merits Process

12.1 If the threshold test is not met, the merits of the original decision will not be reviewed. If the threshold test is met, the case will be reconsidered. A new decision will be made on the merits. If the threshold test is met for only part of a decision, only that part of the decision will be reconsidered.

12.2 Only parties who participated in the original hearing will get a notice of hearing. This is unless the Vice-Chair or Panel directs that all parties get a notice of the hearing.

12.3 The WSIAT may give instructions about the procedure to be followed on the decision on the merits. For example, if credibility is not an issue, the WSIAT may not need to have an oral hearing on the merits. The Vice-Chair or Panel who decided the threshold question will make the decision on the merits unless they provide other directions.

12.4 In some cases, the hearings on the threshold and the merits will be combined.

13.0 Interim Decisions and Rulings

13.1 An “interim decision” or “ruling” is a declaration from a Vice-Chair or Panel. It might be a memo or a formal decision. The decision number for a formal interim decision will end in an “I”.

13.2 An interim decision or ruling does not fully decide an appeal. It is not the final decision. These types of rulings may be procedural or substantive. They are made before a final decision in an appeal is released. Most often, interim decisions will give directions on how to proceed with an appeal.

13.3 You should request a reconsideration for an interim decision as soon as possible as the appeal will continue to be heard. A decision will be deemed received by the parties 5 days after the date it was sent to the parties. This is unless there is evidence to the contrary.

13.4 Reconsideration requests of interim decisions will usually be decided by the Vice-Chair or Panel who is seized with the appeal. If the Vice-Chair or Panel is not seized, one will be assigned to review the reconsideration request.

13.5 Reconsideration requests of interim decisions must be handled quickly. This is because processing an appeal cannot continue until the reconsideration request is resolved. The Request for Reconsideration / Clarification form is not usually required. The Vice-Chair or Panel assigned will determine the specific procedure to be followed.

14.0 Clarifications – Technical Errors and Omissions

14.1 Some reconsideration requests do not question the result in a decision. They identify an omission, ambiguity or misstatement. The WSIAT may correct the

omission, misstatement or ambiguity without asking for submissions. This happens when the problem identified in the Reconsideration / Clarification Request form does not affect the substance of the original decision. This is known as a “clarification”.

14.2 The Vice-Chair or Panel reviewing the request will decide if the request involves a clarification from an omission, misstatement or ambiguity. Or they will decide if a reconsideration is needed based on the threshold test process outlined in section 8.

14.3 The WSIAT may correct the omission, misstatement or ambiguity on its own without asking for submissions if the correction does not affect the substance of a decision.

15.0 Requests for Reconsideration from the Workplace Safety and Insurance Board (WSIB)

15.1 If the WSIB has difficulty implementing a decision, it may bring this to the WSIAT. The WSIAT will consider if there is ambiguity or a misstatement that can be clarified without asking for submissions from the parties.

15.2 The WSIAT will ask the parties for submissions on the threshold question. This happens if the WSIB raises an issue that may affect the substance of a decision.

16.0 Ontario Ombudsman

16.1 The Office of the Ombudsman of Ontario investigates complaints about provincial government organizations. The Ombudsman can help you resolve your problem. They can request changes to how provincial government agencies work. For more information, visit Ontario Ombudsman at www.ombudsman.on.ca.

16.2 An Ombudsman investigation might result in new evidence or submissions that are relevant to your reconsideration request. If you complain to the Ombudsman they may begin a formal investigation. In this case, the WSIAT will not process any reconsideration request until the Ombudsman's Office completes their investigation.

16.3 The WSIAT may begin a reconsideration process based on correspondence from the Ombudsman. Except for clarifications, the parties will be asked for submissions on the threshold test. This happens before the WSIAT decides to re-open a decision. In a case that involves the Ombudsman, the reconsideration process is flexible.

17.0 Reconsiderations of Section 31 Right to Sue Applications

17.1 Parties in right to sue applications have limited time to apply for reconsiderations. There is a different process (review Practice Direction #17 - Right to Sue Applications).

18.0 References and Resources

18.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 123(4) (WSIAT decisions are final), 129 (the WSIAT power to reconsider), and 131(the WSIAT can determine its own practice and procedure)

18.2 Decisions

WSIAT Decision No. 871/02R2 (the reconsideration process and threshold test)

WSIAT Decision No. 585/98R (the WSIB's standing to request a reconsideration at the WSIAT)

Gowling v. Ontario Workplace Safety and Insurance Appeals Tribunal, [2004] O.J. No. 919 (Div.Ct) (upheld the WSIAT's high threshold test for reconsiderations)

Ratman v. Workplace Safety and Insurance Appeals Tribunal, 2022 ONSC 3923 (confirms delay in requesting a reconsideration can be a factor in deciding whether to reconsider a decision)

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (discusses what is a reasonable decision that is justified, transparent and intelligible)

18.3 Related Practice Directions

#17 – Right to Sue Applications

#35 – Calculation of Time

#36 – Delivery and Filing Documents

#37 – WSIAT Hearing Recordings and Transcripts

Effective date: May 6, 2024

Practice Direction #28

Representatives

1.0 This Practice Direction

- explains that parties have the right to be represented by another person at a hearing
- describes who can represent a party and how they provide notice of representation
- provides a Code of Conduct for representatives
- does not apply to friends or family present as “moral support” or to assist in an informal and unpaid manner

2.0 Licence Requirements

2.1 You can represent yourself. Or you can use a representative to assist you with your appeal. Representatives who appear in a hearing must be licensed by the Law Society of Ontario (Law Society). Or they must be authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws, in particular the exemptions listed in By-Law 4.

2.2 The Law Society sets out Rules of Conduct for lawyers and paralegals.

2.3 If the Law Society status of a representative is unclear, the WSIAT may request additional information from the representative. This is to confirm that they are eligible to represent parties at the WSIAT.

2.4 The Law Society status of a representative might continue to be unclear at the time of the hearing. In this case, the Vice-Chair or Panel may question the representative to determine their status for the purposes of the hearing.

3.0 Notice of Representation

3.1 You must notify the WSIAT if you are using a representative for an appeal. You must use one of the WSIAT's forms as soon as possible. These forms can be found on the WSIAT website and include

- Notice of Appeal for Workers Form
- Notice of Appeal for Employers Form
- Worker Authorization to Represent Form
- Employer Authorization to Represent Form
- Request for Reconsideration / Clarification Form
- Reconsideration / Clarification Response Form

3.2 Your notice must include your representative's

- mailing address
- phone number
- email address
- licence number given to your representative by the Law Society of Ontario (or reason why your representative is exempt from the licence requirement)

3.3 If your representative stops acting for you, you or the representative must notify the WSIAT and every other party immediately in writing. This written notice must be provided at least 2 business days, not including holidays, before the scheduled hearing date.

3.4 If a representative does not file written notice at least 2 business days, not including holidays, before the scheduled hearing date, they must attend the hearing to withdraw from representation.

4.0 Code of Conduct for Representatives

4.1 The WSIAT has a Code of Conduct for Representatives. It sets out expectations for the conduct of representatives at hearings. This is for all representatives, whether they are required to have a licence under the *Law Society Act* or not.

4.2 If a representative refuses or fails to comply with the requirements of this Practice Direction or the WSIAT's Code of Conduct for Representatives, the WSIAT may comment on or take official notice of the behaviour. The WSIAT will remind the representative the behaviour may result in remedial action, including

- mentoring or training options
- a temporary or permanent suspension from appearing at WSIAT hearings
- a referral to the Law Society of Ontario

4.3 The Chair may take remedial action if the conduct

- is serious
- demonstrates a pattern of behaviour that continues over time without a reasonable explanation

The representative will be given notice. They will have an opportunity to make submissions to the Chair.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 section 131 (the WSIAT can determine its own practice and procedure)

Law Society Act

5.2 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#18 – Notice of Hearing and Failure to Attend

#27– Reconsiderations

#29 – WSIAT Code of Conduct for Representatives

#35 – Calculation of Time

Effective date: May 6, 2024

Practice Direction #29

WSIAT Code of Conduct for Representatives

1.0 The WSIAT Code of Conduct for Representatives (the Code)

- explains that anyone representing a worker or an employer has certain obligations and responsibilities toward
    - their client
    - the WSIAT
    - the other party
- lists the standards of behaviour that the WSIAT expects from any representative
- does not apply to friends or family who are present as a support person or observer or to assist in an informal and unpaid manner
- explains that everyone who participates in the appeal process must be respectful to all participants, staff and decision-makers

2.0 Standards of Conduct

2.1 Representatives who appear in a hearing must be licensed by the Law Society of Ontario. Or they must be authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws, in particular the exemptions listed in By-Law 4. All representatives are expected to

- represent their clients honestly – they must not share information known to be untrue, or assist or encourage a party to misrepresent the facts

- be knowledgeable about the legislation that is relevant to the case – this includes
    - the *Workplace Safety and Insurance Act, 1997*
    - prior legislation that applies to accidents before January 1, 1998
    - related regulations and statutes
- be comfortable using technology – they must be able to
    - file and receive materials electronically
    - conduct electronic hearings
    - protect confidential information using relevant technology
- be aware of and comply with the WSIAT's Practice Directions and appeal procedures
- be prepared to present the case at hand including
    - reviewing the case materials and relevant Board policies carefully
    - identifying any missing evidence or outstanding issues
    - consulting with their clients promptly about their instructions to comply with the WSIAT preparation and disclosure requirements
- behave courteously and respectfully throughout the appeal process to
    - the opposing party (if present)
    - any witnesses called during the proceedings
    - the Vice-Chair or Panel hearing the appeal
    - WSIAT staff
- respect the confidentiality of information disclosed during the WSIAT's processes and use that information for other purposes only with the consent of the parties and the WSIAT

- refrain from behaviour that the WSIAT considers an abuse of process (the misuse of the WSIAT's procedures that would be unfair to a party or would hinder justice). Examples of abuse of process are
    - attempting to re-litigate the same issue that was already decided
    - failing to respond to the WSIAT's requests and directions leading to inordinate delay

3.0 Remedies

3.1 The WSIAT may take official notice of behaviour if a representative refuses or fails to comply with the requirements of this Code. The WSIAT will remind the representative that the behaviour may result in remedial action including

- mentoring or training options
- a temporary or permanent suspension from acting as a representative
- a referral to the Law Society of Ontario

3.2 The Chair may take remedial action if

- the conduct is serious

or

- there is a pattern of behaviour that continues over time without a reasonable explanation for their behaviour

The representative will be given notice. They will have an opportunity to make submissions to the Chair.

4.0 References and Resources

4.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

Law Society Act

4.2 Decisions

WSIAT Decision No. 2924/18 (abuse of process)

Toronto (City) v. C.U.P.E., Local 79, 2003 SCC 63 (abuse of process)

4.3 Related Practice Directions

#5 – Hearing Formats

#18 – Notice of Hearing and Failure to Attend

#21 – Who May Attend a Hearing

#28 – Representatives

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #30

Representatives' Fees and Costs

1.0 This Practice Direction

- discusses the meaning of the word "costs"
- explains that the WSIAT has no authority to award legal costs

2.0 Costs

2.1 Costs mean the money a party spends on a lawyer or a representative to prepare and attend a hearing. This includes charges for expenses like printing and courier delivery.

3.0 No Authority to Award Legal Costs

3.1 Parties may choose to retain a representative. Parties are responsible for paying the fees and expenses for a representative. This could be a lawyer or paralegal.

3.2 The WSIAT has no authority to award costs against another party.

3.3 The WSIAT may refund certain expenses related to a worker's attendance at a hearing. Review Practice Direction #39 – Fees and Expenses.

4.0 References and Resources

4.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

4.2 Decisions

WSIAT Decision No. 99/91 A (WSIAT jurisdiction to pay costs)

WSIAT Decision No. 927/89 (WSIAT jurisdiction to pay costs)

WSIAT Decision No. 1058/00 (WSIAT jurisdiction to pay costs)

4.3 Related Practice Directions

#5 – Hearing Formats

#28 – Representatives

#39 – Fees and Expenses

Effective date: May 6, 2024

Practice Direction #31

Powers of Practice and Procedure

1.0 **This Practice Direction** explains

- the WSIAT's general authority to control its practices and procedures
- the Vice-Chair's or Panel's authority to control the proceedings in cases they are hearing

2.0 Section 131 of the *Workplace Safety and Insurance Act, 1997*

2.1 The WSIAT determines its own practices and procedures for

- appeals
- applications
- proceedings
- mediations

This is under section 131 of the *Workplace Safety and Insurance Act, 1997*.

2.2 The WSIAT exercises this power of practice and procedure to adopt Practice Directions and Practice Guidelines.

2.3 In the event of a conflict between a Practice Direction and a Guideline, the Practice Direction prevails.

3.0 Effective Date of Practice Directions

3.1 Current Practice Directions are available on the WSIAT website – **www.wsiat.on.ca.** Earlier versions of Practice Directions are archived. They are available from the WSIAT library.

3.2 A Practice Direction takes effect on the date found on the bottom of the Practice Direction. An amendment to a Practice Direction takes effect on the date of the amendment to the Practice Direction.

3.3 The most current Practice Direction on the same subject replaces older versions.

3.4 The Vice-Chair or Panel can make rulings to ensure a fair process if, during a proceeding, a Practice Direction is

- adopted
- amended
- repealed or replaced

4.0 Control of Proceedings

4.1 In certain circumstances, the Vice-Chair or Panel may waive or modify any provision included in a Practice Direction.

4.2 The Vice-Chair or Panel can make any rulings necessary to

- control the proceedings
- prevent abuse of process

5.0 Practice Guidelines

5.1 The WSIAT may issue Practice Guidelines from time to time.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

Effective date: May 6, 2024

Practice Direction #32

Procedure When Raising a Human Rights or Charter Question

1.0 This Practice Direction

- explains the obligations of a party who intends to raise a Human Rights question under the *Ontario Human Rights Code*. The question can be about the legislation or the Workplace Safety and Insurance Board (WSIB) policy that applies to the WSIAT.
- explains the obligations of a party who intends to raise a question under the *Canadian Charter of Rights and Freedoms*. The question can be about the legislation or WSIB policy that applies to the WSIAT.
- explains the WSIAT's procedure when a Human Rights or Charter issue has been raised.
- sets out what happens when a party does not follow the procedure.

2.0 Principles

2.1 The WSIAT can consider a Human Rights question to its legislation under the *Ontario Human Rights Code*.

2.2 The WSIAT can consider a Charter question to its legislation under the *Canadian Charter of Rights and Freedoms*.

2.3 The purpose of this Practice Direction is for the following groups to get sufficient notice of appeals that raise Human Rights or Charter questions

a. the Workplace Safety and Insurance Appeals Tribunal (WSIAT)

b. the Attorney General of Ontario

c. the Attorney General of Canada

3.0 Written Notice of Human Rights Question

3.1 Parties raise a Human Rights question under the *Ontario Human Rights Code* according to the legislation or WSIB policy that applies to the WSIAT. In these cases, the party must file a written notice with the WSIAT containing

- a detailed explanation of the Human Rights question raised including the material facts of the challenge raised
- the section(s) of the *Ontario Human Rights Code* used or the legal basis for the argument
- what the party wants to happen because of the question
- the name, address, phone number and email address of the party's representative (if any)
- the name and WSIAT number of the appeal where the issue is raised

3.2 The party raising the Human Rights question must send written notice of the Human Rights question to the Attorney General of Ontario. They also need to send notice to any other parties to the appeal as soon as it is required.

3.3 Notice sent under sections 3.1 and 3.2 must be received as soon as possible. This can be no later than 60 days before the first scheduled hearing date.

4.0 Written Notice of Charter Question

4.1 A party must comply with section 109 of the *Courts of Justice Act* if they intend

to raise a question under the *Canadian Charter of Rights and Freedoms*. The question must be about the legislation or WSIB policy that applies to the WSIAT.

4.2 A party must serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the WSIAT and all parties to the appeal.

4.3 The notice of constitutional question should be similar to Form 4F. This is provided in the *Ontario Rules of Civil Procedure* (Review http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp).

4.4 The notice must include

- a detailed explanation of the Charter question raised including the material facts of the challenge raised
- the section(s) of the *Canadian Charter of Rights and Freedoms* used or the legal basis for the argument including the constitutional principles being argued
- what the party wants to happen because of the question
- the name, address, phone number and email address of the party's representative (if any)
- the name and WSIAT number of the appeal where the issue is raised

5.0 WSIAT Procedure with a Human Rights or Charter Question

5.1 A Human Rights or Charter question that is raised under this Practice Direction will be addressed by the WSIAT after a decision has been made about the issues in the appeal under the applicable legislation and WSIB policy.

5.2 The WSIAT will not decide the Human Rights or Charter question if it is no longer required after the final decision on the other issues to the appeal is made.

5.3 The WSIAT may consider other procedures for dealing with a Human Rights or Charter question. This is in addition to the procedure in this Practice Direction, when required.

6.0 Disclosure of Information – Written Submissions and Evidence

6.1 Parties to an appeal involving a Human Rights or Charter question must follow the same disclosure requirements for a hearing. Written submissions and evidence must be served on the other party or parties to the appeal. It must be filed with the WSIAT before the hearing.

6.2 Human Rights or Charter questions are only decided when it is required after the final decision on the other issues is made. The WSIAT will not need written submissions and evidence from the parties about the Human Rights or Charter question raised in the appeal until it hears the Human Rights or Charter question.

7.0 Effect of Failure to Follow Practice Direction

7.1 A party to an appeal must follow the procedure in this Practice Direction for raising a Human Rights or Charter question. If they do not, they will not be entitled to raise the Human Rights or Charter question in any proceeding of the WSIAT. This is unless it is ordered by the WSIAT.

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

Courts of Justice Act, section 109 (notice of constitutional question)

Ontario Rules of Civil Procedure, Form 4F (notice of constitutional question)

Ontario Human Rights Code

Canadian Charter of Rights and Freedoms, Constitution Act, 1982

8.2 Decisions

WSIAT Decision No. 794/97 (WSIAT jurisdiction to consider Charter)

WSIAT Decision No. 1529/04 I2 (WSIAT jurisdiction to consider Human Rights questions)

Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513 (authority to consider Human Rights question)

Nova Scotia (Workers' Compensation Board) v. Martin, [2003] 2 S.C.R. 504 (authority to consider Charter questions)

8.3 Related Practice Directions

#8 – Disclosure

#35 – Calculation of Time

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #33

Role of the Vice-Chair Registrar at the WSIAT

1.0 This Practice Direction

- explains the role and responsibilities of the Vice-Chair Registrar

2.0 Role of the Vice-Chair Registrar

2.1 The Vice-Chair Registrar (VCR) is a Vice-Chair. In addition to adjudicating appeals, the VCR has two broad areas of responsibility.

a. The VCR provides direction and makes rulings in cases where there is no seized Vice-Chair or Panel, or when a Vice-Chair or Panel has not yet been assigned.

b. The VCR provides direction and adjudicative guidance on pre-hearing processes.

2.2 Requests for VCR direction are usually made by staff. Parties may also request VCR direction if there is no seized Vice-Chair or Panel, or when a hearing Vice-Chair or Panel has not yet been assigned.

2.3 Requests for direction and the VCR rulings are

- provided in writing
- communicated to the parties
- form part of the case materials

2.4 The VCR may provide direction on a number of issues including, but not limited to

- the appropriate hearing format
- the WSIAT's jurisdiction
- the issue agenda
- if documents or other evidence should be produced
- if a witness should be summonsed to appear at a hearing
- if an appeal may proceed when there are outstanding issues being pursued at the Workplace Safety and Insurance Board (WSIB)
- if an appeal may be placed, or remain, in inactive status
- if an appeal has been abandoned and should be closed
- if documents in the WSIB claim file should be included in or excluded from the record
- if a pre-hearing conference should be scheduled due to the complexity of the case

2.5 The reasons for the VCR direction may be brief. This is so an appeal or application can proceed as quickly as possible.

2.6 If a party objects to a VCR ruling, they may raise their objection with the Vice-Chair or Panel hearing the appeal. The VCR's rulings are subject to the discretion of the Vice-Chair or Panel hearing the appeal. The VCR may be assigned to hear the matter on the merits.

3.0 References and Resources

3.1 *Workplace Safety and Insurance Act, 1997* section 131 (the WSIAT can determine its own practice and procedure)

3.2 **Related Practice Directions**

#3 – Consent for the WSIAT to Release a Worker's Information

#4 – How to Prepare an Appeal at the WSIAT

#5 – Hearing Formats

#8 – Disclosure

#9 – Evidence

#12 – Summonses and Production of Documents

#31 – Powers of Practice and Procedure

Effective date: May 6, 2024

Practice Direction #34

Role of the Tribunal Counsel Office at the WSIAT

1.0 This Practice Direction

- explains the role of Tribunal Counsel Office at the WSIAT

2.0 The Role of the Tribunal Counsel Office in Appeals and Applications before the WSIAT

2.1 Tribunal Counsel Office (TCO) offers neutral assistance to the WSIAT for appeals and applications. They may provide assistance before, at, and after a hearing. The Vice-Chair or Panel may request TCO assistance. TCO may also assist by processing the most complex appeals and applications.

2.2 Requests for TCO assistance are made by a Vice-Chair or Panel. They are confirmed in writing and communicated to parties. They are placed on the record.

2.3 TCO does not take a position on the outcome of an appeal or application.

2.4 TCO does not provide representation to parties participating in an appeal or application.

2.5 TCO can

- assist with questioning witnesses at a hearing, or prior to a hearing with a Court Reporter

- make submissions about legal or procedural issues identified by the Vice-Chair or Panel before, at, or after a hearing
- process the most complex appeals and applications. Processing complex appeals could include liaising with parties. TCO can streamline processes. They can clarify and resolve procedural and legal issues that happen during the hearing process.
- assist as requested by the Vice-Chair or Panel

2.6 TCO also provides legal advice to WSIAT staff. This is for general appeals and applications.

3.0 Other Work of Tribunal Counsel Office

3.1 TCO provides corporate legal advice and assistance to the WSIAT. This is for issues that are not related to appeals or applications.

3.2 TCO also represents the WSIAT. This could be for litigation matters and related proceedings, including in applications for judicial review.

4.0 References and Resources

4.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

4.2 Related Practice Direction

#21 – Who May Attend a Hearing

Effective date: May 6, 2024

Practice Direction #35

Calculation of Time

1.0 This Practice Direction

- explains how days are counted when something needs to be done within a certain number of days
- applies to time periods in
    - Practice Directions
    - Vice-Chair and Panel decisions or directions
    - letters from WSIAT staff

2.0 Holiday

2.1 "Holiday" means any day that the WSIAT is closed. This includes

- Saturdays
- Sundays
- Easter Monday
- National Day for Truth and Reconciliation
- Remembrance Day
- statutory holidays

3.0 How Time is Counted

3.1 If WSIAT materials reference a number of days, the days are calendar days. The first day is not included and the last day is included. For example, 7 days from October 21st would be October 28th. October 21st is not included. October 28th is included.

3.2 If an action needs to be done within a number of weeks, the first day of the first week is not included. The last day of the last week is included.

3.3 If the due date is a holiday, the due date will be the next day that is not a holiday.

3.4 If information is received on a holiday, it will be marked received on the next day that is not a holiday.

3.5 Information is due by 5:00 pm on the due date.

4.0 Changing Time Periods

4.1 The WSIAT can change the due date for information as it deems appropriate.

4.2 A Vice-Chair or Panel can change the time that is set out in a

- Practice Direction
- decision
- ruling

4.3 If the due date is set by WSIAT staff in correspondence, the WSIAT can vary the time.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

5.2 Related Practice Direction

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #36

Delivery and Filing Documents

1.0 This Practice Direction applies to WSIAT appeals and applications only and explains

- how to deliver a document to a party or representative
- how to file a document with the WSIAT
- when delivery or filing will be deemed to have taken place

2.0 How to Deliver a Document to a Party or Representative

2.1 Documents must be delivered to a party or representative. This is also called "service" of a document.

2.2 A document may be delivered to a party or representative by

- mail – regular, courier, registered or certified to the last known business or home address
- secure email to a known email address
- fax to the last known fax number – this is acceptable only if the document is less than 15 pages (or longer with consent)
- personal delivery to the party or representative
- delivery to an adult person at the last known business or home address

2.3 If the service of a document is not practical, the WSIAT may notify a party or representative using public ads or by other means.

2.4 A document is considered delivered

- by mail, on the 5th day after it was mailed
- by courier, on the 2nd day after it was given to the courier
- by secure email when the sender receives the sent details (if the details indicate a time after 5:00 p.m., delivery occurred the next day)
- by fax when the sender gets a confirmation receipt (if the confirmation is after 5:00 p.m., delivery occurred the next day)
- personally when given to the party or representative or when left with an adult person at the last known address

2.5 A document is not considered delivered if the party or representative can prove to the WSIAT the document was received late due to

- absence
- accident
- illness
- other cause beyond the party's control

3.0 How to File a Document with the WSIAT

3.1 "Filing" means that the document was delivered to the WSIAT.

3.2 Documents may be filed

a. by E-file on the WSIAT website (www.wsiat.on.ca)

b. by mail (regular, registered or certified) or courier to

   Workplace Safety and Insurance Appeals Tribunal
   500 – 505 University Avenue
   Toronto, ON M5G 2P2

c. in-person to the same address

3.3 Filing is considered delivered by

a. E-File on the date the document is received by the WSIAT's server (if this is after 5:00 p.m., it will be considered delivered on the next day)

b. courier, mail, or in-person on the date of the receipt stamped on the document by WSIAT staff

4.0 Proof of Service and Filing

4.1 If there is a dispute about service or filing, the WSIAT might need an affidavit or other evidence about the filing. Parties and representatives should keep supporting evidence. This could be

- E-File confirmation email
- courier receipt

5.0 Right to Sue Applications

5.1 For more information about delivery and filing in Right to Sue Applications, review Practice Direction #17 – Right to Sue Applications.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure)

6.2 Related Practice Directions

#17 – Right to Sue Applications

#35 – Calculation of Time

Effective date: May 6, 2024

Practice Direction #37

WSIAT Hearing Recordings and Transcripts

1.0 **This Practice Direction** explains

- who can record WSIAT hearings
- how to get a recording of a hearing
- how long the WSIAT keeps a recording of a hearing
- how to get a transcript of a hearing

2.0 Recording WSIAT Hearings

2.1 The WSIAT usually makes audio recordings of hearings. The WSIAT is not required to record hearings. This is under the *Workplace Safety and Insurance Act, 1997* sections 57 to 59. In unusual circumstances, the WSIAT uses a Court Reporter to record hearings. In right to sue cases, parties can arrange and pay for a Court Reporter to record the hearing.

2.2 Parties are not allowed to record hearings. This could be using any device controlled by a party that is capable of making audio or visual recordings.

2.3 Audio recordings of hearings are kept for workplace safety and insurance purposes only. The WSIAT cannot guarantee that an audio recording will be available if it is requested. Sometimes a recording is not made or kept because of error or technological issues.

2.4 The WSIAT keeps an audio recording for 10 years after the appeal has closed. After 10 years, the WSIAT destroys the audio recording.

3.0 Requests for an Audio Recording from a Party to the Hearing for Workplace Safety and Insurance Purposes

3.1 Parties to an appeal can ask for an audio recording of their hearing. They do this by completing a Request Form for Audio Recordings and sending it to the WSIAT.

3.2 The party requesting the audio recording must agree to use it for workplace safety and insurance purposes only. It must be kept confidential.

3.3 The WSIAT usually approves these requests from parties after it gets the completed request form. In unusual circumstances, the Vice-Chair or Panel that heard the appeal may give directions about audio recordings.

3.4 The WSIAT may or may not charge a fee for the audio recording. The WSIAT will tell you when a fee may apply.

4.0 Requests for an Audio Recording from Non-Parties or from Parties for Other Purposes

4.1 Requests for audio recordings from

- a person who is not a party to the appeal or application (or an authorized representative)
- anyone wanting to use a recording for reasons other than workplace safety and insurance purposes

must be made under the *Freedom of Information and Protection of Privacy Act*, unless otherwise required by law.

5.0 Transcripts of Hearings

5.1 In this Practice Direction, “transcript” means a typed version of the recorded hearing from a qualified professional (authorized court transcriptionist).

5.2 The *Workplace Safety and Insurance Act, 1997* does not require the WSIAT to provide transcripts of hearings. The WSIAT does not generally produce or use transcripts of hearings.

5.3 If you want a transcript you should order an audio recording. You can then bring the audio recording to an independent authorized Court Transcriptionist.

5.4 Parties who want to submit a transcript to the WSIAT must use an authorized Court Transcriptionist.

5.5 To find a Transcriptionist, go to the Authorized Court Transcriptionists for Ontario website (https://courttranscriptontario.ca).

5.6 Transcripts are expensive. You may want to ask for a cost estimate before ordering a transcript. Your provider will make arrangements for delivery and payment.

5.7 If more than one party requests a transcript, the WSIAT encourages the requesting parties to share the cost.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 57, 58, 59 (access to records sections) and 131 (the WSIAT can determine its own practice and procedure)

Freedom of Information and Protection of Privacy Act

6.2 Related Practice Directions

#5 – Hearing Formats

#17 – Right to Sue Applications

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #38

Transcripts of Workplace Safety and Insurance Board (WSIB) Hearings

1.0 This Practice Direction

- explains when a party can use a transcript of a previous WSIB hearing at a WSIAT hearing
- identifies what needs to be done before a hearing to use a WSIB transcript
- gives information about ordering a recording of the WSIB hearing
- lists the requirements for producing a transcript of a WSIB hearing that a party wants to submit to the WSIAT
- explains who pays for a WSIB transcript

2.0 Definition of Transcript

2.1 In this Practice Direction, “transcript” means a typed version of the recorded hearing from a qualified professional (authorized court transcriptionist).

3.0 WSIAT General Practice on the Use of WSIB Transcripts

3.1 The WSIAT reviews the evidence from the WSIB as well as any new evidence. If an oral hearing is scheduled, the WSIAT will hear the testimony of any witnesses it feels have relevant information. This is even if they testified at the WSIB. So the WSIAT typically does not use transcripts of previous hearings.

3.2 The WSIAT also does not typically admit audio recordings of WSIB hearings. Testimony from a WSIB hearing is only admissible as a transcript.

4.0 Witness Unavailable – Exception to the General Practice

4.1 Sometimes there is evidence from a witness who is no longer available to testify. In this case, a party can ask for that portion of the transcript to be added to the case materials.

4.2 If a party wants a portion of a WSIB transcript to go before the Vice-Chair or Panel, a copy of the transcript must be given to the WSIAT and all other parties during the disclosure period. This submission must also include the reasons for the request. It must include why the witness is not available.

4.3 A preliminary issue at the hearing will be whether the transcript will be admitted as evidence. All parties can make submissions about whether the transcript should be accepted.

4.4 In some cases, staff might order a WSIB transcript and add it to the case materials before a hearing. Parties to the appeal are notified that the WSIAT has ordered the WSIB transcript. Parties will receive a copy when it is received.

5.0 Inconsistent Testimony – Exception to the General Practice

5.1 If a party thinks the testimony of a witness will be different than the testimony given at the WSIB, they might use the WSIB transcript to show the differences. In this case, it is not necessary to provide a copy of the transcript before the hearing. You should bring copies of the transcript to an in-person hearing for the witness, Vice-Chair or Panel. For videoconference and teleconference hearings, the transcript can be submitted at or after the hearing.

5.2 Parties using a WSIB transcript to contradict the testimony of a witness can do it during cross-questioning. This happens after the witness testifies about the specific topic of the statement. The following steps should be followed.

1. Ask the witness to confirm their recent testimony.
2. Ask the witness if they made a previous statement. Quote the WSIB transcript.
3. If the witness does not admit or remember the previous statement, provide more detail. Quote the question that the statement was in answer to and when it was asked.
4. Describe the WSIB hearing – for example, before what person, date, who asked the question.
5. If the witness still does not admit or remember the previous statement, share the entire transcript of the testimony for that witness. Point out the statement.
6. Give the witness an opportunity to respond.

5.3 All parties can make submissions on the transcript and the evidence of the witness.

6.0 Other Exceptions are Decided by the Vice-Chair or Panel

6.1 If a party feels that a transcript of a WSIB hearing should be provided to the Vice-Chair or Panel as evidence, they should send the WSIAT specific reasons in writing.

6.2 A preliminary issue at the hearing will be whether the transcript will be admitted as evidence. All parties can make submissions about whether the transcript should be accepted.

7.0 Recordings of WSIB Hearings

7.1 The party who wants a WSIB transcript created must get the audio recording of the oral hearing. They get this from the WSIB's Appeals Services Division.

7.2 The Appeals Services Division does not arrange for written transcripts of recordings from oral hearings.

8.0 WSIB Transcripts

8.1 The party who wants to use the WSIB transcript must arrange for the recording of the hearing to be transcribed.

8.2 A transcript of a WSIB recording must be produced and certified by a trained professional.

8.3 The transcript must include the certification from the professional transcriber.

9.0 Who Pays For a WSIB Transcript?

9.1 In most cases, the party arranging for the transcript must pay for it. The WSIAT will only reimburse a party for a WSIB transcript in exceptional circumstances. If the WSIAT arranges for a WSIB transcript, it will pay for the transcript. This only happens in rare circumstances.

9.2 If a party wants the WSIAT to pay for the WSIB transcript (or a portion of the transcript) due to exceptional circumstances, they must make the request during the disclosure period. The request must be in writing. It must explain the reasons for the request. For example, a party may want the WSIAT to pay for a transcript if it has important evidence from a witness who has died since the WSIB hearing.

9.3 If there is a disagreement about whether a transcript of a WSIB hearing should be obtained, or who should pay for it, a Vice-Chair or Panel will decide. It will usually be a preliminary issue to be addressed before or at the hearing. The Vice-Chair or Panel may not decide this issue until after the hearing.

10.0 References and Resources

10.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 132 (the WSIAT's powers regarding proceedings including the power to accept such oral or written evidence as the WSIAT considers proper, whether or not it would be admissible in a court)

10.2 Decisions

WSIAT Decision No. 1430/02I (using a WSIB transcript to challenge credibility)

WSIAT Decision No. 2614/06 (witness' right to respond to credibility allegations)

10.3 Related Practice Directions

#8 – Disclosure

#9 – Evidence

#25 – Post-Hearing Procedure

#36 – Delivery and Filing Documents

Effective date: May 6, 2024

Practice Direction #39

Fees and Expenses

1.0 This Practice Direction

- identifies who may be repaid for expenses to attend a hearing
- explains what expenses will be paid by the WSIAT
- explains when the WSIAT will pay
- identifies who decides what expenses will be paid

1.1 This Practice Direction does not apply to Right to Sue applications under section 31 of the *Workplace Safety and Insurance Act, 1997* (Act) (review Practice Direction #17 – Right to Sue Applications).

2.0 Who Will Be Reimbursed for Expenses to Attend a Hearing?

2.1 The WSIAT pays certain expenses for attendance and participation at a hearing for

- injured workers and their witnesses
- survivors of deceased workers and their witnesses

2.2 The WSIAT pays certain expenses for a worker's attendance at a medical exam if it directs a worker to be examined by a doctor who prepares a report for the WSIAT.

2.3 The WSIAT does not pay expenses for employers or their witnesses. This is not provided for in the *Act*.

3.0 What Expenses will be Paid by the WSIAT?

3.1 The WSIAT holds in-person hearings in several cities in Ontario. Workers (or their survivors) and their witnesses may live outside the area where the hearing takes place. In these cases, they can claim allowable out-of-pocket expenses for their attendance at the hearing.

3.2 The WSIAT does **not** reimburse expenses for a worker (or their survivor) and their witnesses who live within the metropolitan area where the hearing is booked.

3.3 The WSIAT also offers videoconference and teleconference hearings. Workers (or their survivors) and their witnesses can claim allowable out-of-pocket expenses for their participation at these hearings.

3.4 To get repayment of expenses, a party must complete a Hearing Expense Claim Form. This must be sent to the WSIAT. It must have all the required receipts attached to the form.

3.5 Workers (or their survivors) and their witnesses can submit a claim for the following expenses. Review the Hearing Expense Claim Form for more details.

- Phone – The WSIAT will reimburse for actual phone charges from attending a teleconference or a videoconference. You must submit a receipt to claim this expense.
- Internet/Data – The WSIAT will reimburse for actual internet or data expenses from a videoconference hearing. You must confirm that you do not have access to unlimited high speed wired or wireless internet to claim these expenses.

- Additional Expenses, including Equipment – The WSIAT will reimburse for reasonable expenses related to attending a teleconference or videoconference hearing up to a maximum with a receipt. For example, this could include a webcam.
- Meal Allowances – The WSIAT will reimburse up to a daily and per meal maximum. You must submit receipt(s) to claim this expense.
- Parking – The WSIAT will reimburse for actual parking charges. You must submit a receipt to claim this expense.
- Travel – The WSIAT will reimburse train or inter-city bus fare. You must submit a receipt to claim this expense. If you drive a car, mileage is paid based on a set rate.
- Lost Wages – The WSIAT will pay for lost wages on the hearing day(s) only if the worker (or their survivor) and their witnesses have lost wages to attend on the hearing day. This is subject to a daily maximum. If a summons has been served, any money already sent with the summons will be deducted from the amount to be paid for lost wages. Payments for witnesses' lost wages will be limited to the day or days that they testify, except in extraordinary circumstances.

3.6 In some cases, the WSIAT will pay for reasonable costs for hotel accommodation. This is for workers (or their survivors) and their witnesses to attend an in-person hearing. The WSIAT's Scheduling Department may help them arrange transportation and a hotel. Requests must be made at least **6 weeks** before the hearing date.

3.7 When making a decision about paying for transportation and hotel costs, the WSIAT will consider

- whether the worker, survivor or witness must travel more than 200 kilometers one way to attend the hearing
- the time the hearing starts
- weather conditions

3.8 The WSIAT may pay for a portion of the travel expense to attend an in-person hearing for travel from outside Ontario. The WSIAT will generally pay expenses for travel from

- Winnipeg in the west
- Montreal in the east
- Windsor in the south

For example, if a worker or survivor travels by air from British Columbia, the WSIAT would reimburse them for the cost of a return airline ticket from Winnipeg to the location of the hearing.

3.9 If the WSIAT has arranged for a doctor to examine a worker, it will pay the worker's expenses for travel to the appointment. If a worker lost wages to attend a medical appointment, the WSIAT will pay lost wages for the day of the arranged appointment. The worker should send a request for this payment to the WSIAT Medical Liaison Office. The WSIAT will use the same rates as it does for hearing expenses.

3.10 A party who files an expert report pays for the report. The WSIAT pays when it is requested by the WSIAT. A party who calls an expert as a witness pays the full fee of the expert. In exceptional circumstances, the WSIAT will pay the costs of an expert witness for a worker under the approved table of rates.

3.11 The WSIAT posts a table of rates. This sets out the allowable or maximum amounts to be paid for fees and expenses under this Practice Direction.

4.0 When the WSIAT Will Pay – Getting Approval

4.1 The WSIAT only reimburses expenses after the hearing. The WSIAT must receive a completed Hearing Expense Claim Form. Claimants must submit expense claims with receipts and information as required.

4.2 The WSIAT may issue a travel advance to a worker or survivor before the hearing date. This only happens in exceptional circumstances. A worker or survivor may ask for a travel advance. They do this by sending a written request for the advance to the WSIAT's Scheduling Department. This must be done **at least 6 weeks** before the hearing date. After the hearing, the worker or survivor must submit a completed Hearing Expense Claim Form. It must have all the required receipts to account for the advance provided.

4.3 A worker or survivor can ask for advance payments for travel and hotel accommodation for travel from outside Ontario. They do this by making a written request to the WSIAT's Scheduling Department. This must happen **at least 6 weeks** before the hearing date.

5.0 Who Decides what Expenses will be Paid?

5.1 WSIAT staff will decide payment issues that are covered by this Practice Direction. Staff may request further information to assist with the decision-making process. In exceptional cases, staff may request a Vice-Chair or Panel decide an issue related to expenses.

6.0 References and Resources

6.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 133 (payment of expenses of witnesses)

6.2 Related Practice Directions

#11 – Expert Evidence

#12 – Summonses and Production of Documents

#17 – Right to Sue Applications

#36 – Delivery and Filing Documents

6.3 Resources

WSIAT Table of Rates

Hearing Expense Claim Form

Effective date: May 6, 2024

Revised date: November 19, 2025

Practice Direction #40

Enhanced Case Management

1.0 This Practice Direction explains

- what enhanced case management is.
- which cases are selected for enhanced case management.
- what is involved in enhanced case management.

2.0 What Enhanced Case Management Is

2.1 Enhanced case management is a flexible, user-centered, and proactive way of managing an appeal or application that needs closer procedural oversight. A Vice-Chair or Panel is assigned early to guide the case and ensure fair and efficient adjudication.

2.2 Enhanced case management is intended to provide early and ongoing procedural oversight in cases that may otherwise be delayed or become unnecessarily complex. By assigning a Vice-Chair or Panel early in the processing of an appeal or application, the WSIAT can

- identify and resolve preliminary issues sooner;
- support parties in organizing their evidence and submissions; and
- tailor the process to the needs and capabilities of the parties.

2.3 Each case is handled based on its specific circumstances, and the Vice-Chair or Panel has discretion to manage the process.

3.0 Which Cases are Selected for Enhanced Case Management

3.1 Any appeal or application may be selected for enhanced case management. Factors considered may include the type of claim or the parties involved.

3.2 Factors related to the type of claim can include

- The nature of the claim, including any significant legal or policy issues (for example, the inclusion of issues in relation to the *Canadian Charter of Rights and Freedoms* or the Ontario *Human Rights Code*).
- The complexity of the claim, such as the number of issues or parties.
- The novelty of the appealed issues.
- The possibility of outstanding issues at the Workplace Safety and Insurance Board.
- The possibility that the same issue(s) has already been decided.
- The need to decide preliminary issues before the hearing.
- Whether the same issue or issues are already before the WSIAT in multiple appeals, or the appeal has been identified as, or related to, a leading case.
- The applicability of multiple workers' compensation acts.
- The type or complexity of the evidence.
- The volume of materials.
- The age of the claim.

3.3 Factors related to the parties involved can include

- A self-represented party who requires additional procedural support to ensure the fair and efficient processing of the case.

- Complex accommodation requests or needs that require early and ongoing procedural oversight.
- A difference in representation that may affect the fairness or efficiency of the proceedings (for example, one party has representation and the other does not).
- A highly contentious relationship between the parties that is exceptional and has the potential for causing delay or can interfere with a fair hearing.
- Frequent or extensive requests by a party for information and/or procedures that aren't proportionate to the appeal or application.
- A hearing that has been adjourned multiple times.
- A representative who has a prior violation of Practice Direction #29 – WSIAT Code of Conduct for Representatives, or has engaged in conduct that amounted to an abuse of process.
- A party who has repeatedly failed to respond to the WSIAT's requests and/or directions.
- A request from a third party to intervene.

3.4 WSIAT staff may identify an appeal or application as suitable for enhanced case management at any point, which will usually occur early in the processing of the case. Parties may request enhanced case management, in writing, as early as possible after they become aware that the appeal or application may benefit from closer procedural oversight. A written request should explain why they think enhanced case management is appropriate, referring to the factors in sections 3.2 and 3.3.

3.5 The decision to select an appeal or application for enhanced case management is made by the Chair on the recommendation of the Vice-Chair Registrar, Director of Appeal Services, or Tribunal General Counsel.

3.6 A case selected for enhanced case management may also be referred to the WSIAT's Alternative Dispute Resolution (ADR) Department. An ADR Dispute Resolution Officer (DRO) usually assists with resolving cases before a hearing.

3.7 Enhanced case management is reserved for cases that require the early assignment of a Vice-Chair or Panel for ongoing procedural oversight. Requests for pre-hearing procedural directions (such as hearing format, disclosure issues, or preliminary procedural rulings) should be made to the Vice-Chair Registrar.

4.0 What Is Involved in Enhanced Case Management

4.1 Cases selected for enhanced case management will be assigned to a Vice-Chair or Panel early in the processing of the appeal or application. The Vice-Chair or Panel will provide direction and guidance on how the case will proceed.

4.2 Once assigned the Vice-Chair or Panel will

- manage all procedural aspects of the appeal or application; and/or,
- decide the appeal or application.

4.3 If the assigned Vice-Chair or Panel changes, the parties will be notified.

4.4 Tribunal Counsel may assist in processing an appeal or application selected for enhanced case management.

4.5 The Vice-Chair or Panel may make rulings necessary to ensure that proceedings are fair, efficient, and proportionate. In appropriate cases, this may include measures to manage the proceeding, address procedural concerns, or prevent abuses of process, such as

- Clarifying the issue agenda and the WSIAT's jurisdiction.

- Determining the appropriate hearing format (e.g., written, teleconference, videoconference, in-person, or hybrid).
- Determining the number of, spacing of, and/or length of hearing days.
- Setting reasonable limits on the length of written or oral submissions .
- Setting time limits for presenting evidence or arguments.
- Requiring parties to meet specific deadlines for filing materials or responses.
- Limiting or not allowing further submissions on issues that have already been adequately addressed.
- Requiring evidence or submissions to be provided in writing.
- Limiting the number of witnesses or the scope of their testimony.
- Declining to consider submissions that are irrelevant, repetitive, or disproportionate to the issues.
- Addressing certain issues first, such as preliminary or jurisdictional issues.
- Managing participation in the hearing process, including determining the scope of any intervenor's participation and whether observers may attend, and on what conditions.
- Commenting on or taking official notice of a party or representative's behavior.
- Taking appropriate remedial action for failure to comply with directions or procedural requirements.
- Ruling on complex accommodation issues.
- Placing restrictions on the parties and/or hearing process.

4.6 Failure by a party to follow the Vice-Chair or Panel's directions may result in the appeal or application being

- decided based on the written record, without an oral hearing;
- made inactive; or,
- closed.

4.7 In specific circumstances, and consistent with the WSIAT's past decisions, a matter may be dismissed for abuse of process. This is an exceptional remedy and will only be considered where less serious measures would not adequately address the conduct or protect the integrity of the WSIAT's processes.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure) and 132 (the WSIAT's powers regarding proceedings)

5.2 Decisions

- *WSIAT Decision No. 2924/18* (abuse of process)
- *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (abuse of process)

5.3 Related Practice Directions

#6 – Mediation – 2-Party Appeals

#7 – Alternative Dispute Resolution – 1-Party Appeals

#14 – Pre-hearing Conferences

#19 – Hearing Assignments

#21 – Who May Attend a Hearing

#23 – Adjournments and Withdrawals

#26 – Closing Appeals by the WSIAT

#28 – Representatives

#29 – Code of Conduct for Representatives

#31 – Powers of Practice and Procedure

#33 – Role of the Vice-Chair Registrar at the WSIAT

#34 – Role of Tribunal Counsel Office at the WSIAT

Effective date: August 26, 2026

Revised date: August 28, 2026

Practice Direction #41

Leading Cases

1.0 This Practice Direction explains

- What a leading case is
- Why a leading case approach may be adopted
- How a leading case is selected
- What happens to other cases involving similar issues
- How a leading case is processed

2.0 What a Leading Case Is

2.1 A leading case is a case selected from a group of appeals or applications that raise the same novel or significant issue. It generally is assigned early to a Panel that provides case management direction and ultimately decides the appeal or application.

2.2 A leading case is selected with the expectation that the resulting decision may assist the WSIAT in addressing similar issues in related cases. While each case is decided on its own merits, a leading case may help promote consistency and fairness in decision-making.

2.3 A leading case approach is used where it is appropriate to support consistency, fairness, and efficiency in deciding multiple cases involving the same novel or significant issue. It is not intended to replace the WSIAT's usual development of case law or to limit the individualized adjudication of each case.

3.0 Why a Leading Case Approach May Be Adopted

3.1 The WSIAT may adopt a leading case approach when there are multiple appeals or applications about the same novel or significant issue. This approach allows the WSIAT to prioritize one case for early adjudication, with the aim of providing guidance that may assist in resolving other related cases.

3.2 For the purposes of this Practice Direction, references to a ‘group,’ ‘multiple,’ or ‘related’ cases refer only to appeals or applications that raise the same novel or significant issue. The cases do not need to share the same factual background, workplace, industry, diagnosis, or type of claim.

3.3 The decision to adopt a leading case approach is at the sole discretion of the Chair. In deciding whether to adopt this approach, the Chair may consider whether the case

- raises an important issue with implications for other workers or employers, or for the workplace safety and insurance system as a whole;
- requires interpretation of new or amended sections of the *Workplace Safety and Insurance Act, 1997*;
- involves the interpretation of a new or amended Workplace Safety and Insurance Board (WSIB) policy;
- raises issues in relation to the *Canadian Charter of Rights and Freedoms* or the Ontario *Human Rights Code*;
- arises, or is likely to arise, in multiple other appeals or applications; or,
- involves any other factor that supports adopting a leading case approach.

3.4 A request to consider adopting a leading case approach may come from WSIAT staff, a Vice-Chair or Panel member, or one of the parties. If a party is

making the request, it must be in writing and provided as early as possible. The request should explain why the leading case approach should be adopted for a particular issue.

4.0 How a Leading Case Is Chosen

4.1 Once a leading case approach is adopted, the Chair will determine which case will be chosen as the leading case. In making this decision, the Chair considers factors such as

- the procedural stage of the appeal;
- the completeness or quality of the evidentiary record;
- whether the case is reasonably representative of other related cases;
- whether the case raises the main issue(s) to be addressed in the leading case and can be adjudicated efficiently without additional issues causing unnecessary delay;
- whether both worker and employer perspectives are represented;
- whether the parties are represented;
- the positions of the parties on whether the case should be selected as the leading case; and,
- whether the case is suitable for an early hearing date.

4.2 Before selecting a case as the leading case, the WSIAT will normally invite the parties to provide submissions on its suitability for selection, including whether they agree to their case being selected. Where circumstances require, the Chair may proceed without inviting submissions.

4.3 A request to have a case selected as the leading case may come from WSIAT staff, a Vice-Chair or Panel member, or one of the parties. If a party is making the request, it must be in writing and provided as early as possible. The request

should explain why the case is appropriate to be the leading case, referring to the factors in section 4.1.

5.0 What Happens to Other Cases Involving Similar Issues

5.1 When a leading case is chosen, other cases raising the same or similar issues may be placed on hold. Sometimes the WSIAT will make it optional to have a case placed on hold – the parties in those cases will be notified. Other times the WSIAT will identify that a case needs to be placed on hold. If a party objects to their case being placed on hold, the WSIAT will consider the objection. Cases placed on hold may be made inactive.

5.2 Where appropriate, the WSIAT may allow preliminary or unrelated issues to proceed in an appeal or application that has been placed on hold. This may include bifurcation of issues (a process where one issue is heard and decided before another) or partial progression of the case where doing so will not undermine the purpose of the leading case approach.

5.3 Cases placed on hold will be reviewed periodically to determine whether the hold remains appropriate. Parties whose cases are on hold will be provided with general updates on the progress of the leading case, as appropriate.

5.4 A general description of the selected leading case may be posted on the WSIAT's public website. No personal, confidential, or identifying information about the parties in the leading case will be included.

5.5 Once the leading case is decided, the WSIAT will review all related cases that were placed on hold and provide the leading case decision to the parties in those cases. The WSIAT will notify the parties of next steps as soon as possible. Parties may make submissions about how the leading case applies to the facts of their own case.

5.6 Decision-makers in other cases aren't required to follow the decision in a leading case. The WSIAT decides each case based on the merits and justice of each case. However, the reasoning in a leading case may be persuasive when the facts or issues are similar.[1]

6.0 How a Leading Case Is Processed

6.1 A leading case generally follows the same processing steps as other cases. A Panel is usually assigned before the hearing to provide direction on preliminary issues and/or the hearing process. Once assigned, the Panel is responsible for managing all procedural aspects of the case and for deciding the case.

6.2 The Chair may appoint a 3- or 5-member Panel. A 3-member Panel includes a Vice-Chair or the Chair, one worker member, and one employer member. A 5-member Panel includes a Vice-Chair or the Chair, two other Vice-Chairs, one worker member, and one employer member. The composition of the Panel may change during the processing of the leading case – this could be in response to procedural rulings, changes to the issues, or bifurcation of issues. The parties will be notified of any change to the Panel.

6.3 Notice of a leading case may be provided to the WSIB where the WSIAT determines that its participation would be helpful. Intervenors may also be invited to participate in a leading case.

6.4 The WSIB and intervenors will have limited participation in the hearing process. The Panel will determine the extent of their participation and access to materials, after considering the submissions of the parties.

6.5 Tribunal Counsel may assist in processing a leading case.

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1 See also the Tribunal's *Hallmarks of Decision Quality* in Appendix A to the *WSIAT Members' Code of Conduct*.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, section 131 (the WSIAT can determine its own practice and procedure); section 124(1) (Decisions based on merits and justice; the WSIAT not bound by precedent); and, section 174 (who may hear and decide appeals at the WSIAT)

7.2 Decisions

The following decisions illustrate how the WSIAT has dealt with issues related to leading cases, intervenors, and notice

- WSIAT *Decision Nos. 1169/20I* and *1169/20I2* (participation of intervenors and WSIB as amicus curiae)
- WSIAT *Decision No. 95/09I* (the WSIAT's approach to a leading case)
- WSIAT *Decision 2346/12I3* (application for intervenor status)

7.3 Related Practice Directions

#19 – Hearing Assignments

#21 – Who May Attend a Hearing

#24 – Inactive Appeals

#31 – Powers of Practice and Procedure

#32 – Procedure When Raising a Human Rights or Charter Question

#34 – Role of Tribunal Counsel Office at the WSIAT

Effective date: August 26, 2026