

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 28
Date: July 29, 2021
Subject: Delegation by the Chair

A. GENERAL

1. In this decision, the following definitions apply:

“Act” means the *Workers Compensation Act*;

“ATA” means the *Administrative Tribunals Act*;

“chair” means the chair of the appeal tribunal;

“extraordinary member” means a member of the appeal tribunal;

“member(s)” means the chair, vice chairs and extraordinary members, including any vice chair, specialized vice chair, and deputy registrar;

“officer” means senior registry officer, assessment officer, appeal coordinator, and legal counsel;

“registrar” means the vice chair appointed as registrar;

“scheduling employees” means the supervisor intake and scheduling and registry floater(s) assigned to scheduling;

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

“tribunal counsel” means the vice chair appointed as tribunal counsel;

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

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

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

4. These delegations are effective from July 29, 2021, so long as the delegate continues in office, subject to my replacing this decision with a new delegation decision or otherwise amending or revoking this decision.

5. Under section 281(2) of the Act, in the event I cease to hold office, this delegation continues in effect so long as the delegate continues in office, subject to the term specified in paragraph 4, or the delegation being earlier revoked by a new chair.

B. STATUTES

6. Section 281 of the Act provides:

- (1) Subject to section 304(9), the chair may delegate in writing to another member of the appeal tribunal or to an officer of the appeal tribunal, a power or duty of the chair and may impose limitations or conditions on the exercise of that power or performance of that duty.
- (2) If the chair has delegated a power or duty of the chair and subsequently ceases to hold office, the delegation continues in effect
- (a) so long as the delegate continues in office, or
- (b) until the delegation is revoked by a new chair.

7. Section 280 of the Act provides

- (4) The chair may designate another member of the appeal tribunal to act in the chair's place during the chair's temporary absence, and while acting in the chair's place the designated member has the power and authority of the chair.

8. Section 278 of the Act provides:

- (9) Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated for an extended period or expects to be absent for an extended period,
- (a) the Lieutenant Governor in Council, if the member is the chair, or
- (b) the chair, if the member is a vice chair or extraordinary member,

may appoint a person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.

9. Section 66 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) provides:

- (1) The head of a public body may delegate to any person any duty, power or function of the head of the public body under this Act, except the power to delegate under this section.
- (2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.

C. CONFLICT/ABSENCE OF THE CHAIR

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

10. Under section 280(3) of the Act, I delegate to the tribunal counsel all necessary powers to act in my place, except the authority of the chair under section 304, if I determine that I am or would be exposed to a possible or actual conflict of interest or appearance of bias with respect to a given case. Under section 280(4) of the Act, I also delegate to tribunal counsel the authority to exercise all power and authority of the chair in my temporary absence, except the authority of the chair under section 304. These delegations are subject to a temporary substitute chair being appointed by the Lieutenant Governor in Council pursuant to section 278(9) of the Act.
11. I delegate to the registrar, the same powers and duties as delegated in paragraph 10 to tribunal counsel, but limited to situations where tribunal counsel is absent, or has determined they are or would be exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.
12. I delegate to the vice chair/quality assurance the same powers and duties as delegated in paragraph 11 to the registrar, but limited to situations where the registrar is absent, or has determined they are or would be exposed to a possible or actual conflict of interest or appearance of bias with respect to the given case.

D. DELEGATIONS BY AUTHORITY/POSITION

Delegations under Part D to positions means any incumbent of such a position but only so long as the member or officer holds the position.

13. Consolidation of related matters in one hearing – section 280(2)(k)

I delegate the authority of the chair under section 280(2)(k), to order the consideration of related matters in one hearing before the appeal tribunal, to the following positions:

tribunal counsel, registrar, deputy registrar, senior registry officer, assessment officer.

14. **Certificate of WCAT record for judicial proceedings – section 280(2)(o)**

I delegate the authority of the chair under section 280(2)(o), for the purpose of judicial proceedings, to prepare a certificate attaching the appeal tribunal record in the matter of a particular appeal or decision of the appeal tribunal, including any practices and procedures applied by the appeal tribunal, to the following positions:

tribunal counsel, vice chair/quality assurance, legal counsel.

15. **Establish panels – section 285(2)**

I delegate the authority of the chair under section 285(2), to establish panels of the appeal tribunal, to the following positions:

tribunal counsel, registrar, deputy registrar, senior registry officer, scheduling employees.

16. **Change in panel – section 285(3)**

I delegate the authority of the chair under section 285(3), to terminate an appointment to a panel, fill a vacancy on a panel, and refer an appeal that is before one panel to another panel, to the following positions:

tribunal counsel, registrar, deputy registrar.

17. **Appointment of 3-member panel – section 285(5)**

I delegate the authority of the chair under section 285(5), to determine that a matter under appeal requires consideration by a 3-member panel, and to appoint a panel with either of the following memberships:

- (a) a vice chair, acting as presiding member, plus two additional vice chairs,
- (b) a vice chair, acting as presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests, to the following positions:

tribunal counsel, registrar, vice chair/quality assurance.

18. **Appointment of new panel – section 285(11)**

I delegate the authority of the chair under section 285(11), where a panel is composed of one member and that member is unable for any reason to complete the member's duties, to appoint a new panel to continue to hear and determine an appeal on terms agreed to by the parties, to the following positions:

tribunal counsel, registrar, vice chair/quality assurance, deputy registrar.

19. **Extension of time to appeal – section 293(3), and Transitional Review and Appeal Regulation 2(2)**

I delegate the authority of the chair to extend the time to file a notice of appeal under section 293(3), to the following position:

member.

20. **Suspension pending Board decision – section 305(1)**

I delegate the authority of the chair under section 305(1), on application of the appellant or on the delegate's own initiative, to suspend appeal proceedings if a Board's decision respecting a matter that is related to the appeal is pending, to the following positions:

member, senior registry officer, assessment officer, appeal coordinator.

21. **Early continuation of suspended appeal proceedings – section 305(3)**

I delegate the authority of the chair under section 305(3), if the appellant requests the appeal tribunal to continue the appeal proceedings before the Board's decision referred to in section 305(1) is made, to the following position:

member, senior registry officer, assessment officer, appeal coordinator.

22. **Extension of time to continue suspended appeal proceeding – section 305(4)**

I delegate the authority of the chair under section 305(4), on application of the appellant, to extend the time to make a request under section 305(2) that the appeal tribunal continue the appeal proceedings, to the following position:

member.

23. **Extension of 180-day time frame due to complexity – section 306(5)(a)**

I delegate the authority of the chair under section 306(5)(a), to extend the 180-day time frame for the making of the appeal tribunal decision under section 306(4)(a), to the following positions:

tribunal counsel, registrar, vice chair/quality assurance, deputy registrar.

24. **Extension of 180-day time frame at appellant's request – sections 306(5)(b) and 306(6)**

I delegate the authority of the chair under section 306(6), if the appellant requests a delay in the proceedings under section 306(5)(b) to extend the time for not more than 45 days, to the following positions:

member, senior registry officer, assessment officer, appeal coordinator.

25. **Extension of 180-day time frame at respondent's request – section 306(7)**

I delegate the authority of the chair under section 306(7), on application of a respondent(s), to extend the time for an additional period not longer than that granted to the appellant under section 306(6), to the following positions:

member, senior registry officer, assessment officer, appeal coordinator.

26. **Reconsideration of appeal decision – section 310**

I delegate the authority of the chair under section 310, to refer an appeal tribunal or appeal division decision to the appeal tribunal for reconsideration to the following position (upon assignment by the chair, vice chair or deputy registrar):

member.

27. **Appointment of member, staff or other person to conduct a facilitated settlement process – section 28(1) of the ATA**

I delegate the authority of the chair to appoint a member or staff of the tribunal or other person to conduct a facilitated settlement process under section 28(1) of the ATA to the following positions:

tribunal counsel, registrar, vice chair/quality assurance, deputy registrar.

E. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

Delegations under Part E to positions means any incumbent of such a position, but only so long as the tribunal counsel, vice chair/quality assurance or legal counsel holds the position.

28. Under section 66 of the FIPPA, I delegate the duty, power, and function of the chair under the FIPPA to tribunal counsel, vice chair/quality assurance and legal counsel.

F. EFFECTIVE DATE

29. Subject to paragraph 29 in this delegation, this delegation replaces those contained in the *Workers' Compensation Appeal Tribunal Decision No. 23* (November 10, 2016).
30. Any delegated authority or assignment of matters prior to July 29, 2021 under a delegation of the chair continues so that the delegate may carry out and complete their duties and responsibilities and continue to exercise the powers contemplated in the delegation until completed.

Andrew Pendray, Chair
Workers' Compensation Appeal Tribunal

Signed at Kelowna, British Columbia, as of July 29, 2021